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Law, Anarchy and History

By Grant Gilmore
Professor of Law, The University of Chicago Law School

(The principal address at the Annual Banquet of The University of Chicago Law Review, May 5, 1966.)

This seems to be the anarchists' spring. This is the spring when all over the world people described as students have been marching with banners in angry protest against whatever is. This is the spring when all the people under thirty have decided that no one over thirty should ever be listened to—which must leave people who are just turning thirty, like Professor Staughton Lynd of Yale, in an immense hurry to say what they have to say before they cross the great divide and are never heard from.

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Judicial Clerkships

Mr. Phillip E. Johnson, JD'65, has been appointed law clerk to the Honorable Earl Warren, Chief Justice of the United States. During the past year, Mr. Johnson has been law clerk to the Honorable Roger J. Traynor, Chief Justice, Supreme Court of California.

Most practicing lawyers and law teachers are agreed that a year's service as law clerk to a judge is one of the most valuable experiences a young lawyer can have. In recent years, between fifteen and twenty members of each graduating class of 125 or so, have had the opportunity to extend their education in this manner. The records show great variety as to individual judges served, geographic location, and nature of courts involved. The members of the Class of 1965 who served as law clerks in the year just past were:

Alec P. Bouxein. Clerk to The Honorable Richard B. Austin, U.S. District Court, Chicago.

Bruce J. Ennis, Jr. Clerk to The Honorable William Miller, U.S. District Court, Nashville, Tennessee.

Henry F. Field. Clerk to The Honorable Walter V. Schaefer, Supreme Court of Illinois, Chicago and Springfield.

Robert J. Goldberg. Clerk to The Honorable Thomas E. Kluczynski, Illinois Appellate Court, Chicago.


Carl A. Hatch. Clerk to The Honorable John C. Harrison, Supreme Court of Montana, Helena.

Phillip E. Johnson. Clerk to The Honorable Roger J. Traynor, Chief Justice, Supreme Court of California, San Francisco.

Chester T. Kamin. Clerk to The Honorable Ulysses S. Schwartz, Illinois Appellate Court, Chicago.

Michael B. Lavinsky. Clerk to The Honorable John Pickett, U.S. Court of Appeals, Tenth Circuit, Denver.


(Continued on page 2)
BURRIL L. PRESTON. Clerk to The Honorable Hall S. Lusk, Supreme Court of Oregon, Salem.

TOM A. ROTHCHILD. Clerk to The Honorable James B. Parsons, U.S. District Court, Chicago.

ALAN H. SALTZMAN, Clerk to The Honorable Matthew Tobriner, Supreme Court of California, San Francisco.

MICHAEL G. SCHNEIDERMAN. Clerk to The Honorable Bernard M. Deck, U.S. District Court, Chicago.


TERRY J. SMITH. Clerk to The Honorable John W. Fitzgerald, Michigan Court of Appeals, Lansing.

WILLIAM C. SNOWER. Clerk to The Honorable Ralph M. Holman, Supreme Court of Oregon, Salem.

JOHN L. WEINBERG. Clerk to The Honorable Henry L. Burman, Illinois Appellate Court, Chicago.

WILLIAM A. ZOLLA. Clerk to The Honorable Ulysses S. Schwartz, Illinois Appellate Court, Chicago.

As of this writing, the following members of the Class of 1966, and three other recent graduates, had begun their work as law clerks to judges:

ROBERT M. BERGER. Clerk to The Honorable Henry J. Friendly, U.S. Court of Appeals, Second Circuit, New York.

NICHOLAS J. BOSEN. Clerk to The Honorable James A. Bryant, Illinois Appellate Court, Chicago.

ROLAND E. BRANDER. Clerk to The Honorable Roger J. Traynor, Chief Justice, Supreme Court of California, San Francisco.

BASIL G. CONDOS, JD'65. Clerk to The Honorable Walter J. Cummings, Jr., U.S. Court of Appeals, Seventh Circuit, Chicago.

SEYMOUR H. DUSMAN, JD'65. Clerk to The Honorable F. Ryan Duffy, U.S. Court of Appeals, Seventh Circuit, Chicago.

JOHN PALBY, JD'64. Clerk to The Honorable William M. McAllister, Supreme Court of Oregon, Salem.

LYN I. GOLDBERG. Clerk to The Honorable Edwin A. Robson, U.S. District Court, Chicago.

JOSEPH V. KARAGANIS. Clerk to The Honorable Hubert L. Will, U.S. District Court, Chicago.

HENRY C. KRASNOW. Clerk to The Honorable James B. Parsons, U.S. District Court, Chicago.

DAVID C. LANDGRAF. Clerk to The Honorable Bernard M. Decker, U.S. District Court, Chicago.

ROCLYNE E. LAUER. Clerk to The Honorable Henry L. Burman, Illinois Appellate Court, Chicago.

RICHARD E. POOLE. Clerk to The Honorable Collins J. Seitz, U.S. Court of Appeals, Third Circuit, Philadelphia.


LAWRENCE H. SCHWARTZ. Clerk to The Honorable Morris Miller, Juvenile Court, Washington.

MICHAEL L. SHAKMAN. Clerk to The Honorable Walter V. Schaefer, Supreme Court of Illinois, Chicago.

RICHARD G. SINGER. Clerk to The Honorable Harrison L. Winter, U.S. District Court, Baltimore.

RALPH D. STERN. Clerk to The Honorable Arthur J. Murphy, Illinois Appellate Court, Chicago.

Justice Holman with Mr. Snouffer

Mr. Goldberg and Judge Kluczynski

Justice Lusk and Mr. Preston
Professor Casper Appointed

The Record takes great pleasure in noting the appointment of Associate Professor Gerhard Casper, whose principal field is comparative law. A native of Germany, Mr. Casper studied at the Universities of Freiburg and Hamburg, passing his State Legal Examination (Referendar) in 1961. He received the Master of Laws degree from the Yale Law School a year later. He has since been awarded the degree of Doctor iuris utriusque (Doctor of civil and canon law) by the University of Freiburg. His doctoral dissertation, “Legal Realism and Value Orientation in American Legal Thought,” was recently published in Germany.

For the past two years, Mr. Casper has been a member of the Faculties of Political Science and of Law at the University of California at Berkeley. At Chicago he will teach courses in Comparative Law, Jurisprudence, and Constitutional Law.

He is married to the former Regina Koschel, a Doctor of Medicine, who will be interning at Michael Reese Hospital.

The appointment of Professor Casper, who has already established a reputation as a legal scholar, is in keeping with the strong tradition of emphasis on Com-
parative and Foreign Law at The University of Chicago Law School. Professor Casper will add to the strength of the Faculty in a field in which it is already represented by Max Rheinstein, the Max Pam Professor of Comparative Law, a world-renowned scholar. The Max Pam Professorship, held by Professor Rheinstein since its establishment, was the first chair in Comparative Law in an American university.

Bigelow Fellows

In describing the First Year Tutorial Program, the School’s Announcements state: “All first-year students perform individual assignments in a tutorial program conducted under the direction of a member of the faculty. In this program each student is assigned to a tutor, who is one of the Bigelow Teaching Fellows. The tutorial work emphasizes training in research, in the preparation of legal memoranda and other forms of legal writing, and in oral argument. Several of the assignments each year are based upon problems currently presented in actual cases, both trial and appellate, which are heard in the Weymouth Kirkland Courtroom of the Law School before courts of Illinois.”

The program, a major innovation in legal education, was established at the School in 1938. The Teaching Fellowships are named in honor of Harry A. Bigelow, who was a member of the Law Faculty from 1904 until 1940, and Dean of the School from 1930 until 1940.

In the academic year 1966-67, the Tutorial Program will be directed by Professor David P. Currie. The Fellows will be:

Michael G. Schneiderman, B.A., Antioch College, 1962, J.D., The University of Chicago, 1965. Mr. Schneiderman, who will serve as Senior Bigelow Fellow, has spent the year since his graduation as law clerk to the Honorable Bernard M. Decker, U.S. District Court, Chicago.

Jeffrey M. Epstein, A.B., Amherst College, 1962, LL.B., Harvard University, 1965. Mr. Epstein has served as law clerk to the Honorable Harry E. Kalodner, Chief Judge, U.S. Court of Appeals, Third Circuit.

Peter G. Hefrey, LL.B. (Hons.), University of Melbourne, 1963. Mr. Hefrey, who is a Barrister and Solicitor, has practiced law in Melbourne, and has served as a Senior Tutor on the Faculty of Law of the University of Melbourne.

Harvey S. Perlman, B.A., 1963 and J.D., 1966, University of Nebraska. Mr. Perlman, who was Editor-in-Chief of The Nebraska Law Review and was graduated first in his class, will return to teach at the University of Nebraska College of Law following his year at Chicago.

Sheldon H. Roodman, B.A., University of Michigan, 1963, J.D., Washington University (St. Louis), 1966. Mr. Roodman was Managing Editor of the Washington University Law Quarterly and was graduated first in his class.

Geoffery P. Shaw, B.A., Oxford University, 1965. (B.C.L. anticipated at about the time this article goes to press.) Mr. Shaw, who was at Worcester College, expects to practice at the English Bar after the conclusion of his year at Chicago.

Alumni Notes

Lester R. Uretz, JD’48, has been appointed Chief Counsel of the United States Internal Revenue Service.

On the same day, his classmate, Milton Semer, was appointed Counsel to the President of the United States. Mr. Semer had been serving as General Counsel of the Housing and Home Finance Agency.

Edward H. Levi, JD’35, Professor of Law and Provost of the University of Chicago, and also, of course, former Dean of the Law School, has been elected to the Board of Trustees of the University.

Two graduates of the School were cited by the University of Chicago Alumni Association for civic leadership and community service. The Honorable Hubert L. Will, JD’37, is Judge of the U.S. District Court for the Northern District of Illinois. Judge Will has been Chairman of Chicago’s Committee on Youth Welfare, a member of the International Council of the World Veterans Association, a member of the National Board of the American Veterans Committee, a Director of the Illinois Humane Society, the Foundation for Emotionally Disturbed Children and the Americans for Democratic Action. He was one of the founders of the South East Chicago Commission.

