

STANFORD LAWYER

Fall 1970

AUTUMN TERM 1970

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ED:
LEGAL EDUCATION 2
LEGAL HIST 2
TAX INCOME 1

AM INDIAN LEGAL PROBS 7:30 9:30 WED EVENING 119
U.S. SUPREME COURT 8:00 10:30 ONE EVENING
PSYCHOAN & LAW MR ROGAT 7:30-10:00 THURS. EVENING 119

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Assistant Editor, Barbara Lane

Cover: class schedule board for second- and
third-year courses.

One of the six target items in Stanford Law School's current fund-raising effort, AGENDA for Legal Education, is "legal research." Alumni and friends of the School are familiar with the other five—faculty, student aid, law library, building, nonclassroom educational activities like Law Review—though most still are not fully aware of the degree to which the Law School is without funding for these indispensable elements. In my discussions about AGENDA I have found that "legal research" is the AGENDA item that is least understood and for which, correspondingly, there is least response.

Part of the problem surrounding the term "legal research" is semantic. The term in its classic sense—the location, collection, rearrangement, and inspection of statements made by courts in their opinions and by legislatures in their statutory pronouncements—is a familiar one to all lawyers. The end product of legal research is a statement of what the law "is," or the identification of an emerging verbal doctrine, or, sometimes, the construction of a novel framework of verbal categories that clarify and impose new order in place of a pre-existing intellectual disorder. Used in this sense, America's law schools have since their beginnings been centers of legal research. Indeed, with only minor exceptions, law schools have been the nation's only centers for analytic inquiry into the law. From the law schools, and from the work of their students and faculties, has come a steady flow of analysis, ideas, and perceptions about law. Taken together, these have served as the major single source for the development and the reform of American legal process.

Increasingly, however, it has become clear that this classic form of legal research must and can be supplemented by expanded kinds of inquiry—inquiry into the law in action, into the law as it affects people, into the law as it works. Many of today's law faculty members and most law students are not content to consider law as a matter of verbal statements. They see law as what happens "out there," what actually results when the organized forces of the society, operating through a legitimated process, impinge upon the lives and property of human beings. We know remarkably little about the actual effects and impacts of our legal order.

What really happens in juvenile courts? How is the check collection system operating under the Uniform Commercial Code? How is the behavior of investors actually affected by different kinds of securities regulation? Who actually receives what kinds of criminal penalties and for what kinds of offenses? What have been the real effects of the *Miranda* case? What do zoning laws do to land values? Why, and under what circumstances, do people comply with laws or not comply with laws?

We legislate about such matters extensively, and our courts and administrative agencies daily make new rules and uphold or modify existing rules about them. But what steps are we taking to investigate the consequences?

Within the last few years some beginnings have been made. At the University of Chicago Professor Harry Kalven of the Law School and Sociologist Hans Zeisel have produced the first scientific study of jury behavior. Professor Maurice Rosenberg's study of the pretrial conference and Professor Jerome Skolnick's study of police are other examples of empirical inquiry being conducted at law schools. Only a handful of today's law faculty members have the methodological skills required to go beyond the study of legal words and categories to investigate the operating impact of the law as it is brought to bear upon people. In the nation's leading law schools, it has now become commonly accepted that an economist or a sociologist or other social scientist with a focus of interest on the legal process can make a useful contribution working with legal scholars or as a continuing member of a law faculty. Analytic and ethical reflection upon the course of the law and legal doctrine is indispensable and work of this sort will doubtless continue to be, as it has been in the past, the primary focus of the scholarly work produced by America's law schools. But it may be confidently predicted that more empirically oriented research work will slowly emerge to take a place beside the more classical form of legal inquiry.

A law school cannot hope to have sufficient research funds at its own disposition to support large-scale research programs; faculty members wishing to undertake such projects will continue to have to find financing for them from foundations and other outside sources on a project-by-project basis. But a modern law school cannot carry on its operations without having available to it some funding base to support faculty research work that is of limited scale or of a nature that does not attract outside support. Virtually alone among major law schools, Stanford today has no such funding base.

Some commentators have argued that basic research into the workings of the nation's legal institutions should be placed in special research institutes or other institutions separated from law schools. Pointing in that direction are an increasing number of newly established institutions engaging in such work, such as the American Bar Foundation and the Institute for Court Management. But in my view, the relation between inquiry and teaching, between the development of knowledge and the transmission of knowledge, are reciprocal and mutually reinforcing activities. I believe that our finest law schools, like Stanford, should continue to be, as they have been, centers of legal research as well as centers of legal thought and training.

Bayle Manning



JOHN BINGHAM HURLBUT

Professor John Hurlbut is on leave from Stanford Law School this pre-retirement year, teaching at Hastings College of the Law, University of California, and will continue teaching there following his formal retirement from Stanford. Last spring the students in his Evidence class planned a party for their last class hour. The Silver Fox was one step ahead, however, and terminated the class one hour early. Frantic telephone calls, and an "urgent meeting" requiring his presence at the School produced Professor Hurlbut in 161J in time for a skit and presentation of a silver fox, shown in the picture.

John Bingham Hurlbut was born in Wisconsin in 1906 and received an A.B. in political science from the University of California at Los Angeles in 1928. He earned an M.A. in political science (1929) and an LL.B. (1934) from Stanford. He practiced law in Los Angeles from 1934 to 1937, when he joined the Stanford Law faculty as associate professor. He was promoted to full professor in 1942, and served as assistant dean in 1941-42 and again in 1945-46. From 1942 to 1945 he was on leave for service in the United States Navy. In 1959 he was named Jackson Eli Reynolds Professor of Law. During 1960-61 Professor Hurlbut was Fulbright lecturer in law at the University of Tokyo and at the Japanese Supreme Court's Legal Training Research Institute. Mr. Hurlbut has served as Stanford's faculty athletic representative with the Pacific Coast Athletic Conference and as vice-president of the National Collegiate Athletic Association. His principal subjects at the Law School have been Evidence, Contracts and Domestic Relations.

