

STANFORD LAWYER

Spring 1966



Some Law School alumni have suggested that *Stanford Lawyer* include a section of alumni notes. The success of such a feature depends upon the interest of alumni and upon the selection of a Class Agent for each year to collect and write news of his Class for *Stanford Lawyer*. The possibility of developing a structure of Class Agents is currently under exploration at the School.

Future issues of *Stanford Lawyer* will include contributions by faculty members and articles on: the School's programs in oral advocacy administered by the Moot Court Board and the Serjeants-at-Law; introduction of new faculty members; report on the School's 1966 graduation ceremonies; a report on the law library; and news of alumni activities.

STANFORD LAWYER Spring 1966

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Cover picture: J. Keith Mann, associate dean of the School of Law, with law students Carol Petersen '66 and David Lelewer '67, in front of the main entrance to the Law School.

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FROM THE DEAN

The law, by its nature, straddles yesterday and tomorrow. Grounded in the past, the legal process is in continuous evolution, adapting to changing social environment. Yesterday's legal innovation becomes today's practice and tomorrow's tradition.

Despite this obvious truth, American legal education has not done a very good job of instilling in law students a strong sense of history — a full awareness of the inseparability of the law's past, present, and future. We all demand of an educated man that he have a general familiarity with the course of Western civilization and its dominant figures. Historians of business, of medicine, and of science have in recent years assumed an important place on the faculties of our professional business, medical, and scientific schools. But in the law, though we claim a place for it as a learned calling, most graduates enter upon their professional lives with little conception of the law's great tradition, only the dimmest recognition, or less, of Solon, Justinian, Grotius, Coke, Mansfield, Marshall, Story, and Kent, and little more familiarity with Holmes and Cardozo.

There are signs of improvement. Scholarship and instruction in

American legal history are becoming more widespread and visible, as illustrated by Professor Bickel's study of Justice Brandeis at Yale, Professor Hurst's institutional studies at Wisconsin, and Professor Gunther's work on John Marshall at Stanford. Our best law schools are actively looking for scholars trained in both law and history to teach and study legal history, though the search for such men is usually in vain, so neglected has been the field. It may be hoped that these developments in our law schools foreshadow a wider historical awareness to come. Historical study at a law school, even when narrowly focused and elected by only a minority of the students, asserts the relevance of the past and adds a dimension to the environment of the school and to the work of the entire faculty.

Like all other institutions of the law, our law schools, too, stand upon the shoulders of those who have gone before. The example of earlier lives in the law is a powerful force in the legal education of generations following. As a great school slowly adds years to its maturity, it acquires a momentum of its own, generated out of its past and silently transmitted to each succeeding student generation. No one can set foot in the

great ancient universities of England and the Continent without feeling the impact of the continuity of their past and the immanent presence of the great men who received their education there or, in their time, enriched the atmosphere and standards of the school itself. While older educational institutions are open to the risk of becoming over-fascinated with their own past — the risk of drifting off into self-centered, moss-backed irrelevance — their patina of history does develop in their students a regard for the accomplishments of the men who have gone before, a sense of responsibility entrusted to them by their predecessors, and a tradition of standards that the young dare not fail to match.

In 1968, the Stanford School of Law will graduate its seventy-fifth class. Now at age 73, the Law School is young beside the 744 years of Padua's law school, young even beside Harvard's 149 years and Columbia's 108, but is, nonetheless, of significant seniority against the background of the newest part of the New World. During its three-quarters of a century, Stanford's eyes have been steadily trained toward the future. No one would have it otherwise, and the Law School will



Dean Manning and his students in the spring term 1966 seminar, Legal Programs of Corporate Management and Shareholders. Right, Dean Manning, and counter-clockwise, Gary Berger '66, Stephen Hill '66, William Stark '66, Wylie Sheldon '66, Brett Stearns '66, Eric Olson, teaching fellow 1965-66, and Martin Gelfand, LL.M. '66.

continue to press forward into the future to build the facilities, faculty, and library required to develop and sustain its destiny as a great law school. But one of the costs of the School's intense focus on tomorrow has been relative inattention to yesterday — to the preservation of records and symbols of achievement of those who have taught at the School, who have studied at the School, and who have given its leadership.

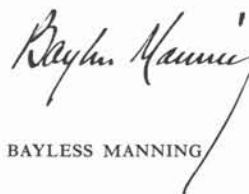
At Columbia Law School there hangs an oil portrait of Professor Nathan Abbott, who taught there from 1906 to 1922; at the Stanford Law School, where, from 1892 to 1906, Nathan Abbott's contributions as the School's first dean were beyond measure, there is no portrait of him. At the University of Chicago there is an oil portrait of Frederic Woodward, vice-chancellor of that university after 1916; at the Stanford Law School, where he taught and served as dean for eight years from 1908 to 1916, there is no portrait of Frederic Woodward. At the Yale Law School there hangs an oil portrait of the great Professor Wesley Hohfeld who taught at Yale for three years from 1915 to 1918; at the Stanford Law School, where Professor Hohfeld's basic innovating work was done over the ten years from 1905 to 1915, there is nothing to record or recall his presence.

Wherever one looks about the Law School at Stanford, the situation is the same. The earliest class photograph the School has is a photograph of the Class of 1916; it has none of any earlier class and none of any class between 1916 and 1947. Except for a portrait of Judge Crothers, no visible tribute to the School's benefactors is on view in the Law School building. The Law School has photographs of a few former professors of the School, but only a few. No single portrait of any of the great figures in the history of American or English law looks out upon classes of Stanford lawyers.

The School is embarking on a sustained effort to locate and bring together for fitting display a complete gallery of portraits of its deans, portraits of its great professors like Professor Hohfeld, portraits of leading English and American judges and scholars, important records in the development of the law, photographs of the School's earlier classes and organizations, and other memorabilia of the School, and to do permanent honor to the School's special benefactors.

A beginning has been made. It was most fitting that the Class of 1939, at its twenty-fifth reunion reported in this issue, should start things off by presenting to the School the fine portrait of Dean Emeritus Marion Kirkwood reproduced here. Initial efforts are underway to arrange for copies to be painted from the portrait of Deans Abbott and Woodward and brought to Stanford. This year's graduating class is bringing out the School's first class yearbook. Professor Emeritus George E. Osborne has presented to the School, as a symbol of the office of the deanship, an appropriately inscribed and handsome gavel, earlier presented to him by the Class of 1958. A collection of archives of the Law School has been begun, drawn from the limited School records that have been preserved.

