

HONORARY GRADUATE

Herbert Cecil Nicholas

Herbert Cecil Nicholas was born in Johannesburg in April 1915. After matriculating at the Jeppe High School for Boys he read for the degree of Bachelor of Arts at this university. He took a deep interest in student affairs, in particular in the Debating Society, where his brilliance as a speaker found expression. In 1936 he became President of the Students' Representative Council. At the end of that year he completed his studies for the degree of BA, which was conferred on him in March 1936.

Herbert Nicholas proceeded to take a teaching diploma at the then Teachers' Training College, now the College of Education. Thereafter he registered for the degree of Bachelor of Laws at this university as a part-time student, while serving as a master at well-known schools, including Jeppe High School for Boys and King Edward VII School, teaching Latin and other subjects. His pupils remember him as an excellent teacher, who kept very strict discipline.

As a part-time student at Wits the young Nicholas continued to take an interest in student affairs. Many graduates will recollect the incident when he was due to address the meeting of the Diogenes Club (now gone the way of so many societies) on the handling of the Munich crisis by the British Government, and how pro-Chamberlain students in the packed Chemistry Lecture Theatre howled him down, resulting in an abortive meeting.

In November 1939 Nicholas was one of eight students to complete the course of study for the LLB; the degree was conferred on him in the March 1940 graduation ceremony with distinction - a very rare honour. Shortly thereafter he was admitted as an advocate and joined the Johannesburg Bar; but he did not commence practice, as he enlisted in the armed forces.

During the last war he was an intelligence officer in the South African Air Force in North Africa and in Italy. Patrick White, the eminent novelist, winner of the Nobel Prize, in his memoirs gives an amusing and appreciative account of his meeting the young Lieutenant Nicholas, sent to Eritrea to replace him.

In July 1945 Herbert Nicholas commenced practice at the Johannesburg bar. Soon his brilliance made its mark. In 1962 he became a senior counsel. Among the well-known legal cases in which he appeared mention may be made of the 'Treason trial', in which he was a member of the defence team; the Coalbrook Colliery disaster, in which he led the defence team; the synthetic diamonds case; and the prosecution of Harold Strachan, whom he defended.

In July 1966 Mr Nicholas was appointed an acting judge in the Transvaal Provincial Division of the Supreme Court. The following year his appointment was made a permanent one. From the start Mr Justice Nicholas was acknowledged by all as an outstanding judge, with a superb capacity to absorb and analyse

complex facts, and with a remarkable gift for expounding, clarifying and developing principles and rules of law. Devoted to his judicial duties, he insisted on close observance of the requirements of judicial practice. Particularly notable have been the decisions of Mr Justice Nicholas on the law of patents, trade marks and evidence; for example, in the case of *Adcock-Ingram Products Ltd v Beecham SA (Pty) Ltd*, 1977. But there are many other instructive judgments, such as the meaning of bribery (*S v Deal Enterprises (Pty) Ltd*, 1977); when tender of performance under a contract is not necessary (the *NKP Kunsmisverspreiders* case, 1973); the meaning of 'indecent' under the Publications Act (*Name Enterprises (Pty) Ltd v Publications Control Board*, 1974); insurance brokers and the law of agency (*Rabinowitz v Ned-Equity Insurance Co Ltd*, 1979).

Mr Justice Nicholas's qualities received further, if rather belated, recognition when early in 1983 he was appointed an acting judge of appeal, an appointment which became permanent towards the end of the year. On reaching the age of 70 he will cease to be a member of the Appellate Division of the Supreme Court, owing to legislation that lays down the age of retirement.

Mr Justice Nicholas has made a contribution to legal literature. Several articles by his hand appeared in the *South African Law Journal* in the nineteen-fifties. From 1947 to 1960 he wrote the chapter on the law of evidence in the *Annual Survey of South African Law*, published by our School of Law. He contributed a long, impressive essay on a difficult question of logic applicable to circumstantial evidence to the book *Fiat Iustitiae: Essays in Memory of Oliver Deneys Schreiner*, brought out by our School of Law in 1983. In the February issue of the *South African Law Journal* this year his Oliver Schreiner Memorial Lecture of 1984 was published, entitled 'Credibility of Witnesses'; it is a valuable analysis that makes for compelling reading.

There has always been a close connection between Mr Justice Nicholas and the University, in particular the Faculty of Law. After his return to civilian life at the conclusion of the war he lectured for a number of years in the LLB course on evidence, a branch of the law of special interest to him. He was an excellent lecturer who gave deep thought to the subject he was teaching. In 1963 he became a member of the Board of the Faculty of Law, a position he has occupied ever since. On numerous occasions he has participated in functions of the Faculty and School of Law. His activities have included presiding over the 'moot' court, where students argue for fictional litigants on disputed points of law; and delivering speeches at important functions. Each time he has made thought-provoking and often courageous remarks, felicitously couched. To take one example: In delivering his brilliant address on 25 August 1976 at the opening of the Oliver Schreiner Law Library at the University (named after its distinguished Chancellor), he alluded to the passing over of Mr Justice Schreiner, that great judge, for appointment as Chief Justice in 1956 and again in 1959, and said: 'Once more the profession was deeply disappointed. It was suggested that the reason was a political one. If that is so, it was a reproach on a system which could allow political considerations to bear upon the appointment of a Chief Justice. But we can see that it is unimportant to his prestige that Mr Justice Schreiner did not become Chief Justice. The authority of his judgments remains undisturbed, and the esteem, the respect, the reverence in which he was universally held remain unimpaired. Machiavelli said that titles do not reflect honour on men, but rather men on their titles.'

This passage also illustrates the lapidary style of Mr Justice Nicholas, and his cultivation, always lightly worn and infused with humour and wit, never forced. Two other examples may be cited. In the graduation address he delivered at the University on 15 December 1967 he dwelt on the disproportion between the financial rewards of a profession and the unremitting toil it demands. He added: 'To his lawyer, more especially his advocate (if need should drive him to such desperate necessity), man entrusts issues of life and death, and liberty, honour and dishonour, fortune and ruin. There are certainly less demanding, less responsible, ways of making a living.' To which gloomy reflection he added the consolation (if that it be) of Nietzsche's conclusion: 'The love of wealth and the love of knowledge are the two moving forces of the earth, and what is given to one must always be taken away from the other.'

That the love of wealth must not be at the cost of hatred of law comes out from the following dictum in a legal judgment by Mr Justice Nicholas in 1978:

'The crime of bribery must be punished severely. If it is not, then, as Alexander Pope prophesied in *Moral Essays*,

"At length Corruption, like a gen'ral flood,
(So long by watchful Ministers withstood)
Shall deluge all; and Av'rice creeping on,
Spread like a low-born mist, and blot the Sun".

Mr Justice Nicholas was appointed by the State President to the Council of the University in February 1969. That position he has held ever since, to the great benefit of the University.

Our university seeks, with a deep sense of pride, to honour this distinguished graduate, jurist and judge by conferring on him the degree of Doctor of Laws, *honoris causa*.