

The Law Men and Women of La Mancha

*A Chicago Lawyer special
section commemorating the
15th anniversaries of the
Chicago Council of Lawyers
and Business and Professional
People for the Public Interest*

May 1984—Section Two



CCL, the bar association for the advancement of law—not of lawyers

By Rob Warden

"There are alternatives to force and to violence," said Ben W. Heineman Sr., businessman, civic leader, and member of the bar, "but there are no alternatives to change."

That was 15 years ago—May of 1969. The statement was quoted at the beginning of a letter inviting lawyers to help start a new bar association which would be known as the Chicago Council of Lawyers and which would be dedicated to the advancement of the law—not to the advancement of lawyers.

The basic idea for the Council of Lawyers originated in 1968. Two young lawyers came up with it independently of each other. They were Judson H. Miner, a 1967 graduate of the University of Chicago Law School who was working under a university fellowship at the Mandel Legal Aid Clinic, and Joseph V. Karaganis, a 1966 University of Chicago graduate who clerked for U.S. District Court Judge Hubert L. Will and then helped form a law firm to represent a new organization called Businessmen for the Public Interest (BPI).

The Democratic National Convention violence may have been the principal catalyst, but Miner, Karaganis, and

others who joined them in starting the Council were primarily concerned with issues directly involving the legal profession—the screening and selection of judges, legal ethics, criminal justice, and legal services for the poor.

After several preliminary meetings in various lawyers' homes, Miner approached the leadership of the Chicago Bar Association about the possibility of forming a young lawyers' group within the CBA, but the idea was not warmly received.

Then, at a meeting hosted by Robert W. Bennett and Robert M. Berger at Mayer Brown & Platt, the letter was drafted inviting interested lawyers to attend an organizational meeting for "a council of lawyers" the afternoon of June 6, 1969, in the basement of the People's Gas Building.

The letter was signed by Bennett, Berger, Miner, Karaganis, and 13 other lawyers—Charles Barnhill Jr., David Currie, Allison S. Davis, Thomas L. Eovaldi, Jerald P. Esrick, Philip Ginsberg, Joel F. Henning, Philip W. Moore, Franklin W. Nitikman, Dallin Oaks, Gordon Scott, David S. Tatel, and Neil Komisar.

In addition to quoting Heineman, the invitation quoted two other distinguished members of the legal profession.

One was Justin A. Stanley, a past president of the Chicago Bar Association: "What is challenged is whether or not our laws are being applied with equal fairness to all of our citizens, and whether or not our legal institutions are so designed that the goal of fair treatment is for many citizens more than a mocking ideal."

The other was Supreme Court Justice William J. Brennan Jr.: "The legal profession must purge itself of the inbred concepts of another day, re-think its code of practice, and re-shape its internal mechanisms for meeting its public responsibilities."

The letter lamented that the legal profession had failed to act with urgency to solve the problems so eloquently referred to by Heineman, Stanley, and Brennan.

"We must do more," said the letter, "to improve the substance and procedure of the law in areas as diverse as the administration of existing welfare programs and the high cost of routine legal services to the middle class. Locally, the quality of the judiciary is at the mercy of canons of expediency conceived and applied by political statemakers, instead of by standards of professional ability and experience."

The letter continued, "The offices of the Cook County state's attorney and

public defender are overworked, underfunded, and infested with politics. The result is low level representation of both the public and the accused."

In response to the invitation, about 300 lawyers attended the June 6 meeting, which opened with a call to action by a well-known lawyer allied with liberal causes—Alexander Polikoff.

Polikoff, who later would head BPI (and change its name to Business and Professional People for the Public Interest), was a Schiff Hardin & Waite partner. As an American Civil Liberties Union cooperating attorney in a class action called *Gautreaux v. Chicago Housing Authority*, he was on the verge of winning a sweeping federal court order requiring that a fair share of future Chicago public housing be built in white neighborhoods.

He began his speech with a quote from *A Tale of Two Cities*: "It was the best of times, it was the worst of times. It was the age of wisdom, it was the age of foolishness. It was the epoch of incredulity. It was the season of light, it was the season of darkness. It was the spring of hope, it was the winter of despair. We had everything before us, we had nothing before us..."

Charles Dickens, according to Polikoff, might have said that about Chicago in the late 1960s.

It was the worst of times: The Great Society was a slogan of the past, a cruel joke; two-thirds of the national budget was being spent on the military; segregation was increasing in most northern cities; Chicago police were repressing lawful First Amendment activity and, a few months earlier, had been ordered by Mayor Richard J. Daley to shoot to

main looters and shoot to kill arsonists.

It was the best of times: A movement had been born; moral concerns dominated the national debate; poverty, racism, and other injustices were attacked as never before; "... the times," sang Bob Dylan, "they are a-changin'."

That is what Polikoff came to talk about—the changin' times. "I believe," he said, "that lawyers and judges represent our greatest potential force for changing the basic institutions of society, short of violence."

And the times had changed. Lawyers from La Salle Street and Wall Street were working pro bono to represent the downtrodden, from Lawndale, to Harlem, to Jackson, Mississippi. Major law firms had contributed to forming the Lawyers Committee for Civil Rights Under Law in Chicago and other cities.

However, the overall picture was not encouraging. "The institutionalized bar has not responded adequately to the pace and profundity of change in our society," said Polikoff. "The profession has not come close to dealing with the basic evils of the system as it should. I am not only talking about such things as the failure of the southern bar to provide counsel in civil rights cases, its hounding out of the State of Mississippi the northern lawyers who try, and the failure of the organized bar to react to that outrage. I am talking about vital areas which are properly within the profession's own back yard right here in Chicago."

