University of Chicago Law School
Chicago Unbound

The University of Chicago Law School Record
Law School Publications

Spring 3-1-1968

Law School Record, vol. 16, no. 1 (Spring 1968)

Law School Record Editors

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Ten Faculty Appointments

The Record takes great pleasure in announcing the following appointments, effective in October, 1968.

Robert A. Burt has been appointed Associate Professor of Law. Mr. Burt was graduated from Princeton University, summa cum laude and Phi Beta Kappa, in 1960. As a Fulbright scholar, he attended Brasenose College of Oxford University, from which he received a Bachelor of Arts in Jurisprudence with First Class Honors in 1962. Two years later, Mr. Burt received the LL.B. degree from Yale Law School, where he served as an editor of the Yale Law Journal and was elected to the Order of the Coif.

Following graduation from Yale, he served for a year as law clerk to the Honorable David L. Bazelon, Chief Judge, U.S. Court of Appeals for the District of Columbia. He then became Assistant General Counsel, Office of the Special Representative for Trade Negotiations, Executive Office of the President. Since January 1967, Mr. Burt has been Legislative Assistant to the Honorable Joseph D. Tydings, United States Senator from Maryland.

Those alumni fortunate enough to have been students during the period of his earlier visit will be especially pleased to learn that Guenter Treitel will return to the Law School as Visiting Professor of Law for the academic year 1968-69. Mr. Treitel is a Fellow of Magdalen College and All Soul’s Reader in English Law, Oxford University.

Phillip H. Ginsberg has joined the Faculty as Assistant Professor of Law and Director of the Edwin Mandel Legal Aid Clinic. Mr. Ginsberg was graduated from Princeton University in 1961, Bachelor of Arts magna cum laude. He received the LL.B. from Harvard Law School in 1964. While at Harvard, he was active in the Philips Brooks Teaching program in the Walpole State Prison, and in the Harvard Voluntary Defenders, which in his senior year included the defense of criminal cases in the trial courts of Massachusetts. Since his graduation, Mr. Ginsberg has been associated with the Chicago Law Firm of Ross, Hardies, O’Keefe, Babcock, McDugald

The Foreign Law Program and Its Graduates

The Foreign Law Program of the University of Chicago Law School is a two-year program of intensive training in the law and legal institutions of a single foreign legal system, supplemented by specialized study of international, public and commercial law. The objective is to enable prospective lawyers and law teachers to better understand the thinking and methods of lawyers trained in the Civil Law. The first year is spent at the Law School and centers around a seminar-size course in French or German law. The second year is spent in Germany, Switzerland, Austria, Belgium or France, and consists of study at a university of the country concerned and of practical work in a law office, or other legal employment, continuing the study of the legal system begun at Chicago.

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Mr. Bergsten
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Summer Brief-Writing Project Results

When the United States Supreme Court reversed the narcotics conviction of Fleming Smith, *Smith v. Illinois*, 399 U.S. 129 (1968), it provided a fitting climax to a unique brief-writing experiment conducted at the Law School in the Summer of 1965. Now that almost all of the appeals have been decided, the results can be reported.

Fleming Smith's case was one of about 60 transcripts of record—indigent criminal appeals—which the Public Defender of Cook County selected from his considerable backlog and delivered to the Law School in June, 1965. The staff who were to prepare the briefs and abstracts of record in these appeals consisted of eighteen law students, whose names appear later. Four had just received their degrees, and the other fourteen had completed their second year. Academically, they represented a fair cross section of their respective classes, C and B averages being about equally represented. The money for their modest compensation and for project expenses was contributed by three foundations, five law firms and one practicing lawyer.1

Working under the direction of Marshall Patner (J.D. '56) of the Chicago Bar, the full-time supervisor of the project, the students prepared the abstracts and wrote the briefs in over 50 appeals during the ten-week duration of the project and a voluntary cleanup period that extended into the succeeding Autumn Quarter. When completed, the student briefs and abstracts were delivered to the Public Defender's staff, who examined them and, in almost all cases, filed them without change. Assistant Public Defender Frederick F. Cohn (J.D. '62) provided the principal liaison with the project. Other assistants who reviewed some of the written work were James J. Doherty and Marshall Hartman (J.D. '57). By special arrangement with the Public Defender's office, nearly all of the oral arguments in the Appellate Court were presented by Marshall Patner. In a few instances the students wrote memoranda or partial briefs for outside lawyers who argued their own appeals.

Illinois law gives all indigent persons a statutory right to counsel for appeal from a felony conviction. In practice, about half of such convictions in Cook County are appealed, and a large proportion of these appeals are assigned to the Public Defender. Many are totally without merit, so the threshold problem of constructing an

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1New World Foundation; Chicago Community Trust (George Firmenich Fund); Wieboldt Foundation; D'Ancona, Pilsam, Wyatt & Raskind; Lehman, Williams, Bennett & Baird; Mayer, Friedlich, Spiess, Tierney, Brown & Platt; Schiff, Hardin, Waite, Dorschel & Britton; Sonnenschein, Levinson, Carlin, Nath & Rosenthal; Harry N. Wyatt. The total cash receipts of the Project were $23,350; total expenditures were $24,063. The Law School absorbed the deficit.

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New Reasons For Uniformity

By Allison Dunham

Professor of Law, The University of Chicago Law School

(Remarks delivered by Professor Dunham to the alumni of The University of Chicago Law School during the Annual Meeting of the American Bar Association, Honolulu, August, 1967.)

In the last decade of the Nineteenth Century, the New York legislature invited a number of states to meet at Saratoga, New York to consider uniformity of state law, particularly that of commercial law and divorce. A result of that meeting was the creation of the National Conference of Commissioners on Uniform State Laws. In 1967, more than seventy-five years later, all areas subject to the jurisdiction of the United States except Puerto Rico and Louisiana had adopted the Uniform Commercial Code prepared by the National Conference of Commissioners on Uniform State Laws and the American Law Institute jointly, but in the same year the New York state legislature again memorialized the states to meet in the near future on unifying divorce law. Success has been great in commercial law. This is at least the second time in which the National Conference has substantiated unified commercial law. I need only remind you of the Uniform Negotiable Instruments Law promulgated in 1896. The National Conference, however, has had little or no success during its seventy-five years of existence in the field of divorce.

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On Entering The Profession Of The Law

By Bennett Boskey

Volpe, Boskey and Lyons; Washington, D.C.

(There follows Mr. Boskey's remarks to the Law School's entering class, at the customary dinner in their honor, October 3, 1967.)

All good things must have a beginning. You talented men and women, just starting your first year at the University of Chicago Law School, have the enviable advantage of entering into the fellowship of one of the few truly great law schools found in the mainstream of our national life. For each of you, this week marks the beginning of your commitment to the law as a profession.

Most of you will never be quite the same again.

Ahead of you lies a broad mixture of experiences—a mixture of accomplishments and, alas, sometimes of disappointments. You will be seeking the paths of learning and of wisdom in a discipline almost as old as civilized man himself. But it is a discipline which every generation—and indeed, every member of this highly-individualized profession—must in some measure rediscover and redefine anew.

Soon—in your classrooms, in your outside reading and in your private discussions—there will be thrust at you what at first will seem to be an over-abundance of legal and other materials. These materials will be aimed at enlightening you concerning the hardy perennials of the law—contracts, property, torts, procedure, corporate and commercial transactions, constitutional developments—as well as concerning some of the more sophisticated-sounding subjects which have become such necessary auxiliaries if law school curricula are to be kept abreast of contemporaroy life. Here in the law school you will be encouraged to develop your talents for understanding—and not only for understanding, but also for utilizing—methods and techniques of analysis considerably different from those which, as your presence here tonight testifies, you mastered so successfully at college. Likewise you will be encouraged to seek to apply these methods and techniques of analysis in working towards solutions of many of the basic problems of our society.

If past experience is any guide—and one of the part-time axioms of the law is Justice Holmes' observation that a page of history is worth a volume of logic—then by the time the winter winds have started to blow along the Midway this coming December and January, many of you will find yourselves in a state of sore confusion. This is sufficiently normal so that it should not be cause for alarm or despair. You ought not expect that your

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Bennett Boskey introduces Edward W. Saunders, JD'42, to the Honorable Jacob M. Braude, JD'20.

Sheldon Tefft, James Parker Hall Professor of Law, introduces Edward W. Saunders, JD'42, to the Honorable Jacob M. Braude, JD'20.

At the reception for entering students, Norval Morris, Julius Kreeger Professor of Law and Criminology, talks with members of the Class of 1970.

Dean Neal with Joseph I. Bentley, Class of 1968, a senior host, and Joseph H. Groberg, of the entering class.

Mr. Boskey addresses the dinner honoring entering students.
Privacy: Policy and the Law

Problems of privacy in modern life have become of increasing concern, with the steady increase in the variety and detail of information gathered on each individual by both government and private agencies coinciding with marked technological advances in electronic surveillance instruments and in computers.

On February 23 and 24, the University of Chicago Law School sponsored a Conference on Privacy: Policy and the Law. The Conference was supported by a grant from Sentry Insurance.

The opening session, chaired by Professor Harry Kalven, Jr., of the Law School, heard three papers. Edward A. Shils, Professor of Sociology and in the Committee on Social Thought at the University of Chicago, spoke on “The Zone of Privacy.” Next, “The Constitutional Right to be Private” was the topic of Louis Henken, Hamilton Fish Professor of International Law and Diplomacy at Columbia University. Marc A. Franklin, Professor of Law at Stanford University, closed the session with “A Legal Map of Privacy.”

Stanley A. Kaplan, Professor of Law, The University of Chicago Law School, presided over the second session, which heard Arthur R. Miller, Professor of Law, University of Michigan, and Alan F. Westin, Professor of Public Law and Government, Columbia University and author of Privacy and Freedom. Professor Miller’s topic was “Computer Technology—Potential Threat to Personal Privacy.” Professor Westin spoke on “Privacy and Social Control: The Dilemma of a Data-Based Civilization.”

The third session, chaired by Professor Gerhard Casper, was devoted to the examination of four specific areas in which personal privacy is, or may be, threatened. The speakers and topics were: “Privacy and the Welfare State,” by Robert J. Levy, Professor of Law, University of Minnesota; “Privacy and the Public Purse,” by the Honorable Mitchell Rogovin, Assistant Attorney General of the United States for the Tax Division; “Privacy and Government Employment,” by Bennett Boskey, of Volpe, Boskey and Lyons, Washington, former Deputy General Counsel, U.S. Atomic Energy Commission; and “Privacy and the Census,” by Philip M. Hauser, Professor of Sociology and Director of the Population Research and Training Center, The University of Chicago, and former Acting Director, U.S. Census Bureau.

At dinner on the evening of the second day, those attending heard Pierre Salinger, former press secretary to President Kennedy and President Johnson, discuss “Privacy and the White House.”

The concluding event on the Conference Program was a panel discussion of “A Policy for Privacy.” Participants were Walter J. Blum, Professor of Law, The University of Chicago Law School, Chairman; Bruno Bettelheim, Stella M. Rowley Professor of Education, Professor of Psychology and Psychiatry, and Director of the Sonia Shankman Orthogenic School, The University of Chicago, and Professors Casper, Henkin, Kalven and Shils.
A portion of the nearly four hundred people in attendance at the dinner session.

Interested members of the audience continue the discussion with Professor Hauser after the session at which he spoke had adjourned.

Kenneth Culp Davis, John P. Wilson Professor of Law at the University of Chicago Law School, with Professor Levy.

