THE UNIVERSITY OF MICHIGAN OFFICIAL PUBLICATION

Law Quadrangle Notes

Fall, 1968, Vol. 12, No. 4

Four New Deans Appointed In Administrative Change

As part of the general reorganization of the administrative structure at the Law School, two associate and two assistant deans were appointed last spring.

Serving as associate deans are Professors Roy F. Proffitt and Joseph R. Julin. Kenneth L. Yourd and Matthew P. T. McCauley are assistant deans. Professors Proffitt and Julin are continuing to teach, but Yourd and McCauley have no teaching obligations.

Proffitt

Julin

Yourd

McCauley

Prof. Proffitt, who joined the U-M law faculty as associate professor and assistant dean in 1956, "has performed his administrative obligations with distinction and unusual devotion," Dean Allen noted in his communication to the University Regents. "Roy Proffitt is one of the most successful student counsellors in the American law schools, serves as secretary of the faculty, supervises the operation of the Law School Fund, participates in the scheduling of courses and the classification and registration of students, and is available to perform a host of particular functions."

Since joining the U-M Law School faculty in 1959, Prof. Julin has performed a wide range of administrative assignments in the Law School and Institute for Continuing Legal Education. For several years he has been the faculty member principally involved in the administration of the Lawyers Club, and has served as chairman of the Law School Committee on Building Plans. He has been active in the field of educational television and has been presenting the program "Law in the News" over the University radio station for some time. As associate dean he will be assigned a variety of duties involving the internal administration of the Law School and will also be a principal representative of the School in Bar Association affairs.

Yourd, who received his A.B. and J.D. degrees from U-M and his LL.M. from Harvard Law School, has held a variety of positions in law practice and business. In 1966 he was appointed assistant to the dean of the Law School. In that position he assumed supervisory responsibility for the Law School Placement Office, the Lawyers Club, and operational responsibilities for the program of student financial assistance. This year he also took on the functions of acting dean of students. He will continue with these and additional duties in his new position.

McCauley, 26, is the youngest man to receive an assistant deanship in the Law School. He received his A.B. *cum laude* from Harvard and his J.D. from U-M. He spent the past year working in Zambia under a fellowship awarded by the Program of East Africa Studies, Syracuse University. The principal part of McCauley's new duties will be in the area of admissions operations for the Law School. This includes supervising the operations of the Admissions Office, helping to select the incoming classes, supervising research into admissions practice with a view to revising the Law School admissions criteria, strengthening relations with admissions counsellors at other colleges throughout the country, and preparing admissions literature.

Law School Fund Sets Record Total of $210,774

The Annual Giving program of the Law School continues to grow. Under the direction of its National Chairman, Benjamin M. Quigg, Jr., 3,458 contributors gave a record total of $210, 774 in the calendar year 1967.

If the new January 31 termination date for the campaign is taken into account, the 13-month total reached $225,470. In its seven-year history the annual totals of the Law School Fund have increased over 400 per cent.

Although the University-wide $55 Million Program has ended, the Law School benefited from this campaign, and continues to do so as annual pledge payments are received from contributors.

In addition, the Law School was the beneficiary of a number of gifts not falling within the categories mentioned above. In many cases these gifts took the form of funds to memorialize deceased faculty or alumni of the School.

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Professor Yale Kamisar, publications chairman, University of Michigan Law School. *Managing Editor:* Wono Lee, University of Michigan Information Services; *Contributors:* William A. Irwin; Janet A. Cawley; Ed Gudeman. Edited in the University Publications Office.

Vol. 70, No. 42 OCTOBER 25, 1968

Entered as second-class matter at the Post Office in Ann Arbor, Michigan. Issued semiweekly July and August and triweekly September through June by The University of Michigan. Office of Publication, Ann Arbor, Michigan 48104.

Judicial Clerkships Grow Popular; Students Interested in Public Service

Sixteen 1968 University of Michigan law graduates—an increase of seven over 1967—are currently holding judicial clerkships across the nation, from the U. S. Supreme Court in Washington, D.C., to the Superior Court of King County in Washington state.

Professor Thomas E. Kauper, who devotes much time and effort assisting students in garnering clerkships and who himself is a former law clerk to Justice Potter Stewart, suggested some possible explanations for the increase. One of them is the generally growing interest of law students in public service, which judicial clerkships offer an excellent opportunity to satisfy. Another reason is that the Law School has been intensifying its efforts to generate interest in clerkships and to provide information about them.