He mentioned three areas specifically:

- "The judiciary and the court system, including the selection of judges, is shot through with politics, and the quality of justice suffers



Judson H. Miner

grievously as a result. ... Judicial procedure in the lower state courts within our city is frequently a mockery. How is it that lawyers have not long since put the operation of the judicial system on a sensible basis?"

- "Assembly line criminal justice for the poor in Cook County is a special subject all of its own, and the Chicago bar will never be able to justify its callousness to the injustices which permeate that system."

- "The provision of legal services to the great body of poor who need them most and have them least is a problem which the organized bar, with all its contributions to legal aid, has not come close

to dealing with adequately. ... [Many] governmental wrongs are, as a practical matter, beyond redress and cannot be responded to intelligently by the ordinary layman because of the maze of procedural obstacles which are thrust in his path."

Polikoff continued that the legal system does not even purport to offer remedies for a variety of evils which have not been viewed as traditional "rights"—poor garbage collection in slum areas, for example.

"I believe," he said, "there will be no solution to the fundamental problems of justice and the quality of life in our society until we have established mechanisms—viable and visible—by which the aggrieved individual can deal with the aggrieving institution. That, my friends, is a technical lawyers' problem, a problem of procedure, if you will."

He criticized "the absurdities that pass for a welfare system, which ... is designed to save money instead of people; the landlord law which lawyers call 'landlord-tenant' law; the neat complex of arrangements which makes it perfectly lawful for each of our suburbs to bar its doors to low-income persons, and so on." And he added, "I put it to you that these are matters which are vital if our great cities are not to fester and die, or become a battleground between blacks and whites, rich and poor. I also put it to you that these are matters for which lawyers, by commission or omission, are largely responsible."

After Polikoff's speech, the group agreed that Miner and Bennett would serve as co-chairmen of a steering committee to oversee the drafting of bylaws and planning for the Council's first

meeting in October, at which bylaws would be adopted and permanent officers elected.

By October, about 300 lawyers had joined, at \$10 each, but serious differences had arisen, or had become apparent, between Miner and Karaganis. The two agreed that a small reformist bar organization could effect significant reforms in the legal profession, but they disagreed over the style, goals and structure of the organization.

Miner was brash and outspoken in his criticism of local courts and the organized bar. "As far as the Chicago Bar Association is concerned," said Miner, "a qualified judge is anything above a moron." To him, the need for a reform bar group without strong ties to powerful institutions was driven home when a lawyer in a major firm tried to pressure the U of C into severing its relationship with Miner, due to his involvement in a controversial lawsuit.

Miner's style, with his seemingly infinite capacity to be incensed, contrasted sharply with that of Karaganis, a disciple of Judge Will. Karaganis envisioned a soft-spoken *creme de la creme* organization modeled after the Association of the Bar of the City of New York, the formation of which had been sparked a century earlier by the Tammany Hall scandal. He even suggested naming the organization the Association of the Bar of the City of Chicago, and he thought the president should be someone more established in the legal community than either he or Miner, someone, to be precise, like Alexander Polikoff. He tried to persuade Polikoff to run for president, but to no avail.

CCL

The conflict between Miner and Karaganis burst into the open at the October meeting, over an inconsequential but perhaps symbolic procedural issue. It had been agreed in advance that the candidate speeches would be given in alphabetical order. Karaganis assumed this meant that he would speak and then Miner would speak. However, at the last minute, Bennett decided to speak on Miner's behalf, giving rise to a heated controversy over whether "alphabetical order" applied to the candidates' names or to the speakers' names.

This point was resolved in favor of Miner, whose virtues were then extolled by Bennett. Karaganis extolled his own virtues, and the meeting was thrown open to the audience. After a rousing speech by Kermit Coleman, a black American Civil Liberties Union lawyer, the new bar association narrowly elected Miner, age 27, its first president.

Karaganis never became active in the Council, although his early influence was both significant and lasting. At his urging, four older and widely respected liberal lawyers agreed to serve on the first board—William W. Brackett, Alex Elson, Polikoff, and Calvin P. Sawyier. Their names, interspersed among those of a dozen younger lawyers on the first board, immediately gave the Council legitimacy in the legal community, particularly because Elson and Sawyier had served on the CBA Board of Managers.

Michael Powell, an American Bar Foundation social science research associate who studied the Council a decade later, observed that it was fortunate to have survived the early division between Miner and Karaganis. "Such differences among founders have often derailed new organizations in the past," he wrote in the Summer 1979 *ABF Research Journal*, "but did not in this case, perhaps because although Miner won the election and was certainly the dominant figure in the Council's early years, the presence on the board of older lawyers, recruited by Karaganis, assured a degree of stability and professionalism which allayed the fears of the Council's more cautious supporters."

After the election, Miner moved fast

to maximize publicity. Within a week of his election he persuaded 14 Northwestern University law professors to join with the Council board in opposing Richard M. Nixon's nomination of Clement F. Haynsworth Jr. to the Supreme Court. Miner sent telegrams over their signatures to Nixon, Senators Charles H. Percy, Ralph Smith, Birch Bayh, and James O. Eastland, and the American Bar Association opposing not only Haynsworth's confirmation but also questioning his "eligibility to serve on any federal court."