The Panel, left to right, Professors Kalven, Casper, Blum, Bettelheim, Shils and Henkin.

The Conference concluded with a panel discussion on “A Policy for Privacy,” in the Law School Auditorium.
Pierre Salinger spoke on "Privacy and the White House."

Mr. Salinger at the speaker's table with Mrs. Phil C. Neal and Charles U. Daly, Vice President for Development and Public Affairs, The University of Chicago.

Robert Levy and Bennett Boskey enjoy the remarks of a fellow speaker.

Professor Philip Hauser addressing the Conference on Privacy.

Participants in the opening session of the Privacy Conference were, left to right, Professor Louis Henkin, Professor Marc A. Franklin, Professor Edward Shils, and Professor Harry Kalven, Jr., who presided.

Professor Marc A. Franklin, with law students at one of the Conference receptions.

Mrs. Arthur Miller and Professor Miller during a Conference interlude.
Coif Award to Gilmore

The Triennial Award of the Order of the Coif was established to honor distinguished legal scholarship. During the Annual Meeting of the Association of American Law Schools, in December, 1967, the second such Triennial Award was presented to Grant Gilmore, Harry A. Bigelow Professor of Law at The University of Chicago Law School. The presentation by Herbert L. Packer, Professor of Law and Vice-Provost, Stanford University, who was chairman of the Award Committee, and Professor Gilmore's response were memorable in themselves, and are therefore set forth below.

Presentation by Professor Packer

Following as we did in the footsteps of the first Triennial Coif Award Committee, we found our task delineated, both formally and substantively. Formally, it was our charge, as it was theirs, to recommend an award to the author or authors of "an outstanding legal publication that evidences creative talent of the highest order." Our predecessors gave substantive content to that charge through the award to our lamented friend, Brainerd Currie. They thereby set a standard for this award that made the task for the second triennium both easier and harder than it might otherwise have been: easier because it enabled us at once to discard the merely meritorious, the merely competent; harder because of the constant reminder that the standard we were to apply was in fact as well as in form an exacting one.

We read much, learned much, admired much. In the end, though, there was only a handful of truly exceptional works. Had the salutary tradition of a single award not been so happily set by the first Triennial Award, we might with good conscience have nominated three or four works to share the award. But we chose to make a single choice.

In a moment, I shall attempt to give reasons of record for voting the award as we did. First, however, a non-reason, off the record. At the time of the first award, members of the faculty of an obscure midwest law school were heard to complain that they missed their share of the reflected glory because Brainerd Currie had moved to another school before he received the award for work which had in the main been done at their school. Today we are making it up to those fellows. They will share in the glory of an award to a colleague who wrote his book at another school, before he joined them. Whether this gives the equally obscure eastern law school, which he left, any sort of lien on the next Triennial Coif Award would be ultra vires for me to say. Suffice it to say that we voted the award to Grant Gilmore, for his Security Interests in Personal Property.

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Supreme Court Clerkship

Mrs. Martha Field Alschuler, Class of 1968, has been appointed law clerk to the Honorable Abe Fortas, Associate Justice of the United States Supreme Court.

Mrs. Alschuler was graduated from Radcliffe College in 1965. She entered the Law School in October of that year, shortly after her husband, Albert W. Alschuler, became law clerk to the Honorable Walter V. Schaefer, JD'28, Justice of the Illinois Supreme Court. At the conclusion of her first year at the Law School, her husband became Assistant Professor of Law at the University of Texas Law School, and Mrs. Alschuler therefore received her second year of legal education there.

Last autumn, Mr. Alschuler was appointed a Research Fellow of the Center for Studies in Criminal Justice at the University of Chicago Law School, and Mrs. Alschuler returned to complete her work here.

Mrs. Alschuler ranked first in her class at the end of her first year at the University of Chicago, and at the end of her second year of law school at the University of Texas. She is the third woman to be appointed a law clerk to a Justice of the United States Supreme Court.

Four Distinguished Lecturers

On March 18, the Law School, together with the American Bar Association, sponsored a public lecture by the Honorable Sol Linowitz, United States Ambassador to the Organization of American States. The Ambassador's topic was "The Legal Profession in a Changing Society."

During the current Spring Quarter, N. J. Coulson, Professor of Islamic Law in the School of Oriental and African Studies of the University of London, is visiting the University of Chicago under the joint sponsorship of the Law School and the Center for Middle Eastern Studies. Professor Coulson will deliver a series of six public lectures, generally titled "Conflicts and Tensions in Islamic Jurisprudence."

On April 18, 1968, the Fourth Henry Simons Lecture was delivered by Kenneth LeM. Carter. The Lecture was established in honor of the distinguished economist who for many years was both a member of the Department of Economics and Professor of Economics in the Law School. Mr. Carter, an eminent Canadian accountant, was chairman of the Royal Commission on Taxation of Canada, the report of which has become a landmark in the study of tax policy. The title of Mr. Carter's Simons Lecture was "Canadian Tax Reform and Henry Simons."

The Annual Dinner of the Law Alumni Association will be held on May 9. The Association takes great pleasure in announcing that the principal speaker at that dinner will be the Honorable Thurgood Marshall, Associate Justice of the United States Supreme Court.
The Supreme Court Review

The Review is published annually by the Law School to provide skilled, disinterested and professional analysis and criticism of the work of the Supreme Court of the United States. It is edited by Professor Philip B. Kurland. The contents of the 1967 issue, now available, are as follows.

“Administrative Searches and the Fourth Amendment: The Camara and See Cases”
WAYNE R. LAFAVE

“Reitman v. Mulkey: A Telophase of Substantive Equal Protection”
KENNETH L. KARST and HAROLD W. HOROWITZ

“Fair Representation in Grievance Administration: Vaca v. Sipes”
THOMAS P. LEWIS

“The Supreme Court as Republican Schoolmaster”
RALPH LERNER

“Neither Above the Law nor Below It: A Note on Walker v. Birmingham”
SHELDON TEFFT

“Self-Incrimination and the New Privacy”
ROBERT B. McKay

“The Constitutional Domestication of the Juvenile Court”
MONRAD G. PAULSEN

“The Reasonable Man and the First Amendment: Hill, Butts and Walker”
HARRY KALVEN, JR.

Faculty Honored

The International Association of Legal Science is a non-governmental organization founded under the auspices of, and subsidized by, UNESCO. It has consultative relations both with UNESCO and with the Economic and Social Council of the United Nations. The Association now has in preparation an “International Encyclopedia of Comparative Law,” which is intended to describe, compare and evaluate specific legal subjects in the various systems of the world.

It is thought that the Encyclopedia should be a major stimulus to research and teaching in Comparative Law, that it should provide important assistance in the formulation of legislative policy and in the unification of law, and that it will aid in the solution of practical problems arising from the practice of international private law.

The Encyclopedia will consist of sixteen volumes. The Editor-in-Chief is Professor Konrad Zweigert, of the University of Hamburg. There are seventeen other Editors, of whom four are Americans.

The Record takes great pleasure in noting that two of the four American Editors are members of the Faculty of the University of Chicago Law School. Max Rheinstein, the Max Pam Professor of Comparative Law, will be responsible for Volume IV, on “Persons and Family.” Kenneth W. Dam, Professor of Law, together with Professor Boris Blagojevic of the University of Belgrade, will edit Volume XVI, entitled “The State and The Economy.”
The Revolting Student

By Philip B. Kurland
Professor of Law, The University of Chicago Law School
This is the text of a talk delivered by Professor Kurland to the Law School Alumni Association of Washington, D.C., in November, 1967.

Jim Ratcliffe told me that it didn’t matter what subject I chose to speak about before this August audience. The tone in which he said it made it clear that my appearance here was due to an act of desperation on the part of the Law School administration from which it expected to salvage very little by way of good will. Jim’s attitude suggested, too, that this was so sophisticated a group that nothing I could say would be either informative or interesting. After all, bringing a speaker to Washington has all the attributes of piping natural gas to Texas. Gas usually flows in the opposite direction.

Given a free hand, I have chosen to speak for a few minutes about a phenomenon that is appearing on our campus and, indeed, on the campus of most universities in this country. My subject is: “The Revolting Student.” And my efforts will be directed to showing that the facts of life are a bit more complicated than is generally assumed. Let me, if I may then, make an attempt at classifying some of the species that might properly be placed under the generic label of “the revolting student.” But first I should make it clear that these students are a small minority on campus and almost non-existent at the Law School. The two or three of these species that we do have in the glass menagerie are among the least interesting specimens.

My first category is made up of that group of students who are superficially in revolt against their parents and the bourgeois society that offered them too many of the good things in life without requiring them to expend the effort that used to be needed to acquire them. This is a group that has inhabited American campuses for several college generations now. But each generation has chosen its own manner of expressing its independence of its predecessors. The essential means that this group has chosen to demonstrate its individuality is by adopting a uniform, a uniform appearance and a uniform behavior. Thus, because their parents wore their hair short, this generation of “new intellectuals” will wear it long. If their parents wore loose clothing, this generation is dedicated to tight clothing. Because their parents were clean-shaven, they are hirsute. (The girls have a rather difficult time with this but seem to bring it off none the less.) If their parents regarded cleanliness as a virtue, they prefer to abominate it. What their predecessors regarded as beautiful, they think to be ugly, and vice versa. What their parents regarded as private, they prefer to indulge in public.

Perhaps the prime article of the new faith of this group is the notion that First Amendment freedoms are epitomized in the right to use four-letter Anglo-Saxon words on all occasions, in all company, and at any time. After all, this was the great issue of academic freedom that helped bring Reagen to the Governorship of California and, for this group, what’s good enough for Berkeley is good enough for the world. (To digress for a moment, I must concede that there are times when such words are indeed more meaningful than the polite language of an earlier generation. For example, a professor at the University of Chicago described one of the signs raised at a recent visit to campus by Dow Chemical as saying: “Have intercourse with Dow.” Some of the flavor was certainly lost in translation.)

This first group is indeed a pathetic group. Lacking the implicit courage to take such vivid steps to sever the silver cord, some of them have had to turn to drugs to destroy their own inhibitions. Sex has lost its mystery and romance. And, most frustrating of all, none seems to delight more in their antics than the parents who are the objects of the attack.

By themselves, this species of revolting students would be a passing phase of little more consequence than those who once swallowed goldfish or squeezed their way in telephone booths, except for the damage that they are doing to themselves. At worst, they create minor parietal problems for a university that may not have realized that if it is going to act in loco parentis it should condone rather than condemn these actions and leave to the ordinary community forces the imposition of sanctions appropriate to violators of the law.

This brings me then to the second category of revolting student: those taken up entirely with the major social issues of our time. Unlike the first group—though they are not mutually exclusive—the members of this species share their frustrations with their parents. How, they ask, can a nation, supposedly civilized, find itself in the devastating posture of fighting a war and leaving unresolved the problem of reconciling the Negro and white cultures? No more able to come up with easy answers than the adults, they tend to resort to temper tantrums, directed not at those who might have the power to do something about resolving these issues, but rather at the University, because it is there.

Certainly there is a Negro problem on campus. It is a different problem in the major universities outside the South than in the South. The problem here is, essentially, how does a University bring into its student body a sufficient number of Negro students competent to meet the standards of excellence to which the University aspires. Of course it is true that the lack of such students derives from a deprivation that American society has condoned if not imposed for many years past. But
to recognize the cause is not to suggest a cure. There are only three obvious courses open to a University. It can admit Negro students who do not meet the standards demanded of white students and make fewer demands of them while they are in school. But this is to deprecate every degree granted to a Negro student, the qualified along with the unqualified. It is to provide a second-class status for Negro students. Or it can lower its standards generally for both white and Negro students and abandon its notions of excellence. Or it can maintain its standards for white and Negro students with the consequent inability to secure a sufficiently large proportion of Negroes to satisfy the demands of those anxious to integrate the Negro in American academic society at whatever cost.