Chosen to be Commencement speaker by the Class of 1970, Professor Hurlbut quoted from a yellow Wisconsin village weekly as it reported the remarks of a Memorial Day 1930 speaker—"a typical Stanford Law student of 40 years ago as he then pondered the state of the nation," in Mr. Hurlbut's words. The following phrases in quotation marks are those from the Wisconsin weekly as they appeared in Professor Hurlbut's text of last June.

"The danger signs of political, economic, social, and spiritual disease in our body politic are plain to be seen," he says, and "just as we cannot sweeten the sea with a few lumps of sugar, so we cannot cure these ills by pleasing platitudes." What it takes is recognition, followed by hard study and hard work.

But, he says, "far too often he who points to our ills, he who sees beyond Today, is hissed and branded a radical." And "Just as when the first amoeba crawled forth from the mass of its fellows and the crowd clutched at his throat to draw him back to their own level, just so the cry of 'Radical, Radical' follows those of each generation who seek to lead humanity to higher, cleaner, more righteous levels." "Know you well," he adds, "that the words of the radical too often paint a vision true."

"No nation," he says, "has ever had a more glorious and righteous a past, but the pages of history dramatically remind us that many a noble Yesterday

and Today has been buried in an ignoble Tomorrow"—and he wonders whether disintegration and decay is inevitable because of the avarice of the few, the fanaticism of the few and the apathy of the many.

"Let us not dwell in the past," he urges, "nor be the Revolutionary who would destroy the good and the bad alike (with no substitute blue print in mind), but rather the New Liberal who with the good of the past and the promising of the present, builds a better Tomorrow." . . .

So it seemed to that Stanford law student on 30 May, 1930. Whether the problems he saw were real or imaginary, whether he was long on questions and short on answers, whether he covered too many bases, whether his cerebration was side-tracked by purple rhetoric, and similar questions, I leave to you.

And, if in this account you detect a bit of satire directed at John Hurlbut of 40 years ago, you are on target.

1930, 1970—our problems do seem ageless and endless. New problems, old problems, new problems created by solutions to old problems. Each generation desperately strives to be adequate to the needs of its children, to the needs of Tomorrow. Some successes, some failures, many advances, some retreats.

Of one thing I am quite sure. The contemporary university student and the contemporary university teacher did not invent or discover what is called "social consciousness," "social awareness." The typical Stanford lawyer has always had it whether he dwelt in the big city or in the valley town, whether he was in practice, on the Bench, in Government, or in business, and he had it quietly and when there were no fashions in social awareness. One of my vintage never ceases to be thrilled when he contemplates the achievements on behalf of his fellow men of the Stanford lawyer citizen as a social and political architect. And you will carry on that tradition. But my impression is that the most productive of those Stanford lawyer citizens have striven hard to be high grade professionals *first*, social and political architects second.

Writing in the November issue of the *Stanford Law Review*, dedicated to John Bingham Hurlbut, William T. Lake '68, a former student, said, ". . . Professor Hurlbut had completely mastered the socratic method of teaching. Like few others, he had learned to marshal that often unwieldy tool and make it accomplish his purposes. He dispatched his trenchant questions seemingly without mercy, but with consistent skill at bringing forth answers that related intelligently to the problem at hand. . . . Professor Hurlbut has served Stanford during a period of growing educational ferment, when his ability to enlist the students' attention and affection was especially valuable. His impending retirement is well-earned, and his student-friends from 34 years of teaching wish him the best."

Judge Shirley Hufstedler reminisced on another aspect of John Hurlbut's teaching at the annual Stanford luncheon during the State Bar Convention last September. She remembers her first exposure to John Hurlbut, "a dashing young man, poised on the dais—well, almost poised. Actually John was cantilevered."

A former colleague, Harold Shepherd, William Nelson Cromwell Professor of Law, Emeritus, began his tribute in the November *Law Review*:

"Brilliant student, inspired and inspiring teacher, and one of the gentlest and kindest of men—around these qualities are built John Hurlbut's enduring contributions to the Stanford Law School and the legal profession."

ENVIRONMENTAL LAW AT STANFORD

Those of you who came back to Stanford for the 1970 Summer Alumni College on the Environment brought legal training to the investigation of environmental issues. One of the faculty participants was Professor William Baxter '56, former consultant to the Federal Aviation Agency and an outspoken critic of the SST on economic grounds. Recognizing the need for leadership by the legal profession in the pursuit of a quality environment, Professor Baxter has published significant legal studies on environmental pollution and is currently working on the legal aspects involved in the distribution of international resources.

Others on the Law faculty are expanding this area of the curriculum, adding to the list of established courses such as land-use controls and water law. Professor Robert Girard, an avid conservationist, teaches Environmental Issues, an examination of selected problems relating to the nature and quality of the physical environment with emphasis on governmental organization, powers and planning for purposes of environmental control. Professor Charles Meyers, consultant to the National Water Commission, is developing materials for an experimental course in Environmental Law to be offered this spring. The course will consider the legal aspects of environmental protection, including procedure and remedies as well as substantive concepts.