Thomas L. Nicholson, JD’54, M.C.L., ’59, is a member of the Chicago firm of Isham, Lincoln and Beale. He is President of the Metropolitan Housing and Planning Council of Chicago. As Vice-President of the Chicago Council on Foreign Relations, he was the Director of the Ninth Biennial Conference of the U.S. National Commission for UNESCO. Both Judge Will and Mr. Nicholson are members of the Board of Directors of the Law School Alumni Association.

Alan C. Swan, JD’57, has been appointed Assistant Vice-President for Planning and Development at the University of Chicago. Mr. Swan practiced with the New York firm of Milbank, Tweed, Hadley and McCloy for four years, and then served as Assistant General Counsel of the Agency for International Development.
again. This is surely the spring when all the people over thirty have given up even pretending to understand what is going on. There are of course the pundits of the Great Society who make a profession of explaining the truth of the matter—but I dare say that no one paid much attention to them, even as far back as last spring.

My own generation, in its youth, went through what was then conceived to be a period of revolutionary ferment. The Great Depression of the 1930's, which was our dearest intellectual possession, had taught us that Society—it was not yet the Great Society—must be rebuilt. Wherever we clustered, from right to left of the political spectrum, we were all rebuilders. The one article of faith which no one questioned was that you must have clearly in mind, before you started the demolition, what you proposed to put in the place of the structure you were getting rid of. There was to be no destruction just for the dreadful joy of seeing things go up in smoke, the awful ecstasy of seeing them come tumbling down in ruins. We knew that, in the great nineteenth century debate between Marx and Bakunin, Marx had triumphed. You had to have what came to be called an ideology. In this sense the president of General Motors was every bit as good a Marxist as the chairman of the Communist Party—although it is true that the details of their ideologies were not at all points in agreement.

But this year, I take it, ideologies are for the birds and we are all for the dreadful joy and the awful ecstasy. There was a French anarchist who, as he was being led off to execution, told his followers: If you want to be happy, hang your landlord. There is much to be said for this, even from the landlord's point of view. It concentrates your mind wonderfully, as Dr. Johnson remarked, to know that you will be hanged tomorrow and a short, happy life is on all counts to be preferred to a long, dull one. Smash now, build later must be our slogan; Back to Bakunin our watchword.

In this forward-looking Law School, where we pride ourselves on keeping up with the times, we must set about constructing an anarchist theory of law, fit for the season. I have no doubt that the the incoming editors of the Law Review already have this project well in hand and that we may confidently look forward to a symposium issue next fall on The Rule of Law in an Anarchist Society.

Perhaps the most useful contribution that our young friends can make to our anarchist jurisprudence will be the destruction of the myth that predictability is what law, and the study of law, are all about. The myth has obsessed us ever since Holmes told us, the better part of a century ago, that what he meant by law was the prediction today of what the courts are going to do tomorrow based on a study of what the same courts did yesterday. That is, from a study of the past we ought to be able to foretell the future. If we know the last decision, we know the next one too. It is true that Holmes cautioned us, without explaining what he meant by either term, to pay more attention to experience than to logic—but that seemed to mean merely that there is a wrong way, as well as a right way, of studying the past. If we go about it the right way, Holmes assured us, we will undoubtedly pull off the predictability trick.

The nineteenth century historians, of whom Holmes was a typical representative, were happy optimists—much as the social scientists are today. Their mission, which would be accomplished as soon as they had had time to look through the archives, was simply to tell us, as a German historian put it, exactly what had happened. Once that had been done, we would know—although there remained a central core of ambiguity about what it was that we would know. From much of the German writing it appeared that we would know that all history had been a triumphant progress toward the ideal of perfection embodied in the Prussian state. Lord Acton devoted most of a long life to a monumental history, which he never quite finished, of the idea of freedom and its progress—an English version of Prussianism. Marx, and early drop-out from society, became the apostle of a somewhat different synthesis.

Common to all this writing was the assumption that everything is a progress toward a predetermined goal. The inevitability of history became the brooding omnipresence of the age. What was had to be. Having been so, it could not have been otherwise. From which it followed that what will be has already been plotted, the course has already been set, our destiny is truly written in the stars. There was, in most versions, one more river to Jordan but the Promised Land was already in sight.

Historians today have become a sadder, but, I am sure, a wiser, lot, as perhaps even the sociologists will have become after another generation or two of seeing their reach exceed their grasp. Exactly what happened will never be known, even when the last document in the last archive has been analyzed in accordance with the most refined techniques. Except in broadest outline the past escapes us. There are the bare bones, bleached white with time—dramatic and terrible events of which we have heard so often that we believe them to be true—but it is a madman's folly to try to clothe the dead bones with living flesh. The inevitability of history has become, except for a nostalgic Victorian like Toynbee, a series of unrelated traffic accidents. What was could perfectly well have been something else. What will be, God, if he is not already dead, only knows. Knowing who won the last election, the last war, the last revolution tells us exactly nothing about the next election, the next war, the next revolution—except that there will in all probability be
more wars and more revolutions. Whether there will be
more elections is a closer question. Meanwhile, as an
English poet has remarked,

The situation of our time
Lies round us like an unsolved crime.

An historian is someone who writes about the past. History is not what happened, but what is written about
what happened, in the past. History is a formal discipline,
like sonnet writing or law. The historian is not absolutely
free to improvise. If he chooses to write about what we
oddly call the middle ages, he must take account of the
fact that Rome fell. But we know so little about what
Rome was or what its fall consisted of that the historian’s
imagination has as free a range as the sonnetteer’s within
his fourteen lines or the lawyer’s within his library of
bound reports. Rome fell, we may say, because of corruption
and immorality in high places—which teaches us to
trusture austerity and a high moral tone among our
elected officials. Or Rome’s fall represented the triumph
of barbarism and Christianity—which makes us love our
own enlightened rationalism all the more. Or the truth
is that there was a long-continued drought in central and
southern Europe: let us keep our irrigation systems in
good repair. Or that a population decline, which began
during the second century of our era, went on until the
Empire no longer had the strength to withstand attack:
there seems to be no particular moral there for us. Or
that a strong central government in China in the third
century drove the barbarian tribes westwards from the
Asian steppes until they poured in helpless terror across
the Roman wall: perhaps a strong Chinese state and
civilization in the rest of the world are incompatible. And
there are a good many other theories which have been
put forward at one time or another to explain why Rome
fell—if indeed it did fall.

History, let us conclude, is a systematic distortion of
the past, designed to tell us something meaningful about
the present.

As lawyers, we are all historians, whether we like it or
not. We are bound to a discipline which requires us to
justify whatever is to be done now on the ground that it
resembles something that has been done in the past. We
must search out the precedents. We must ascertain the
true intent of the legislature. The lawyer’s insistence that
nothing absolutely new can ever be allowed is, I am sure,
socially useful: it acts, to some extent, as a brake on pro-
gress and slows down a rate of change which might other-
wise become intolerable. It satisfies a profound psycho-
logical need. Almost the first legal business of any success-
ful revolution is to legitimize the new regime—which
is mostly a matter of proving that the revolution changed
nothing but merely recognized what had in fact already
taken place. The proof, indeed, is usually persuasive.

But, since we must be historians, let us try to be good
historians. Let us stop pretending that from the past we
can predict the future. Let us stop teaching students that
the point of studying cases is to guess how the next case
is going to come out. The point of studying cases is the
same as the point of studying why Rome fell. For one
thing the cases, like the fall of Rome, are in themselves
intellectually fascinating. It is fashionable in some circles
today to heap contempt on what is called merely narra-
tive history—I think that the contempt is largely over-
done. A good story has never been a waste of anyone’s
time. For another thing, given the necessary inadequacy
of our knowledge, there is—there always will be—room
for an infinite number of hypotheses about what went on
and why it went on and what caused it to move in the
implausible direction it did rather than in the plausible
direction it didn’t. Our hypotheses never tell us what is
going to happen next. They tell us about patterns of re-
response to circumstance. They give us a reason for argu-
that, at this juncture, we ought to do this, rather than
that. They give us a way of channeling our behavior
so that it will be something more than helpless panic or
random improvisation. A chess-player knows what he
plans to do next if his opponent makes the move that is
expected of him. If his opponent makes an unexpected
move, he may be wise to change his plan and do some-
thing else. The more carefully he has studied the cele-
brated games of the past, the better equipped he will be
to adjust, quickly and confidently and rationally and
flexibly, to the new situation. He has something to go on.
And that is the point of studying cases.

Let us also, as good historians, stop pretending that
once we have learned all the facts about everything—or
even all the facts about anything—we shall be in a posi-
tion to control our destinies or make the world a green
and pleasant place or even do our opponents in the eye.
Fact-gathering is a comforting occupation: it makes us
feel scientific and the more facts we gather the more sci-
entific we feel. The number of facts one man can gather
in a lifetime is sadly limited. Therefore we must have
teams to do cooperative research. We must have research
institutes. We must have squads and platoons of research
assistants. We must have batteries of computers. We
must pile up the facts until they reach the sky. And when
they have reached the sky, we shall sadly discover that
our arduous and expensive labors have been for naught.
Last year’s fact is no more helpful than yesterday’s news-
paper. Nothing so obscures vision as too many facts,
dancing like spots before our eyes. Facts give us, not
truth, but the illusion of truth, and those who know they
are right have always done a great deal of harm in the
world and always will. The facts, or the fancies, which
one man can harvest, unaided, are the limit of wisdom.

Let us, finally, stop pretending that the law is more
than it is. Let us stop talking, each May Day, about the
Rule of Law in a Democratic Society—as if all the good things we like to think we have in our way of life come from a strict observance of the positive law and as if the more law we have the more democratic we will be. Let us stop talking about World Peace through Law: conceivably we might get World Law through Peace—of which there appears to be little present prospect—but not the other way around. The law—our system of law—is wonderful enough as it is without being packaged like a television commercial to show how much better it is than poor old Brand X. Law never creates society; society creates law. Law never makes society better; a better society will improve the law.