Let me assure you that if none of the Universities of which we are proud has solved this problem, it is not for want of effort. There is no Negro student who is today deprived of an education at a first-rate University for lack of funds. Even if the Universities were not prepared to subsidize such students, there is an abundance of foundations who are. And the forces on campus that are pushing for segregation of the races are two. The first is made up of a group of Negro students themselves who prefer their own society to that of the patronizing, guilt-ridden white students. The second force for segregation on campus is the Department of Health, Education, and Welfare, which is doing its darndest through its demands on the Universities to require that students be labelled and treated as separate groups, categorized by H.E.W. as "White," "Negro," and "Others."

There is, of course, nothing I need tell you about the feeling of despair that pervades the campuses over the Viet Nam War. There is essentially no difference between the students of this species and the faculties on this score. Both are appalled at the horrors and stupidities of warfare. Neither has come up with any solution for getting off the back of the tiger and remaining whole. The question may be harder for the older generation that remembers the 1930's and the failure to take timely steps in Europe to prevent the holocaust that enveloped the world. For most, however, the cases are distinguishable. But even these lack the 100% certainty that generates the young. And the oldsters, like the youngsters, feel the same frustration about the inability to make their voices felt where they might do some good. But, most of the faculty, though not all, don't strike out at the nearest object because an appropriate one is not available.

In short, my second species is essentially not by any means a despicable group of revolting students. But if their objectives are to be admired, their means of obtaining them are, at best, ineffective and, at worst, destructive, not of the evils they abhor but of the values they purport to cherish.

This brings me to the third category, and, indeed, the most revolting of the revolting students. I refer here to the so-called Students for a Democratic Society and its ilk. They reveal neither the silliness of the first group nor the decent motives of the second. To a considerable measure they are not students at all, if by students we mean those who are registered as such in universities. Moreover, the greater part of their student leadership derives from the professional student, the one for whom the pursuit of a degree is a lifetime effort to avoid going into the hard, cold world that they deplore and fear. They are nationally organized and externally financed. This group has, essentially, a single objective. That objective is to turn American universities from educational institutions run by faculties into political institutions run by their own cabal. Their models are the South American universities which—it will be recognized—have brought about such model civilizations in their own communities and which are such examples of high academic attainments.

These students derive their strength, essentially, from two devices. The first is their ability to make use of the first two groups of which I have already spoken. The second is their capacity to create incidents that cause the faculties to divert their efforts from teaching and research into the nonproductive activities that are required to afford undue process to the insurgents. The first creates a broader student base than their own forces could muster for their program. The second has the same result as guerilla warfare. None of the damage done by individual incidents is of serious consequence, but it creates a desire on the part of the faculties and administrations to concede a little here and a little more there, in the vain hope that such concessions will buy peace and an opportunity to return to what they consider their prime obligations of training and research. And such tactics seriously divide the faculty over the question whether punishment should be imposed on the little darlings. The only question, as of now, is whether the Universities will take a stand before it is too late, before they discover that the process of erosion has turned them from educational institutions into political ones.

In short the strength of S.D.S. lies in its nihilistic philosophy and its small but hard cadre who look upon the universities as a stepping stone to power. Its predecessors in recent times—South America to one side—are to be found in the nihilistic student movements in Germany and Russia. The one that helped pave the way for Hitler and the other for the tyrannies of Communism.

There is about to be a Washington episode for this struggle. The Senate Judiciary Subcommittee on Subversive Activities appears to be ready for a look at the New Left. (Although why it is styled the New Left is

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Journal Now Semi-Annual

The Journal of Law and Economics has been published annually by the University of Chicago Law School since 1958. As one would gather from the title, articles appearing in the Journal are principally concerned with the interplay between legal and economic systems. The Journal is edited by Professor Ronald H. Coase.

The growing interest in the law-economics area has suggested that it would be desirable to undertake more frequent publication. Beginning immediately, therefore, the Journal will appear twice yearly, in April and in October. The contents of the issue which should be available at about the time this issue of the Record reaches its readers are:

Property in Capital and in the Means of Production in Socialist Economies by Aleksander Bajt

Constitutional Law and Economic Liberty by Jo Desha Lucas

Predictive and Statistical Properties of Insider Trading by James H. Lorie and Victor Niederhoffer

Why Regulate Utilities? by Harold Demsetz

Transaction Costs, Resources Allocation and Liability Rules—A Comment by Guido Calabresi

Mergers and Public Policy in Great Britain by C. K. Rowley

The Case for Comprehensive Disaster Insurance by Howard Kunreuther

How Effective is Safety Legislation? by Paul E. Sands

Political Economy and the Tariff Reform Campaign of 1903 by A. W. Coats

Supreme Court Session

One of the major sources of strength in the educational program of the University of Chicago Law School has long been the close relationship the School enjoys with the Bench and the practicing Bar. Perhaps the outstanding example of the importance of that relationship is the annual visit of the Supreme Court of Illinois to the School’s Weymouth Kirkland Courtroom.

Most recently, the Court sat in the Kirkland Courtroom on January 26, 1968. The Court, composed of the Honorable Roy J. Solisburg, Jr., Chief Justice, and Walter V. Schaefer, JD’28, Ray I. Klingbiel, Byron O. House, Robert C. Underwood, Thomas E. Kluczynski, JD’27, and Daniel P. Ward, Associate Justices, heard argument in two cases from its regular calendar. The first case, Mak vs. Frek, was an appeal of the decision of the Illinois Appellate Court refusing to apply a doctrine of contributory negligence and adopting a rule of comparative negligence as the common law of the state. It was argued by William C. O’Brien, of Aurora, Illinois, for Appellees, and Bradley A. Steinberg, of Chicago, for Appellant. The second, Fiorito vs. Jones, was an appeal from a decision of the Circuit Court of Cook County holding unconstitutional certain recent amendments to the Service Occupation Tax and Service Use Tax of Illinois. It was argued by David D. Schipper and Edward A. Berman, of Chicago, for Appellants, and John J. O’Toole, Assistant Attorney General of Illinois, for Appellants.

Prior to the court session, meetings were held for law students in which Professor Harry Kalven, Jr., analyzed the issues in the comparative negligence case, and Professor Jo Desha Lucas performed the same function for the tax case. Subsequent to the session, similar meetings were held at which Professor Geoffrey C. Hazard, Jr.,
discussed the oral arguments in the comparative negligence case, and Professor Philip B. Kurland did the same for the tax case.

It is anticipated that the students of the Law School will also have the benefit of a visit from the Circuit Court of Cook County, at which time a jury trial in a personal injury case will take place.

Student Open House

Each year, during the Christmas holidays, the Law School and the Law Alumni Association jointly sponsor a luncheon and open house for college seniors. In addition to the college student guests, members of the Law Faculty, alumni of the School, and students currently enrolled in the Law School are present to act as hosts. Following lunch, a member of the Faculty speaks informally on the study and practice of law. Law students then conduct tours of the Buildings and members of the Faculty are available in their offices for further informal conversation. In December, 1967, more than 200 college students attended. The Faculty speaker was Professor Harry Kalven, Jr. In view of the great success of this occasion, and the large number of college students interested in the practice of law who either live in, or attend college in, the metropolitan area of New York, it is highly likely that a similar gathering in New York, at about the same time, will be added to the Chicago meeting in December of this year.

Welcome To New Students

It is a Law School custom of long standing to hold a welcoming dinner, followed by a lecture, early in the academic year, for students newly entering the School. In addition to the members of the Law Faculty, the Board of Directors of the Law Alumni Association, the Visiting Committee of the Law School, and a number of junior and senior law students, act as hosts.

Last Autumn, the speaker at this evening of welcome was Bennett Boskey, of Volpe, Boskey and Lyons, Washington, former Deputy General Counsel of the U.S. Atomic Energy Commission. Mr. Boskey's address may be found elsewhere in this issue of the Record.
Dean Neal welcomes the School’s guests at the Open House for College Seniors.

Professor Kalven, the luncheon speaker, ponders a point.

Student guests chat with Professor Meltzer . . .

. . . Professor Lucas . . .

. . . Dean Neal . . .

. . . Dean of Students Fee . . .

Guests are . . .

. . . shown the Buildings . . .

. . . by Law Student hosts . . .
“THE AMERICAN JURY” IN REVIEW

All the Conclusions Seem Absurdly Obvious

MARK DEWOLFE HOWE
The Scientific American

“I am neither competent nor inclined to question the authors’ confidence that they have, within the presuppositions that controlled their inquiry, succeeded in the behavioral aspects of their study. My own confidence in the work rests on the somewhat deflationary fact that virtually all the conclusions the authors have reached by their elaborate statistical and sociological procedures seem absurdly obvious.

This is not to discount instances in which the intelligent and imaginative industry that animated this study has uncovered data casting fresh light on the psychology of the American juror. One is both surprised and reassured to be told that jurors show ‘a modest tendency’ to treat favorably those defendants who have been made the victims of one or another form of police skulduggery or brutality. They also have a wholesome, if somewhat lawless, inclination to look charitably on those defendants who have done injury to persons whose carelessness, violence or aggression induced the defendant’s criminal act. Perhaps the tendency of jurors to allow the instinct of self-help to play a larger part in the control of social behavior than government has officially assigned it reflects a streak of anarchy in the American spirit. In any case, the existence of the tendency is frequently apparent in the data.

... in any of the saloons ...

HARRIS B. STEINBERG, Esq.

It is as though one were to try to describe a woman by charting her temperature, height, weight, food ingestion, and sex habits... Aside from the statistics, however, the information furnished and the conclusion offered are for the most part such as seasoned trial lawyers, queried for an hour over a number of drinks in any of the saloons which abound near courthouses, could furnish from their own experience.

The Leading Treatise

W. GILBERT FAULK, JR.
24 Washington and Lee L. R. 158 (1967)

“This reviewer highly recommends this book to all members of the legal profession. The American Jury is undoubtedly the leading treatise on the use of jury in criminal trials.”

The Most Impressive Scientific Effort by a College of Law to Date

THE HONORABLE LEE LOEVINGER
Commissioner, Federal Communications Commission
19 University of Florida L. R. 537 (1967)

“Perhaps the most impressive scientific effort made by a college of law to date has been the study of the American jury system at the University of Chicago Law School pursuant to a grant from the Ford Foundation. The recently published report of the first results of this study should be required reading for every law professor, law student, practicing lawyer and judge, both for the substantive information contained about jury behavior, and, perhaps more importantly, for the illustration it gives of the employment of the empiric method in relation to a legal problem. Unfortunately this first report is confined to data concerning jury behavior in criminal cases, but other reports from the study and similar investigations are promised to be forthcoming.

The Chicago jury project appears to be unique in American law schools as an undertaking of rigorously scientific research in a strictly legal field. Some work has been done at other American law schools, notably Yale and UCLA, but there has not yet been any production of significant empiric legal data comparable to that of the Chicago project.”

An Outstanding Contribution

THE HONORABLE ARTHUR J. GOLDBERG
United States Representative to the United Nations

“I have scanned The American Jury and found it a most interesting and excellent book: informative, well-organized, clearly written. It must certainly rank as an outstanding contribution to legal scholarship.