The telegram cited Haynsworth's "insensitivity" to the appearance of impropriety created by dealing in securities of corporations involved in litigation before him, his "lack" of sufficient intellectual capacity to serve on the court, and the "bias he has displayed" against minorities. "Any of these would be adequate reason for disqualifying Judge Haynsworth," said the telegram. "All of them in combination render his appointment inappropriate."

After Haynsworth's nomination was rejected, the Council also opposed Nixon's replacement nominee, G. Harrold Carswell, and later took much pride in having been the first bar association to oppose Carswell. Also on the national level that first year, the Council opposed no-knock legislation before Congress, opposed occupational draft deferments, and opposed cuts in federally funded legal services for the poor.

But the Council's real province, as Polikoff had said the previous summer, was "the profession's own back yard right here in Chicago." To attack "back yard" issues, the Council formed several committees.

A constitutional convention committee, for instance, proposed a new Illinois Judicial Article. A criminal justice committee put together a program whereby volunteer lawyers would represent indigent defendants in misdemeanor courts, and 75 lawyers volunteered to serve and studied the consequences of delays in preliminary hearings in murder cases. A housing committee studied eviction procedures—a study that led to substantial reform. And a state judiciary committee was formed to report to the public on party nominees for Cook County Circuit Court judgeships and on judges seeking retention in office.

But a major "back yard" issue arose unexpectedly at 4:40 a.m. on December

4, 1969, less than two months after the Council was born, when raiders sent by Cook County State's Attorney Edward V. Hanrahan burst into a West Side "crib" of the Black Panther Party and, in a blaze of gunfire, killed Fred Hampton and Mark Clark.

After Hanrahan put out a false and self-serving version of what happened—a version which the *Chicago Tribune* splashed across its front page, identifying rusty nail heads in photographs as bullet holes "proving" that the Panthers had fired on the raiders—the Council, the Illinois Division of the American Civil Liberties Union, and the newly formed BPI joined in a



Robert W. Bennett

demand that a special prosecutor be appointed to investigate the raid.

The Field Enterprises papers, the *Chicago Sun-Times* and *Daily News*, seconded the idea and a distinguished Chicago lawyer, Barnabas F. Sears, was appointed special prosecutor. A special grand jury indicted Hanrahan and several others involved in the raid. The case ultimately ended in directed verdicts of acquittal by Judge Philip Romiti, but the scandal was enough to prompt Richard J. Daley to dump Hanrahan from the Regular Democratic Organization ticket. Hanrahan beat the machine in a three-way primary, after a BPI-led investigation of apparent forgery of nominating petitions for the Daley-backed candidate, Raymond K.

Berg. The twin scandals of the fatal Panther raid and the Berg petition fraud gave Republican Bernard Carey just the boost he needed to defeat Hanrahan in the general election. Carey was supported by all four major daily newspapers—the Tribune Company was still publishing *Chicago Today* and *Chicago's American*—and, to be sure, the Chicago Council of Lawyers.

Another "backyard" issue into which Miner promptly led the Council was the Conspiracy 7 trial—known as the Conspiracy 8 until the case of a bound and gagged Bobby Seale was severed at mid-trial. The Council's concern was not only with the fairness of the trial but also with a local federal rule that restricted out-of-court comment by lawyers on pending cases—the issue of free speech for lawyers.

The local rule had been adopted almost verbatim from the American Bar Association Code of Professional Responsibility years before but had been sparingly enforced, if enforced at all, until the Conspiracy trial.

The Council filed a suit, *Chicago Council of Lawyers v. Bauer*, complaining that the rule was overbroad and unconstitutional. The suit was dismissed by the District Court but the U.S. Court of Appeals for the Seventh Circuit struck the gag rule with a unanimous opinion by Chief Judge Luther M. Swygert. The opinion overturned the rule entirely with respect to civil cases and mandated that restrictions on lawyer comment in criminal trials, such as Conspiracy 7, could be imposed only if the comment posed a "serious and imminent" threat to the fair administration of justice.

At for the Conspiracy trial itself, the Council expressed "grave concern" over the legal issues raised by U.S. District Court Judge Julius J. Hoffman's handling of contempt citations against the defendants and their lawyers, William M. Kunstler and Leonard I. Weinglass. It filed an amicus brief in the U.S. Court of Appeals for the Seventh Circuit in support of the defendants and their counsel.

The Council's position, which would be vindicated years later by the Seventh Circuit and U.S. Supreme Court, was harshly criticized by the institution that most symbolized virtually everything against which the Council stood, the *Chicago Tribune*. The "World's Greatest Newspaper" editorialized:

Congratulations to the
Chicago Council of Lawyers
on your
15th Anniversary
Kirkland & Ellis

"Judge Hoffman has been abused by the same revolutionary and irresponsible elements that have defamed Chicago and decry the riot-conspiracy trail. The Chicago Council of Lawyers has added its two cents' worth to this clamor, expressing 'grave concern,' about the summary contempt sentences imposed by Judge Hoffman. These pettifoggers should wait and see what the Supreme Court says. Meanwhile, the whole country should be grateful to Judge Hoffman, the jury, and United States Attorney Thomas Foran, and his staff for doing their duty."

The Field papers thought differently, though, and cautiously gave the Council support both on their editorial pages and in their news columns. "Chicago's new breed lawyers," said a September 1970 headline over a 2,000-word article by Lois Wille in the *Daily News*. The article was almost fawning in its praise for Judd Miner, beginning with a description of his cluttered office "decorated with a crocus plant dead so long it looks like garlic cloves." Miner, wrote Wille, refused to throw the plant away because it was "the only fee" he had ever received in his brief legal career.