Law is not a positive good; it is a necessary evil. In Utopia there will be no law. The lion will lie down with the lamb and the forms of action will not longer rule us from the grave. Happily for us, no doubt, Utopia is not yet in sight and we shall have need of law even after we have turned the next corner. But we may judge of the excellence of our society not by how much law we have but by how little we can make do with.

Law is our attempt to control the chaotic and exuberant spontaneity of life. Law is formal, rigid, analytical, rational. Law is, as we say, a discipline. Life is undisciplined, irrational and forever overflowing the banks and dikes we have built to contain it. The study of law, I tell my students, tends to corrupt what is human in us; the ideal lawyer would have left his humanity quite behind. We shall be wise to stop well short of that bleak goal.

In constructing our new jurisprudence for the season, let us be careful to reserve a part for life. The demonstrations of this troubled, but not uninteresting, spring should serve to remind us that reason, which is our stock in trade, has never been enough. A wise lawyer once said to me that he had concluded, after a lifetime of observation, that all outstandingly successful men are insane. Their insanity is, indeed, their most precious asset. If they had not been insane, they would have been like the rest of us. The lawyer’s function, therefore, when he counsels such a man, is to try to make sure that his client does not go quite off the rails, without doing anything to cure or curb the insanity which is the secret of his success. We are—all of us—by our profession, the purveyors of reason to a world that is unreasonable, if not insane. We try to impose a degree of order on the swirling chaos. We perform a necessary, if somewhat disagreeable, task. By our training we come instinctively to prefer tradition, continuity and ordered change. But let us bear in mind that our true function is to preserve, protect and defend the insanity which, while it terrifies us, is yet our greatest and our only hope.

My fellow anarchists, I salute you.

Gilmore Honored

Grant Gilmore, Professor of Law at the University of Chicago Law School, has been awarded the Ames Prize for his book, Security Interests in Personal Property. The catalogue of the Harvard Law School describes this coveted and infrequently awarded prize as follows:
The Graduate Program

Provision for graduate study beyond the J.D. degree has been a major element in the work of the Law School for decades. In recent years there has been a substantial increase both in the variety of graduate programs and the number of graduate students. During the academic year 1966-67, it is expected that fifty-six graduate students, from seventeen countries, will be enrolled. The students and their programs are:

Commonwealth Fellows (Candidates for J.D. degree):
PETER J. BAYNE, Melbourne, Australia, LL.B., 1965, University of Melbourne.


Center for Studies in Criminal Justice:

ISRAEL—DAVID LIBAI, Tel Aviv, Master of Law, 1956, Hebrew University; Candidate for D.C.L. degree.

JAPAN—ATUSHI NAGASHIMA, B.Jur., 1941, Kyoto Imperial University.


U.S.A.—DAVID L. PASSMAN, Chicago, Class of 1967, The University of Chicago; Candidate for LL.M. degree (beginning Spring Quarter).

Comparative Law (Candidates for M. Comp. L. degrees):

BELGIUM—FRANZ VAN HOECK, Brussells, Candidat (Law), 1963, 3rd Doctorate of Law, 1966, Catholic University of Louvain.


GERMANY—VOLKER DAHLGRUN, Celle, Reverendar, 1961, University of Würzburg; Assessor, 1965, Oberlandesgericht Celle.

GERMANY—GERHARD FISCHER, Stifturstresse, Jur Staatsprüfung, 1965, Eberhard Karls University of Tabingen.


ISRAEL—NITZA SHAHRO LIBAI, Tel Aviv, LL.M., 1963, Hebrew University.
JAPAN—JUNJIRO TSUBOTA, LL.M., 1965, University of Tokyo.
SWITZERLAND—VICTOR MUELLER, Aargau, Doktoral, 1966, University of Zurich.
YUGOSLAVIA—DJURICA KRSTIC, Belgrade, Doctor of Law, 1961, University of Belgrade.

Foreign Law Program
First Year, in Residence at the Law School
LOREN DARR, Garden City, N.Y., LL.B., 1966, Stanford University.
KENNETH E. FRIES, Chico, California, LL.B., University of California, Berkeley.
MONT P. HOYT, Oklahoma City, Oklahoma, J.D., 1965, University of Oklahoma.
DONALD SCHER, Altadena, California, LL.B., 1966, University of California, Los Angeles.
RICHARD J. SCOTT, West Bend, Wisconsin, LL.B., 1966, University of Wisconsin.

Second Year, in Germany
JAMES L. BILLINGER, Manistique, Michigan, J.D., 1964, University of Denver.
THEODORE K. FUEBER, Minneapolis, Minnesota, LL.B., 1965, University of Minnesota.
STEPHEN W. GUTTARD, Victoria, Texas, LL.B., 1961, University of Texas.

International Trade and Development Program (Candidates for J.S.D. degree):


Law and Economics Program:
ROBERT J. DONOVAN, Drexel Hill, Pennsylvania, J.D., 1966, The University of Chicago; Candidate for LL.M. degree.
JOHN L. PETERMAN, Charlottesville, Virginia, Ph.D., 1964, University of Virginia (Post-doctoral research fellow).

Candidates for Master of Laws degrees (LL.M.):
S.W.F. AMARASURIYA, Colombo, Ceylon, LL.B., 1954, University of Ceylon.
ROBERT L. BARD, Buenos Aires, Argentina, LL.B., 1959, Yale University.
ALLIE DUBRELL DOUTHIT, Austin, Texas, LL.B., 1961, University of Texas.
DAVID N. GOLDSCHEID, Elizabeth, New Jersey, LL.B., 1966, University of Michigan.

Candidate for Doctor of Laws degree (J.S.D.):

Special Research:
BELGIUM—LUDOVIC DE GRYSE, Rosseilare, Dokter in de Rechten, 1961, Catholic University of Louvain (and Assistant to Professor Max Rheinstein).
The Many Faces of the Law

By The Honorable Charles D. Breitel
Justice of the Appellate Division, Supreme Court of New York

(The talk which follows was the Lecture to Entering Students, presented by Justice Breitel at the opening of the academic year 1965-66.)

Thank you very much, Judge Schaefer, for a magnificent introduction. If I weren't the rude man that I am I wouldn't say what I'm going to say, namely, that it was too magnificent. An introduction, if it is not good, is a terrible thing. It leaves the speaker before the audience completely naked, with no foundation upon which he can proceed and without clothes to hide his obvious human imperfections. When the introduction is too good, there is no possibility that he can possibly attain the expectations that have been raised, so dear friend, Walter, you've done me too well tonight. I meant what I said: that was very nice and very touching and especially coming from Judge Schaefer. This I will tell you, and I know this is not compliment trading. . . . There are three great state judges in this country and they happen to live and work across the country. There is Traynor of California, there is Fuld of New York and there is Schaefer of Illinois.

I think it's a marvelous idea to have an entering law class addressed by someone who is an old man at the law. I think it's a magnificent idea to have it preceded by a dinner for all the reasons that Dean Neal told you.

The only trouble is what in heaven's name does the speaker now say to an entering class? I have a bad habit of accepting invitations to speak without having decided what I'm going to speak about. I find it somewhat rewarding sometimes, because in the necessity of deciding upon what I will speak about, I usually find it very educational for me, even if the effect on the audience is not equally rewarding.

So I have said to myself for a long time now, since I accepted the invitation to speak tonight, what does one say to an entering class? It's thirty-six years since I was a member of an entering class, and my memory is dim. It is a common rule of ordinary, commonplace psychology that painful experiences are not recalled easily, and so I did not know just what it was that an entering class would like to hear. Worse, I did not know what an entering class ought to hear, which might be quite different from what they wish to hear. So, with the legal training that I have had, which has not been too bad, I knew that I should do research. So I did. I started almost at home.

I have a daughter who has been out of law school less than two years, and as the idea of doing this research came to me on the spur of the moment, I used the telephone. And I said to her, "Eleanor, if you were a member of an entering class, it's a short time ago for you, and I was speaking to that class, what would you want me to say?" "Oh, my God," she said, "it's useless. Not at the beginning . . . maybe in February." She went on: "At the beginning they know all the answers. At the beginning they (the students) have achieved their successes in the liberal arts schools, and especially if they've been admitted to good law schools, they feel they've made it. They've both achieved at the college level and they have achieved by admission to their law schools." You heard what Dean Neal had to say today, this evening, which confirmed that. He told you this is the best of all classes the School has ever had, and therefore the most promising of all classes. You do not have to be told anything more on this point. She repeated, "Much better to talk in February." My daughter said also, "You know, by December confusion will reign. By December they will be in trouble, but it will still be too early to talk to them. You'll have to wait for it to settle a bit." I asked, "What's the confusion about?" She said, "The chaos in the law, the lack of any system, the peculiarities of the teaching system of law. It just doesn't make any sense. And for the first time these great achievers of great successes in the halls of Academe discover that there is this hopeless, waterless desert before them and the way out of it does not appear." When she had finished, I said, "You know, you have given me the beginning of my speech, and what else you have done is that you have given me some recall, because I now remember some things about when I entered law school."

I had been a major in philosophy during my liberal arts education with its highly disciplined, intellectual, logical system. I believed that I had the rules of logic by the tail, and I thought that I had heard that the law was logical, and that the law was a system. By the end of my first year in law school I said, "This is not for me." I hated it.

But I might be peculiar and it might be that my daughter inherited some peculiar genes from me, so I spoke to my law secretary. His recall, at first, was not very good either, and his answers were not very useful. Then I told him what my daughter had said. He's been out of law school about five or six years, therefore, it's eight or nine years since he was an entering student. And I said, "What was your condition when you entered?" He said, "By golly, it was like that." He said, "At the beginning I was at the top of the heap. I had done exceedingly well at my college, Cornell; I had been admitted to Columbia Law School; everything was open for me; it was marvelous; it was wonderful." He said, "After a few months the truth began to come through and I was distraught. It took me a long time to straighten out. I was on the Law Review before I finished, but
I had a terrible time before I was through." I figured that I would carry my research just a little bit further.