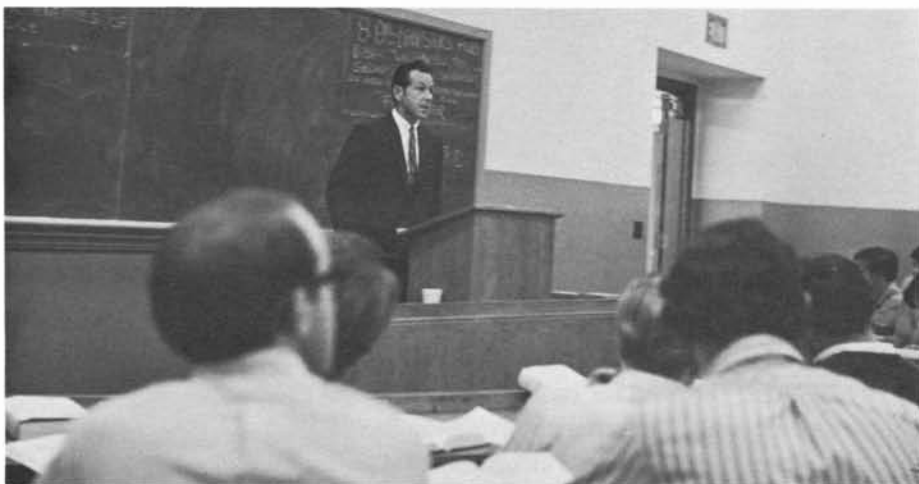
Professors Girard and Meyers have acted as advisers to the student-run Environmental Law Society (ELS) since it was organized in the fall of 1969 to offer student volunteer legal assistance to conservation organizations, citizens' groups, public agencies and lawyers.

While many traditional law student organizations are courtroom-oriented, ELS members most often find themselves exploring other areas of the legal process in their efforts to combat air and water pollution, profligate land and resource use and the final despoiling of wildlife and wilderness. They must interpret legislation, deal with municipal officials and understand the powers and politics of administrative agencies.

About 25 students are active in ELS, working on projects such as these: a study of county planning commissions for the California Joint Legislative Committee on Open Space; an investigation of federal and state alternatives to the Army Corps of Engineers' proposed Pescadero Creek dam; an attempt to prevent irreparable damage to streamfish which will be caused by a proposed temporary sewage treatment plant; a proposal for litigation aimed at removing the lead from gasoline; legal research on a San Mateo county logging suit; a study of methods to control haphazard recreation homesite development in a rural county; a panel discussion on land-use trends in the Bay Area with representatives from planning, law, conservation, private development and the state legislature.

Last summer, ELS members conducted two highly successful studies of local land-use problems. One project, funded by John D.





Professor William Baxter



David Jackman



Professor Robert Girard



James Rummonds

Professor Charles Meyers



Rockefeller III, centered on the misuse of land in San Jose. Nine law students and three students from other disciplines studied San Jose's rapid two-decade change from an agricultural area to an urban center under the proclaimed goal of making the city the "Los Angeles of the North." After ten weeks of intensive field research and writing, the students recommended a restructuring of the process for making decisions on how land will be used in San Jose. As a result, the San Jose City Council has created an Environmental Task Force to consider how large the city should be and other policy questions.

The second land-use project is an attempt to save the coastal region directly to the west of Stanford from irresponsible urban development. Four students researched water supply, waste treatment, zoning administration and taxing policy and have continued to work with concerned citizens to preserve the area's natural resources.

Some projects are tied into writing courses, giving the student a real problem to deal with instead of a hypothetical one. While researching water rights in the upper Klamath River basin for a class in water law, ELS President David Jackman found contracts being negotiated by the United States Bureau of Reclamation which would have seriously threatened sound water management on two important federal wildlife refuges in northern California. He circulated a summary of his findings and a petition for recommended action to conservation leaders and governmental officials and later discussed the problem in detail with the Assistant Secretary of the Interior for Fish, Wildlife and Parks. These efforts brought together a broad coalition of conservation groups in opposition to the contracts and effectively stopped contract negotiations while the Interior Department undertakes a full review of their advisability. Mr. Jackman has found that students are not always heard, but when they are, they are considered objective.

James Rummonds, one of the students who helped organize ELS, has been named by President Nixon to the National Commission on Population and the American Future. The Commission, headed by John D. Rockefeller III, is conducting a two-year study of the long-term effects of unchecked population growth on the American environment.

Mr. Rummonds is also the founder and coordinator of the National Environmental Law Society (NELS), formed at Stanford in late 1969 as a clearinghouse for information on the local efforts of environmental law societies around the country. NELS attempts to coordinate the work of societies at more than 40 law schools and develop the communication necessary to avoid duplication of effort. The NELS newsletter serves as an open forum for students, professors and attorneys engaged in environmental work to contribute ideas and report on topics being researched, involvement in litigation and activities with local bar groups.

Now a privately financed, unincorporated association, NELS is seeking tax-exempt and nonprofit research organization status. As an independent, national organization, NELS hopes to involve all segments of the legal community in the search for solutions to environmental problems.

**REMARKS by
RICHARD W.
LYMAN**

"No one accepts the presidency of a major university these days without some profound misgivings both personal and institutional. We all know the reasons—financial problems, the tendency each year for the campus to erupt into a more serious kind of academic civil war than the year before, the consequent loss of public confidence that comes from that, and the embitterment of personal relationships and the atmosphere both on and off the campus.

"But by the same token no one should accept the presidency of a major university without a profound devotion to the university and even to the very idea of the university. To take on this job implies respect for the life of the mind and the love of scholarship and teaching that extends beyond any single time and place."

These were the opening remarks of Richard W. Lyman at a press conference on September 25, 1970, the day after Board of Trustees President W. Parmer Fuller III announced his appointment as Stanford's seventh president. Son of a lawyer and a Phi Beta Kappa graduate of Swarthmore (A.B. 1947), President Lyman holds two advanced degrees from Harvard (M.A. 1948, Ph.D. 1954). He taught at Harvard, Swarthmore, and Washington University, St. Louis, before joining the Stanford faculty as associate professor in 1958. An expert on contemporary British history, he is the author of *The First Labour Government, 1924*, and has served for many years as a special correspondent for *The Economist*.