In light of these considerations, the Law School has found it more practical to give information than to offer specific guidance to those interested in clerkships. Although there was a program of counseling individual students by the faculty and the Placement Office in the past, the emphasis now is to place as much information as possible before the student and let him follow his own ambition and self-appraisal in seeking a clerkship at any level.

This information is made available in a variety of ways. Faculty members who have been clerks discuss their experiences at different levels in a meeting open to all interested students. Those who attend are encouraged to investigate the Placement Office's substantial file of information: letters describing current opportunities and possibilities; prospects for draft deferment for clerking (which depend on the local board); lists of recent graduates' clerkship positions; letters from current clerks describing their situation; and general information on duties, salaries, and terms of employment.

If it develops that a substantial number of students express an interest in clerking for a particular judge or court, these students are encouraged to discuss their interests and backgrounds candidly with their faculty advisers, or Professor Thomas Kauper, so the students can learn more about the special needs and requirements which may be involved.

The aim of these consultations is to alert the students to the realities of competing for highly-sought positions where judges may have frankly or impliedly indicated a preference for a clerk from a certain alma mater, region of the country, or other factor. No effort is made to dissuade a student from applying wherever he wants. Nor is a student picked and pointed towards a particular court or judge, except in the rare case where a judge so requests.

One problem senior students this year are experiencing is an awkward squeeze in considering whether and where and when to apply for these coveted positions.

On one side there is a trend for some judges to advance their dates of selection, in some cases to as early as the summer prior to the senior year. This trend probably results from a desire by these judges to have the often time-consuming process of selection disposed of before the burdens of the new session descend. Competition among judges for the best candidates also accounts for moving up the date.

On the other side, increasing pressure from the draft causes many students to hesitate, for several reasons. Understandably, a student does not want to act in the face of complete uncertainty, particularly if he is waiting to see what alternatives to the draft may be open to him.

Also, a student may be reluctant to apply as early as is becoming necessary because a subsequent withdrawal of his application for sufficient personal reasons, at a time when the judge may well have expended considerable time in narrowing his field of selection, would have the effect of irritating the judge, jeopardizing the student's reputation, and compromising Michigan's standing in the eyes of the judicial profession. With next year's class this draft-related problem will become acute.

Actually, Kauper commented, almost any University of Michigan Law School graduate could get a clerkship of some kind. Several clerkships remain unfilled every year, often in part because students mistakenly assume they could not qualify and do not apply.

The criteria for selection depend very much on the nature of the court and the preferences of the individual judges. For federal district or state appellate courts, a student interested in trial practice or other less scholarly matters may be more suitable than a law review editor. An ability to deal with lawyers is frequently a concern at this level. Often particular needs simply cannot be predicted.

Kauper sees the nature of the experience of a clerkship as more important than the obvious opportunity for learning substantive law and gaining writing practice. Working with a judge gives a perspective on the legal system which a lawyer cannot readily obtain in practice. It gives an appreciation of the importance of procedure and an insight into how decisions are reached and how they may be influenced by effective marshalling of precedent.

Often the day to day interchange with an aware and experienced judge is the most valuable reward of an entire clerkship, Kauper remarked.

A list of 1968 graduates holding clerkships follows:

Bruce P. Bickner
Clerk for The Honorable John Reynolds
U. S. District Court
Eastern District
Milwaukee, Wisconsin

Lowell A. Blumberg
Michigan Court of Appeals
First Federal Building
Detroit, Michigan

Howard P. Danzig
Clerk for The Honorable
James R. Giuliano
Chief Judge
Superior Court of Essex County
Newark, New Jersey

Williamson P. Donald
Clerk for The Honorable
Norman O. Tietjens
United States Tax Court
12th Street & Constitution Avenue, N. W.
Washington, D. C.

Glenn F. Doyle
Clerk for The Honorable
Timothy C. Quinn
Michigan Court of Appeals
Lansing, Michigan

Richard J. Egger, Jr.
Clerk for The Honorable
Harold R. Tyler
United States District Court
United States Courthouse
Foley Square
New York, New York

Kenneth H. Finney
Clerk for The Honorable
Wade H. McCree, Jr.
United States District Court
Sixth Circuit
Detroit, Michigan

Henry S. Gornbein
Clerk for The Honorable
Joseph A. Sullivan
Presiding Judge
Wayne County Circuit Court
Detroit, Michigan

Joseph J. Kalo
Clerk for The Honorable
Sterry R. Waterman
U. S. Court of Appeals
Second Circuit
St. Johnsbury, Vermont

W. John Lischer
Clerk for The Honorable
Lorna E. Lockwood
Arizona Supreme Court
Phoenix, Arizona

John Francis McCabe II
Clerk for The Honorable
Clifford O'Sullivan
United States Court of Appeals
Sixth Circuit
Cincinnati, Ohio

Steven D. Pepe
Clerk for The Honorable
Harold Leventhal
United States Court of Appeals
District of Columbia Circuit
Washington, D. C.