My family is studded with lawyers, I want you to know, although this isn't a family story, I promise you. I spoke to my son-in-law, who is a lawyer. He's been out of law school about four or five years, and I did not tell him about these other and earlier conversations. I said, "Bill, if you were in your first year at law school and I was there to speak to you, and have in mind who I am and what I've done or haven't done, what would you want to hear from me?" He said, "I'd want to hear ... now notice the parallel here, he came through with some other constructive suggestions, but notice the parallel ... he said, "I'd want to be told that all the things I learned and achieved in liberal arts education were not necessarily relevant in the learning of the law. I'd want to be told that the law is different; that it's a different kind of discipline. I'm not quite sure why it's different, but it is, and that every single one of us, when we entered law school, first came a cropper, in the first few months, and some never came out of it until the end of the first year, and some even later. I would have wanted to be warned of that so that I would be prepared for it, because at the beginning it was easy, and at the beginning I was in the flush of self-esteem and self-confidence."

Last night I stopped off in Ann Arbor and I spoke to a young lady, a first year law student, and I wasn't a good lawyer, because I didn't first check something that I'll mention to you in a moment. I said to her, "If I were addressing your class as an entering class, what would you like me to say?" "Oh," she said, "I don't know, I'm all confused." And I thought, my gosh, my research hasn't been complete. This case is different. And then I caught myself; (it shows you how careful you have to be in research) classes had started at Michigan six weeks before. Then I asked her, "By the way, how was it at the beginning?" "Oh," she said, "at the beginning it was wonderful. I'd been told how terrible law school was, how difficult, and it wasn't at all."

But she said, "It didn't stay that way." So, the exception was no longer an exception.

Now to move just a little bit closer to what I want to tell you; there is something strange about the law. You know, almost every man thinks he is equipped to discuss the law with you, that he is equipped to decide whether a rule of law is good or a rule of law is bad. Unlike his treatment of professionals in other fields, as medicine or in the exact sciences, whether mathematics or nuclear physics, he assumes that this is within his ken. In the law he believes that he is entitled to have the same kind of judgment as those who have spent their lifetimes learning its peculiar vocabularies, its misleading ambiguities, the peculiar concepts, the misleading concepts, properly called fictions, with respect to the law, and so, if you as liberal arts graduates come to law school and feel that you have a right to think that you can understand it quite easily, you're not out of the ordinary at all. You're right in the proper lay tradition, and just to confuse you a little bit about that, we lawyers often say, and it's considered even a principle in jurisprudence, that law is based on common sense and that if the law is not intelligible to the layman it is not good law.

All of these things, you see, obviously cannot be true at the same time. There is something that requires a synthesis here. So let's try to see if I can analyze what the trouble is. I want to say, with no false effort at modesty or humility, for which I'm not noted, that I am not sure that my answers are right, but I do assure you that I believe that these are the answers and that they may provide data of some value to you.

First, we have the obvious premise that the law is a discipline like other disciplines, with its own vocabulary, its own techniques, its own categories, which is a matter more involved than that of vocabulary, and those of you who have studied logic or philosophy will know exactly what I mean, and also with its own traditions. Traditions suggest that the historical import will affect a discipline, and obviously, when we're dealing with a social field—a humanity—history and tradition will be much more important than it is in the other so-called exact sciences. Although you do not have to know much about science to know that even there history influences our understanding and our so-called knowledge of what those sciences have to offer or discover for us. But when you deal with a social field, it is much more true that history will influence its content and method.

The second, and not such an obvious fact, is, and you're going to be surprised that I claim it is not such an obvious fact, that the law is not a branch of a logical science, nor is it born of a logical methodology. The law is a social science and at the same time it is not merely a science, it is also an art and skill in the sense that it involves the doing of things. That does not give you the full import of what I want to say; my statement may be too obvious. After all, I did not have to come all the way to Chicago to tell you that the law is concerned with practical applications, but my point is that the law, unlike every other discipline, covers absolutely every aspect of human activity and inactivity in an organized society, so there is nothing that it does not touch—absolutely nothing that it does not touch. When one considers the other important orders in our society, whether of religion, or morals, if you distinguish between the two, or of politics, the sciences, the economic order, and, indeed, all of the institutions of society, from the family to the largest aggregates of social organization, there is just nothing that the law does not touch. Even when the law abstains from laying its hand on the conduct of human beings, it, in a sense, is functioning by
withholding its regulation. Now that, you see, is going to make the law a very complicated discipline.

You can begin to understand, too, from what has been said, that the law is very different from all the other things, even the most "social" of the social sciences that you studied in the liberal arts schools. Nothing was quite so embracive, nothing was quite so universal, but the end is not yet.

There is another quality that is peculiar to law. Some of the qualities I have already mentioned are shared to some limited extent with other social disciplines, but there is one that is peculiar to law, and that is... and although this is not an easy thing to understand, it is a very easy thing to phrase... that the law makes its own conditions. You see, in economics, for example, to take a real social science, a rule in economics may be valid or invalid, true or false. If it is false, it simply means we did not know enough. In law, that does not quite follow. The law, by making its rules the rules, makes them the law. It creates its own conditions. If the law says that using narcotics is a crime, by gosh, it's a crime. Now in economics, you know, if somebody adopts a rule... you'll notice that lawyer phrasing, "adopts a rule"... rather, finds a rule that such and such a factor will affect the demand under such and such circumstances, it is either true or false. The economists do not change the conditions by their pronouncements of rules, but the law does. For example, if the law says that a horse is a cow, the horse nevertheless remains a horse, but there is still a strange thing. The courts will treat the horse as if it were a cow, and when that happens, law students and almost all lawyers get apoplexy.

As a consequence of these few points that I have made for you, and take what follows not as an apology for law, but as a claim of pride on behalf of the law in its travail, that because these things are true, the law falters and stumbles. It moves ahead and then it slips backward. Sometimes it goes too fast, sometimes it moves too slowly. Sometimes it adjusts and sometimes it adapts and sometimes, too, it misadjusts and misadapts. Sometimes it follows what is happening in society and sometimes it even leads.

If we assume that the purpose of law is the fulfillment of society's ends, sometimes it is a failure and sometimes it is a success. But this is no reason for having less love and respect for it. This is what I did not know in my first year in law school. This stems from the fact that because the law is as universal as I told you, and because it covers all of society's problems, it must, by definition, suffer from every human failing, from every failing in society. If man does not know enough, then the law does not know enough. If man is greedy, the law will reflect that greediness. If man is beastly, the law will reflect beastliness, and I could carry the parallels indefinitely, but you can do that for yourself. Because the law, you see, is a reflection of the entire, both in extent and in depth, panorama of organized society.

To expect the law to be any better than the organized society in which it exists, is to expect the impossible. It is a very evil thing and a failure where it does not even rise to the level of its society. Then there is rejection of law and even revolution, as there should be. But to expect it to be much better, this is expecting what cannot be. So to find exactitude where there is no exactitude in society is impossible. To find perfect knowledge where there is no perfect knowledge in society is impossible. This may help explain to you when the days of confusion begin to come to you, how and why law has stumbled, how it has faltered, how it has moved ahead, how it has fallen back, how it tries to adjust, always in the hands of ordinary human beings who are, of course, finite.

Even as I speak to you tonight of this, I am not sure that this is the answer to explain the confusion. Many have tried to find the answers to problems of this kind and no man claims that he has them with any certainty, so that I am not picking myself out as the only modest man in the group.

Now there still can be a little further help that we can get out of this broad philosophical area and try to deal with the question of what it is that you are supposed to be learning in law school. In the first place, we have cases, and this method of teaching law by cases has its own devilmint in it. Before Langdell developed the case method at Harvard Law School, law was studied out of texts, great texts written by great minds, texts that were also used by the courts in the way of citation of learned but not binding authority, something as they still do to a certain extent in continental countries under the so-called civil codes. Texts have a beauty to them. They have system. You start out with definitions; they give you principles; they give you rules. In short, they give you answers. It is not just an endless questionnaire. Yet we do not use texts in this way, with some very few exceptions. We have not used texts in the better law schools now for half a century, and more. We use cases, and I will try to tell you why.

The law operates by generalizations, by rules, but we have become skeptical about rules and generalizations. We have learned that it is easy to confuse a collection of words with a true generalization which describes an existing condition. But in cases we see how the rules and generalizations are actually applied. This is why we stress cases. Just to begin to introduce some of that confusion that perhaps you have not reached in only your second day: it is not true that the law is cases. The law is still rules and generalizations, and if you reach that distorted state of mind where you think there are only cases, you end up without any law. You just end up with decisions and judgments by individuals in cases,
and that is not law. There is something much more that impels both the lawyer and the judge to decide a case the way they do, and it is the need to apply principles of generalization. We work with the cases and yet out of the cases; instead of using the text as a crutch, you must find the rules and generalizations upon which the case rests; and to make the matter still more confusing, you cannot quite trust the judge who wrote the opinion when he gives you his generalizations. In the first place, he may not have been a good craftsman, although he may be a fairly good judge and reach the right result. So the reasons he gives may not be so good. Or he may be one of these crafty fellows—to use a word with the same etymon but with an entirely different meaning—he may be one of these crafty fellows who deliberately gives you a false reason for reaching a result for which he is afraid to give you the real reason.

But you see, you want to know how the next case is going to be decided, so you've got to find out what the real rule is, what is the real generalization, that, in fact, moved the court to do as it did, consciously or unconsciously. Thus, you are going to find professors of yours, who are not natural-born sadists deliberately irritating you, who insist on asking what is the holding of the case, what the court said, what it had to say or reason in order to reach that holding, as distinguished from the dictum that it uttered, and whether, in fact, it really meant what it said. This does not mean that all lawyers, judges included, are completely untrustworthy speakers of the word. Think back of what I told you before. This is rough stuff. This is dealing with the facts of life. This is deciding cases about people who are involved in disputes.

The law deals with what are all trouble matters, and the need for reaching a just result is a very difficult one indeed, and judges are not selected in such numbers or in such ways as will produce uniformly a collection of the wisest men in the realm. And by the way, if you chose them that way, you probably would not have a good judiciary. There is a lot more to the problem of government of the people, of which the judiciary is a branch, than merely having intellectual and logical excellence, and perhaps scholarship to boot.