The important thing, however, is the significant first step that has been taken with this work. I believe The American Jury is absolutely indispensable to anyone who would desire full comprehension of the functioning of the American jury. Not only the entire bar but intelligent and interested laymen as well should be profoundly grateful for the efforts of Professors Kalven and Zeisel.”

An Almost Unmitigated Delight

JON R. WALTZ
Professor of Law, Northwestern University
62 Northwestern University Law Review 122 (1967)

“This study has intrinsic importance and it is an exciting harbinger of things to come. Surprisingly enough, it
The Sort of Law Book That Appears Once in a Decade

The Honorable Henry J. Friendly
Judge, United States Court of Appeals
for the Second Circuit
33 University of Chicago L. R. 884 (1966)

"This is the sort of law book that appears once in a decade. If perchance the sensitive ears of Professors Kalven and Zeisel detect in that statement something of a double entendre—embryoning, in their terminology, the imposition of a fact judgment on a value judgment—it really wasn't meant that way. This volume has indeed been long in coming. But if the authors had written the book rapidly, they would not have written the book they have. A pioneering work like this needs time. Entirely new tools had to be engineered, tested and remodeled; data had to be collected, analyzed, and reanalyzed. Then came the task of writing; one may guess that few chapters still have the form in which they sprang even from such a pair of fast and fertile minds. Wine from this new species of grape first had to mature in the cask. Now, bottled at precisely the right age, it will keep growing. This is a book to be savored and reread, not one to be gulped at a single sitting. Brilliantly avoiding Professor T. R. Powell's barb at the kind of research where 'counters don't think and thinkers don't count,' it shows how, in the hands of imaginative scholars and skillful writers, figures can enrich old insights and afford new ones.

There is only one more thing for me to say about this book—read it."

Challenges No Sacred Cows

Abraham S. Goldstein
Professor of Law, Yale University
Commentary, April, 1967

"Within its terms, as an exploration of the intricacies and hazards of research into a complex legal institution, this is a graceful and sophisticated book. And as a first entry into serious empirical research on the jury, it is a work of unquestioned importance. Nevertheless, a great deal more remains to be done if the authors are to achieve their objective, which was 'to find out as carefully as we could how the jury actually performs.' For example, this volume leaves out entirely any consideration of the jury's internal decision-making processes or the relation between background characteristics of individual judges and jurors and the decisions they reach. But other volumes are scheduled to follow; and this one has succeeded in pointing the way toward the sort of ongoing research enterprise which should, in time, unlock the mysteries of jury behavior.

It is regrettable, however, that the authors' purpose, 'was not to evaluate.' The result is a book which presents no major thesis, which challenges no sacred cows, and which presses on to few generalizations. 'It will be time enough,' they tell us, after the report on the civil jury is done, 'if then, to confront the larger significances of our lengthy inquiry into the jury.'... The tracing of connections between this study of jury behavior and various theories of judicial behavior will have to await another day.' Yet without such confrontation and tracing, this book is merely a building block, albeit a significant one, in the larger structure dreamed of by the legal realists."

New Clothes for the Emperor

Delmar Karlen
Professor of Law, New York University
35 Fordham Law Review 769 (1967)


The trials which were studied took place mainly in 1954-55 and 1958, thus indicating that the book was in gestation for a dozen years or more. It is only the second book to come out of the much publicized and lavishly financed (by the Ford Foundation) University of Chicago Jury Project. . . .

The book may be of value to statisticians and sociologists, but I doubt that it will be of much use or interest to lawyers or law students. It tells them only what they know already, or can easily find out by visiting a courthouse or talking to an experienced trial lawyer or reading a few good courtroom novels—namely, that in most cases, judges and juries react alike; that in a minority of cases, they react differently, with juries tending toward leniency more often than judges; and that the reactions of both judges and juries vary with the type of case and the nature of the defendant involved. Why this should take so much time and money to find out or why it should take so many pages to say is beyond my comprehension. Also
mystifying is why the book should have elicited several ecstatic reviews. I suppose it is another case of new clothes for the Emperor."

**Solid, Informative and Brilliant**

**MARTIN MAYER**

*Book Week, September 18, 1966*

"The quality of a work of social science can be judged by four criteria: the importance of the subject, the quality of the information offered, the degree to which that information is new, and the penetration of the insights the information serves. Most of the classics of the field have won their status in just one of these four playing fields. *The American Jury*, product of more than a decade's work by two professors at the University of Chicago Law School, is a dazzling accomplishment in all four: it is significant, solid, informative, and brilliant. Moreover, it is literate: in this book the reader makes unobstructed contact with a first-rate mind which is at play while it is at work.

Or, rather, two first-rate minds: Harry Kalven jr., law professor, specialty in torts (personal injury; in the modern world, automobile accidents), and Hans Zeisel, statistician and sociologist, author of *Say It With Figures*, which is to the presentation of scientific information as Fowler is to English prose. Both are quick, learned, aggressive, thoughtful, much given to ridicule as a device in argument, but never overcommitted to what they said yesterday (you can't get away with that in a good law school)."

**Efforts Such as This Give Courage and Hope**

**JAMES A. ROBINSON**

*Mershon Professor of Political Science*  
*Ohio State University*

21 Rutgers University Law Review 596 (1967)

"This review of *The American Jury* 's many findings hardly does justice either to its scope or its details. Kalven and Zeisel certainly address themselves to the conventional and familiar concerns with the jury trial as a social and decision process. They do more, however. They confront the obvious with unexpected and ingenious formulations, as their results are much more than a mere catalog of empirical affirmations or rebuttals of legal lore. What emerges from this research report (in a sense it is not a book) is a modified impression of the jury trial in criminal cases. The reader's old images are clarified and refined; the student also acquires new images. On the basis of this research book, we should look forward to the companion volume on the jury in civil cases.

I think it not too much to say that efforts such as this, especially as they increase in number, scope, and application, give courage and hope to those who believe that societies and social institutions may appraise themselves, to the end that they may be modified or adapted, revised or reinforced, and thus realize the highest human aspirations, including justice, fairness, and respect."

**Style and Organization is Superb**

**DICKSON PHILLIPS**

*Dean, School of Law*  
*University of North Carolina*

52 Cornell L. Q. 1037 (1967)

"The style and organization of the book is superb. The authors themselves, in developing their 'new scholarship and literature' for the lawyer and the social scientist, recognize the problem of style. They attempt to blend legal writing with a statistical-scientific style, and succeed, as well as possible, in avoiding the danger of mutual obtusion. The result is good, lucid, expository writing. The well-conceived and carefully used footnote materials provide rudimentary aids to cross-understanding of technical concepts without interrupting the flow of the text.

The authors have similarly done an unusually fine job of fitting their essential statistical tables into the flow of text. The text provides effective support for the tables, explaining and clarifying those that are not immediately understandable. This is extremely valuable in a book of only 559 pages which contains a total of 155 tables, many of them playing a critical role in the expository scheme.

In sum, the authors have managed to steer a consistent mid-course between over-sophistication and annoying condescension. They have confided in their readers, revealing the doubts, frustrations, surprises, and feelings of accomplishment that they have experienced. Yet, the intimacy thus generated is not cloying. The authors maintain a level of scholarly sophistication, with the result that the book is both readable and informative."

**This Book Will Become a Familiar Tool**

**HARRY P. STUMPF**

*University of New Mexico*

20 Western Political Quarterly 994 (1967)

"Neither a long list of laudatory adjectives nor a review twice this length would adequately convey the methodological and substantive value of this study. In method, the presentation is assiduous, perhaps elementary, each step from sampling to questionnaire construction to data analysis being discussed thoroughly and critically, usually within the context of the relevant methodological literature. This feature of *The American Jury* not only enhances the credibility of the findings themselves, but also
"THE AMERICAN JURY" IN REVIEW

renders the study pedagogically useful for undergraduate and graduate courses in social science research method—one might also hope in courses in legal research.

In all, 227 specific variables were identified and discussed! Many of these were heretofore but hunches in the mind of the practicing lawyer, but are now systematically catalogued; others are isolated and studied herein for the first time.

If this reviewer rightly interprets the current mood and habits of his social science colleagues, this book will become a familiar tool in the hands of the many political scientists, sociologists, and social psychologists interested in the law. As for the lawyer and legal scholar, it remains to be seen whether even this monumental study, representing the best in socio-legal research and writing, can succeed in penetrating the curtain of Austinian jurisprudence which has for so long isolated most of legal education and research from the methods and findings of modern social science."

Who Would Have Thought Statistical Prose Could Be So Interesting

PATRICK D. McANANY, S.J.
Professor of Law, St. Louis University
11 St. Louis University Law Journal 282 (1967)

"There are earlier studies which have gone the route of legal sociology. These have made their mark and provided a base from which to work. But the present book has several things in its favor to make it the pioneering effort in this direction. First is the massive research efforts which only the beneficence of Ford Foundation could underwrite. Second is the area studied—the jury system. This is a vital sector of public life lying between the technical legal world and society at large. Third, the authors are highly qualified and very meticulous in spelling out the worksteps that took them to their conclusions. Yet the book will not win total acceptance from all lawyers. Indeed, its very quality may make debate more acrid over fundamental issues of values. For there are many who feel that law and social science do not make comfortable bed partners.

Social scientists and lawyers have shown little affinity for cooperative research. The American Jury is a giant step toward reconciliation, wherever one places the blame for its late arrival.

The crisp style that fills the gaps between tables makes the book a delight to read. Who would have thought statistical prose could be so interesting?"

A Standard That Other Inquiries Will Be Proud to Emulate

EDWARD GRIEVE
Senior Lecturer in Law at Leicester University
From Criminal Law Review 555, October, 1967

"The jury system is a topic on which many able and experienced observers have over a long period voiced strong opinions. What has been lacking has been an adequate empirical basis for argument.

The daunting task has been performed with immense skill for the American jury in criminal trials. The resulting book is the central product of the University of Chicago Law School Jury Project, which has laboured heroically for more than a decade with the assistance of a magnificent grant from the Ford Foundation. The authors are professors of law (Kalven) and of law and sociology (Zeisel). Both the research, in which they took leading roles, and the book represent as happy a marriage of disciplines as it is possible to conceive.

It will be worth while saying a few words about the book as a work of literature and of exposition. In both respects it is a tour de force. I am prepared to confess that I have never before read a substantial work involving the presentation and analysis of figures without dependency and boredom. That will give point to my saying that I read this book through with enthusiasm and constant pleasure. The pattern of the argument is gently and lucidly unfolded before one's eyes. The figures are clearly presented, simply but uncondescendingly explained. The mathematics, such as they are, are made mathematics for the million. In this forest of evidence and argument it is well-nigh impossible either to lose one's way or to hit one's head against a tree. What is more, the sights by the way are a positive pleasure. For this there are three reasons. First, the research method, as we shall see, involved taking the evidence of judges about the cases studied; and the judicial descriptions and comments—brief, varied, colourful and human—constitute much of the evidence presented. Secondly, the book is written in a style that puts most American, and many other, academic authors to shame. It is limpid, muscular, rich in metaphor, free of unswallowable sentences and outrageous words. It is rare to find a book of this sort in which the authors have seemed to resolve that they would be above all else comprehensible; rarer to find a resulting work of art. Thirdly, the book is beautifully produced. The publishers, lapsing with the authors in their aim of clarity, have been generous with print and space. It is nice to be able both to gobble the pages and to enjoy the taste as one does so.