Miner was the son of a popular federal judge, recently deceased, Julius H. Miner. Judge Miner had been appointed to a second "Jewish seat" on the U.S. District Court for the Northern District of Illinois—against the wishes of the occupant of the first "Jewish seat," Julius J. Hoffman, who had written a letter to the Justice Department suggesting that Miner's loyalty might be open to question because he was a Russian immigrant. Later, Miner was known in some circles as "Julius the Just" and Hoffman as "Just Julius." In other circles the nicknames may have been transposed, but in any event Judd Miner's legacy was an entree to certain high-powered legal circles closed to most of his contemporaries. Judd Miner was able, for instance, to elicit the support for the Council from his father's good friend, Albert E. Jenner Jr., senior partner in one of the city's most prestigious law firms, Jenner & Block.

The younger Miner's own connections may have made it possible for him to enlist troops from the University of Chicago, such as Professor Philip B. Kurland, who was active in the Council from the beginning and who keynoted its annual luncheon in 1970. But family

connections undoubtedly helped when he recruited the following year's speaker, Judge Swygert.

Linking himself with the Council of Lawyers by accepting its speaking invitation may have required more soul searching by a Seventh Circuit judge than by Kurland, owing not only to their different stations in life, but also to timing. When Kurland spoke to his fellow members, the Council had not yet thrust itself into the thick of the issue that has dominated it ever since—the selection of judges.

The Council had in that first year lobbied Illinois' freshman senator, Charles H. Percy, to appoint John Paul Stevens and Frank J. McGarr to federal judgeships over three other candidates it considered less qualified, but this was not generally known and, consequently, provoked little controversy.

Within days after Kurland spoke in 1970, however, the Council issued a blistering judicial report, calling the Cook County Regular Democratic

Organization by both parties "on the basis of partisan political considerations, usually as out-right rewards for service to the party and with little regard for judicial qualifications." But it cited three Democratic candidates—Henry W. Dieringer and Francis S. Lorenz, running for the First District Appellate Court, and Louis J. Giliberto, running for the Circuit Court—as examples of "the crassest use of judgeships as political patronage."

The Council's remarks concerning the three contrasted sharply with the official view of the CBA, which had rated Lorenz "well qualified" and Dieringer and Giliberto "qualified." The Council report charged that the CBA had been "paralyzed because of internal politics and fear." It added, "While the failures of individual lawyers [to criticize unqualified judicial candidates] cannot be condoned or justified by any means, it is a fact that the greatest and most damaging failures have been those of the organized bar, particularly the Chicago Bar Association."

Such injudicious remarks were not appreciated either by Circuit Court Chief Judge John S. Boyle, who suggested that judicial candidates should ignore all future Council requests for information, and by the CBA, which pretended to ignore the Council. Neither were they appreciated by enough Cook County voters to perceptibly affect the election results. Dieringer, Lorenz, and Giliberto won overwhelmingly.

The Council further irritated the CBA and Boyle in June 1971 by issuing a report saying that 82 of 107 Cook County magistrates scheduled to be automatically elevated to associate judge were unqualified. The report said that only two, Joseph Schneider and Lawrence I. Genesen, were fully qualified, while many were "so flamboyantly unqualified that it is shocking that they have been permitted to sit as magistrates." Of one, the report said it was "difficult to believe he ever attended law school."

A law degree and service to the Regular Democratic Organization—of Republican Party in the suburbs—long had been the only qualifications magistrates needed, and consequently they were known as "precinct captain judges." They served renewable one-year terms, earning \$23,000 a year handling traffic and other misdemeanor

cases. As associate judges, which they would become on July 1 under a provision of the new Illinois Constitution, they would earn \$32,500 and their authority would be greatly expanded. The Supreme Court had ordered the circuit courts statewide to review the qualifications of every magistrate and remove the unqualified ones prior to the automatic elevation.

It seemed apparent to the Council that all 107 were likely to be elevated. "Only a strong demonstration of concern by the public and the bar has a chance to substantially ameliorate the disaster scheduled to take place on July," said the Council. Circuit Court Judge Daniel A. Covelli, chairman of the judges' committee evaluating the magistrates, called the Council's strong demonstration of concern a "vicious, cowardly, and unwarranted attack."

Whatever it was called, the campaign was not particularly effective. All but six of the magistrates were elevated, and when the rhetoric died down the only thing that could be said with certainty about the Council was that it had guts and good contacts in the media. Thus, it may have been with trepidation that Swygert accepted the invitation from Miner, who was then ending his second and final one-year term as president, to speak at the second annual luncheon in November 1971.

Few judges, however, could overcome the lower degree of trepidation attached to just accepting the invitation to hear Swygert speak. Regret letter after regret letter arrived on fancy stationery from the federal and state court-houses. One note said, "I am very sorry . . . but I think you understand. I remember many pleasant luncheons that I had with your father. . . . I have also enjoyed the many times that I have had dinner with the judges at your mother's." Said another, "I deeply regret a previous engagement. . . . I wish for you all a most pleasant occasion together." And another, from a judge's secretary, apologized that the judge would be tied up but added, "All of us associated with the court know this will be a most successful luncheon with such a distinguished honoree."

There were several exceptions—five members of the Seventh Circuit and seven District Court judges—including one who had been quite unexpected.

(see following page)



Sheli Z. Rosenberg

Organization's slate of 25 judicial candidates in the upcoming general election "an out-and-out disgrace." Lest anyone get the idea there was any partisan politics involved, the Council struck preemptively by declaring that the Republican slate was also "extremely unqualified."