I would like to give you a bit of an illustration where some of these knotty problems get us into trouble. If we work with texts, we have a simple definition of fraud, for example. Fraud would be the misrepresentation of a fact to another with the intent that he should rely on it for the purpose of obtaining something of value from him. In courts they will sometimes refer to it as the five fingers of fraud; false statement of fact, the knowledge of its falsity by the utterer of it, the intention that the other should rely on it, the actual reliance by the victim, and the deprivation of the victim of his property or other thing of value by the actor, the evil actor. All right. So the friend lies to his friend who wishes to commit suicide, that if the friend will lend him his gun he will go hunting with the gun and return it to him the next day. He hasn't the slightest intention of going hunting, he hasn't the slightest intention of returning the gun. Obviously, that's not fraud, but the facts literally, but only literally, fit the definition. No court would be so asinine as to apply that generalization to it. I have given you a very simple, very glaring, obvious example. You don't have to be a lawyer to see the trouble with that one. But this is the kind of stuff out of which the exceptions to the rules begin to come. Then we have exceptions to the exceptions, because again, you see, we are not interested in constructing an ideal system of words; we are not writing a beautiful text; we are deciding real cases with real people; and we use generalizations in order to understand what rules we are supposed to apply and to discipline those who try the cases so that they will try them, not according to their own visceral or subjective reaction at the particular time, but in accordance with rules that have been laid down and learned by statute or precedent, as the case may be.

Let me give you another illustration, and this, again, is an ultra-simple one, but it can suggest the same kind of problems that you would have with the first. This is an illustration that appears in a case and materials book used at one of the Eastern law schools. There is a waiting-room in a station. The sign on the waiting-room says, "No Dogs Allowed." A man comes along with a trained bear on a chain. May he enter the waiting-room with his bear? The words were so simple—No Dogs Allowed. But were they so simple? And what is the problem of the law with respect to enforcing the possible responsibilities and liabilities that would stem from such a sign? And it is no different from my fraud illustration, really it is not. Analytically it is not, and troubles with signs like that do occur, except that you don't see many trained bears around, but there will be people with cats, there will be people with parakeets in a box, there will be people with parrots and, by the way, the problem may arise in connection with a tariff schedule for shipment on a train or ship or plane and so on, endlessly, always these problems with words; and because we are dealing with the rules by which society is governed, these troubles are our business.

Now, both in the several principles I tried to give you before about what law was, as separated from other disciplines, and from the problems I gave you in connection with the handling of cases as opposed to the fact that law consists of rules and generalizations, you have something else super-imposed that introduces the real chaos, because chaos was the right word, and it is not found just in the contraries I put to you. It is found in something else, and this is straight jurisprudence.

There are three imperatives for any rule of law that distinguishes it from any other kind of rule that might
govern you and that might be imposed upon you by the state or other political authority. The first is neutrality of the rule. The second is justice and the third is equality. Now these three things are not the same, and the odd thing is they do not live together very well. That is where the chaos comes in; but first let's try to define them, remembering that definition in this field of ours is a very slippery eel.

Neutrality requires that the arbiter of cases, the maker of law, be ideally absolutely impartial with regard to the consequences to whom the rule is applied. He just doesn't care—he just doesn't. He'll treat his own mother the same way he would treat the stranger. He's totally neutral. The rule is supposed to be neutral. If the rule is you must pay your debt, everybody must pay his debt; the neutral doesn't distinguish. The second thing is that the rule is supposed to achieve a just result. Now without getting into all of the subtleties of what a just result is—that you will have trouble with even in your third year, let alone now—let's assume that the just result is what we expect the law to achieve in deciding cases so that when you get the result, you say this is the way it ought to be—this is the right decision. The umpire has done the right thing—he called that ball as it was. That's oversimplification, but for our purposes, take it as that. The third thing is there must be equality of treatment. That is a little different from neutrality. The neutrality relates to the motivation with which you start. Now you've done it—you were very neutral and you did it. Now the same case comes up again, but now either because you know more, have learned more, or have changed your mind, or whatever it may be, you would like to decide this case differently. Then you violate the principle of equality. You don't have a stable rule anymore. And the reason we need these two things, the equality and the neutrality, because justice, you see, is the big diamond in the tiara, that's the main one, the reason you need the other two is because dealing with finite people we assume that if they will be both neutral in their treatment of everyone, and equal in their treatment of cases, the chances of just results being achieved is very, very high, recognizing that a man doesn't just look at a situation and say, "Ah, this is the just answer." It isn't that easy. Think of the No Dog Allowed sign again. So we need these other two for that purpose. But you see, they don't sit well together because every time you get a new case it's just a little bit different because all human events are slightly different, even just because the events happened a little later, and as you get to know more about things, and the changing external conditions, your attitudes may change, and so will your sense of rightness. So there is a strong tendency to have what's called a free judgment. Just decide every case the way it comes along. But you see, most of us believe—there is dispute about it—most of us believe that that is not a true system of law. So this means we have to reconcile ourselves to some unjust results in order to obtain neutrality and equality, but our tolerance is not unlimited. When we find the number of unjust cases precipitated by these other imperatives of neutrality and equality, we rebel and we create an exception, or we create a fiction of law, or we just stand on our heads and say, "I hope nobody sees us doing this." And this, as we make an exception without saying so, makes for confusion and chaos in the rules and the cases and in the work you do, because human beings working in the mines have decided these matters, and they have been affected by the danger of an unjust result. They have struggled with the rule or the generalization and did not like it, as applied in that case, and they did not quite know how to get out of the quandary.

It is often said that a very skillful craftsman can avoid these unjust situations without doing violence to the rules, but that most people are not very skilled craftsmen. This applies to the practice of the law as well as to the business of judging. You know, if you're a very smart lawyer you'll be surprised at what you can do for your client without cutting any corners, but when you're not very smart, and you try to do the same thing for your client by cutting a corner you might be disbarred, and the client could even go to jail. I do not want you to get any idea that law is a highly relativistic business and anything that happens goes. If you actually look to the incidence of cases you will find that tested by almost any standard that you would use, if you only agree on the standard, you will approve of the results, whatever the reasons that may have been given. But there is a generalization, a proper generalization, lurking somewhere that would explain why you like all of these results, even though they are justified verbally by conflicting or contrary supporting explanations. It is much like explaining jury verdicts. If you talk to trial lawyer after trial lawyer they will tell you, and judges, too, that the juries are very stupid. You ask jurors after they have rendered a verdict how they decided the case, you may get the sheerest nonsense in the world, the worst fallacies, the worst recollections of the evidence, complete misunderstanding of the judge's charge, introduction of utterly irrelevant and prejudicial factors in deciding the case, but if you ask the lawyer, "Did they decide it the right way?" he is likely to answer, "Yes, they did." The laymen on the jury are the least trained in analysis and yet we know as a fact, and most of us agree, that they do reach the right results. This may go back to that paradox I mentioned to you earlier, that law is based on common sense, and if it is not intelligible to the layman, it is not good law. That is why a jury can actually function in a court system without doing violence to the system of the law, and you will see that most arguments about eliminating the jury are
based upon the argument that the judges would decide the cases the same way anyway, which simply means the juries haven't been deciding it so badly if that argument is valid.

But let me move on a bit. The three factors that I have mentioned give rise to these conflicts and this chaos. The chaos and the lack of system and the troubles are all the worse because the discords will vary in degree, and here you will begin to see where your roles as lawyers come into it, if there are failures of advocacy. If the lawyers do not do a good job, the chances of these failures occurring are all the greater; there is greater difficulty in achieving the just result consistent with the principles of neutrality and equality of treatment. You will find that there may be failures of proof—that are nobody's fault, that are inevitable. In other words, you have two cases that seem to be alike, but in one case they prove the X factor and in the other case they do not prove the X factor. By way of hunch you believe that the X factor was present in both cases, but it is not proven. What do you do? And then, of course, we have the weakness of our own generalizations and definitions, like the definition of fraud. Time-honored and ancient as it is, it does not describe, in the strict definitional sense what is fraud. You will recall that for a definition to be perfect there must be classification by family and differentiation, including everything that is to be covered and excluding everything that is not to be covered. I venture to say that you will never find a definition of law that does that, because we are not defining words for a dictionary; we are defining working propositions that are to be applied to cases in real society and that makes the difference. Real society just does not fit into neat little—you cannot include the bear in the definition of a dog, and it is a chained bear, at that. If an unleashed bear is involved you have no trouble with the case; it's easy. Why is it easy? There is another principle lurking there somewhere. But this is a trained bear and it is on a chain. Why would you have less trouble with a parakeet in a little box as compared with an American bald eagle in a wicker basket? The sign only said No Dogs Allowed. Then, of course, obviously, a changing society engenders an evolution of new insights. Hence, we often find ourselves rebelling against principles that we used before and considered established. This trouble arises with statutory law just as much as with decisional law. Not many decades ago there were many crimes for which people could receive capital punishment, certainly an extreme sanction. Today there are very few crimes that people think merit the sanction and many people would abolish it for all. I take this kind of illustration deliberately because implicit in the sanction is a generalization that it serves certain social purposes. Why did they kill people for committing larceny in England in 1810? They did it because they believed it would serve certain essential social purposes. Obviously, they have decided that it never did, or, at least, that it does not at present. Now one takes a simple thing like that, and it if gives you trouble, think of the troubles that are given us by these marked advances in the techniques of economic enterprise, the development of administrative law, and the development of government regulation and involvement with economic enterprise today.

Moreover, one may not neglect the great public issues involving civil rights and the status of minorities, and anybody who thinks that the transition legally from Plessy v. Ferguson to Brown v. the Board of Education can be accomplished by any kind of logical process merely, just does not understand anything at all about the law. This is disturbing in the first year, because you are looking for some kind of certain technique, some kind of neat logic that one can use and it is not there. This is a different kind of discipline.