Speaking at the Leadership Conference on campus on October 9, Mr. Lyman called for more cooperation between universities in the area. To implement this sharing he foresaw the possibility of



helicopter service between Berkeley and Stanford (painted blue and gold on one side, Stanford red on the other) "to enable scholars of whatever age and stage in either place to benefit from the special strengths of the other."

President Lyman ended that speech saying:

Living, learning, and teaching do not remain static. The life of the mind is not an escape from the world, it is the uniquely human opportunity to understand and shape the world. . . .

Let all who would constrain the universities beware, whether they act in the name of patriotism or anti-patriotism, revolution or reaction. Once aroused, we and our friends intend to defend ourselves and the precious heritage of our species. I believe we are at last aroused, and that the results of that awakening will show themselves, sooner rather than later, in this decade of the 1970's.

Following are the remarks of then Vice-President and Provost Richard W. Lyman to the Law School Board of Visitors on April 16, 1970.

I wasted a fair amount of time, once Bayless had asked me to talk to this distinguished audience, trying to decide which of the multitude of problems besetting universities in general and Stanford in particular I would try to discuss. I say that I wasted this time, because in a terrible way, events nowadays all but dictate what one will talk about in any given set of circumstances. Tonight's circumstances, as I see them, are these: I am a responsible University official (and also a member of the Stanford faculty), facing an audience of persons who have shown, by their willingness to serve on the Law School Board of Visitors (as well as by many other actions and expressions, variously among you), that they care about Stanford. Given that degree of interest in the institution, and given what has been happening at Stanford for the past fortnight, I would clearly be remiss if I did not try to talk about some of the problems associated with radical protest.

These are not—heaven knows—new subjects, and any hope that I can offer new insights into them must perforce be a slender one. The main themes are by now so well-worn that a genuinely new idea in this field might well be considered a pearl beyond price. Furthermore, I, like hundreds of other people in positions of supposed leadership in higher education across the country and indeed around the world, have been so greatly occupied with the day-to-day conduct of the battle that time and energy for long-range thinking have been about as rare as the aforesaid original ideas. It is perhaps worth emphasizing this point, at risk of sounding apologetic, for it is part of the reason why the response of university administrators to radical protests has not been more effective. We are often charged with an almost masochistic abstention from the initiative; with responding only to pressure, and defensively at that. One reason for this is simply that we are kept on the run to the point where creative response is often rendered impossible by sheer lack of time to sit and think. It is part of the radical strategy to keep the Establishment on the go and to goad it into making mistakes through plain weariness and exasperation. It is only because, contrary

to widely held belief, many of the radical revolutionaries are lazy, undisciplined and as chaotic in their conduct of the revolution as they are in their thinking processes that university administrators have fared as well as they have—which isn't very well, you'll surely agree.

How to find time to plan or to make sober judgments is just one of many dilemmas we face in trying to cope with campus disruptions. Some of our most profound difficulties I shall not discuss, not because they are unimportant, but because we have little opportunity to resolve them close to home. I refer, of course, to the major causes of our present discontents as a nation: the war and fear of bigger wars, the cruel persistence of poverty amid plenty, the ravaging of our environment, and the inexcusable rashness with which our institutions of government have in some respects been misused of late. We can work for months in the University to persuade people that democracy works and peaceful progress is possible, and have the results undermined by a single episode such as the miraculous conversion of Lt. Duffy's conviction from premeditated murder to negligent homicide, merely because the Lieutenant's judges suddenly discovered that the penalties for murder are severe ones, even when the victim of the crime happens to be Viet Nameese.

Turning to the more humdrum and less profound, but nonetheless very real problems of the campus being disrupted, the most obvious practical problem is, of course, that of determining the most effective level of response to any particular episode or offender. We seek to respond strongly enough to constitute a deterrent, but not so strongly as to feed the ever-ready flames of martyrdom. The price of martyrdom, unlike the price of just about everything else, has gone down markedly in recent years. That is, it costs less to become a martyr. This is related to the inflation of rhetoric; in a period in which words like "genocide" and "fascism" are thrown around as if they had never had any genuine meaning, it is not surprising that the merest tap on the wrist of a revolutionary nihilist can be converted into persecution and incipient martyrdom, at least to the satisfaction of many who are not themselves revolutionary nihilists. Time after time, here and elsewhere, small campus trouble has exploded into major disruption because of clever and unscrupulous—but effective—exploitation by the radicals of a university disciplinary action.

I'd be the first to admit that too often administrators have used this tactical problem of the appropriate level of response to excuse a limp failure to offer any response whatever. But this does not alter the fact that a genuine dilemma exists. To ask the university president of today to act in relation to organized insurrection by the ground rules used twenty years ago to punish participants in a panty raid is to ignore the realities of our situation. The fact is that the universities are now the scene of a political struggle of great difficulty and intricacy, in which toughness and tenacity are just the first of a long list of qualities needed to prevail.