The skill demonstrated throughout the research and analysis are such as to leave a mere lawyer limp with admiration. The Chicago Jury Project has set a standard that other inquiries into legal institutions will be proud to emulate. The appearance of the principal fruit of the Project, so long awaited, is a special event, the importance of which it has been sought to mark in however inadequate a way by the publication of an extended review in these pages on the other side of the Atlantic."
Alumni Officers Elected

Just as the Record went to press, officers and Directors of the University of Chicago Law School Alumni Association were elected. The officers, for 1968-69, are:

Charles W. Board, JD'33, President
William G. Burns, JD'31, Vice President
J. Gordon Henry, JD'41, Vice President
Richard H. Levin, JD'37, Vice President
Robert McDougal, Jr., JD'29, Vice President
James J. McClure, Jr., JD'49, Secretary
Arnold I. Shure, JD'29, Treasurer

Admission is open to graduates of approved American law schools presenting superior academic records and evidence of sufficient competence in the appropriate language. The degree of Master of Comparative Law is awarded to students who have satisfactorily completed the two year curriculum. Qualified students in the J.D. program of the Law School are eligible to participate in the Foreign Law Program during their third year. Satisfactory completion of that year's work, including both those courses from the regular curriculum and those particularly relevant to the Foreign Law Program, will qualify such a student for the year of work abroad described above. No additional degree is awarded for the year of work abroad in these cases, but such students may qualify for such advanced degrees after an additional period of residence at the Law School following their return from Europe.

The careers of graduates of the Foreign Law Programs have been so varied and interesting that the Record asked a number of such graduates to provide us with a report on their activities since graduation. Their responses follow.

Eric Bergsten
Associate Professor of Law, University of Iowa,
M. Comp. L., 1961

Since returning to the United States at the completion of the Foreign Law Program in 1961, I have been a member of the faculty of the College of Law at the University of Iowa, with the exception of the academic year 1965-66 when I was on leave to visit at Northwestern University.

International and comparative law had not penetrated the Iowa curriculum to any large extent in 1961, and my courses for the first few years were concentrated in commercial law with an occasional seminar on the Common Market. As a result, I was called upon to serve as the research consultant for the Legislature of the State of Iowa in the adoption of the Uniform Commercial Code, and have done some law review writing in this field.

However, as the orientation of the curriculum has changed in the last several years, my teaching has shifted towards international and foreign law. This year I am teaching, in addition to Commercial Paper, a required first year course in International Law and seminars on the Common Market, Comparative Regulatory Techniques (the means by which the governments of modern industrial states control and shape the economy) and Problems of Doing Business Abroad.

My interest in things more strictly French, which was generated by the Foreign Law Program, has taken form mainly in a monograph on the Control of Restrictive Trade Practices and Markets in France which will appear in a series on The European National Systems of Control of Restrictive Trade Practices and Market Power sponsored by the Association of the Bar of the City of New York and to be published by McGraw-Hill. This monograph grew out of an earlier article on the French experience with refusal to sell legislation.

Currently I am conducting research on the problems of the reception of Common Market law in the French courts. These problems are not unlike those involved in our early constitutional history: who has the right to interpret the Treaty, whether the Treaty or a later national law governs in case of conflict, and the relations of the national courts to the Court of Justice of the European Communities. I hope to use this research to satisfy the dissertation requirement for the degree of Doctor of Comparative Law.
Upon my return to the United States in 1961, I became associated with Stassen, Kephart, Sarkis & Scullin in Philadelphia. My work there consisted principally of international tax planning, trade mark problems and advising American companies on the new anti-trust regulations of the European Common Market. In addition, I participated in part of the protracted litigation concerning ownership of the world-wide Bata shoe empire.

From 1963 to late 1967, I was associated with the firm of Steptoe & Johnson, in Washington, D.C. My practice there was rather general, with a large proportion of my time devoted to tariff matters, particularly those arising out of the Kennedy Round. The latter entailed representation of domestic industries before the Tariff Commission, Bureau of Customs and other U.S. agencies and departments.

Just recently I joined the Legal Department of International Finance Corporation in Washington. IFC is the affiliate of the World Bank devoted to encouraging the growth of private enterprises and the expansion of existing concerns. It also invests in and assists private development finance corporations and underwrites public offerings of securities of private enterprises in the countries. The Legal Department is responsible for all legal matters involved in these projects as well as the sales from IFC's portfolio investments to private investors.

Gordon E. Insley
Hill, Samuel & Company Ltd., Geneva, Switzerland,
M. Comp. L., 1959

September 1959-September 1960: Corporate and securities law practice, Bell, Boyd, Lloyd, Haddad & Burns, Chicago—some international estate and tax work.

December 1960-July 1962: U.S.-Swiss tax and corporate legal advising, Allgemeine Treuhand A.G. Zurich, Switzerland. Most interesting and important matter was recovery of building machinery worth ca. $300,000 sold on conditional sale contracts to a Liechtenstein "établissement" and by it to related companies in Germany and Austria. The case involved three bankruptcy proceedings in two countries.

July 1962-October 1966: Tax and corporate attorney, Legal Department, Nestlé Alimentana S.A., Vevey, Switzerland. My work consisted of advising the management of this very interesting world enterprise on all sorts of legal problems ranging from SEC requirements attached to owning more than ten percent of a NYSE company through arranging a public issue of shares in Ceylon to forming a joint venture with the Government in Northern Nigeria, in addition to the run of the mill tax and license agreement work.

October 1966-December 1967: U.S. attorney in Baker & McKenzie, Zurich office. While, of course, most work here was advising U.S. companies on their Swiss and to a certain extent European operations, spice was added in the form of advising on creation of mutual funds, on an anti-trust matter involving soccer football, and U.S. income and estate tax problems of U.S. and foreign nationals, in Europe.

January 1968: I have accepted a position as tax and legal advisor to the London merchant bank Hill, Samuel & Company Ltd., based in Geneva, Switzerland. Since this is a forward-looking investment banking concern, I hope this will involve various amalgamations, joint ventures, investments and securities work in the process of the continued integration of European finance and business.

Michael J. Kindred
Assistant Professor and Assistant Dean at the Faculty of Law of Haile Selassie I University, Ethiopia,
M. Comp. L., 1964

Since 1965, I have been an Assistant Professor at the Faculty of Law of Haile Selassie I University in Ethiopia. I have taught the first year civil law course, which consists of an historical introduction to Ethiopia's French-inspired private law, study of contracts in general and problems of government contracts in a developing country. Considerable time is spent tutoring students, through frequent writing assignments, as a regular part of the course, as the Faculty of Law has experimented with intensive teaching to compensate for deficiencies in stu-
students' secondary and pre-law education. I feel that the Faculty's experience in Ethiopia in this regard may be relevant to the problems in the U.S. of giving professional training to persons from culturally and educationally deprived backgrounds.

Shortly after my arrival in Ethiopia, I was given responsibility for the new student-faculty Journal of Ethiopian Law. My particular responsibility was in the area of developing the Journal as a national case reporter. In addition, I organized a system of Journal patronage by which members of the Ethiopian legal profession contribute voluntarily to the Journal's support. Over 200 persons are new patrons of the Journal, which has thus become nearly self-supporting in spite of a local sales price designed to encourage wide distribution.

In June 1966, I was appointed Assistant Dean of the Faculty of Law. In this position I have had responsibility for, among other things, developing a legal aid program and a program of low-level mass legal education to upgrade the present administration of justice.

In 1968 I will give up my administrative position to devote my full efforts to scholarship and Ethiopian law before returning to the U.S. to teach in 1969-70.

Other graduates of the University of Chicago Law School now at Haile Selassie I University Faculty of Law are Dean Quintin Johnstone (J.D. '38), Paul McCarthy (Foreign Law Program—M. Comp. L., '66), G. O. Zacharias Sundstrom (Comparative Law Program—M. Comp. L., '63), and Mechitilde Immenkötter (Comparative Law Program).

ROBERT L. NORGREN
Counsel, Continental Oil Company Limited, M. Comp. L., 1960

As you know, I was in the Foreign Law Program from 1958 until 1960. At the end of the first year of the Program in June of 1959, I was offered and accepted a position with White & Case, the work to begin upon my completion of the Program in August of 1960. I was associated with White & Case through April of 1962, at which time I left to go to work in the international division of Continental Oil Company's Legal Department in New York. In September of 1963 I was promoted to the position of Counsel for the company's European Operations, I continue to occupy the position and I perform its functions in my capacity as Counsel, Continental Oil Company Limited.

As Counsel, Continental Oil Company Limited, I am responsible for the provision of legal services to all of the members of the Continental Oil Company group of companies operating in Europe. In this context, 'Europe' means the British Isles and all of Continental Europe, including Scandinavia, the Iberian peninsula and the Balkans. My brief does not run to the Middle East or to Africa, although on occasion we are called upon to assist with legal problems connected with those areas. My work is basically of two types: (a) the performance of what might be called direct legal services for the headquarters group here in London and for our English subsidiaries on the Continent, and (b) the provision, supervision and co-ordination of the services of outside
attorneys in the countries in which we are active. To assist me in this work I have a staff of four attorneys and associated clerical personnel. In addition, two of our Continental subsidiaries each employ an attorney who devotes a good share of his time to legal work, and both of these men have functional responsibility to my office.

Continental has large crude oil reserves in Libya and some newly discovered ones in the Arabian Gulf Sheikdom of Dubai. At the time the Libyan reserves were discovered the decision was made to put the crude oil through our own system rather than adopting the alternative of selling it to third parties. As a result Continental has created a fully integrated petroleum company operation in Europe. This consists of a major Refinery now under construction in the U.K., an equity interest in a German refinery, our own pipeline in Italy, an equity interest in other pipelines, including the recently completed Transalpine pipeline, marketing companies in half a dozen countries, together with the storage facilities, transportation equipment etc. necessary to supply them, a small fleet of vessels for the transportation of crude oil and petroleum products, and widespread exploration activities throughout Europe.

Consequently, the activities of my staff, and my own in particular, require a considerable amount of travelling and constant contact with the legal systems of the various European countries and with lawyers all over Europe. I have therefore found it advisable to supplement my knowledge of German and Spanish by taking intensive courses in French and Italian. In this regard, I have often been reminded of Professor Rheinstein's bland assumption that we should be able to work with foreign language materials written in any of the European languages. I recall my reaction to this as being sceptical to say the very least, but I have since been obliged to, and found that one in fact can cope with languages such as Dutch and Swedish on the basis of the knowledge of closely related languages. You will appreciate that all of this makes the work quite interesting and stimulating, and also that the Foreign Law Program could not have been better designed to equip me to discharge my duties. I am therefore naturally disposed to consider the Program as being an unqualified success.

ROBERT STARR

Department of State, M. Comp. L., 1964

I completed my undergraduate legal studies at the Law School in 1962 and entered the Foreign Law Program in that year. I spent the overseas portion of the Program in the Legal Service of the European Economic Communities (Brussels), and at the Law School of the University of Aix-Marseille, France, where I obtained the degree of docteur en droit after completing a thesis on monopolization under French and Common Market Law.

On returning to the United States I was associated for a short time with the Washington, D.C. law firm of Surrey, Karasik, Gould and Greene. I then joined the Legal Adviser's Office in the State Department, where I specialized in European Affairs and, subsequently, in International Organization Affairs. In this capacity I was a member of the United States delegation to various international conferences, including the 1967 United Nations Special Committee on Principles of Friendly Relations and Co-operation among States, which was established by the General Assembly to study various principles of international law with a view to their progressive development and codification. I served on the United States delegation to the 21st (1966) and 22nd (1967) sessions of the United Nations General Assembly.