Now when one reaches technical and procedural problems the confusion is even greater and the principles even harder to extract. When one starts dealing with the problem of hearsay evidence, for example, one is likely to get quite a few fixed notions, like so many Anglo-American lawyers have done before, after being exposed to the hearsay rule, that the doctrine was divinely ordained. In fact, it is hard to believe that history and tradition are the real explanations. On the continent of Europe, hearsay evidence is used almost without limitation. Professor Morgan wrote a model code of evidence for the American Law Institute which contains very serious and sharp inroads into the so-called hearsay evidence rule. The hearsay evidence rule itself is shot through with exceptions and exceptions on the exceptions. The fact of the matter is all hearsay is not unreliable. If a hundred witnesses who ran from the scene because they did not want to be involved eventually told ten honest policemen what happened, that's pretty good evidence if it is probability of truth you are after, but we won't admit a single bit of it.

The reason all those exceptions to the hearsay rule developed are the problems I discussed with you before. Courts faced with real situations, real problems, recognize that even though, under the literal generalizations of the hearsay rule, evidence is not admissible, there may be very reliable proof and it ought to be admissible; as, for example, when we are talking about the so-called dying declaration of a victim of a murder, which, in some ways, is the most extreme kind of hearsay. Because the man has just been shot, the policeman has arrived at the scene, the victim is gasping, he knows he's about to die, and he says, "Johnny Brown did it," then the policeman can testify to what was said. It was not said under oath, it was not said in court, but you see, they feel he's about to face his Maker, or worse, and so he'll tell the truth.

Then, for another illustration, there's an old one that
drove me wild when I was in my first year of law school. I had a very distinguished professor of criminal law, his name is renowned in the field, and I was an old philosophy student, have that in mind, and he was explaining how the criminal law no longer is based on vengeance; once it was, but it is no longer. Now the purpose was to deter wrongful acts and every crime must have a wrongful intent, *mens rea*, and also a wrongful act, and both must concur, if there is to be a crime. He gave as an illustration what I suppose has been given a thousand times in hundreds of law schools. My teacher said that there is a student's watch on his desk. The student who owns it, but does not recognize it as his watch, thinks it is the teacher's. The student stealthily removes it. Is there a crime? And students raised their hands and said, "Of course not, there was no wrongful act, it was the man's own watch." So, stupid me, I raised my hand too and I said, "I don't follow that. If the purpose was merely deterrence, I can see why you need an objective manifestation. We should not attempt to read a man's mind, that's unreliable. But here it is perfectly obvious that the man was out to steal, and you want to catch thieves and stop them from doing it again. We are not trying to revenge him for taking somebody's watch, we are trying to prevent stealing. Why shouldn't he be punished?" The answer to me was, "You think you're smart, don't you?" I did. It was my first year.

I think that I have given you enough to spell out some of the seeming confusions. I do not have to take you by the hand and show you further. It should be clear, almost clear, why we go to the cases, and yet why the law is not cases, and why the techniques of the law and the lawyer are going to be so different from those in economics, to take a difficult field, or sociology, to take another difficult field, or even from nuclear physics, which is a field we think of as capable of exactness, if only we know enough. In this sense the natural sciences are easy because one is dealing with something that pertains to be an exact science, the rules of which can be tested in various ways with reasonably controlled experiments. We cannot control most of our experiments.

There is still another difficulty. Everytime we do something we create our own conditions as I told you before. At the same time we have to work with angels and we have to work with devils. We have to make laws and rules for good men and we have to make laws and rules for bad men, and it isn't that we're even engaged in a trial and error method. Serious things have to go on ahead while we fuddle around, and as we fuddle we may be creating the conditions that never should have come to pass. We may be aggravating evil conditions. Let me again give a simple illustration from the field of criminal law. I refer to a current problem, and it is also a legal problem. Should the sale of narcotics be made a crime? Should the obtaining of narcotics be prevented by making the sale to the narcotics addict a crime or are we sowing dragons' teeth so that we produce more crime, both of the narcotics variety itself and associated crime committed to raise the money to buy the narcotics at the high prices dictated by the illegality of the market by reason of that kind of rule? Some of you must be quite familiar with the discussion and the debate at that level. It is a matter of the highest controversy at the present time. You know the problem.
is no different when you try to decide what should be the liabilities of a seller of merchandise who ships the merchandise across the land under a bill of lading and the bank at the other end has some responsibilities with regard to picking up the cash for the bill of lading against a sight draft. Surely it's not as important as narcotics addiction, or is it not as important? After all, the productive side of our society is what makes the rest of it possible, and one cannot pick any essential part of this society of ours and say we can dispense with it, or that it is not important legally, because it does not affect us emotionally as much as something else. Then, too, we are governed by certain other corollary principles. Disputes we must decide, otherwise people will decide them by force, and one of the chilling things you will learn is that it is more important that we decide the dispute than that we decide it correctly. So, for example, a legal system that would take three years to decide a case correctly may be worse than a legal system that does not do too badly, but does not decide them correctly, but at least decides them within a matter of weeks. I saw an interesting discussion just the other day in the New York Law Journal, saying that the Supreme Court rule in Sullivan v. The New York Times, making a showing of actual malice a condition before there may be recovery for defamation against public officials by depriving injured persons of a libel remedy may bring us back to the days when the libeled person would resort to self help. In other words, when you withhold a legal sanction you have to think twice as to the consequences. If one says that something will not be covered by legal regulation you may be suggesting to these people that since nothing is going to be done by the state you will have to take care of this matter yourself, and they will. For example, in criminal law one of the things we believe is that in imposing sentence we must pay some attention to the anger and demand for retribution of the community, not too much, just enough to quiet them so they won't go out and lynch. But you can't just ignore community reaction. Take, particularly, the kinds of crime that arouse great emotional reaction; for example, rapes, vicious assaults against old people, against children. So it is true, obviously, that the man who did it was a very sick man or he never had any advantages, or he was very underprivileged. Will the community permit that man to escape any retribution? If you think so, then we can handle the case on a purely individual and sociological basis. But if it is law and order we have to maintain, we have to look to something else. I said before the law created its own conditions. It does as law, but it does not, except rarely and in very slight degrees, change society. Remember, the horse remained a horse, it did not become a cow. If, for example, we pass a law that you should not have evil thoughts, that will be the law, but it won't be very meaningful law, and you won't be able to prosecute anybody for it because you won't be able to prove it. Now if you have been analytical enough, and I think you probably have been, you will realize that I've been pulling, not deceitfully, something like the philosopher's jokes, "all generalizations are false except this one," or "all men are liars except me"; because here, although I have been questioning the rational and logical pattern of the law, I have also been urging the need to find unifying principles. I have also warned that one will not necessarily find the principles easily in the cases and we know that the texts will also be fallible. Here we are touching upon the primary technique of the lawyer and why it is so difficult to be a good lawyer. From one point of view one must work with the worst materials possible, and yet by strokes of genius one must elicit rules and generalizations on the basis of which one can advise the client, argue to a court, or, if one is a judge, decide the case.

Yet, this a grand system; it is just a most difficult one. It is not a chaos, it does have order, but it is an order imposed upon a society, the order of which itself is not all neat and buttoned up. I suppose we could devise a perfect legal system for a society uncovered by a group of excavating archaeologists because then we could study it at our leisure, we could make rules and the conditions that wouldn't change and we would give them a perfect legal system, and it would be a lovely museum piece to put alongside the skeletons and the artifacts and the fabrics of clothing that they wore and all the rest of it along with the chards. But you cannot do that with a living society.

Now I said I would not make this a family story, but I've got to bring in another lawyer member of my family. My wife is also a lawyer but she doesn't practice law, hasn't practiced it since my first daughter was born, and I told her about my research into the subject matter for my talk tonight, and she said (a very cynical person she is, too, with no respect for her husband, based upon long experience; indeed, I have been married to her even longer than I have been a lawyer) and she said, "It is all useless. They will not remember in December what you said in October." Now that does not daunt me, because I do not expect you to remember everything. You will not remember everything you study in law school, either, and if human knowledge and skills depended on remembering all the things we learn we may as well give up and go back to the wigwams. The fact of the matter is there is something else we acquire in the process of learning, and maybe there are some drops of my mental perspiration that will descend on you and add some clarity to something. We will know if there has been a benefit out of it, if at the end of three years, and I challenge you to it, you will be able to tell me what should have been said to a first year class.
Professor Jo Desha Lucas holding forth at an alumni gathering in Salt Lake City.

Professor Lucas, now shown in Denver, has not lost his audience.

The speaker's table at the Annual Meeting of the Law Alumni Association of New York, left to right: George B. Pidot, JD'30; Waleed M. Sadi, JD'58, Jordanian Delegate to the United Nations; Donald L. Janis, '61, retiring president of the Association; Sheldon Teft, James Parker Hall Professor of Law, the principal speaker; Frank H. Detweiler, JD'31, incoming president of the Association, and Assistant Dean James M. Ratcliffe, JD'50.

F. Max Schuette, JD'50, Kenneth S. Tollett, JD'55, Assistant Dean James M. Ratcliffe, JD'50, James P. Markham, JD'22, and John H. Freeman, '12, at the Houston alumni luncheon at which Dean Ratcliffe was the speaker.

Summer Work for NCLC

The National Council of Legal Clinics has continued into a second year its program encouraging the placement of law students for summer work in areas of the Council's interest. In the summer just passed, fifteen University of Chicago Law School students worked in such positions, the variety of which may be of interest:

James L. Baillie, Office of the Public Defender, Miami, Florida.
Geoffrey A. Braun, Legal Aid Society of Nassau County, New York.
Richard H. Chused, Neighborhood Legal Advice Clinic Program, Chicago.
Daniel H. Friedman, Legal Service Unit of Mobilization for Youth, New York.
Jeffrey H. Haas, Neighborhood Legal Services Project, Washington, D.C.
Christopher Jacobs, Community Renewal Foundation, Chicago.
Michael Kaufman, Office of Fifth Ward Alderman, Chicago.
Wayne A. Kerstetter, National Labor Relations Board, Chicago.
Elinor B. Levinson, Legal Aid Office, Portland, Maine.
William A. London, Legal Aid Bureau of Chicago.
Roberta C. Ramo, American Civil Liberties Union, Chicago.
Barry Roberts, Neighborhood Legal Services Project, Washington, D.C.
Jesel S. Seidenstein, Civil Liberties Union, New York.
Forty-One and Fifty-Six

The Twenty-Fifth Reunion of the Class of 1941 was held at the Law School in June. Arranged by J. GORDON HENRY and Professor WALTER J. BLUM, the dinner reunion drew an attendance of forty, including classmates from New York, Indianapolis, and St. Louis. The dinner program featured Professor Blum as toastmaster, and James Parker Hall Professor of LAW SHELDON TEFFT, and DEAN PHIL C. NEAL as speakers. The evening concluded with the sort of tour of the Law Buildings which can be led only by Chairman of the Faculty Building Committee Walter Blum.