The report criticized candidate selec-

BEST WISHES

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Congratulations

Schiff, Hardin & Waite

(from previous page)

"For your kind invitation to attend the annual general membership meeting of the Council on November 22, you have my most appreciative thanks," wrote Julius Hoffman. "I shall, of course, be happy to attend and to hear Judge Swygert." But only two Cook County Circuit Court judges attended, James H. Felt and Marvin E. Aspen.

Miner spoke first. "From the start there have been misconceptions about the Chicago Council of Lawyers," he said. "The press, for example, would refer to us as a group of young militants. That would upset me, but Alex Elson or Irv Friedman [Irving M. Friedman, a well-known labor specialist elected to the Council board in 1970] would take it as a compliment that had not been bestowed for many years, and Phil Kurland took it as a compliment that had never before been bestowed at all."

Then he asked rhetorically, "So who are we? As our members know, with their dues remittance they were asked to fill out a questionnaire requesting their age, type of practice, other bar groups affiliated with, and related questions. Based on the approximately 350 questionnaires that have been returned to date, we are starting to get a clearer picture of who we have attracted. And some of the data is quite surprising. Mr. Average Council Member is over 35. He is a partner in a law firm, and probably has a civil practice either in litigation or in a business-related field. He is a member of the Chicago Bar Association, the Illinois State Bar Association, and the American Bar Association."

He continued that there must be a difference between Council members and other lawyers. "That difference is, I submit, one of attitude and vision—and, although much less significant, a difference in style. The average Council member thinks differently—he has a different perception of his own role, as well as the role of his profession, in society. It is that difference that the Council is all about."

"Quite simply, the Council is about the awakening of the legal profession to its society responsibilities, first to the public and then to the bar. The Council is about the acceptance of the fact that we are not just any profession, but rather a very special profession, vested with a very special power. A power that

stems from the fact that we hold a monopoly over a third of our government—the judicial branch. We are the only citizens who can enter that branch of government either to assert and protect the rights of the rest of society or to serve as judges. And as life becomes even more complex, society becomes increasingly dependent on us.

"With such awesome power, one might have expected the imposition, perhaps even from without, of certain public responsibilities. Because of their monopoly, radio and television are legally required to serve the public interest. The legal profession, on the other hand, has often acted as though it had little or no public obligation.

"One of the primary differences between the Council, on the one hand, and the traditional professional legal trade associations, on the other, is that the Council has tried, at every turn, to weigh the interest of the public."

Judge Swygert had a prepared text which concluded with a quotation from Anthony Lewis of the *New York Times* that could be taken as a compliment to the Council but that did not mention it by name: "If lawyers want to retain their traditional place of honor and influence in American life they will have to remember and live by the words of Justice Holmes. 'The law is the witness and external deposit of our moral life. Its history is the history of moral development of the race.'"

But sitting at the dias, as Miner summarized the Council's activities to date, Swygert added three sentences to his speech: "Finally, I wish to pay my respects to the Chicago Council of Lawyers and to your president, Judson Miner. It has been my impression that your organization has recognized the obligations of the lawyer about which I have spoken. I congratulate you and extend to you my sincere best wishes."

Perhaps this endorsement provided the impetus that the council needed to reach a membership goal set by Miner in the waning months of his presidency: To reach the minimum size required for a seat in the American Bar Association House of Delegates—1,000 lawyers.

The Council had applied for ABA affiliation in the summer of 1971, but requested that consideration be postponed

because it had not reached the 1,000 mark when the ABA met in August. Council membership stood at just slightly more than 850 in October when Miner turned the gavel over to his staunch supporter and friend, Robert Bennett, who had left Mayer Brown & Platt to join the faculty of Northwestern University Law School.



Ronald E. Kennedy

Bennett, who was unopposed in the election, as all of his successors have been, hired the Council's first executive director, a young lawyer named Richard K. Means. With a major effort on membership development, Bennett and Means pushed the Council over the 1,000-member mark and achieved ABA affiliation in August 1972.

Means subsequently decided to seek a Circuit Court judgeship but the Council rated him not qualified and he lost. He ultimately was replaced as executive director by Julie O'Brien and went on to help start Project LEAP (Legal Elections in All Precincts) and, later, to help form a utilities division in the Chicago Department of Law under Corporation Counsel James D. Montgomery.

Under Bennett, the Council undertook a federal judicial survey in which lawyers who filed appearances in the U.S. District Court for the Northern District were asked to answer a questionnaire evaluating the performance of each member of the court with whom

they had experience.

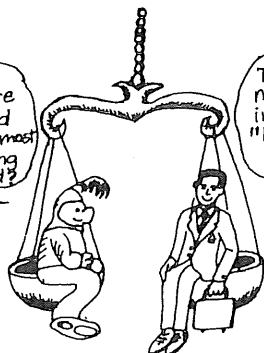
The purpose of the survey, and two like it that have been done since, was to provide guidance to the judges themselves and guidance to the White House, Justice Department, and Senate in picking future judges or considering sitting judges for elevation to the U.S. Court of Appeals. Only four of 13 sitting Northern District judges were rated "worthy of advancement to higher judicial office" by 60 percent or more of the lawyers who responded to the questionnaire—McGarr, Will, Alexander J. Napoli, and Thomas R. McMillen. Based on the survey, the Council five of the judges ought not be on the bench—James B. Parsons, William J. Lynch, Joseph Sam Perry, William J. Campbell, and Hoffman.