These are encouraging developments, and the School is very grateful for them. But it is only a beginning. The job of assembly will take many years and, indeed, will be never finished. I am confident that the pride of Stanford's law alumni in their School, and their interest in the background of their profession, will insure long-range success of the enterprise.


BAYLESS MANNING

The passage of a new Code of Evidence by the 1965 California legislature is a major accomplishment achieved during the recently completed tenure of Professor John R. McDonough as chairman of the California Law Revision Commission. The new code is considered to be among the most important pieces of legislation to have been passed by the legislature upon the recommendation of the commission.

Professor McDonough will continue to serve as a member of the Stanford-based commission, with which he has been continually associated since its establishment by the legislature in 1954. He served as its executive secretary from 1954 to 1959, was appointed a member by Governor Brown in 1959 and again in 1963, and served as chairman during 1964 and 1965.

This spring Assistant Dean Thomas E. Robinson served as special consultant to the United States Senate Judiciary Subcommittee on Improvements in Judicial Machinery. The committee is conducting hearings in connection with pending legislation that would empower United States courts of appeals to review criminal sentences imposed by federal district courts.

The legislation is co-sponsored by Senators Joseph D. Tydings of Maryland and Senator Roman L. Hruska of Nebraska. Among those testifying in support of the legislation was the Honorable Stanley A. Weigel '28, United States District Judge in San Francisco.

Governor Brown has appointed Dean Bayless Manning to head a panel of three lawyers who will make a study of proposals for conflict-of-interest legislation affecting members of the California state legislature. Other members of the panel are Professor Preble Stolz, University of California at Berkeley Law School, and Daniel Frost, Los Angeles lawyer.

Dean Manning has long been interested in the conflict-of-interest problem in government service. He is the author of a book, *Federal Conflict of Interest Law*,



Assistant Dean Thomas E. Robinson, right, talks with Senator Roman L. Hruska, left, and Judge Stanley A. Weigel '28.

Assistant Dean Robert A. Keller, left. Professor Edwin M. Zimmerman, right.



and was staff director of the special committee of the New York City Bar Association, which produced the book *Conflict of Interest and Federal Service*.

Several members of the Class of 1966 will serve as law clerks to judges in various parts of the country next year. Stephen M. Blitz of New York will be clerking for Judge Irving Hill, United States District Court for the Southern District of California; Paul H. Breslin of Portola Valley for Judge Oliver Koelsch, United States Court of Appeals for the Ninth Circuit; John H. Colteaux of San Rafael for Judge Ben C. Duniway '31, United States Court of Appeals for the Ninth Circuit; Raymond C. Fisher of Sherman Oaks for Judge Skelley Wright, United States Court of Appeals for the District of Columbia Circuit; William A. Reppy, Jr., of Oxnard for Justice Raymond E. Peters of the Supreme Court of California; Norman M. Sinel of New Haven, Connecticut, for Judge Stanley A. Weigel '28, of the United States District Court in San Francisco; Alan Douglas of San Diego for Justice Gerald Brown, presiding judge, Fourth District Court of Appeals in San Diego; La Joie Gibbons of Glenview, Illinois, for a judge as yet to be appointed in the Fifth District Court of Appeals in Fresno; Alan Kamin of Tucson, Arizona, for the Tax Court of the United States; and Thomas N. Allen of Red Oak, Iowa, for the Superior Court of Santa Clara County.

Blitz, Breslin, Colteaux, Fisher, Reppy, and Sinel have all served as members of the *Stanford Law Review*, Fisher having been president, 1965-66.

Michael G. MacDonald, who was graduated from the Law School in January 1966, is currently clerking for United States District Judge Frank M. Johnson, Jr., in Montgomery, Alabama.

A teaching fellow at Stanford, Mrs. Paula Currie, a graduate of the Law School at the University of California at Los Angeles, will be clerking for Chief Justice Roger Traynor of the California Supreme Court.



Some of Stanford's future law clerks meet in the Sloss Room. From left: La Joie Gibbons, Alan Kamin, Stephen Blitz, Raymond Fisher, John Colteaux, Alan Douglas, and Norman Sinel.

Professor John R. McDonough



Robert A. Keller '58, has been serving as an assistant dean of the Stanford School of Law since last October, with responsibilities centering in the area of alumni relations and financial development.

While at the Law School, Dean Keller was a member of the Board of Editors of the *Stanford Law Review* and was elected to Order of the Coif. From his graduation in 1958 until his appointment as assistant dean, he was associated with the San Francisco law firm of Orrick, Dahlquist, Herrington, and Sutcliffe. His work there was concerned with antitrust, public utilities, and corporate matters, including litigation.

A native of Oklahoma City, Dean Keller served as an officer in the United States Navy for four years after having received his Bachelor of Business Administration from the University of Oklahoma in 1951.

Seven law professors were among holders of endowed professorships honored by the Stanford Alumni Association at its annual campus conference. All Stanford professors who hold, or have held, endowed professorships and their wives were guests of honor at the conference luncheon held on May 14.

Law faculty honored included Carl B. Spaeth, William Nelson Cromwell Professor of Law; John B. Hurlbut, Jackson Eli Reynolds Professor of Law; and Moffatt Hancock, Marion Rice Kirkwood Professor of Law.

All emeritus holders of the William Nelson Cromwell Chair were present at the luncheon: Marion Rice Kirkwood, 1949-1953, George E. Osborne, 1953-1958; and Harold Shepherd, 1958-1962. Also present was Lowell Turrentine, the first holder of the Marion Rice Kirkwood Chair, 1958-1961.

Professor Edwin M. Zimmerman is currently on leave from the faculty of the Law School while serving in the Antitrust Division, Department of Justice. He was appointed first assistant to the head of the Division last December, after having served as Director of Policy

Planning in the Antitrust Division since July 1965.

At Stanford, Professor Zimmerman has taught Agency, Securities Regulation, Regulated Industries, Government Regulation of Business, Law and the Competitive Economy, and Administrative Law.