The Tenth Reunion of the Class of 1956 began with tours of the Law Buildings. It centered on a dinner, held in the Center for Continuing Education. A detailed, engrossing, and probably slanderous report on the members of the class, by BRUCE KAUFMAN, followed brief remarks by Dean Neal.

The Committee for the reunion was LANGDON ANN COLLINS, ROBERT L. AUSTIN, and DONALD M. SCHINDEL.

Planning is already beginning for reunions in the Spring of 1967. Suggestions and advice from members of the Classes of 1962, 1957, 1942, and indeed, any other class in the mood for a reunion, will be welcomed by the School.
Visiting Committee

The Annual Meeting of the Law School Visiting Committee, a group of distinguished judges and lawyers who provide advice and assistance to the Dean and Faculty, was held on April 8, 1966.

In the morning, members of the Committee attended classes and met with law students at an informal coffee hour. After lunch, Dean Neal presented a report on the School.

The afternoon program opened with a panel discussion, "The Escobedo Case—Whither or Wither?" Participants were The Honorable Henry J. Friendly, Judge of the U.S. Court of Appeals, Second Circuit; The Honorable Walter V. Schaefer, JD'28, Justice of the Illinois Supreme Court and Chairman of the Visiting Committee; The Honorable Hubert L. Will, JD'37, Judge of the U.S. District Court, Northern District of Illinois; Professor Bernard D. Meltzer, and Professor Philip B. Kurland, presiding. The session concluded with a report on the findings of the Law School Jury Project by Professor Harry Kalven, Jr., and Professor Hans Zeisel.

The Committee then met in Executive Session, with Justice Schaefer, Committee Chairman, presiding.

Following dinner, the members of the Committee were special guests at the Final Argument of the Hinton Moot Court Competition. The Court was composed of The Honorable Frank R. Kenison, Chief Justice of the Supreme Court of New Hampshire, Judge Friendly and Justice Schaefer, all members of the Committee.
At the Faculty Reception for the Visiting Committee, Sheldon Tefft, James Parker Hall Professor of Law, chats with Willard L. King of Chicago and Paul Carrington of Dallas.

The Arts and the Law

The soaring market in paintings and other works of art has served to underscore a variety of interesting and important questions of law and of economics. In recognition of this, in the Spring Quarter, 1966, the Law School sponsored a Conference on the Arts and the Law. The scope of the Conference was confined to painting, sculpture and the allied arts, and focused on the arts in the commercial marketplace.

The Conference opened with a paper on "The Economics of the Art Market", by Simon Rottenberg, Professor of Economics, Duke University. The second speaker was Everett Ellin, Public Affairs Officer of the Solomon R. Guggenheim Museum, a former art dealer, and a member of the California and New York Bars, who spoke on "Art and Opulence: The Commerce of Culture in the Affluent Society." Harold Haydon, painter, Associate Professor of Art at The University of Chicago, and art critic of the Chicago Sun-Times, and Alex L. Hillman, Class of 1924, art collector and former publisher of Hillman Periodicals, Inc., commented on the papers. James M. Ratcliffe, Assistant Dean of the Law School and Chairman of the Faculty Committee on the Conference, presided.

The second session, chaired by Geoffrey C. Hazard, Jr., Professor of Law, The University of Chicago Law School, opened with a talk on "The Artist and the Law," by Joshua Binion Cahn, of Cahn and Mathias, New York. Alvin S. Lane, of Wien, Lane and Klein, New York, past chairman of the Committee on Art, Association of the Bar of the City of New York, spoke on "Problems of the Purchaser of Art Objects as Seen by a Lawyer." The concluding paper of the Conference, on "Taxation and the Arts," was presented by William A. McSwain, of Eckhart, McSwain, Hassell and Husum, Chicago, a Trustee of the Art Institute of Chicago.

At the dinner following the Arts Conference, speakers Joshua Binion Cahn, left, and Alvin S. Lane, join Professor Soia Mentschikoff.
Kreeger Inaugural Lecture

An earlier issue of the Record conveyed the welcome news of the establishment by Mrs. Arthur Wolf, of the Julius Kreeger Professorship in Law and Criminology. On May 23, 1966, Professor Norval Morris, first holder of the Kreeger Chair, and Director of the Law School’s Center for Studies in Criminal Justice, delivered the Inaugural Lecture for the Julius Kreeger Professorship.

Professor Morris’ topic was “Impediments to Penal Reform.” The Inaugural Lecture has been published in the Summer, 1966, issue of The University of Chicago Law Review.

The Record is pleased to announce that the Board of Trustees of the University of Chicago has designated the complex of buildings housing the Law School as

THE LAIRD BELL QUADRANGLE

Formal dedication ceremonies were held on October 12, with former Chancellor Robert Maynard Hutchins the principal speaker. A detailed report of the ceremonies will appear in the next issue of the Record.
The Alumni Gather

The Annual Alumni Day Conference began, as is customary, with attendance at classes by the alumni who came to spend the day becoming better acquainted with the Law School.

After lunch with students and faculty, the visiting alumni heard a detailed report from Dean Neal. The afternoon session, chaired by Assistant Dean Ratcliffe, focused on some of the research activities in progress at the School. Ronald Coase, Professor of Economics at the Law School, reported on the School's work in the Law and Economics area. These activities included, among others, the work of the four Law and Economics Fellows and developments regarding The Journal of Law and Economics, of which Professor Coase is Editor.

Norval Morris, Julius Kreeger Professor of Law and Criminology, described some of the work planned for the newly-established Center for Studies in Criminal Justice, of which he is the Director. Finally, Harry Kalven, Jr., Professor of Law, and Hans Zeisel, Professor of Law and Sociology, gave a preliminary report of some of the findings of the School's Jury Project, which can be found in detail in their newly published, monumental study, The American Jury (Little, Brown and Company, Boston $15.00).

The group then adjourned to the Ambassador East, to join 400 others at the Annual Dinner of the Association. The featured speaker was the Honorable John Bartlow Martin, former Presidential Envoy and Ambassador to the Dominican Republic, who spoke on "Dominican Problems and American Power." Also featured on the program, over which Alumni President Laurence A. Carton presided, were Dean Phil C. Neal and Professor Grant Gilmore. Chairman of the Committee on the Annual Conference and Dinner was James J. McClure, Jr., JD'49.

The new officers of The University of Chicago Law School Alumni Association, installed at the Annual Dinner, are:

Peter N. Toddhunter, JD'37, President
Charles W. Boand, JD'33, Vice-President
William G. Burns, JD'31, Vice-President
J. Gordon Henry, JD'41, Vice-President
Richard H. Levin, JD'37, Vice-President
James J. McClure, JD'49, Secretary
Arnold I. Shure, JD'29, Treasurer

James Hautzinger, JD'61, of Denver, second from right, with law students, left to right: David S. Tatel, Washington, Class of '66; Charles R. Bush, Chicago, Class of '67; and Lewis M. Collins, Chicago, Class of '66.

Charles R. Brainerd, JD'58, of New York, with law students Stephen R. Gainer, Class of '68, and Jon Emanuel, Class of '67.

Alumni attending the Annual Alumni Conference meet with students at lunch time. Left to right, Edwin P. Wiley, JD'52, of Milwaukee and Mrs. Wiley; James J. McClure, Jr., JD'49, of Chicago; and Elbert J. Kram, of Frankfurt, Ind., Class of '66.

Before lunch, at the Alumni Day Conference, left to right: David L. James, JD'60, New York; Richard M. Stout, JD'44, St. Louis; Dean Neal; Frederick Sass, Jr., JD'32, Washington, D.C.; and Robert J. Donovan of the Class of '66.
The Honorable John Bartlow Martin addressing the Annual Dinner of the Law School Alumni Association.

Ambassador Martin with Laurence A. Carton, JD'47, retiring President of the Alumni Association, and Professor Grant Gilmore.

William G. Burns, JD'31, General Chairman of the Thirteenth Annual Fund Campaign, with Mrs. Burns and C. Curtis Everett, JD'57, examine the seating list at the Annual Dinner.
Mrs. James Donohoe, James Donohoe, JD'62, of Dallas; David P. Earle III, JD'62, and David Chernoff, JD'59, of Chicago.

Mr. and Mrs. Richard Ogle, JD'61, of Cleveland, talk with Dean Neal at the reception.

At the reception preceding the Annual Dinner, left to right: Frederick Sass, Jr., JD'32, retiring President of the Washington, D.C. Alumni Association; Frank H. Detweiler, JD'31, President of the Alumni Association of Metropolitan New York; J. Gordon Henry, JD'41, Vice-President of the Law Alumni Association; and Maurice A. Rosenthal, JD'27.
Three Generous Gifts

The Record takes great pleasure in noting the establishment of three new funds in aid of the students of the Law School.

The Esther Jaffe Mohr Memorial Loan and Scholarship Fund, established in memory of Mrs. Mohr, J.D., 1920 by Judith Mohr Joyce, Elaine Goodman Mohr, J.D., 1954, and David L. Mohr, J.D., 1959. Preference is to be given to women students, particularly those with a special interest in human rights.

The Baker Scholarship Award, provided by a bequest in the will of Winifred W. Baker in appreciation of the assistance given her late husband, Ezra L. Baker, J.D., 1909, when he was a student at the Law School.