Over the years, the federal judicial surveys have drawn much favorable comment. ABA President Chesterfield Smith praised the Council survey as "a model which ultimately will be embraced nationwide." Senator Percy, in a speech on the Senate floor, commented, "I would like to call to the attention of my distinguished colleagues the work that has been done by a relatively young but very influential and prestigious bar association in the State of Illinois to provide those of us involved in the selection of federal judges with valuable information about their performance on the bench."

Bennett also put the Council into the seminar business. It co-sponsored with the Lawyers Committee for Civil Rights Under Law a conference dealing with an Illinois Supreme Court case called *Jack Spring V. Emma Little*. In that case, the court rejected the application of traditional contract law to the landlord-tenant relationship, holding that a lessee's covenant to pay rent is interdependent with a lessor's implied warranty of habitability which is fulfilled by substantial compliance with pertinent provisions of the Chicago Building Code. The Council and the Cook County Bar Association, an organization of black lawyers, co-sponsored a seminar on civil damage actions in police brutality cases.

The Council strongly supported Proposition 2B, the merit selection amendment to the new Illinois Constitution, in a statewide referendum. The proposal was defeated statewide, although it carried in Cook County. Paradoxically, the

Now that you're 15, what would you say is the most important thing you've learned?



That there's new meaning in the term, "He Ain't Heavy, He's My Brother!"

HAPPY 15TH BIRTHDAY
TO THE CHICAGO COUNCIL OF LAWYERS
FROM YOUR BROTHERS (AND SISTERS) AT BPI

**Congratulations
to the
Council of Lawyers**

State's Attorney Richard M. Daley

passage of 2B, or any of the subsequent merit selection proposals which have been beaten back by foes of the Council, might have deprived the young bar association of the single issue that has made it thrive. "Judicial evaluation has . . . proved to be an ideal organizing theme, concrete enough so that improvement can be demonstrated, yet large enough and sufficiently intractable that it retains its motivating force," Michael Powell observed in his aforementioned *ABF Research Journal* article. "Social movements that achieve their goals either find new ones or quietly fade away."

In 1972, Arnold B. Kanter, a young lawyer with Sonnenschein Carlin Nath & Rosenthal, was elected president of the Council. He was a graduate of Brandeis University, Northwestern University Law School, and the London School of Economics, but he was the sort to devote the major part of his autobiographical sketch to more significant facts:

"Arnold B. Kanter was born of natural causes in Chicago's Michael Reese Hospital on October 12, 1942. After whiling away several days at the hospital, he moved in with his parents on the South Side. On, before long, to Kenwood Grammar School, where he acquired a collection of baseball cards that the envy of everyone in his class. Generally regarded as a fair-fielding second baseman and a good clutch bunter, he became a lieutenant in the Kenwood patrol boy force and president of his graduating class. Both Rodfei Zedek Congregation and Camp Indianola had significant impact on his formative years, although how is not yet fully understood."

A few days after Kanter took office, the Council released a report on three First District Illinois Appellate Court and 43 Circuit Court judges seeking retention.

The Council rated 19 of the Circuit Court judges not qualified for retention, including Chief Judge Boyle about whom it said: "The prevailing view among lawyers is, in words used by many, that Judge Boyle is 'a politician, not a judge.' His primary concern appears to be a political one—maintaining the power of his office and its authority over the court system as an arm of the Democratic Organization with which he is allied."

For the third time, however, the Coun-

cil appeared to be tilting at windmills in its judicial evaluations. All retention judges were returned to office.

With the help of foundation grants, the Council opened a Lawyer Referral Service for victims of police misconduct, and sponsored a seminar to train lawyers to bring police misconduct cases. The Council also sponsored seminars on the press and criminal process, evaluation of judges, and on the scandal that rocked the nation, Watergate. John R. Schmidt, a Mayer Brown & Platt lawyer, 1967 graduate of Harvard Law School, and *Harvard Law Review* editor, became the Council's first elected representative to the ABA House of Delegates.

Significantly, the Council was invited to participate in the swearing in of U.S. District Court Judge Prentice H. Marshall, whose nomination it had backed.

A Council women's rights committee surveyed women attorneys in Chicago in the hope of increasing the number of women in judicial positions, an effort that would prove fruitful in the future. The committee also filed an amicus brief in a state court case in which contractors had challenged non-discriminatory hiring guidelines for state-supported construction projects.

Women moved more into the forefront of the Council in October 1973 when Sheli Z. Rosenberg, a Northwestern Law School graduate who had headed the women's rights committee, succeeded Kanter as president, and O'Brien succeeded Means as executive director.

The women's rights committee sent questionnaires to all women lawyers in Illinois—an extension of the local project begun previously—and cataloged data on their qualifications in an effort to encourage more to seek judgeships.

With the help of a grant from the Playboy Foundation to the Fund for Justice, the Council's tax-exempt foundation, the committee also wrote and distributed 8,000 copies of a booklet titled "Women: Jobs & Justice." And it provided legal support for a new group called Women Employed, drafted a position paper adopted by the Council board condemning any effort to restrict abortion rights, joined the ACLU in a case alleging job discrimination in the Chicago Police Department, and backed a citywide anti-rape coalition.

A new committee on rights of the mentally impaired was formed and

began working on a position statement for presentation to the Governor's Commission to Revise the Mental Health Code, to which Governor Dan Walker the following year named John Schmidt, who also succeeded Rosenberg as president of the Council.