A second dilemma, closely related to the first, is the sheer difficulty we have in identifying those guilty of carrying protest beyond the

rights guaranteed by the United States Constitution, and into the field of violence and coercion of others. This is a very hard thing to get across to anyone who has not confronted the problem at first-hand, although I am sure that you as lawyers will understand it readily enough. Today's violent dissenter does not identify himself (a point I'll return to later), and in all conscience we cannot ask University students, faculty, or staff members to mingle in the running, screaming mob of campus and off-campus people that caused the damage at Stanford recently, for purposes of identifying the perpetrators of illegal acts. As for the police, they were frustrated by darkness, the fast-moving hit-and-run tactics, and the size of the mob, which, while small by some standards, nevertheless often totaled a couple of hundred. With a very large number of police there could doubtless have been mass arrests, though whether charges would have stood up later is questionable. What is less questionable is that mass arrests almost always entail some injury, usually to both sides. And then the whole struggle may well be escalated with no compensating advantage for the cause of good order on the campus. At Harvard and Columbia and Buffalo the lessons have been unpleasant, but cannot simply be overlooked. As long as there is widespread campus sympathy for the alleged *objectives* of the rioters, even though there is little sympathy for their tactics, the likelihood is very great that an attempt at mass arrests, accompanied by genuine harm to individuals (however much they may, as the saying goes, "have been asking for it") will only make a bad situation worse.

Another dilemma we face as administrators is this: how can we bring home to our faculties and student bodies that the University is in serious danger of losing its external sources of support because of the general revulsion against campus uproar, and yet not play into the hands of those who would be quick to say, "What did we tell you? The University is not free, but is the slave of the rich and the military-industrial complex." You and I know that, with rare exceptions, those who support universities are not asking that dissent be stifled; they are only asking that it take forms more compatible with the educational enterprise than the hurling of bricks or the forcible occupation of buildings. But once again, the radical intent is to goad the supporters of universities into demanding curbs on freedom of speech and of assembly, so that the cadres of revolution can then be expanded by recruits from the moderates who will be outraged at such infringements of the hard-won freedoms of a democratic and open society. It is, I submit, equally important for both faculty and students on the one hand, and alumni and other supporters of higher education on the other, to be aware of this crude but effective strategy of polarization, aimed at dividing them from one another, and at seeing the University administration ground to pieces in the ensuing struggle between them.

If the universities are to reverse the disastrous trend towards loss of the public's confidence, they will do so by a judicious combination of three vital ingredients: effective discipline, including self-discipline; institutional responsiveness; and education.

I've already commented on some of the difficulties in establishing

discipline. The situation is not entirely grim, however. The use of a court injunction, while of little help in coping with midnight hit-and-run raids, has been effective in stopping the disruption of academic activities and meetings on the campus. It is easy to forget, reading the newspapers, that while these troubles are going on, thousands of students and hundreds of faculty are going about their business in peace and quiet. With the exception of a few ROTC classes—and even there, the injunction was effective eventually—classes have been held, the library and laboratories have been operating as usual, and even the University administration has managed to do a few normal things such as approving appointments and haggling with each other over fiscal problems (of which we have a great many, and sometime I hope to have an opportunity to talk with you about them . . .).

Institutional responsiveness can, I know, be the fancy dress costume used to cloak surrender and appeasement to the most outrageous of demands. I, too, grow weary of reading news accounts wherein a complete yielding to pressure is accompanied by hollow administrative croakings about how intolerable were the tactics used by the rioters to produce the capitulation. If one is going to tolerate the intolerable one might at least have the self-respect not to pretend otherwise.

But it is painfully true that American universities have stood in need of substantial self-examination and reform. And if they try to undertake those tasks even under conditions of difficulty and disorder, provided they undertake them intelligently and with genuine concern for the fundamentals of the academic enterprise, they are to be commended. As that greatest of British conservatives, Edmund Burke said of 18th Century France, "A state without the means of some change is without the means of its conservation." The means of change have been greatly improved at Stanford, and while that does not disarm the more extreme radicals, it does make harder their task of radicalizing the uncommitted, or making non-violent radicals collaborate in the use of violence.

Count the achievements of the past three years in this regard. There is now an effective faculty deliberative body, the Senate of the Academic Council, big enough to be representative, small enough to manage a coherent debate. Two years ago there was no such thing.

This year, the entire structure of standing committees in the University has been reformed. They have been streamlined and their purposes clarified. They all include student members—which is no panacea, since the student members of committees have difficulty remaining in close and convincing touch with their constituents, but it is a help. Student committee members have generally given a very good account of themselves; often the very fact that they *do* come to the committee unburdened by a surfeit of previous experience is an asset. It makes them able to ask important questions about things that jaded faculty members long since took for granted.

The Board of Trustees, as you know, has undertaken revisions and improvements of its own practices and composition. These are certainly far from radical. Most universities have had elected alumni

trustees for years, and even the provision that half of these must be 35 years old or less is not likely to convert the Stanford Board of Trustees into a nursery school. There remains much uncertainty and confusion as to the proper functions and purposes of the Board—or even as to its *actual* functioning today. To the extent that it can still plausibly be maintained that the Trustees “run the University,” the Board remains vulnerable to the attacks of the would-be wreckers. I’m sure that it must be the most unkindest cut of all for a Trustee to hear himself charged with responsibility for the day-to-day administrative management of the place when first of all he isn’t guilty and second his accusers are often those who are doing the most to jeopardize the long-run survival of the University—for which the Trustee *does* feel a responsibility.

Finally, we have developed new institutional devices to deal with new problems, or new aspects of old problems. A University Ombudsman has been appointed, to provide that independent and unfettered investigation of bureaucratic muddle without which the citizen, be he student or not, so often must flounder in frustration. (The fact that the first Ombudsman happens also to be a Professor of Psychiatry is, I assure you, wholly coincidental.)

Various staff members have been appointed to assist in matters pertaining to disadvantaged minorities; a search is currently underway for a person to devise and administer an external Affirmative Action program.

The Stanford Judicial Council, with a Chairman from the Law faculty and otherwise an even division between faculty and student members, is also less than two years old. While in my judgment it has sometimes been surprisingly lenient in its treatment of those who disrupt the University, it has certainly worked conscientiously, often against formidable odds, and it has imposed more meaningful penalties than most non-campus people realize. Its legislative counterpart, the Student Conduct Legislative Council, was totally frustrated in its first year of operation by internal disagreements and the pressures of last year’s events, but it has now begun to function, and there are grounds for hoping that we may before long emerge from our present state of having to live under interim regulations promulgated by the President, and can have a code of campus conduct that is the more authoritative for having been the product of a formal deliberative body charged with this specific responsibility.