The Stanford Law Library's collection of materials in the field of real property will be greatly strengthened by a recent grant of \$44,000 to the School for that purpose by the Title Insurance Company and Trust Foundation, based in Los Angeles. The Law School will receive \$24,000 as an initial grant, and five years of support of \$4,000 per year.

To guide use of the grant, a library accession program has been drawn up by Professors Moffatt Hancock, John Merryman, Charles Meyers, and Howard Williams, all of whom teach in the area of real estate law, and the School's librarian, Professor J. Myron Jacobstein. The accessions will fall in four main categories: current and historical development of the law of real property; natural resources and conservation of land; land use controls; and foreign land law.

The Law School's first student yearbook has just been published. Sponsored by the School's general student organization, the Law Association, the yearbook was prepared under the leadership of John G. Bannister, Jr. '66, editor, and David W. Layne '66, and Malcolm D. Hawk '67, associate editors.

The 128-page book contains portraits of the students from all three current law classes and of the law faculty. Each student organization is represented by a group picture, with a description of its activities. Also in the book are photographs of familiar law school scenes, many of which are the work of Professor Moffatt Hancock.

Mr. Hawk will serve as editor of next year's *Stanford Law Yearbook* and plans are already underway for the 1967 volume.

STANFORD LAW FORUM

The Stanford Law Forum is one of the Law School's most active student organizations. During the course of the past academic year, the Forum has presented a wide variety of speakers under several programs and formats, including the World of the Law series, the Oxford Debate, the Professional Responsibility series, and the guest-in-residence program.

In the World of the Law series, members of the bar participated in panels and discussions to help acquaint law students with some of the career possibilities that lie open to the well-trained lawyer today. In November and December, law students heard in four successive programs: Judge Richard Sims, Jr., of the California District Court of Appeals; Evelle J. Younger, District Attorney of Los Angeles County; Thomas E. Haven '48, Maurice D. L. Fuller, Jr. '55, and Thomas Klitgaard of the San Francisco firm of Pillsbury, Madison and Sutro; Winslow Christian '49, executive secretary to Governor Brown; and John Kaplan, associate professor of law at Stanford.

The spring series on Professional Responsibility concerned problems of ethics and professional conduct in personal injury litigation, corporate law, criminal trials, trusts and estates, and other areas of practice.

From October 13 to 16, 1965, the Forum inaugurated its guest-in-residence program. Its first guest was the Honorable Elliot Lee Richardson, Lieutenant Governor of Massachusetts. A former president of the Harvard Law Review, law clerk to both Judge Learned Hand and Justice Felix Frankfurter, Mr. Richardson was a successful lawyer and partner in Ropes and Gray and is a politician with an academic turn of mind. During his stay at Stanford, he gave two public lectures on problems of public administration. But he spent most of his three days at the School attending classes and meeting informally with students and faculty in seminars and at meals, discussing, with clarity and wit, the



Members of the Law Forum with the Honorable Alfred Bexelius, Sweden's Ombudsman: Rex Heeseman '67, left, Richard Harray '67, David Lelewer '67, Mr. Bexelius, Thomas Craven '66, and Malcolm Hawk '67.

frustrations and challenges of political life and public law.

The Oxford Debate has become a spring tradition at the School—a combination of serious debate and good fellowship. This year's debate was held on the afternoon of March 3 at Rickey's Hyatt House. The principal speakers were Roderick M. Hills '55 and Arthur H. Connolly, Jr., both of whom have served on the State Bar of California Group Legal Services Committee. Professor Jack Friedenthal served as moderator. Mr. Hills argued that the rules of the California State Bar should be amended to accommodate group legal services; Mr. Connolly contended that such a change would



do much to destroy the legal profession in the state. After the principal speakers had set forth their views, speakers from the floor, under the rules of the Oxford Debate, were free to expound their own ideas and to question the speakers. During the course of a lively afternoon, the wide-ranging ethical, social, political, and economic implications of the question were explored thoroughly.

Other Forum speakers during the year included Justice William O. Douglas, Justice Kenneth O'Connell of the Oregon Supreme Court, Professor Albert A. Ehrenzweig of Boalt Hall, and the Honorable John W. Douglas, Assistant Attorney General of the United States, Civil Division.

The Law Forum was established to bring speakers to the School, mainly drawn from members of the bar in the Palo Alto area. From its beginning, the organization has been run entirely by students and, under their leadership, the Forum's operations have steadily expanded. Particular impetus for widening the scope of the Forum's programs came from C. Stephen Heard '64, who became the Forum's president in 1963. He, his vice-president, Kerry Fox '64, and the remainder of his board set as their aim Holmes' "legal education in the grand manner." They added a seminar in legal ethics, while at the same time expanding the horizons of the by-then-proven lecture series and retaining the Oxford Debate inaugurated shortly before.

Under William D. Symmes '65, who became president in 1964, the Forum was particularly successful in securing prominent and stimulating speakers.

In 1965, David Lelewer '67, was elected president. He, his officers, and board members have again added to the development of the Forum's programs with their guest-in-residence venture and the expansion of the general program established by their predecessors. The Law Forum is a self-perpetuating group that

chooses its members on the basis of imagination, creativity, and enthusiasm for the Forum's work. New members are usually chosen at the end of their first year. The group for 1965-66 consisted of four officers and eleven board members. The full board met every week, the officers often daily.

Members of the Forum are continually alert to possible speakers. Last February they learned that Alfred Bexelius, Sweden's Ombudsman, was to address the Commonwealth Club in San Francisco and arranged for him to speak at the Law School on March 4. (An article on the Norwegian Ombudsman by Professor Gellhorn of the Columbia Law School had just appeared in *Stanford Law Review*.)

Mr. Lelewer has said, in speaking of the Forum's objectives, "We hope to raise the student's eyes beyond the covers of his casebook. We believe the Forum can help demonstrate to him that the schooling he is now undergoing is not merely academic. The man with a law degree from a school like Stanford must be equipped to address himself to the major challenges of our day. The Forum hopes to lead the student to consider questions appropriate not only for the choices of his law practice but also for the choice of the life he will lead as a professional man."