Ward J. Rathbone
Clerk for The Honorable
Theodore S. Turner
Superior Court of King County
Seattle, Washington

Robert W. Stocker II
Clerk for The Honorable
W. Wallace Kent
United States District Court
Western District of Michigan
Federal Building
Grand Rapids, Michigan

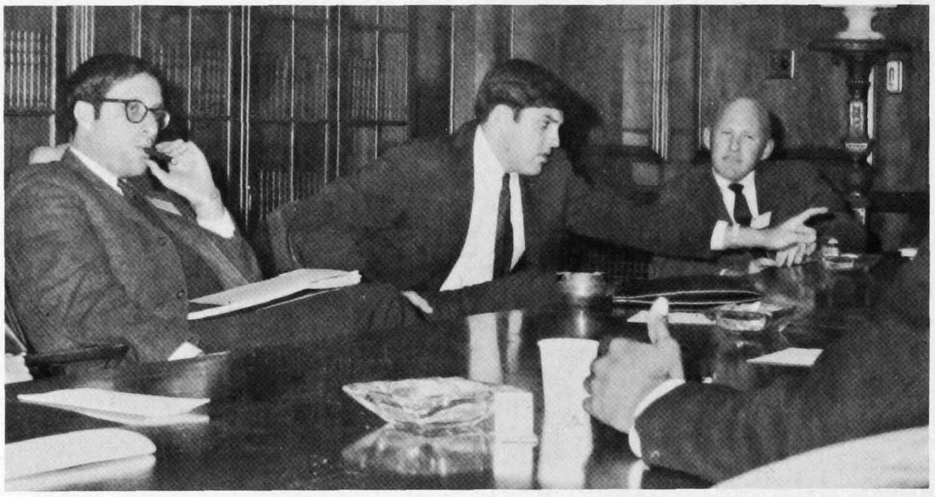
William R. Weber
Clerk for The Honorable
John M. Gillis
Michigan Court of Appeals
First Federal Building
Detroit, Michigan

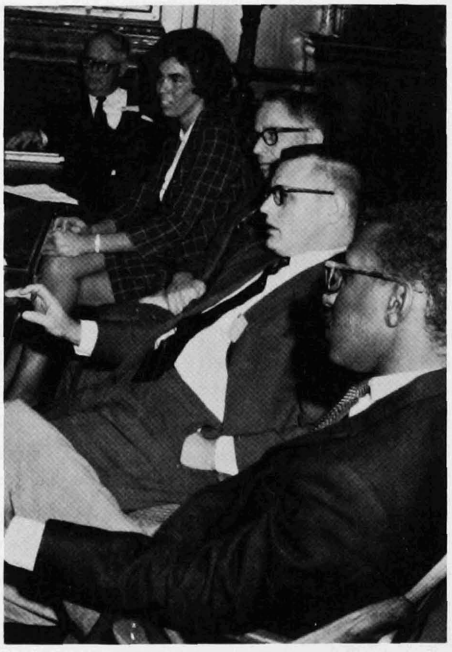
Dean Wants Moratorium On 'Expressions of Esteem'

"It is a remarkable fact that in four years' time, five American law schools turned to the faculty of The University of Michigan for their new deans," Dean Francis A. Allen observed in his 1967–68 Report to the University President. "It should, no doubt, be a matter of pride that the Michigan faculty has proved such a popular source of leadership in American legal education. No other school has, to my knowledge, made a remotely comparable contribution of this sort during the same period. Frankly, however, I hope for a moratorium on such expressions of esteem, and for a more equitable distribution of these tributes among the faculties of other leading law schools."

The five who accepted deanship are: Charles W. Joiner at Wayne State University Law School; Spencer L. Kimball at University of Wisconsin Law School; Roy L. Steinheimer, Jr., at Washington and Lee University Law School; William B. Harvey at Indiana University Law School; and John W. Reed at University of Colorado Law School. Reed, however, has returned to Ann Arbor this year as a member of the law faculty and Director of the Institute for Continuing Legal Education.

Robert M. Weinberg
Clerk for The Honorable
William J. Brennan
United States Supreme Court
Washington, D. C.