The catalogue could be extended, but only at intolerable risk to your patience. Besides, I cannot in all conscience end on a wholly cheerful note. The unbridled and infantile ferocity of the past two weeks represents too ominous a threat for that. Furthermore it would, I believe, be a mistake to imagine that what has happened in this most recent outbreak does not have roots in our not quite so recent past.

Many would argue that a crucial turning point came at Stanford with the forcible occupation of Encina Hall, the rifling of files there (and subsequent publication of confidential materials from them), and the summoning of massive police power to remove the demonstrators from the building.

Speaking for myself, I wonder if the *more* crucial shift did not come during the earlier, supposedly peaceful sit-in at the Electronics Labs. True, that was a considerably milder occupation than Encina, and only desks, not confidential files, were rifled, for whatever comfort that is worth. But to me the saddest and most ominous feature of the AEL sit-in was the shift from responsible to irresponsible dissent.

By that I do *not* mean a change from dissent expressed always within the law, to lawless dissent. Rather, I mean a shift from dissent which, when it transgressed the law, was willing and indeed anxious to bear witness by accepting the consequences, to anonymous, self-protecting, law-evading dissent. The AEL sitters-in refused almost to a man to identify themselves. By now, there seems almost a quaintness about the mere notion that anyone would expect participants in an illegal protest to stand publicly by the convictions that led them to break the law. That, I believe, is a fundamental and tragic deterioration.

It is also fraught with revolutionary implications, as some (though not all) who practice the new style intend. For by refusing to take



any consequence of your misdeeds, you are indeed saying that the society and the institutions that would provide those consequences are corrupt beyond redemption. You are saying that the system must be subverted, eroded, terrorized, and coerced, if justice is ever to prevail. And in so saying, you are subverting and eroding your own capacity to live a constructive life in a free society.

And this is where my third point—education—comes in. To those old enough to remember totalitarianism at its most virulent, in Hitlerite Germany; to those informed enough to perceive the world of difference between the individual's lot in China or the Soviet Union or the South African Republic and in the United States, whatever our shortcomings; to those possessed of enough perspective to know that freedom begins in the willingness of each individual to recognize the right of others to differ from him, over things that matter, and that this willingness has been a rare phenomenon in the long sweep of man's history; to all such, the dreary, doctrinaire fanaticism of the hard core revolutionary Left is really more frightening than their rocks or their dynamite tragedies or their toying with terrorist tactics.

One of the most depressing experiences of the past couple of years has been to listen to those interminable radical meetings, full of atavistic crudity, of mind and expression alike. The intellectual poverty of their arguments has been more than a match for the unimaginative arrogance of their subsequent behavior. It is food for thought, not only for lawyers but for all of us, that anyone can do well enough in American schools and universities to constitute part of the supposed intellectual élite of this nation, yet have such manifest and shocking shortcomings as thinking men and women. Thank heaven they are few; pray heaven they remain so.

If that prayer is to be answered, we may have to return once again to the America of which Burke said:

In no country perhaps in the world is the law so general a study. . . . This study renders men acute, inquisitive, dexterous, prompt in attack, ready in defence, full of resources. . . . They augur misgovernment at a distance, and snuff the approach of tyranny in every tainted breeze.

The American Law School has no higher duty than to help protect the American University from the tainted breezes of the new totalitarianism. In this, the Stanford Law School has performed prodigies. These include the devoted service, in jobs that are thankless if ever a job was, of law professors as chairmen of the Stanford Judicial Council—Jack Friedenthal last year and Marc Franklin now. They also include advice, freely proffered, gladly listened to, often taken, from a number of other Law School faculty members. They include the eloquently successful mission of a young member of the Law faculty last year at the height of the Encina occupation, a wholly voluntary mission, I hasten to add, which helped persuade demonstrators not to take on the police in combat that ugly morning.

But they include something more: namely every effective effort that is made by Law School people, whether faculty, administrators, or students, to make the law a living, adaptable, socially responsive instrument. There is an anti-legalism that marches hand-in-hand with the anti-intellectualism I have been decrying. Those who wish to discredit the law these days, enjoy no lack of ammunition. It is all the more important that able members of a prominent law faculty be alert to opportunities—not to defend the courts and the law as they are, but to point out right directions for their improvement and reform. When Herb Packer, with characteristic force and clarity, attacks the obsolescence of many contemporary uses of the criminal sanction; when Tony Amsterdam takes on the Establishment, including the legal Establishment, on behalf of defendants who, whatever their sins and provocations, appear to have received unequal treatment under the law; when Paul Brest works to keep the law a constructive force in the long struggle for racial justice, these men are not, as some would argue, threatening the foundations of law and order. They are shoring up those foundations, and providing the basis for renewed faith in the capacity of “the system” to renew itself without resort to the barricades. That faith is in acutely short supply in many sectors of American society. To rely on the majesty of the law is not and never was enough; to buttress its humanity is always and never more so than now the task of the hour.

The first of the School's Law and Computer Fellows began research and study programs at Stanford this fall. Associate Professor William E. Boyd of the University of Arizona Law School and Mark J. F. Fischer, who has just completed a clerkship in the United States Court of Appeals for the Second Circuit, will divide their time between the Law School and the Computer Science Department focusing upon the applications of computer technology to the law and legal research. Individual studies will be supplemented by occasional seminar meetings, guided by a member of the Stanford Law faculty, in which computer applications to legal research, legal procedures, administration of justice, and the analysis of legal and judicial reasoning processes will be explored. Each fellow will be encouraged to undertake an individual research project involving an intersection of law and computer technology in an area of special interest to him.