Stanford's Law Forum offers an example of the important role that student organizations play in the educational activities of a modern law school. But the Forum is always seeking new ways to improve its effectiveness. During the last year, it conducted a nationwide survey of the programs of similar organizations at other law schools. In thanking the Forum for the results of this survey, the president of the Harvard Law School Forum said, "The Stanford Law Forum is to be commended for such a comprehensive project of genuine assistance to the Harvard Law School Forum and, I am sure, similar groups throughout America."

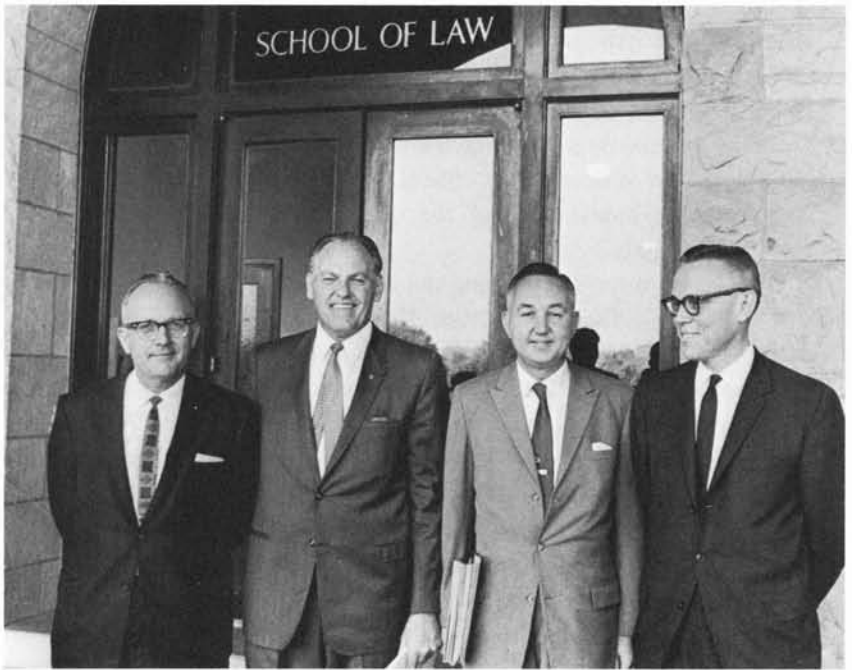
TWENTY-FIFTH REUNION OF THE CLASS OF '39

The Stanford Law Class of 1939 is the first class to have celebrated its twenty-fifth reunion at the Law School. The two-day occasion was, by the judgment of all, a success.

At the time of graduation in 1939, the class had forty-three members. Of the forty members living at the time of the Class's twenty-fifth reunion, twenty-six, or 65 percent, returned to the campus for the affair. Also attending were five members of the Class of 1940 who, as enrollees in the four-year course of study available at the time, took the majority of their classes with the '39 students. Most of the returning alumni were accompanied by their wives.

Edward L. Butterworth of Los Angeles was chairman of the 1939 Reunion Committee. The other members were Albert L. Burford, Jr., Joseph Gill, and George H. Whitney, from Los Angeles; and Perry Moerdyke and Andrew Spears from Palo Alto.

On Friday the Class held a luncheon on campus at Bowman Alumni House honoring Dean Emeritus Marion R. Kirkwood. At the luncheon the Class presented to the Law School a portrait of Dean Kirkwood painted by Daniel Mendelowitz, professor of art and education at Stanford. Samuel D. Thurman '39, dean of the Univer-



Four members of the Class of '39 meet outside the Law School: Edward Butterworth, left, chairman of the reunion committee; Andrew Spears, a member of the committee; Robert Blewett, toastmaster at the luncheon; and Dean Samuel Thurman, who made the presentation of Dean Kirkwood's portrait.

sity of Utah College of Law, made the presentation of the portrait, with a review of Dean Kirkwood's years of service to the School from his appointment to the faculty in 1912 to his retirement from the deanship in 1945. Dean Kirkwood was on hand for the presentation

and spoke in response. Professors Emeriti Joseph Bingham, George Osborne, and William Owens were on hand, as were Mrs. Kirkwood, Mrs. Owens, and Mrs. James Brenner. Robert Blewett served as toastmaster.

The reunion weekend included

many other events. On campus, the returning class members were conducted through and attended classes in the Law School, heard a review of, and participated in a question period about the School's current educational programs, and were guests at a reception at the home of Dean and Mrs. Manning. On Friday evening there was a Class dinner and dance, and on Saturday the group attended the Big Game.

Thirty-seven '39ers sent in answers to a questionnaire circulated by the Reunion Committee. The returns showed that eighteen members of the class were in private practice, five were attorneys with corporations, five were employed by government, six were business executives, and one was a colonel in the Air Force. One member of the Class was on the bench, Judge James C. Toothaker, of the Appellate Department of the Superior Court of San Diego County, and one was in academic law, Dean Thurman.

At the time the questionnaire was sent out, all but four members of the Class lived in California. Twenty-two of the men had served in the armed services during World War II. Ten children of Class members were attending Stanford.