I am now on the President's Task Force on Communications Policy, which is under the chairmanship of Eugene V. Rostow. The Task Force was given a broad mandate to make a comprehensive study of communications policy, both domestic and international. The President instructed it to investigate such questions as whether the present division of ownership of our international communications facilities best serves our needs, and whether the Communications Act of 1934 and the Communications Satellite Act of 1962 require revision.

I have contributed a number of articles to various law journals, on European antitrust law (14 A.J. Comp. L. 98 (1965)), French corporation law (40 Tulane Law Review 57 (1965)), international protection of human rights (Wisconsin Law Review, Oct. 1967) and United Nations efforts in the progressive development and codification of international law (to be published in The International Lawyer). I am currently chairman of the Subcommittee on United Nations Constitutional Structures of the ABA Section on International and Comparative Law.
arguable theory for appeal is often a severe test of a lawyer’s ingenuity. In terms of their potential for reversible error, the cases assigned to the project were no better than an average cross-section of the Public Defender’s cases. Indeed, because they were drawn from a backlog from which the more promising or more urgent appeals had already been removed, the project’s cases probably contained more than their proportionate share of the stale and unworthy. Despite this fact, the percentage of reversals obtained in appeals where students wrote the briefs and abstracts proved to be somewhat higher than the percentage of reversals in all criminal appeals in the Appellate Court during the same period. The results are shown in the following Table:

Disposition of Criminal Appeals Briefed by University of Chicago Law School Summer Brief-Writing Project, and Disposition of All Criminal Appeals, Illinois Appellate Court, First District, 1965-67.

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<th>BRIEF-WRITING PROJECT APPEALS</th>
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<td>Affirmed</td>
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<td>Reversed in part</td>
<td>3 6%</td>
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<tr>
<td>Reversed or reversed</td>
<td></td>
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<tr>
<td>and remanded</td>
<td>124 23%</td>
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<tr>
<td>Total cases disposed</td>
<td>53 100%</td>
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<td>(excludes appeals dismissed)</td>
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It appears from the foregoing Table that 23 per cent of the project’s cases were reversed or reversed and remanded, and that an additional 6 per cent were reversed in part. The project’s total of 29 per cent is significantly more than the comparable total of 22 per cent for all cases disposed of by the First District of the Appellate Court during the same period. In addition, two other cases, affirmed by the Appellate Court, were later reversed by higher courts. When these two cases (4 per cent) are included, the proportion of project cases in which some relief was obtained on appeal is a remarkable 33 per cent.

Most of the relief obtained in the Appellate Court was for insufficient evidence (8). The next highest category was prejudicial rulings on evidence (3). Other relief was for illegally obtained evidence (2), denial of a statutory right (1), and inadequate counsel (1).

Fleming Smith had been convicted of selling narcotics. There were three witnesses against him, a police informer who claimed that he had purchased narcotics from the defendant and two police officers who provided the informer with marked money and arrested him after the transaction. On cross-examination the informer gave his name as James Jordan. He then acknowledged that this was an alias, but was sustained in his refusal to reveal his true name. The brief prepared by students Barbara Hillman and Leonard D. Levin argued that the court committed error in this ruling because once an informer has appeared and testified he is no longer protected by the “informers privilege” and his “true identity must be revealed for purposes of cross-examination and impeachment.” The Appellate Court rejected his argument and affirmed the conviction, but the United States Supreme Court reversed on the theory urged by the students: “To forbid this most rudimentary inquiry at the threshold is effectively to emasculate the right of cross-examination itself.” Smith v. Illinois, 390 U.S. 129, 131 (1968).

Another record assigned to the students was the jury trial of Lee Roy McCoy, convicted of killing his wife and sentenced to twenty to thirty years. After compiling an impressive list of errors made by counsel in the course of the trial, student Bruce H. Schoumacher wrote a brief urging that the conviction should be reversed because of the incompetence of counsel, even though reversals on this ground are almost unheard of when (as in this case) defendant is represented by counsel of his own choice. In what was probably the most significant opinion written in one of the project’s cases, the Illinois Appellate Court reversed and remanded on the theory urged in the student’s brief. The Court wrote:

“The general rule adopted by our courts is that where a defendant is represented by counsel of his own choosing, his conviction will not be reversed for incompetency of counsel unless it can be said from the record that the representation was of such low caliber as to amount to no representation at all, or that it was such as to reduce the trial to a farce . . . . While we do not believe that the representation given the defendant in this case reduced the trial to a farce, we do believe that the caliber of representation afforded the defendant in this case was such as would deprive the defendant of any chance of being found not guilty. We therefore conclude that the defendant did not receive adequate representation in the trial of this case, which resulted in substantial prejudice to him.” People v. McCoy, 80 Ill. App. 2d 257, 263-64, 225 N. E. 2d 123, 126 (1967).
Since appellate courts rarely reverse a conviction because of the incompetence of retained counsel, the McCoy case, where this result was obtained through the efforts of a second-year law student, is probably unique. Through a combination of hard work and good luck this same student, Bruce H. Schoumacher, worked on 10 appeals—more than any other student—and saw 4 of his cases reversed, a higher proportion than any other student.

Following is a list of the students who worked on the Summer Brief-Writing Project, and their present employment:

Howard B. Abrams (J.D. '66), Assistant Public Defender of Cook County
Robert G. Berger (J.D. '66), Legislative Research Center, University of Michigan Law School
Charles C. Bingham (J.D. '66), Assistant Director, Institute of Continuing Education of the Illinois Bar
Ronald D. Boyer (J.D. '65), Assistant State's Attorney, Iroquois County, Illinois
Robert C. Funk (J.D. '66), private practice in Hammond, Ind., but now in Germany with U.S. Army
Roger C. Ganobick (J.D. '66), private practice in Shrewsbury, Mass., but now in Alabama with U.S. Army
William Halama (J.D. '65), private practice in Los Angeles
Barbara J. Hillman (J.D. '66), private practice in Chicago
Leonard D. Levin (J.D. '65), studying at The Hague, Holland
Alfred E. Lipton (J.D. '66), Appellate and Test Case Division, Legal Aid Bureau of Chicago
Craig A. Murdock (J.D. '65), private practice in Denver
John D. Ruff (J.D. '67), Government Employees Insurance Company, Chevy Chase, Md.
Marc P. Samuelson (J.D. '66), Internal Revenue Service, San Francisco
Bruce H. Schoumacher (J.D. '66), private practice in Nebraska, but now with U.S. Air Force in Nebraska
Robert A. Shuker (J.D. '66), defending indigent juveniles in Cook County Juvenile Court for Chicago Lawyer Project
Robert C. Spitzer (J.D. '66), Legislative Reference Bureau of the Commonwealth of Pennsylvania
Henry A. Waller (J.D. '66), Woodlawn Neighborhood Office, Legal Aid Bureau of Chicago

The Summer Brief-Writing Project was also assisted by the volunteer efforts of four Chicago attorneys and eight members of the Law Faculty, who read drafts of student work and counseled with the authors. Those assisting included Steven Larson, Michael Lew, Leonard Spalding III, and Bernard J. Nussbaum (J.D. '55), of the Chicago Bar, and Dean Phil C. Neal, Assistant Dean James M. Ratcliffe, and Professors Walter Blum, Geoffrey C. Hazard, Edmund W. Kitch, Dallin H. Oaks, Bernard D. Meltzer, and Hans Zeisel. Professor Oaks organized the project and provided general supervision. A copy of his final report of the project is available on request.

After the project was concluded, Justice Joseph J. Drucker of the Illinois Appellate Court, First District, urged that some of the experience of the project be preserved and made available generally by having some of the participants publish a manual and checklist for indigent appeals. Financing was provided by the Center for Studies in Criminal Justice of the University of Chicago Law School. The work was supervised by an ad hoc lawyers' committee consisting of Jason Bellows (J.D. '53), Elmer C. Kissane, Professor Edmund W. Kitch, Francis X. Riley, Thomas P. Sullivan, and Professor Dallin H. Oaks (chairman).

The Appointed Counsel's Guide for Illinois Criminal Appeals was written by Marshall Patner, with research assistance by Robert C. Funk (J.D. '66) (a brief-writing project participant) and with research and editorial assistance by Peter Kolker (J.D. '66). The Guide, which consists of an annotated checklist of subjects to be considered in preparing a brief and abstract for a criminal appeal, was published by Callaghan & Company. Copies have been distributed to trial and appellate courts in Illinois and will be given to each court-appointed counsel without charge.

Dallin H. Oaks & Marshall Patner

APPENDIX

Disposition of Summer Brief-Writing Project Cases

1. AFFIRMED

People v.
II. AFFIRMED IN PART, REVERSED IN PART
People v.

III. REVERSED OR REVERSED AND REMANDED
People v.

IV. AFFIRMED BY APPELLATE COURT, BUT REVERSED BY HIGHER COURT
People v.

Continued from page 3

The significance of the second attempt by the New York legislature to induce the states to unify divorce law lies in the dramatization of a substantial change in the reasons for uniformity of state law and perhaps even in the methods of obtaining uniformity. When the National Conference was formed seventy-five years ago, the literature concerning its formation emphasized the fact that then in our federal system about the only method of obtaining uniformity of state law was by voluntary adoption by state legislatures of identical law. It was thought, as the United States Constitution was then interpreted, that Congress could not unify commercial law or divorce. Today, seventy-five years later, Congress can clearly unify the law concerning commerce by enactment of a law which applies not only to all inter-state transactions but to all transactions affecting interstate commerce. After the case of Katzenbach v. McClung, 379 U.S. 294 (1964), involving the Civil Rights Act of 1964, it is hard to imagine an area in which Congress cannot unify law by its enactment. If we can imagine an area, it may be the area of divorce.

In the seventy-five years since the founding of the National Conference, two other methods of obtaining uniformity of law have developed. The clause in the federal constitution concerning interstate compacts, long dormant, has come into its own with compacts on such matters as education, and air and water pollution. In addition, the United States government has become a member of the Hague Conference on Private International Law and the Rome Institute for Unification of Private Law and as a member of these organizations and of the United Nations and its constituent organizations, the United States is now participating in the drafting of conventions or treaties designed to obtain world uniformity of private law.
The reasons, as well as the methods, for uniformity have changed in seventy-five years. In 1892, the emphasis was on transportation of moveable things—identical law to be applied to a multi-state transaction involving the movement of a sack of flour from Minneapolis to Boston. To some extent in 1892, and to a greater extent in between the two world wars, the emphasis shifted to the mobility of money—the need for uniformity concerning intangibles.

The 1967 memorial of the New York legislature concerning divorce emphasizes anew another reason for uniformity, the mobility of persons. The lack of uniformity in many areas of law points up the possibility of discrimination between rich and poor. It did not go unnoticed in the New York legislature that the ability of Governor Rockefeller to obtain a divorce from Nevada was an ability not shared by the large number of people in New York who could only get a divorce under the very stringent New York divorce laws because they could not temporarily leave New York.

Mobility of persons is presenting a problem in another way. Both the Commissioners on Uniform State Laws and the Council of State Governments have received suggestions from federal agencies to the effect that it is difficult for them to move their employed lawyers, doctors and architects from one state to another, that is, from one regional federal office to another, because of the difficulties and differences in the licensing laws of the respective states concerning these occupations. In some states, employment by the federal government except in the General Counsel’s office, as an example, is not regarded as “practice of law” for the purpose of being admitted to practice on motion in a new state. In some states, a lawyer in the General Counsel’s office of a corporation cannot count his practice in that office as practice entitling him to admission on motion in a new state. It is probably true that in a recent sleet storm in a northern urban area where the utility companies brought personnel from all over the United States by quick jet transportation to work on repairing the power lines, these personnel, if required to have a license in order to make electrical installations within a particular village, were working illegally. This is another illustration of the quick mobility of population changing the need for uniformity of state law.