The Earl K. Schiek Loan Fund, a testamentary gift by the late Mr. Schiek, who was a member of the Class of 1920.

Ave Atque Vale, to Coin a Phrase

Each June, on Convocation Day, the Faculty of the Law School holds a luncheon for graduating seniors and their families. The Toast to the Graduates was offered this year by Sheldon Tefft, James Parker Hall Professor of Law; the Response on Behalf of the Graduates came from Joseph V. Karaganis, President of the Class of 1966. Dean Neal then announced the following winners of honors and prizes:

The Joseph Henry Beale Prize, for the best work in the First Year Tutorial Program, to Martha Alschuler, Class of 1968.

The Karl Llewellyn Cup, awarded for excellence in brief writing and oral argument in the second-year moot court competition, to John T. Gaubatz and John C. Hoyle, Class of 1967.


The Lawyers Title Award, for the best work in the field of real property, to Roland E. Brandel, Class of 1966.

The United States Law Week Award, for the best progress in the final year of law school, to Walter J. Robinson III, Class of 1966.


The Edwin F. Mandel Award, for the greatest contribution to the School’s legal aid program, to Donald M. Thompson, Class of 1966.

The Hinton Moot Court Competition Awards, to Howard B. Abrams and Richard G. Singer, winners, and to Donald J. Christl and Frank H. Wohl, runners up, all of the Class of 1966.

The Jerome N. Frank Prize, for the best student contribution to The University of Chicago Law Review, to Robert M. Berger, Class of 1966.

The members of the Order of the Coif, elected from among those ranking in the top ten per cent of their graduating class:

Alexander D. Aikman
Robert G. Berger
Robert M. Berger
Roland E. Brandel
David N. Brown
Lewis M. Collins
Robert J. Donovan

The Degree of Doctor of Law, cum laude, awarded to students achieving an over-all academic average of 78 or more, to:

Robert G. Berger
Robert M. Berger
Roland E. Brandel
Lewis M. Collins
Robert J. Donovan
Paul F. Gleeson
Duane W. Krohnke
George A. Ranney, Jr.
Walter J. Robinson III
Michael L. Shakman
Voyle C. Wilson

The program concluded with the traditional remarks by the first-ranking member of the graduating class, this year, Robert M. Berger.
Joseph V. Karaganis, President of the Class of 1966, responds for the graduates.

Robert M. Berger, first-ranking graduate of the Class of 1966, who spoke at the graduates' luncheon, with Mrs. Berger.

Sheldon Tefft, James Parker Hall Professor of Law, on behalf of the Faculty offers the toast to the graduates.
The Ernst Freund Lecture

The Lectureship was established ten years ago in honor of Professor Freund, who served as one of the most distinguished members of the Law Faculty from the founding of the School, in 1902-03, until his death in 1930. Holders of the Lectureship have been The Honorable Felix Frankfurter, Associate Justice, Supreme Court of the United States; The Honorable Walter V. Schaeffer, Associate Justice, Supreme Court of Illinois; The Honorable Charles E. Wyzanski, Jr., Judge of the United States District Court for Massachusetts; The Right Honorable Lord Denning of Whitchurch, Lord of Appeal in Ordinary; The Right Honorable Lord Parker of Waddington, Lord Chief Justice of England; Wilbur G. Katz, Professor of Law, University of Wisconsin; The Honorable John Marshall Harlan, Associate Justice, Supreme Court of the United States; The Right Honorable Sir Kenneth Diplock, Lord Justice of the Court of Appeal; and The Right Honorable Lord Devlin, formerly Lord of Appeal in Ordinary.

In April, 1966, the Tenth Ernst Freund Lecture was delivered by The Honorable Carl McGowan, Judge of the United States Court of Appeals for the District of Columbia. Judge McGowan’s topic was “Problems of an Emerging Constitution.”

At the reception preceding the Freund Lecture, Mrs. Norval Morris and The Honorable F. Ryan Duffy, Judge of the United States Court of Appeals, Seventh Circuit.

The Honorable Carl McGowan, Judge of the United States Court of Appeals for the District of Columbia, delivering the Tenth Ernst Freund Lecture, in the Law School Auditorium.

Also at the reception, The Honorable Walter V. Schaeffer, JD’28, Justice of the Illinois Supreme Court, talks with The Honorable Roger Kiley, Judge of the United States Court of Appeals, Seventh Circuit.
Atsushi Nagashima will spend the greater part of the academic year 1966-67 as a Senior Fellow at the Center. Mr. Nagashima, who has had extensive experience as a public prosecutor, has served also as Chief Counselor to the Criminal Affairs Bureau. He is now the Chief of Secretariat of the Ministry of Justice of Japan. Mr. Nagashima participated in the revision of the Penal Code of Japan, and has published extensively in both Japanese and English.

Dr. George Sturup will be a Visiting Scholar at the Center during at least two quarters of the academic year 1966-67. A psychiatrist, Dr. Sturup is internationally known as the Director of the Herstetvester Detention Institute, located near Copenhagen, Denmark.

A Staff for the Center

An earlier issue of the Record reported the establishment of the Center for Studies in Criminal Justice at the Law School. Norman Morris, Julius Kreeger Professor of Law and Criminology, is Director of the Center. In recent months, a number of significant appointments have been made to the staff of the Center.

Hans W. Mattick has become Associate Director of the Center. Mr. Mattick, who received a Master of Arts degree in Sociology from the University in 1956, has served as Assistant Warden of the Cook County Jail, as Lecturer in Sociology at Indiana University and, most recently, as Director of the Chicago Youth Development Project, an action-research project in delinquency sponsored by the Institute for Social Research of the University of Michigan and the Chicago Boys Clubs. Mr. Mattick is a past president of the Illinois Academy of Criminology and has contributed extensively to the literature of his field.

Oliver J. Keller, Jr., has been appointed a Research Fellow at the Center. Mr. Keller is a Ph.D. candidate in the Committee on Human Development of the University. He has served as Chairman of the Illinois Youth Commission and as a Special Fellow of the National Institute of Mental Health.

Anthony M. Platt is the second newly appointed Research Fellow. Mr. Platt, A.B. in Law, Oxford University, 1963, will have received the Doctor of Criminology from the University of California, Berkeley, by the time this appears. He has served as a Research Assistant at the School of Criminology of that University and has already seen the publication of six of his articles.

A representative group from among the more than forty graduate students enrolled at the Law School in 1965-66.

The Board of the Law Student Association, 1965-66, left to right, standing: David W. Ellis, Vicksburg, Miss., Class of '67; William H. Horton, Chicago, Class of '67; Dennis M. DeLeo, Rochester, N.Y., Class of '66; David L. Pasman, Chicago, Class of '67; Keith Eastin, Chicago, Class of '67; and Joseph V. Karaganis, Rochester, Ill., President, Class of '66. Left to right, seated: Steven L. Clark, Bloomington, Ind., Class of '68, and Linda J. Thoren, St. Paul, Minn., Class of '67. Not shown, John N. Tierney, Chicago, Class of '68, and Janet E. Roede, La Grange, III., Class of '68.
Conference on the Landlord-Tenant Relationship

Readers of the Record may recall references in earlier issues to the Conference on Consumer Credit and the Poor, which was held in the Autumn Quarter, 1965. That Conference was planned and administered entirely by law students. It set so successful a precedent that again this year there will be a student-run conference. The topic chosen is the landlord-tenant relationship. In explanation of the need for, and purpose of, the conference, the student planning committee has written:

“Recent efforts to improve the conditions of urban life have made it apparent that the shortage of decent housing for families of low and moderate income presents one of the most pressing problems facing the urban poor. While basically this is an economic problem, the importance of the legal relationship between landlord and tenant cannot be ignored. Although extension of legal services to the poor has brought the promise that tenants’ rights can be effectively enforced, it has become clear that often inadequate attention has been given to the substantive law affecting indigent persons. The law of landlord-tenant, developed in a different context to meet different social goals, has in many instances proven unsuited for the needs of modern urban society. If ‘equal justice under law’ is to become a reality for the urban poor, there must be development and change in the substantive law governing the landlord-tenant relationship.

Modeled on last year’s successful Conference on Consumer Credit and the Poor, this Conference will discuss the legal relationship between landlord and tenant, noting particularly those changes which promise to alter our traditional view of that relationship. The Conference is intended for those who have a working interest in the law affecting urban housing. Discussion will center on the efforts by government and the tenants themselves to find solutions to the shortcomings of the present relationship. Hopefully, the Conference will provide a forum in which both landlords and those providing legal aid for the indigent can express their views and work toward solutions.”

The general theme of the opening session, at which papers will be presented, will be “New Approaches to Changing the Landlord-Tenant Relationship.” The speakers and their topics will be:

**TENANT UNIONS**
Gilbert Cornfield, Kleiman, Cornfield and Feldman; Chicago

**PUBLIC HOUSING**
Nancy E. LeBlang, Assistant Director, Legal Services Unit, Mobilization for Youth; New York

Commentators will include:
Gary Bellow, Deputy Director, California Rural Legal Assistance
John E. Coons, Professor of Law, Northwestern University; Chicago

Two Workshop Sessions will also be featured. The first, on the general topic of “Tenant Initiated Remedies,” will focus on issues raised in the following papers:
THE COMMON LAW BACKGROUND, by Geoffrey A. Braun
RENT WITHHOLDING, by Edward H. Flitton

The topic of the Second Workshop is “Governmental and Institutional Entry into the Field.” The working papers will be:

REMEDIES THROUGH PRIVATE INSTITUTIONS, by Arthur W. Friedman
RECEIVERSHIPS, by Charles M. Pratt

All Workshop papers are being prepared by law students, who will also lead the Workshop discussions. The papers will be sent out to Conference registrants in advance, so that all participating will have had an opportunity to read them before the Conference, which will be held on November 17-18.

The student executive committee engaged in planning the Conference is made up of Bernardine R. Dohrn, Philip N. Harlutzel, Philip W. Moore, and Frank E. Wood. Further details and registration blanks may be secured from the Law School, 1111 East 60th Street, Chicago 60637.
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