One question on the Class questionnaire was: "What do you re-



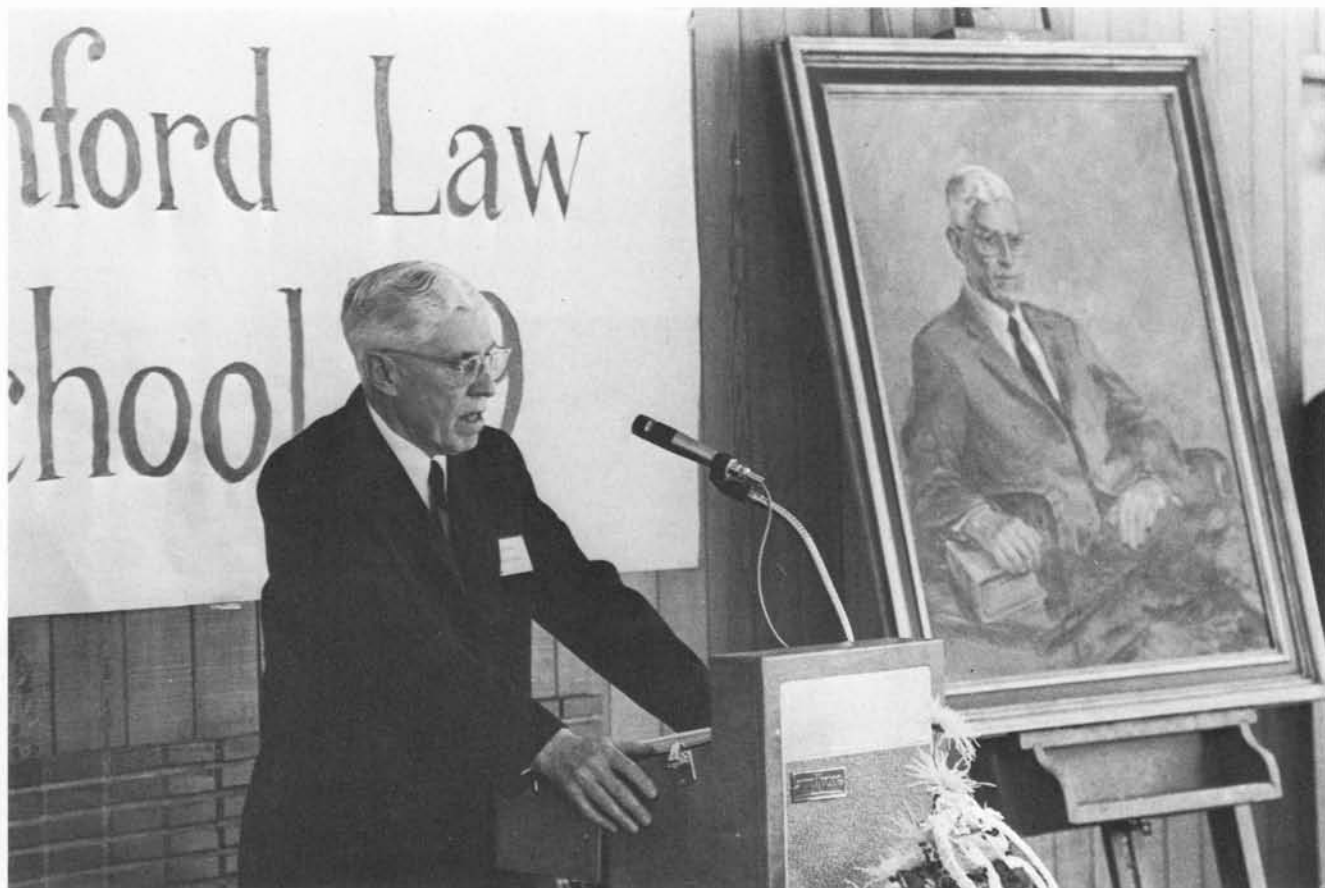
Dean Thurman addresses the luncheon meeting at Bowman Alumni House.

member most about our law school days?" One member of the Class answered, "The warm comradeship of dedicated men all bent on attaining the same goal." The Class's twenty-fifth reunion was evidence that that comradeship is still active.

The 1939 twenty-fifth reunion

has led alumni of other Law School classes to inquire about the possibility of their holding reunions at the School. The School warmly welcomes the suggestion.

Assistant Dean Keller and the rest of the School staff stand ready to assist in making arrangements.



Dean Kirkwood speaks in response to the portrait presentation.

The imprint of Dean Emeritus Marion Rice Kirkwood is everywhere evident at the Stanford School of Law. His portrait hangs in the reception room of the School, a gift of the Class of 1939 presented at their recent twenty-fifth reunion. The School's moot court competition, an endowed professorship, and the main desk in the Library all honor his name.

A year after his graduation from the Law School in 1911, Marion Kirkwood was appointed by President David Starr Jordan to the law

faculty. From 1923 to 1945 he served as dean. Retiring from the faculty in 1952, he continued until last year to give an annual series of lectures on water law. An authority on the law of property, he has been a leader in legal, academic, and civic circles throughout his career. The law, and the School to which he has devoted so much of his energies over a span of fifty-eight years, continue to be his abiding interests.

Today, Dean Kirkwood wears his years and honors with dignity,

grace, and vitality. An active man, who reads extensively and gardens, Dean Kirkwood enjoys visiting with former students who come by the School.

Dean and Mrs. Kirkwood continue to live at 249 Lowell Avenue in Palo Alto, and frequently visit their two sons and their families in Santa Monica.

These days, he may be found every morning in the Law School office, often with his colleague of many years, Professor Emeritus Lowell Turrentine.

LAW SOCIETIES

The Stanford Law Society of Northern California and Nevada, the most senior of the School's alumni organizations, has been in existence for a generation. The societies of Southern California, District of Columbia, Oregon, and Washington have also been in operation for many years. During the last academic year five new local societies were formally chartered—the law societies of Superior California, Utah, San Diego-Imperial, the Central San Joaquin, and Arizona. The dean and other representatives of the School met with each of the existing societies during the year.

Additional societies are in process of organization in other areas, including Hawaii, San Francisco penin-

sula, Nevada, New York City, and Denver, and, to judge from alumni interest, Assistant Dean Keller anticipates that in time a network of some fifteen societies will be active.

The law societies are of great help to the School and to their alumni members. They act as channels of communication between the alumni and the School, serve to bring alumni together for professional and social activities, are a source of aid and counsel to new graduates entering or considering entering a new community, spark interest in the School among potential students, and provide a means for introducing new members of the growing faculty to former graduates.



Associate Professor John Kaplan, left, Mrs. Bayless Manning, and Robert N. Blewett '39, first president of the Stanford Law Society of Superior California, at the society's February 3 charter meeting. Professor Kaplan



spoke on the "Trial of Jack Ruby." Above, Dean Manning presents a charter to Richard F. Kahle '21, first president of the Stanford Law Society of San Diego-Imperial.



THIS PAGE, top to bottom:

Reed A. Watkins '56, right, first president of the Stanford Law Society of Utah, receives the group's charter from Dean Manning.

Edward Spurgeon '64, left, James H. Perkins '53, and James K. Barnum '42, first president of the Stanford Law Society of the Central San Joaquin.

Prince Hawkins '40-'41, left, and Russell McDonald '48, at the Reno meeting.