Seven members of the Stanford Law School Class of 1970 were elected to the Order of the Coif. The Stanford Chapter of this national legal honor society was enchartered in 1912 and has had 385 students, going back to the Class of 1901, elected to membership. Those elected in 1970 were: Gilbert Charles Berkeley, Jr., Michael Leonard Burack, John Irving Huhs, Roger Wellington Kirst, James Hamlin McGee, James Virgil Selna and William Edward Westerbeke.

Professor Joseph T. Sneed has been appointed dean of the Duke University School of Law. On February 1, 1971, he will succeed A. Kenneth Pye, who left the law school deanship July 1 to become chancellor of Duke.

Mr. Sneed, 50-year-old Calvert, Texas, native, has been on the law faculty at Stanford since 1962. He served as president of the Association of American Law Schools in 1968 and is a member of the Council on Legal Education for Professional Responsibility and the Council on Legal Education Opportunity.

Rapid and continuing changes in society pose challenges to legal education, Mr. Sneed said in anticipation of the new duties in Durham. "In this period in which new attitudes, social structures and laws are being formed, a law school must both expand its awareness and preserve its educational excellence. To do this requires imaginative curricular planning, a strong faculty, alert and sensitive to the cries of both new and old claimants, and a student body sufficiently diverse to assure that within it are those who understand through experience the aspirations of the time.

"This broadening of its concern must be accompanied by adherence to meaningful evaluation standards and continuing recognition that the primary mission of a law school such as Duke is the preparation of students for a career in the legal profession," he said.

Professor John Kaplan has returned to the School after a year of leave at the Institute for the Study of Drug Dependence in London. The results of his research were published last spring in *Marijuana—The New Prohibition* (World).

Professor Kaplan advocates a plan of licensing the sale of marijuana in much the same way that alcohol and tobacco are now regulated. Marijuana would then be packaged in uniform grades and strengths and taxed high enough to put it out of reach of many young people. He believes this would be a more honest system than the present collection of marijuana laws which, says Mr. Kaplan, "now impose costs upon society far out of proportion to the good they do." He cites the \$72 million a year worth of police and court costs for enforcement of marijuana laws in California alone.

Two men have joined the Stanford Law School faculty this fall. Professor Mauro Cappelletti, not in residence during 1970-71, was born in Italy in 1927 and holds a J.D. from the University of Florence. He served as clerk to the president of the Italian Bar from 1952 to 1954 and pursued advanced legal studies at the University of Freiburg. From 1957 to 1962 he was professor of law at the University of Macerata, Italy. Professor Cappelletti has been professor of law and director of the Institute of Comparative Law of the University of Florence since 1962 and now holds the simultaneous position of professor of law at Stanford. He is a member of the Italian Bar and president of the Italian Association of Comparative Law. He was a visiting professor at Stanford in 1968, at Harvard in 1969 and at Boalt Hall in 1970.



Mauro Cappelletti



William Cohen

Professor William Cohen was born in Pennsylvania in 1933. He holds a B.A. and an LL.B. from the University of California at Los Angeles, where he was editor in chief of the *UCLA Law Review*. He served as law clerk to Mr. Justice Douglas of the Supreme Court in 1956-57. While on the faculty at the University of Minnesota from 1957 to 1960, he spent 1959-60 as visiting professor of law at UCLA, and joined that faculty in 1960. He was on leave from UCLA during the fall of 1968 while visiting at Stanford.

Visiting faculty members for all or part of 1970-71:

David J. Bordua, Professor of Sociology at the University of Illinois, was born in 1927. He holds a B.A. and M.A. from the University of Connecticut and a Ph.D. from Harvard. His field is Sociology with emphasis on Large Scale Organization and Sociology of Religion. He will be teaching sociological study of law enforcement at Stanford.



The Law Association was host to the first-year class and members of the faculty on Saturday, September 12, 1970, for a spaghetti lunch at the El Mirador Ranch.



Professors Charles J. Meyers and Wayne Barnett participated in the first Serjeants at Law trial of the year on October 8, along with Assistant Dean Thelton Henderson and third-year students Tom Bowen, Irwin Schwartz, Nick Clainos and Peter Bewley. Judge Sidney Feinberg presided.

Professor Gabriele Crespi Reghizzi of the Catholic University of Milan was born in Italy in 1941. He received a J.D. from the State University of Milan Law School in 1963 and is an S.J.D. candidate at Harvard. His principal subject is Civil Law of Socialist Countries.

Professor Aubrey L. Diamond of the University of London was born in London in 1923. He took an LL.B. (1950) and an LL.M. (1956) from the University of London. His principal subject is Commercial Law.

Aidan Gough of the University of Santa Clara Law faculty will be offering the family and the law course in the spring. Professor Gough received an A.B. (1956) and A.M. (1957) from Stanford, a J.D. (1962) from the University of Santa Clara and an LL.M. (1966) from Harvard.

Professor Dietrich A. Loeber of the University of Kiel, Germany, and senior research fellow at the Max Planck Institute was born in Latvia in 1923. He received a J.D. (1949) and a J.S.D. (1951) from the University of Marburg, Germany, and an M.A. (1952) from Columbia. His principal subject is Socialist Legal Systems.

Former professor John McDonough, now with the firm of Ball, Hunt, Hart, Brown & Baerwitz in Long Beach, will be teaching the course in trial advocacy during the spring.

Professor Monroe Price of the Law School of the University of California at Los Angeles teaches American Indian Legal Problems during the fall at Stanford. Mr. Price received a B.A. in 1960 and LL.B. in 1964 from Yale University.