Involuntary civil commitment based solely on the likelihood that a person might harm himself or others was opposed by the committee. "Although a prediction of future dangerous conduct has generally been accepted as a basis for involuntary commitment," said the position paper, "the Council is persuaded that there is no sufficient evidence that such prediction can be done with any degree of accuracy. Indeed, all evidence appears to indicate that the commitment of persons on the basis of such predictions inevitably entails the commitment of large numbers of persons who would in fact never commit a dangerous act. Under these circumstances, the total deprivation of civil liberties involved in involuntary commitment, based upon such a prediction, is unjustified."

The position paper said that involuntary commitment should be based on other determinations, such as a person's inability to physically care for himself due to a mental condition, that legal representation ought to be provided for anyone whose involuntary commitment is sought, and that in each case the burden ought to be on the state to show that treatment could significantly benefit the person.

The 36-member governor's commission in 1976 issued sweeping recommendations which incorporated in large part the Council's recommendations. From the commission's report, four bills were drafted. These were introduced into the General Assembly early the next year and, with the strong backing of State Senator Richard M. Daley, approved by substantial margins. Governor James R. Thompson promptly signed what the *Washington Post* described as the most important mental health reform in the history of the United States.

"What is new," Daley said in a talk before the Council's mental health committee after the package became law, "is the way the new code ensures that voluntary patients really are voluntary patients and that involuntary patients really are committable."

In the area of judicial reform on the

first major success shortly after Schmidt took office when Cook County voters in the November 1974 election rejected Circuit Court Judge David Lefkovits's bid for retention.

In 1975, the Council released a comprehensive report on Cook County associate judges, rating 35 unqualified and 39 qualified. The latter group included seven termed "outstanding"—Milton H. Solomon, Matthew Moran, David J. Shields, Lawrence I. Genesen, Myron T. Gomberg, David Linn, and Frank M. Siracusa.

At the same time, the Council opposed the appointment of Elgin attorney Alfred Y. Kirkland to the U.S. District Court, although without public fanfare. It restricted its efforts to quietly lobbying Senator Percy, who had always been responsive to Council recommendations in the past. He was not responsive this time, however, and Kirkland was appointed by President Gerald R. Ford.

The Council's second federal judicial survey was completed during Schmidt's term. In it, five judges fell short of a 60-percent favorable response to the overall question of whether they were worthy to be on the bench—Parsons, Lynch, Campbell, Hoffman, and, this time, McMillen too.

In days leading up to the March 1976 Democratic primary, the Council played a prominent role in helping James A. Dooley and William G. Clark defeat the CBA-backed Regular Democratic Organization candidates, Henry W. Dieringer and Joseph A. Power, for two Supreme Court vacancies. The CBA's had found Clark not qualified, which many lawyers and journalists regarded as scandalous. This enanced the the credibility of the small alternative bar association in the eyes of the public, and set the Council on the path toward its most comprehensive candidate evaluation project ever: In the November 1976 election, 32 Circuit Court judges were seeking retention, and there were 29 contested partisan Circuit Court races, plus 14 candidates seeking First District Appellate Court seats.

Shortly before Schmidt was succeeded as president by John C. Christie Jr., the Council released voluminous reports on the candidates. It opposed the retention of Joseph Power as presiding judge of the Criminal Division, and voters ousted him. But, as Schmidt sadly reported to the membership later, "the

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**The Sun-Times
congratulates the
Chicago Council of Lawyers
on its 15th anniversary.**

We salute and support your dedication
to justice and the advancement of the law.

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**Congratulations on 15
great years!**

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(from previous page)

entirely predictable happened." The Democratic candidates won all county-wide races, and Republicans won all suburbs-only races.

Under Christie, a trial lawyer, the Council filed a complaint with the Illinois Judicial Inquiry Board against Circuit Court Judge Paul F. Elward, who prior to the 1976 election had run a campaign advertisement quoting the Council as having called him "a person of substantial intellectual ability who works hard... to achieve worthy objectives—such as avoiding delays in the court process."

The sentences were taken out of context. The words omitted where the ellipse appeared in the ad were "but reports from many lawyers also indicate clearly that he has a terrible judicial temperament characterized by extreme rigidity, unreasonable demands and positions, and close-mindedness." And the full quotation had concluded that because "of his clear lack of judicial temperament, the Council concludes that he should not be retained as a judge."

The Judicial Inquiry Board, however, dismissed the Council complaint, with the seemingly incredible finding that Elward's "excerpts" from the Council statement "did not create the false impression that the Council had recommended him for retention..."

When Senator Adlai E. Stevenson III recommended the appointment of Rockford lawyer Stanley Roszkowski to the U.S. District Court, Christie broke the silence that had prevailed during the Kirkland nominating process. He had an excuse, in that the *Chicago Daily News* had incorrectly reported that the Council had highly recommended Roszkowski. Christie corrected the error, labeling the prospective appointment "a return to the old tradition of non-merit appointment of federal judges."

In contrast to the Council, the CBA rated Roszkowski "highly qualified," and Stevenson would not back down. President Jimmy Carter sent Roszkowski's name to the Senate, which promptly confirmed the appointment.

In 1977, the Council elected its second female president, Elaine E. Bucklo, under whom the third federal judicial survey was launched. The report ranked the active members of the court from best—John Powers Crowley, Prentice H. Marshall, and Joel M. Flaum—to worst—McMillen and Parsons. This time, senior judges were omitted, so Hoffman and Perry escaped wrath.