OPPOSITE PAGE, column 1, top to bottom:

Harry Atkinson '03, left, talks with Dean Manning before the February 15 dinner of Reno law alumni.

Dean Manning, left, Oliver M. Jamison '41, Judge Frederick E. Stone '33, and James H. Perkins '53, in conversation before the charter dinner meeting of the Stanford Law Society of Central San Joaquin held on April 8.

Arizona alumni meeting at breakfast. From left, Judge Richard H. Chambers '32, Judge Walter E. Craig '34, Newman R. Porter '55, and Dorothy Carson '48.

OPPOSITE PAGE, column 2, top to bottom:

Mrs. Helen Keller, left, wife of Assistant Dean Keller, Richard H. Moffat '56, and Mrs. Reed Watkins at the March 12 luncheon meeting of the Stanford Law Society of Utah.

San Diego-Imperial alumni meet at the San Diego Yacht Club on March 15th. Among those present are, starting at the far end of the table, Assistant Dean Keller, and clockwise, Richard F. Kahle '21, Frank D. McDaniel '48, Professor Joseph Sneed, who addressed the group, Leon W. Scales '34, Charles Fox, Jr. '33, Dean Manning, Judge William Glen '29, Judge James Toothaker '39, and Leroy A. Wright II '39.

Arizona alumni meeting in Phoenix for the charter breakfast on May 6. From left to right: John J. O'Connor '53, Mrs. John J. O'Connor '52, Jack H. Laney '42, Theodore K. Shoenhair '26-'30, Paul Ulrich '64, and Richard Mallory '63.





Some years ago Dean William Prosser, famous for his extensive writing in the field of torts, made the following pronouncement. "The realm of conflict of laws is a dismal swamp filled with quaking quagmires and inhabited by learned but eccentric professors who theorize about mysterious matters in a strange and incomprehensible jargon." Mr. Justice Cardozo is also credibly reported to have said that "the average judge, when confronted by a problem in conflict of laws, feels almost completely lost and like a drowning man will grasp at a straw."

I hope you will all agree with me that these are entertaining but gross exaggerations. I look back upon the experience of studying conflict of laws as a fascinating and rewarding one. It satisfied one's desire to deal with weighty matters for its problems concerned the conflicting claims of nations to enforce their laws for the protection of their citizens. Besides having international significance, it involved the workings of the federal system in the accommodation of the laws and policies of the different states. Its keynote was uniformity and simplicity; judges, with the help of professorial and student commentation, were working to build a system of principles which would produce the correct decision of every case, wherever it might be litigated. Most of these principles were very old, having been developed by famous European scholars of earlier centuries with resonant and romantic names such as Bartolus, D'Argentré, Dumoulin, Boullenois. They were supposed to contain the distilled and crystalized wisdom of these great men and many others. Their antiquity and respectability were demonstrated beyond question by the fact that they contained many Latin phrases. Thus all question of liability for torts (*delicta*) were to be decided by the *lex loci delicti commissi*. Transfers of real property or, better still, *immobilia*, were to be governed by the *lex rei sitae*. As for transfers of per-

sonal property, the entire rule was in Latin, *mobilia sequuntur personam*.

Every play must have its villain and the villains of the conflicts course of my youth were narrow-minded judges who would not follow the grand old Latin maxims but insisted on following the law of the forum (*lex fori*). In doing this they sometimes said that the foreign law was against the public policy of the forum; to use this escape device was considered deplorably parochial and provincial. How could the great goal of harmonious uniformity be achieved if judges violated the ancient maxims and applied their local laws? Had not the famous Mr. Justice Cardozo said, "We are not so provincial as to say that every solution of a problem is wrong because we deal with it differently at home." This was generally taken to mean that in choosing laws, one state's law should be considered as good as another's or, at any rate, no worse than another's.

Another deplorable escape device in the old system was the doctrine that courts should follow the forum's law in matters of procedure. Since procedure was a vague term with a long history in the law, it was possible for judges to stretch it a bit when they wanted to follow their home-state law. This practice was likewise criticized and discouraged by the great teachers and commentators.

I suppose you have all discovered that though conflict of laws seems very important in law school, litigated cases are, in practice, relatively rare. I have never heard of a practitioner who specialized in conflict of laws but if there were one, he would be like an astronomer whose specialty was a planet that appeared only at intervals of ten years. Since judges and practitioners have less direct experience in this area, they are inclined to rely more heavily on the writings of academic commentators. This circumstance excited my ambition as a young law teacher and I resolved to become such a commen-



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tator. After six years of toil by the midnight oil, I published, in 1942, a hard-cover monograph entitled *Torts in Conflict of Laws*. Naturally, throughout its pages, I emphasized the great importance of following the *lex loci delicti commissi* to achieve the shining goal of uniformity which would be nation-wide and someday, hopefully, world-wide.

Alas! Today it is my melancholy task to inform you that during the last ten years the grand old system of traditional principles with their stately Latin phrases has almost completely broken down. Several leading courts have refused to follow the *lex loci delicti commissi* and have gone off at curious tangents upon strange frolics of their own.

It all began, like a cloud no bigger than a man's hand, with a case decided by the Supreme Court of California. Two Californians had the misfortune to collide upon the highway; both were injured, and the one apparently responsible for the collision eventually died. Suit was brought against his estate by the other party. Possibly the real defendant in interest was an insurance company, but on this point the report is silent. Though the plaintiff and the decedent were both Californians, the collision had occurred in Arizona and under the Arizona common law the death of a tortfeasor extinguished his liability. The Supreme Court of California refused to apply this archaic Arizona law although it was the *lex loci delicti commissi*. As an escape device, they held that the Arizona law extinguishing liability was merely a "rule of procedure." The importance of securing uniformity by careful adherence to the *lex loci delicti* was entirely overlooked. The court apparently did not realize that one state's law should be considered as good as another's in choice cases.