Another new reason for uniformity which is developing is a reason which I call facility of administration.

This came to me in a dramatic form when I received a communication from the Department of State of the United States enclosing the pages of the Foreign Service Manual instructing foreign service officers on taking acknowledgments abroad for American citizens and others to be used in some state in the United States. This is the case which would arise if an American citizen, while touring in Europe, had to execute and have acknowledged a deed for land in Illinois. The instructions to foreign service personnel were many pages long and they started out with a statement that the foreign service officer had to find out the state in which the document was to be used. It then provided that if the document was to be used in, let us say, North Dakota, the secretary of the embassy could not take the acknowledgment because the North Dakota law permitted only secretaries of legations to take acknowledgments; the acknowledgment could not be taken by the Counsel General because the North Dakota law authorized only consuls to take acknowledgments, and so on for each state of the United States. The Department of State urged the National Conference to attempt to unify the law on this subject so that they could simplify the instructions to foreign service officers—having one uniform method of procedure by a foreign service officer wherever located in the world and whatever title the State Department assigned him. This is an illustration of the problem from the Executive Department, but it arises even in the court system. The federal courts, as an example, are directed by the United States Supreme Court not to grant habeas corpus on application of a prisoner in a state prison, unless the state does not provide an adequate procedure for post-conviction review of various constitutional claims of the prisoner, such as the denial of a fair trial. The circuit courts of the United States and the United States Supreme Court must know, therefore, the law of all the states in the circuit, even though the particular judge was trained under the law of one particular state. It would facilitate the judging functions if the court could be reasonably confident that the law of all of the states in the circuit was substantially identical. In Montreal we promulgated the Uniform Post Conviction Procedure Act and at the Honolulu meeting of the National Conference we promulgated and the American Bar Association approved a new statute authorizing federal courts to certify to state courts a question of state law which had not previously been decided by the state court, so that the federal court could, with confidence, decide the federal question on the basis of known state law. If all of the states in the circuit had this type of statute or rule of court, as one of the federal judges argued during the presentation of this act, the federal judges could know that they could find the answer in a substantially uniform way. Federal administrators have the same problem. Most federal agencies are operated on a decentralized or regional basis. There are regional offices in Chicago and Denver, for example, covering many states. To the extent that federal rules, including federal grants-in-aid, turn on a particular state law, it would facilitate administration by the federal government and reduce the necessity of having separate employees for each state, if the law in the region was substantially uni-
form. The Uniform Federal Tax Lien Registration Act serves this reason for uniformity.

This is not a problem solely involving federal employees; it is also a problem involving private corporations with multi-state operations.

Finally, there is a new or at least an increasing reason for uniformity in areas where custom, convention and habitual course of conduct are tending to establish a common expectation throughout the United States. This commonality of expectation is increasing at a faster rate than I suspect many lawyers realize. I will use a "non-law" illustration to make this point. A friend of mine has been with a national waterworks company since his graduation from engineering school in 1939. When I saw him for the first time in many years in 1964, twenty-five years after his graduation, I asked him what were the major changes in his business in the twenty-five years he had been with it. His answer was, the development of a common taste or tolerance (perhaps it would be better to say lack of tolerance) of brackish or poor-tasting water. The demand in his business for insertion of chemicals into municipal water supplies designed to eliminate various bad qualities of water has been the fastest growing element of his business and the demand, he asserted, was tending to make water quality substantially uniform nationwide. I asked whether he had an explanation for this phenomenon and he replied that he did. He said that it was the result of the tendency of the large multi-state corporations to transfer their junior executives from plant to plant throughout the country and the equally strong tendency of the wives of these executives to become members of the League of Women Voters or other similar organizations in the community in which they reside. He reported that as soon as the junior executive's wife tasted the water in her new location she mounted a campaign to have chemicals inserted in the water to make it equivalent in taste to the water of the community from which she had come.

In the law side of this problem, the strongest illustration is perhaps in the field of probate law. There is developing a common expectation that on death the rules concerning transmission of wealth, particularly the rules concerning the administration or activities of the personal representative, should be substantially uniform throughout the United States. Thus, the commonality of expectation is becoming an increasing reason for uniformity.

I should not close without referring to another reason for uniformity and that is the elimination of various kinds of economic discrimination. Here the divorce of Governor Rockefeller dramatizes the point. As we are developing an increased consciousness of discrimination against the poor, we are becoming more aware that the middle class and the higher income groups can shop for their law in such matters as divorce and abortion but the poorer elements of the community can not. In order to eliminate this kind of economic discrimination, increasing pressure is developing for unifying the law so that there is no advantage to the rich by their ability to leave temporarily the jurisdiction which has a bad law. One of the legislative sponsors of the recent Colorado abortion law, it is said, was induced to be a sponsor by his shock and embarrassment, when a client asked him about abortion, to find that his client (who fortunately had sufficient money) could best obtain an abortion by going to Japan. He was embarrassed that he could not give similar advice to his other clients because they did not have the price of the airline ticket.

It is likely that these newer reasons for uniformity will spread, so that the Commissioners and, indeed, the Congress, will be operating in areas of law which seventy-five years ago it was thought could be left to the "experimentation" of the individual communities.

Continued from page 3

course at the law school will resemble in any way the breezy saturation courses which now enable one to speak fluent French or Italian or Spanish with the tongue of a native after only a few weeks of vigorous effort. The law does not permit herself to be taken so readily. But she nevertheless is amenable to seasonal blandishments. As spring rolls round, many of you will find that at least some of the confusion has started to be dispelled—assuming, of course, that you yourselves have cooperated by hard work, perseverance and a reasonable amount of self-generated initiative.

Before this mysterious process of confusion followed by de-confusion has even begun to set in, it may be helpful to explore just a little the nature of the commitment which you are making to the law. Just what is it that you have committed yourself to, and what should you expect from that commitment?

You will find it is a familiar exercise in the law, when we are trying to identify and to zero in on what some principle or some concept really is, that we look closely at some of the things which it is not. To use a rather antique illustration, if you examine enough situations involving simple bailments which are not gifts or trusts, it will slowly dawn on you that you have acquired a degree of understanding as to what gifts and trusts actually are. Or if you scrutinize enough situations which involve mere exercises of free speech which are protected by the First Amendment, then you may develop an instinct for recognizing conduct which because of accompanying violence or other special circumstances has stepped over the line into the area where the Constitution permits the police power to operate. Or to take a
more dreary but a highly practical question, if you read enough cases in which the Government defeated claims by taxpayers that their transactions had produced capital gains rather than ordinary income, then you may be able to furnish to the next taxpayer some profitable advice on how to avoid the pitfalls and work out his salvation so as to be taxed only at the lower capital gains rate.

All this is related to what is known as definition by the gradual process of inclusion and exclusion—a process which is part of the great strength of the common law, provided the particular problem is not so explosive that society is unable to hold itself together while waiting breathlessly for the emergence of the applicable general principles. In this tradition, let me mention an event from my early experience which may provide a meaningful contrast to your own situation this evening.

Nearly a quarter of a century ago, in the summer of 1943—having completed my service as law clerk to Chief Justice Stone and having spent the intervening two months in the Department of Justice—I entered the Army as a private and was assigned for basic training to the combat engineers replacement training center at Fort Belvoir, Virginia. In those days the Army was dealing with manpower on a rather vast scale, and its classification methods often seemed to have little rhyme or reason. Fort Belvoir was reputed to be a tough and rigorous training ground, which probably few men would have selected voluntarily if given any choice as to their initial destination in the Army. On our second day there, the captain in command of the company convened a meeting to deliver his welcoming address. The captain asked that every man in the company who felt that being assigned to Fort Belvoir must have been the result of some mistake should raise his hand. Good-naturedly the captain himself raised his own hand first, and most of the men then quickly did the same. The captain closed this out by saying that, mistake or not, there was no way of transferring out of Fort Belvoir until the basic training was completed, and therefore everyone should just get on with the job.

That is one way, of course, for a professional career to begin. How different it is from the circumstances which bring all of you into this first-year class at the University of Chicago Law School. Each of you is here not by mistake, and not because you were sent or assigned, but because you want so very much to come. Each of you who stays will stay not because you are required to, but because, on the basis of those periodic reassessments which nearly all thoughtful people engage in, you will make a deliberate decision that you want to remain.

I urge, however, that you never regard this matter as closed or settled. If in good time you discover that you do not have a temperament for the law, or if you find that the law is not sufficiently activist for your tastes, or if you feel a strong urge to move into another branch of learning or into another profession or occupation, then by all means take a hard look at whether the change should be made. This does not mean you should be unduly hasty in arriving at such a decision. But certainly it is no dishonor and no discredit to become a law school drop-out—provided of course that the reasons are sound and do not merely reflect laziness or other weakness of character. Being one who came to the law only after having done a year of graduate work in economics at this University, I feel a special affinity with those of you who may find yourselves, particularly within the next year or two, reconsidering your choice of a profession.

Having (I hope) disarmed you a little by this plea for career open-mindedness, let me turn now to some of the factors which are likely to influence the great majority of you to stay steadfastly on the course you now have chosen.

A basic consideration is the extraordinary variety and diversity of callings which the law will offer.

People grumble about lawyers from time to time—Shakespeare set the tone for this—and it is right and proper that they do so, for complacency in a profession can lead only to weakness and deterioration. But despite such grumblings, ours is a Nation in which lawyers have always played a notable and a creative role both in public affairs and in private matters. With the increasing complexity of our society, the diversity of these opportunities has multiplied—and multiplied almost unbelievably.

In politics and in Government, the lawyers—some of them in legal positions, but many of them not—are at least as prominent today as they ever have been. Whatever may be the seasonal or even the cyclical ebb and flow, it seems unlikely that this role will be substantially diminished during your professional lifetime.

In private matters, the American lawyer—and in this respect, he is very much unlike lawyers in many other countries—tends to serve as counsel in the broadest sense, whether he is advising business and industrial organizations or foundations and other non-profit groups. Thus it is commonplace today to find the lawyer participating regularly in the formulation of policy, and not merely in the determination of the often-narrower strictly legal questions.

In the universities, a lively reception awaits the law graduates whose interests run to teaching, scholarship or applied research. As the law schools, with foundation and government assistance, have been seeking to meet their enlarged responsibilities to society, the opportunities for law teaching and for wide-ranging legal research have increased vastly. While generalization is risky, it is evident that legal scholarship has broadened out—and in certain respects its quality has been altered—partly
under the stimulus of interdisciplinary activities involving the collaboration of lawyers, economists, some scientists, and indeed scholars and men of affairs from many other disciplines. This interdisciplinary thrust is a movement in which your law school has been one of the innovators, though I think such approaches will require far more attention during the next decade, particularly if urban life is to be reconstructed on a tenable basis. Moreover, the welcome announcement recently made by this University concerning its next president shows that a distinguished legal career is not an insuperable obstacle even to becoming the head of an outstanding institution of learning.

Indeed, wherever one turns in American life, those who have come through the law schools have made and are making their mark. One need hardly be a prophet to know that this situation will continue. Once again the opportunities and the need for lawyers to bring to bear their creative talents and their wisdom will grow substantially, as the country really comes to grips with its serious problems of poverty and slums and inequality. These squalid areas have been miserably neglected by the organized bar in the past, but there are stirrings now which suggest that an effort is under way to make up for some of the lost time.