During Bucklo's tenure, the Council and Legal Assistance Foundation of Chicago completed a two-year study of 8,000 Cook County housing eviction cases. The study concluded that most tenants appearing in Eviction Court were unrepresented, that unrepresented tenants who presented defenses were ignored, that landlords often did not appear but won judgments anyway, and that demands for jury trials were ignored. The response from then-Chief Judge Boyle was negative, but some reforms were instituted. Judge Jerome T. Burke, one of two judges who heard eviction cases, was reassigned. The other, Judge Eugene R. Ward, was subjected to disciplinary proceedings as a result of conduct disclosed in the Council-LAFC investigation.

Julie O'Brien was succeeded as executive director by Lois Weisberg, former development director for BPI, and Ronald E. Kennedy, a black Northwestern University law professor, succeeded Bucklo as president.

Having succeeded in ousting Lefkowitz and Power, the Council took aim at Chief Judge Boyle himself. Kennedy and Weisberg hurried plans launch a new Chicago legal publication, *Chicago Lawyer*, into publication in order to help in this effort. The first issue of *Chicago Lawyer* rolled off the press on November 1, 1978. In a bylined editorial, Kennedy called the defeat of Boyle "a matter of great urgency for the Chicago bar."

Chicago Lawyer originally had been envisioned by the Council as a newsletter, but several Council members became intrigued with the idea that its potential might be greater than that after the second issue exposed a major assignment scandal in the Illinois Appellate Court: Five criminal appeals in a row filed by politically connected criminal lawyer Harry J. Busch had been assigned to a single division of the court.

The court had five divisions. Thus, a truly random assignment procedure—which the court professed to have—placed the odds at 3,125 to one against five cases in a row being assigned to one division. And after these assignments, four of the five cases were reversed—the fifth was still pending—in decisions written by Judge Dieringer.

The publication's editorial board, which was dominated by Schmidt, Kennedy, and Weisberg, saw almost immediately that it would be better if *Chicago Lawyer* could be sustained independently of the Council. Thus, early in 1979, a limited partnership was formed. More than a score of lawyers and business leaders purchased limited partnership interests in increments of \$2,500 each to finance the publication. The only connection between the Council and *Chicago Lawyer* today is that the Council purchases subscriptions each of its approximately 1,200 members. For these, it pays \$8 per year each, or half the rate charged other subscribers.

The Council celebrated its 10th anniversary. It accepted an "Award of Merit" in August 1979 from the ABA for its successful launch of *Chicago Lawyer*. Later in the year, the Michael Powell ABA Research Journal article was published.

Kennedy was succeeded in October 1979 by Robert L. Graham, a Jenner & Block lawyer, who thought that there were many reasons for the Council's viability but that the most important was that it never lost sight of its original goals to address itself outwardly to social problems rather than inwardly to the selfish preoccupations of the bar.

Under Graham, the council urged passage of the Equal Rights Amendment in Illinois, issued a position paper analyzing its impact, criticized the new federal criminal code, and continued its support for merit selection of judges. It also completed a massive candidate evaluation for the November 1980 election, in which 62 candidates were on the ballot in Chicago and 49 in the suburbs. The report formed the basis of a 16-page election guide published in *Chicago Lawyer* containing a biography of each candidate.

Mayer Brown & Platt provided its second Council president when Gary T. Johnson succeeded Graham in 1981. He saw one priority issue—legal services to the poor in the face of Reagan administration budget cuts. "Events in Washington have given us a tremendously challenging issue of professional responsibility," he said. "Given the current climate in Washington, if the private bar does not respond vigorously, both with money and with service, the effect on the poor will be devastating."

A committee appointed by Johnson proposed establishing a non-profit Illinois Justice Foundation to be funded by interest from client trust accounts in order to fund legal services. The idea was embraced by the CBA, Illinois State Bar Association, and, ultimately, by the Illinois Supreme Court.

To some it seemed that the Council had lost the fire of its youth, but Johnson claimed that was not so. He noted that David Hilliard, an early Council supporter, had been elected president of the CBA, thus contributing to "the prevailing ecumenical spirit among bar associations in Illinois."

He added, "I do not believe that the intensity of our commitment to the cause of justice has waned.... The difference today is that we are the competition, not the opposition."

In 1983, Johnson was succeeded by a partner of Judd Miner's, George W. Galland, and Eva Dziekonski became executive director when Weisberg left to become city director of special events in Mayor Harold Washington's administration. The political climate was very different than it was when Miner headed the Council.

Regular Democratic Organization candidates for countywide Circuit Court vacancies in the March 1984 primary election were without exception rated qualified by the Council, as well as by the CBA, while independent challengers were found not qualified by the Council. Voters, however, went against the regulars, opting for challengers whose main qualification appeared to be Irish surnames.

The benefit that over the years had accrued to the Regular Organization from the political selection of judges had suddenly evaporated and with it the reason for resisting merit selection of judges.

Chicago had come a long way in 15 years, from a having a shoot-to-kill order to having its first black mayor, and from having absolute Machine domination of the judicial election process to having a political apparatus unable to elect even well qualified judges.

And when the Council in April 1984 released a massive report by Malcolm Rich on shortcomings of the Chicago Department of Law, Corporation Counsel Montgomery welcomed it as constructive criticism. In another time, city fathers might have dismissed it as a vicious, cowardly, and unwarranted attack.

Chicago indeed had come a long way, and the Council of Lawyers had come a long way too. It lowered its voice, but it was being heard better, and lost some of its early excitement, but not its sense of purpose. That's what comes with growing up. ☺