Commentators were shocked by the decision and a barrage of learned criticism broke forth. Some years later Chief Justice Traynor who wrote the opinion, dis-

cussing the case in a law review article, explained the real ground of the decision. He said that the obvious purpose of the Arizona common law rule was to protect the estates of deceased tortfeasors against damage claims for the benefit of their heirs or testamentary donees. The court saw no reason for applying this policy to the case of a dead tortfeasor domiciled in California where that policy had been rejected by the legislature. Let the Arizona law protect the estates of deceased Arizona tortfeasors; it should not be extended to the case of two Californians. As for the ancient principle that the case should be governed by the *lex loci delicti commissi*, Chief Justice Traynor referred to it and the other grand old Latin rules as "a petrified forest." Orthodox commentators were horrified, but the worst was yet to come.

Even as Chief Justice Traynor uttered these shocking words, rebellion against the traditional system was rearing its ugly head in Wisconsin. Under the law of that state, a wife injured by her husband's negligent driving had a cause of action against him so that his insurer would have to pay all her medical expenses plus consolation money for pain and suffering. But under the laws of the states surrounding Wisconsin, the husband was not liable for damages and the wife got nothing — a harsh result, which insurance counsel defend on the smugly prudential ground that otherwise husbands and wives would conspire to cheat the insurers. Back in 1931 the Supreme Court of Wisconsin had to decide what should be done when a wife domiciled with her husband in Wisconsin was injured by his negligent driving in one of the surrounding states. In the famous case of *Buckeye v. Buckeye*, which some of you may have studied in law school, the Wisconsin court pledged its allegiance to the *lex loci delicti commissi* and following that law refused to permit the Wisconsin wife to recover.

In the course of time, Wisconsin judges and lawyers became dissatisfied with the rule of this case, which deprived Wisconsin wives of their usual recovery merely because they had been injured outside their home state. In one case the suggestion was thrown out that the law of the state of injury might be *presumed* to be the same as Wisconsin's, but this obvious legal fiction did not satisfy the judges. In a later case they used the escape device of holding that the foreign law barring suit was merely a rule of procedure. Finally, in 1959, they overruled the *Buckeye* case along with six similar cases; they rejected the *lex loci delicti commissi* because they said it discriminated against Wisconsin wives.

This decision came to me as a rude and unpleasant surprise; it has been a source of considerable embarrassment ever since. For discussing the *Buckeye* case in my book in 1942 I had written that while it might well have gone the other way, it ought to be followed in the future for the sake of uniformity and stability. Apparently the Supreme Court of Wisconsin was more interested in Wisconsin wives than in the great interstate and international goal of uniformity.

Having once tasted the red meat of rebellion the Wisconsin judges next proceeded to reject in its entirety the age-old supremacy of the *lex loci delicti commissi*. Half a century ago, when the automobile was beginning to establish its leadership as a source of litigation, many state legislatures passed laws designed to reduce drastically the liability of host-drivers to non-paying guest passengers. These laws were defended on the curiously inconsistent grounds that (1) the host driver ought not to be saddled with liability for the results of an act of kindness; (2) if the host had insurance he would probably conspire with the guest to defraud his insurer. The only practicable solution was to make the guest bear the loss. Wisconsin, New York, and a few other state legislatures resisted the pressures of the in-

surance lobby and refused to enact such a law. In 1965 the Wisconsin Supreme Court was confronted by the problem of a guest and host both domiciled in Wisconsin, and negligent driving by the host in Nebraska causing injury to the guest. Nebraska law would have barred the guest's recovery. The court took the same line that Chief Justice Traynor took in his article: because the Nebraska law was designed to protect Nebraska host-drivers and their insurers there was no reason to apply it to a case of two Wisconsinians and their Wisconsin insurer. Noting that the venerable principle of resort to the *lex loci delicti* had come down from the days of the ox-cart and the sailing ship, the court renounced it forever in favor of a more flexible approach based on a consideration of the policies of the respective state laws.

California and Wisconsin have not been the only hotbeds of revolt against traditional choice of law doctrine. The poisonous heresy has spread to such respectable older states as New Hampshire, New York, and Pennsylvania. The New York cases have been especially alarming. Two years before Wisconsin renounced the *lex loci delicti* doctrine in the guest statute case, New York had, in a similar case, taken the same heretical position.

Prior to that the New York Court of Appeals had refused in the notorious *Kilberg* case to follow a Massachusetts statute limiting the damages for wrongful death to \$15,000. Back in the days when railroad trains had no brakes and steamboats raced against one another, the death toll of travelers and transportation employees ran so high that state legislatures were under considerable pressure to enact laws limiting the amount a jury might award for wrongful death. At one time the New York legislature enacted such a limitation, but the feeling against it became so strong that it was abolished and in 1894 a perpetual injunction against such limita-

tion laws was written into the New York constitution.

In the *Kilberg* case a New York citizen who had bought a ticket on an airline operating there was killed when his plane crashed in Massachusetts. His dependents claimed damages of \$150,000; Massachusetts law would give no more than \$15,000. Branding the Massachusetts law as "anachronistic," the New York Court of Appeals refused to follow it. They took advantage of the two standard escape devices: the Massachusetts rule, they said, was merely a rule of procedure and in any case it was contrary to New York's public policy. Lawyers and judges who had been trained in orthodox choice of law principles and remembered Cardozo's stirring denunciation in the same court of narrow provincialism were deeply disturbed. At one time a federal court of three judges refused to follow the *Kilberg* case on the grounds that it was unconstitutional, but the Second Circuit Court of Appeals decided that this was an untenable position. The New York decision was shocking to the orthodox but not unconstitutional.

It is no exaggeration to say that choice of law doctrine today is in a state of chaos and confusion. The courts have gone too far to retreat; all hope for uniformity and harmony has been destroyed; all hope for simplicity and predictability is gone; no man can tell what the morrow may bring. Worst of all, our books will have to be rewritten and this, of course, includes mine.

How happy I was in the bygone days when I could proudly refer in my classroom to "my little book on torts." Or sometimes I would coyly remark, "You might be interested in looking at a little monograph on torts, written, if I may venture to say so, by myself." But those days are gone forever. Now I am subjected to indignity and embarrassment, for I must tell my students: "I have written a book, but please don't read it. It's outmoded and outdated. It's an antique."

BOARD OF VISITORS ANNUAL MEETING

The Board of Visitors of the Stanford School of Law, appointed by the president of the University, has, since its inception, provided the School with an important source of counsel and communication with alumni. This year's annual meeting of the board was held at the School on Friday and Saturday, April 1 and 2. Thirty-two Members of the board attended the meeting. The parents of five current law students invited as visitors to the board meeting were also on hand.