Associate Professor Robert L. Rabin of the University of Wisconsin was born in Illinois in 1939. He received a B.S. (1960), a J.D. (1963) and a Ph.D. (1967) from Northwestern University. His principal subjects are Torts and Administrative Law.

Stanford University President Richard Lyman was informed on September 16 by Bayless Manning, professor of law and dean of the Stanford Law School, that this will be his last year in the deanship, and that he plans to resign later in the year, effective during the summer of 1971.

President Lyman said that the Dean had given long advance notice because he feels strongly that his successor should be designated as soon as possible so as to permit him to be introduced to the work of the deanship during this academic year in advance of taking office.

Dean Manning was designated dean in 1963 and assumed office in 1964. The Dean has not resolved upon his future academic or other plans.

On October 20 President Lyman appointed a Committee to help advise him about the selection of a successor for the deanship of the Law School. In view of the desirability of an early resolution of the question, as mentioned in the Dean's announcement, the Advisory Committee, at the President's request, sought to complete its assignment expeditiously. In order to enlist the ideas and suggestions of alumni the Advisory Committee solicited the counsel of many representative alumni including the Executive Committee of the Board of Visitors, the present and former chairmen of the Board of Visitors, the officers of AGENDA, and present and past chairmen and other officers of the Council of Presidents of the Law School's sixteen geographically distributed Law Societies. In addition the Committee was in contact with emeriti professors of the School and received suggestions from other individual alumni. The members of the Advisory Committee are Law Professors Anthony G. Amsterdam, John H. Barton, Gerald Gunther, Charles J. Meyers, and John Henry Merryman (Chairman); Jack G. Charney '71 and Calvin P. Johnson '71, President and Vice President respectively of the student Law Association; and Robert M. Rosenzweig, Associate Provost of the University.

Professor Howard R. Williams has been designated chairman of the Stanford Judicial Council for 1970-71. A nationally known expert in oil and gas law, he was named the first holder of the Stella W. and Ira S. Lillick endowed professorship in the Law School two years ago.

The jurisdiction of the Council extends to "all student disciplinary cases." In the past, cases have included such matters as Honor Code violations, violations of the policy on campus disruption, and various other violations of the Fundamental Standard.

Besides Professor Williams, the University-wide Council includes four professors and four students, one of whom is second-year law student Leslie M. Kratter.

Robert A. Keller, assistant dean since 1965, left the Law School in August to become assistant to the president of First Charter Financial

Corporation in Los Angeles. In September Bob married Judith Ann Sample, former director of financial affairs at the School.

Thomas E. Robinson assumed duties in December as program director in areas relating to the legal profession at the Educational Testing Service in Princeton, New Jersey. Tom was also assistant dean and had been at the School since 1964.

Professor Gerald Gunther, a nationally known specialist in constitutional law, was invited to lecture and consult this fall in the Republic of Ghana. He spent the month of November in Ghana under a Fulbright exchange grant. The International Legal Center of New York administered and assisted in financing the award.

In addition to lecturing at the University (where Professor Joseph T. Sneed was a visiting professor in 1969), Professor Gunther consulted with Ghanaian lawyers and government officials about the new constitution adopted during the past year in the aftermath of the overthrow of the Nkrumah regime and modeled in part on the American experience. It introduces clearcut separation of powers and a Supreme Court with explicit authority to hold acts of the other branches unconstitutional.

STANFORD LAW SOCIETIES

ARIZONA

On June 19 Assistant Deans Robert Keller '58 and Bruce Hasenkamp '63 spoke to the Arizona Law Society.

NEW YORK

Professor Jack Friedenthal presented remarks on Stanford Today at the Fourth Annual Meeting and Reception of the Stanford Law Society of New York on September 10, 1970.

On October 29, Dean Bayless Manning was the guest speaker at the second annual dinner of the Stanford Law Society of New York and the New York Chapter of the Stanford Business School Association.

OREGON

Assistant Deans Robert Keller and Bruce Hasenkamp and Professor Paul Brest shared the speaker's rostrum at a dinner meeting of the Stanford Law Society of Oregon on May 26.

SANTA CLARA

Members of the Stanford Law Society of Santa Clara County heard Congressman Paul N. "Pete" McCloskey, Jr. '53 speak on "The Challenge to Respect for Law" on October 29 at a luncheon meeting.

SOUTHERN CALIFORNIA

Chancellor J. E. Wallace Sterling spoke at the annual spring meeting of the Stanford Law Society of Southern California on May 15.

The Southern California Law Society hosted Professor John Merryman and students Beth Jay and Raymond Sarna at a seminar dinner on June 10.

Judge Shirley Hufstедler '49 spoke to about 300 alumni and friends of the School at the annual luncheon during the meeting of the State Bar of California in Los Angeles on September 16. The affair was arranged by R. Chandler Myers '58, president of the Stanford Law Society of Southern California.

Assistant Professor John Barton's topic was Unconventional Arms Control at the November 18 dinner meeting of the Stanford Law Society of Southern California. After reviewing some of the limitations and logical difficulties in the positions of both the proponents and opponents of arms control today, Professor Barton led a discussion with those present.



Mr. and Mrs. Sharp Whitmore, A.B. '39, LL.B. Boalt Hall '42, join Dean Bayless Manning at a cocktail party for Stanford Law School alumni during the annual American Bar Association meeting on August 12.

Also at the ABA-Stanford party were Gilford Rowland '25, Eugene Glenn '24, Dean Manning, Mrs. Gordon, Donald W. Morrison '50, Joseph Gordon '31 (Treasurer of the ABA), Mrs. Rowan, Assistant Dean Bruce Hasenkamp '63, and Mrs. Glenn.



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