Because of the exceptional multiplicity of opportunities available to law school graduates, going to law school has been looked upon by some as being, in substance, a means of preserving one's opinion. In a sense, of course, it is. The law school teaches the methods of analysis—and the methods will be useful outside the law as well as within it. The law school imparts at least a certain minimum of substantive information concerning legal matters and the institutional environment in which they arise. It helps to instill in the students a spirit of inquiry and a willingness to tackle new problems no matter how difficult and insoluble those problems may at first appear. The students, however, having once decided to enter the law school, are then enabled to put off for three years, and possibly longer, any concrete decisions as to whether to go into public service, or into private practice, or into teaching, or into some law-related activity outside the main branches of the profession—or whether, instead, to leave the law behind for a career in business or in the arts or in some other field where the law's role will be very much in the background.

Moreover, even when the emerging law graduate has made his or her choice of a place to start in the profession, he or she is fortified by the knowledge that this choice is neither permanent nor irrevocable. One of the high attractions of the law is that it permits so much mobility from one branch of the profession to another, and that, at least within limits, a sort of lifetime guarantee attaches to this condition of mobility; the ability to move, and to do so in a dignified manner, is almost always there if needed or badly wanted. No other single factor is better calculated to preserve the independence of mind and action which makes a lawyer worth his salt.

Now, as each of you is happily reflecting on all the options which you have so astutely preserved, let me go on to mention several other matters you may find of importance regardless of which one, or more, of these many options you ultimately exercise.

Lawyers occupy a key role in improving effective communication between different groups of people. We see this vividly in Washington law practice. In case after case, we are confronted with situations which start out with a chasm of misunderstanding between a Government agency and the industry which it regulates or the company or individual with whom it is dealing. The skillful lawyer, by a combination of interpretive translation and diligent ingenuity, frequently can find some mutually acceptable accommodation which gives proper recognition both to the legitimate desires of the Government and to the significant interests of the industry. I should add that in the search for such accommodations, it usually helps materially if the ingenuity and the goodwill come from the lawyers on both sides—those who represent the Government as well as those who represent the industry.

And it is not only in the affairs of Government that lawyers are the catalysts for effective communication. In a large business enterprise, for example, it is often the lawyer who, by well-placed questions or comments, enables the management and the technical staff each to understand what the other is driving at and how to proceed toward a common goal. Accordingly, as you move ahead through law school, it is well to remember that the book learning, for all its apparent significance, will become primarily a basis for assisting living human beings to deal with concrete problems.

Let me mention also the high value of developing habits of mind and habits of work which will enable you to move comfortably, and fairly rapidly, from one type of problem to another. Whether you are in public life or in private practice, whether you are an office lawyer or a trial lawyer or both, whether you are in a university or in a law firm or in the legal department of a private corporation, you will find that such agility is intellectually stimulating and provocative. It strengthens your judgment—and wise judgment is the ultimate hallmark of the fine lawyer—by providing a wider basis in experience. It increases your capacity for handling whatever may be the range of problems that actually arise—problems which often will come upon you suddenly, without warning, and take you by surprise. Justice Frankfurter occasionally used to say that a lawyer is an expert in relevance. By this he was paying tribute not
only to the ardor with which lawyers are willing to grapple with every aspect of human affairs, but also to the special abilities of a good lawyer in sorting out a brand new problem into manageable form. Indeed, if any of you were to leave the law and embark upon cattle breeding, or producing motion pictures, this is a capability you might wish to take along.

Finally, let me say a word about what may be broadly referred to as the fiduciary principle. It applies to many relationships in our society, but has its greatest impact on the ethic of the lawyer himself. I am sure all of you already realize—and in time you will come to know about this in far greater detail—that a lawyer is first and foremost in a position of trust and confidence. His clients—whether they be private clients or governmental agencies or something in between—are entitled to his best independent judgment as to what is the most appropriate course of action for the client to pursue. In making this judgment the lawyer must strive carefully to eliminate all consideration of what would be personally advantageous for himself, as distinct from the legitimate interests of his client. This perhaps is another way of saying that a lawyer works in a representative capacity, not for his own glorification but for the softer satisfactions that come from a professional task well done.

All around you, as you enter this law school, you hear the sounds of conflict and of challenge, both at home and abroad. Of one thing you may be certain. Your course of studies here will in no way isolate you from the major present-day controversies which all of us find so troublesome. And if you are not too impatient, you should emerge from this law school far better equipped to play your part in dealing not only with these present controversies but also with whatever new problems are to follow them in this computer-oriented world. Like other institutions in our society, the law is on the threshold of immense changes. By the time you are ready, it will need your help.

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Our Committee has not adopted a statement of reasons, but I shall exercise the Chairman’s prerogative of stating some of them: Grant Gilmore’s work exhibits the singular power of the single human mind, not likely to be matched by any team or committee or task force, to impose a kind of order on unruly and recalcitrant facts, to see a piece of reality in a new way. His field has been traditionally obscure, technical, particularistic, rule-ridden. Through his labors and those of others, especially the late Karl Llewellyn, a statutory tour de force has illuminated the field. And now, by a superb act of critical detachment, Professor Gilmore has reappraised that reappraisal, set it in its historic perspective, analyzed its central problems and unspiringly criticized its deficiencies. He is no builder of closed systems; he substitutes no new dogmas for the old ones. If his treatise is “definitive”—and it is—that quality inheres in its recognition that soundly conceived legal doctrine is simply a starting point for thinking about a problem in its context. Finally, Grant Gilmore exhibits a lucidity and grace in this, as in his other works, that stands as a reproach to those who think that style is somehow separate from substance. The mind at work in these pages is fastidious, ironic, aristocratic. These are not qualities that are much in vogue today; they are qualities that are worth celebrating when brought, as here, to the solution of significant legal and intellectual problems.

Response by Professor Gilmore

I have often thought that the distinguishing mark of our particular profession is its essential loneliness. There are many honorable ways of making a living—indeed of coping with life—in which you know to start with what it is that you are supposed to be doing and will in due course be told whether or not you have succeeded in doing it. We are like spies in an alien land, cut off from any contact with headquarters, with no way of ever finding out whether the intelligence which we diligently collect and relay is what is required of us or is even relevant to our vague and ambiguously stated mission.

We do something called teaching. But we all know from bitter personal experience that nothing is, or can be, taught once we get beyond the communication to small children of the basic mysteries on which civilization depends—how to read, how to write, how to count. We can of course pump students full of facts or even brainwash them—but pumping facts is a waste of everybody’s time and washing brains in public is, as Justice Holmes might have told us, dirty business. Learning is what the students are there for and all we know about learning is that, on any level of complexity, it is every man for himself and by himself, imposing a perhaps delusive formal pattern on the swirling chaos by a prodigious effort of the individual will. It may be that we can stimulate, or irritate, an occasional student into undertaking this arduous task—but, if we do so, it will be much more by accident than by our own design. Karl Llewellyn once observed that the function of the law teacher is not to let the true light shine: he was wise to content himself with that negative formulation.

We also engage in something called research and scholarship. We write learned articles and books, we draft Codes and Restatements, we publish or we perish—sometimes we do both. In our articles and books and Codes and Restatements we are indeed concerned to let the true light shine. We aim at a hammerlock on certainty, a stranglehold on truth. In the ecstasy of struggle
it is hard not to succumb to the illusion that we have, once and for all, wrestled our adversary to the ground. But time, which outwits us all, will presently reveal the boundless extent of our ignorance, our limitless capacity for self-deception.

Still, if you can stand the loneliness, it's a good life. But it is heartwarming, I must confess, once in a while to be invited to come in out of the cold.

I thank you.

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and Parsons. He has also served as Vice Chairman of the Neighborhood Legal Assistance Center, which has involved both the counseling of clients at the Center and the trial of criminal and civil matters in a variety of courts in Cook County.

Walter van Gerven, Professor of Law at the University of Louvain, Belgium, and George Briere de l'Isle, Professor of Private and Criminal Law at the University of Bordeaux, France, have been appointed Visiting Professors of Law. They will teach the Civil Law course in 1968-69, which will be on French law. Professor van Gerven will be in residence during the first half of the year and Professor Briere de l'Isle the second. Both men have previously taught at the Law School. Professor van Gerven was teaching assistant to Professor Rheinstein in the Foreign Law Program in 1959-60. Professor Briere de l'Isle taught in the Program in 1964-65.

The Bigelow Teaching Fellows and Instructors for the academic year 1968-1969 will be:

Danny J. Boggs, who was graduated from Harvard, Bachelor of Arts cum laude, in 1965, will receive the J.D. from the University of Chicago Law School in June. He has been a Floyd Mecham Scholar during his stay at the Law School. Mr. Boggs won the award for best oral argument in the Hinton Competition in 1967 and is serving as Advisor to the Hinton Moot Court Committee during the current academic year.

David M. Brown, A.B., magna cum laude and Phi Beta Kappa, University of Southern California in 1965, will be graduated from the Law School of Stanford University this spring. Mr. Brown is an editor of the Stanford Law Review, was the recipient of the American Jurisprudence award for the best work in Criminal Law, and is serving as a dormitory resident head.

Michael M. Martin received the degree of Bachelor of Arts with High Distinction from the University of Iowa in 1964, where he was also elected to Phi Beta Kappa. In 1966 he was graduated from the University of Iowa College of Law, second in his class. He served as Editor-in-Chief of the Iowa Law Review and was elected to the Order of the Coif. Upon graduation from law school, Mr. Martin was awarded a Rhodes Scholarship. He is currently a student at New College, Oxford University, where he is a candidate for the B.Litt. degree, with a thesis on British securities regulation.

Jarrett C. Oeltjen was awarded the Bachelor of Arts degree by the University of Nebraska in 1965. He is currently a student in the University of Nebraska College of Law, where he will complete the requirements for the J.D. degree in June. He stands first in the senior class at Nebraska, and is an editor of the Nebraska Law Review. During the current academic year Mr. Oeltjen has also been serving as student law clerk to the Honorable Robert Van Pelt, United States District Judge for the District of Nebraska.

W. Thomas Teté will complete the requirements for the degree of Master of Laws at Yale this spring. He was graduated from Louisiana State University, and last May received the J.D. degree from that institution, where he ranked second in his law school class. He was an editor of the Louisiana Law Review and was elected to the Order of the Coif. While an undergraduate, Mr. Teté also served as a tutor and grader in Ethics and Logic in the Department of Philosophy.

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a little beyond me, unless lawlessness and anarchy are to be identified solely with the left.) That the S.D.S. is a part of the New Left is not to be gainsaid. That it is subversive is equally clear, if one is prepared to talk of subversion of educational institutions rather than subversion of the government of the United States. That its money—and there seems to be a lot of it—may be coming from interests anxious to subvert the American government is not unlikely. And yet, the Eastland Committee investigation may, paradoxically, strengthen rather than weaken the power of the S.D.S. in the academic community. For like the victims of the House Un-American Affairs Committee, the targets of an Eastland investigation will find sympathy among many soft-headed academics who are prepared to find persecution even where there really is only legitimate investigation. The irony then lies in the fact that an attack on the S.D.S. by the Eastland Committee, displaying its usual methods and rhetoric, may make it possible for this small group to gain the necessary adherents and protectors within American university faculties to make feasible its destruction of American educational institutions.

So much for today on the revolting students. Having brought you such joyful tidings from the University campus, I had better quit now. Some day, however, I should like to come back and speak to you about the revolting faculty, a story that is equally heartening.
The Law School Record
A Publication of the
University of Chicago Law School
Chicago • Illinois 60637

Local photos by Stephen Lewellyn,
Joan Hill and Steven Newburg