The Members and parents attending reviewed the present state and future plans of the School through extensive discussions with the dean, faculty, and students.

They observed at first hand two days in the life of the School.

On Friday, Board Members and parents lunched at the University's new Faculty Club, opened in September 1965. That evening, they had dinner at Rickey's Hyatt House, where Professor Gerald Gunther of the law faculty spoke on "The Marshall Court and the Warren Court: Strategy and Timing in Constitutional Adjudication." Dean and Mrs. Manning entertained visitors and their wives for luncheon at their home on Saturday.

The board met under the chairmanship of Judge Murray Draper '30. As next year's officers, the

board elected John Lauritzen '32 chairman and Deane F. Johnson '42 vice-chairman. The newly elected executive committee will be, in addition to Messrs. Lauritzen and Johnson, C. Wendell Carlsmith '28, Stuart L. Kadison '48, Frank K. Richardson '38, Keith E. Taylor '54, and, *ex officio*, Judge Draper. They will take office September 1, 1966.

During the two-day period, Members who also serve on the executive committee of the Stanford Law Fund, Members who are members of the executive committee of the Friends of the Law Library, and representatives of the law societies of Superior California,



Professor Gerald Gunther addresses the dinner meeting. To his left are Judge Murray Draper '30, Judge Shirley Hufstedler '49, and Dean Manning.



Visitors enjoy a coffee break in the Law School lounge. Augustus Mack '28, facing camera, talks with Assistant Dean Thomas Robinson. Richard Carver '57 is at left, rear.



George K. Smith '27, left, and Professor John Hurlbut '34 at the Mannings' luncheon.



Jack Laney '42, left, George Whitney '39, and Laurence Weinberg '33, at the Mannings'.



of Southern California, of Northern California, of Utah, and of San Diego-Imperial held separate meetings to discuss future plans of their organizations.

New Members attending the meeting were: William H. Allen '56, Robert N. Blewett '39, Jerome I. Braun '53, George L. Buland A.B. '16 (Reed), LL.B. '19 (Columbia), Richard Carver '57, Allan E. Charles '27, James T. Danaher

'58, Chesley M. Douglas '27, A. Stevens Halsted, Jr. A.B. '29, LL.B. '32 (Harvard), Frederick H. Hawkins, Jr. '34, Roderick M. Hills '55, Edwin E. Huddleson, Jr. A.B. '35, LL.B. '38 (Harvard), Seth D. Montgomery '65, and George K. Smith '27.

Incumbent Members attending the meeting were: John M. Brenner '47, C. Wendell Carlsmith '28, John M. Cranston '32, George I.

Devor A.B. '22, LL.B. '25 (Harvard), Judge Murray Draper '30, Melvin L. Hawley '52, Albert T. Henley '41, Judge Shirley M. Hufstedler '49, Stuart L. Kadison '48, Jack H. Laney '42, John B. Lauritzen '32, Augustus F. Mack, Jr. '28, Austin H. Peck, Jr. '38, Frank K. Richardson '38, Keith E. Taylor '54, James B. Tucker, Jr. '49, Laurence M. Weinberg '33, and George H. Whitney '39.

OPPOSITE PAGE, column 1, top to bottom:

Mrs. Keith Taylor, Assistant Dean Robert Keller '58, and Keith Taylor '54.

Frederick Hawkins '34, left, John Bannister, father of John Bannister, Jr. '66, and Professor John Hurlbut '34.



OPPOSITE PAGE, column 2, top to bottom:

Mrs. James Danaher, left, James Danaher '58, and Edward Huddleson.

Mrs. Allan Charles, left, Allan Charles '27, and Mr. and Mrs. George Buland.



THIS PAGE, top to bottom:

Judge Murray Draper '30, left, outgoing chairman of the board, talks with John Lauritzen '32, incoming chairman.

Mrs. Melvin Hawley, left, Professor Thomas Ehrlich, Mrs. Thomas Ehrlich, and Melvin Hawley '52.

John Cranston '32, left, George K. Smith '27, and Frank Richardson '35.



LAW FACULTY COLLOQUIA

Law faculty colloquia in the Law School's Lang Room, the faculty's meeting room given to the School by Richard E. Lang '28, have become an increasingly significant feature in the intellectual life of the School. Typically, a visiting scholar or faculty member offers an informal presentation on a legal subject of current scholarly interest, and the entire faculty then participates in a two-hour period of questions and general discussion. Colloquium leaders this year have included Professor Paul Bator of Harvard, who discussed the proposed ALI Pre-arraignment Code, Professor Joseph L. Sax of Colorado, who spoke on contemporary problems of compensation in condemnation proceedings,

and Professor Yosai Rogat of Chicago, who reviewed for the combined faculties of the Law School and Stanford's Department of Political Science differing conceptions of the judicial function in the history of American political thought.

In a variation from the usual colloquium format, the law faculty on January 21 welcomed as colloquium leader a prominent Law School alumnus. United States Senator Frank Church of Idaho '50, on the campus as a guest of the Foreign Policy Institute to deliver a public speech at Dinkelspiel Auditorium, met with the faculty for an informal discussion of senatorial participation in the formation of foreign policy.



Senator Church '50, in a law faculty colloquium discusses the role of the Senate in the formulation of foreign policy. Professor Gerald Gunther, left, and former Dean Carl



Spaeth talk with the Senator. Above, Senator Church with one of his undergraduate teachers, Professor of Political Science Emeritus, Thomas S. Barclay.

A NOTE FROM THE STANFORD LAW REVIEW

The October special issue on the 1965 Voting Rights Act and the June issue dedicated to Dean Emeritus Marion Rice Kirkwood were high points of the eighteenth year of publication of Stanford Law Review. Among contributors were Professors Merryman, Hancock, Franklin, and Ehrlich of the Law School faculty, Judge Ben C. Duniway and Professors Elliot Cheatham and Walter Gellhorn. A new emphasis was put on student-written material.

Stanford Law Review provides an alumnus with a vital link to the Law School, helps him keep abreast of current developments in the law, and provides a research source of permanent usefulness.

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