The Committee of Visitors held its annual meeting at the Law School November 7–9. Among other activities, the Committee members held informal discussions with representatives of four leading student organizations. The Legal Aid Society was the topic of discussion in these photographs. In the photo above are (from left) Howard N. Nemerovski; Michael Staebler, student; William J. Conlin. In the photo at right, from top to bottom, are William F. Kenny; Mary Marsh, student; Arthur A. Greene, Jr.; Gerald D. Rapp; and John W. Davis, student.

'Law and Order' *On What Terms?*

Statement by Dean Francis A. Allen before the National Commission on the Causes and Prevention of Violence, October 30, 1968, in Washington, D. C.

To the founders of the American republic, "domestic tranquility" is not only one of the fruits of constitutional government, but is essential for the preservation of constitutional government. The founders recognized that violence is the enemy of liberty, but also that liberty may be overcome by the efforts of state officials to suppress private violence. Because the founders were concerned both with liberty and order, they devoted great attention to the regulation and control of governmental power in criminal law enforcement. Thus four of the Amendments in the original Bill of Rights expressly regulate the administration of criminal justice and several others have relevance to the criminal process.

There is clearly much at stake here. No open society can retain its character as such or even preserve its liberal aspirations for very long, when large groups within the community are locked in violent combat, and when extreme applications of force are being brought to bear by one element of the population against another. The point is valid without reference to the "legal justification" for the imposition of the force. We in the United States have suffered from a "crime problem" of large proportions for a century and more. The social costs of widespread crime are many, but it has not been noted often enough that among the most serious of these costs are the maintenance of quasi-military organizations to suppress it and the production of public attitudes and anxieties that at times can fairly be described as a war psychosis. Frequent references to "the war against crime" by our public figures and the mass media illustrate and corroborate the point. Over 40 years ago Clarence Darrow remarked that "The psychology of fighting crime is the same as the psychology of fighting wars. . . ." A war psychosis does not provide an atmosphere in which a free society can be expected to flourish. I am, of course, not saying that substantial violations of the law can be ignored; I assert the precise contrary. But I am saying, in addition, that the launching of large force by an organized society against its own citizens involves that society in costs, which quickly become exorbitant; that the resentments and attitudes bred in consequence, both in those who apply and those who absorb the force, threaten the assumptions and essential character of a free society; and that today we face an acute need to devise techniques and strategies that will de-escalate the uses of violence in the conduct of public controversies, both as an instrumentality of law enforcement and of social protest.

Periodically the American public discovers that it has a "crime problem." In these periods great concern and agitation are expressed; but public attention is not sustained and the reactions are rarely constructive. However unpalatable the fact, our history reveals that a nation can function, can develop and become great, in the face of rather high levels of law violation in all segments of society. Obviously, our attitudes toward crime are ambivalent; and we are capable of great tolerance of law violation so long as it is not too visible and does not threaten too drastically the interests of the dominant groups in our society. Riots and public disorders involving large groups of persons, however, are a very different matter. This is not because rioting is new to American history. One needs only to recall the conscription riots in the Civil War, the public disorders associated with the abolitionist movement and with the development of organized labor. What principally is new about the modern disorders is their enhanced visibility. The television screen has brought the violent confrontations of our time into the living

Dean Francis A. Allen

rooms of America. For a great many persons these disorders have become symbolic of the erosion of public order and public morality, and have increased concerns about law violations of all sorts. In short, television's graphic representations of public disorders are a primary source of public insecurity.

Public reactions to the issue of "law and order" are today of two principal sorts. Both, in my judgment, are dangerous and mistaken. The first asks too much of legal institutions, or, more accurately, relies too heavily on forceable repression by law-enforcement authorities. The second concedes far too little to the law and may often deny to the legal order that degree of support essential to the performance of its vital functions. I shall consider each set of reactions in turn.

That a very large segment of the American population is seriously disturbed by the incidence of crime in American society and by overt resistance to public authority needs no elaboration. One might respond by saying that much that is producing fear reactions today has always been a prominent feature of American life or, at least, has been so since our population first began to become

concentrated in cities a century-and-a-quarter ago. One may say that we do not really know whether, or how much, crime has increased over significant time intervals; and we do not know because we have been unwilling to make the expenditures necessary to establish a reliable body of crime statistics. We are, in consequence, denied this basic information at a time when it has become of critical importance. We can point to the facts that not only has there been a rapid increase in the total population of the country, but that those age brackets in which most crime is committed have shown disproportionate gains.

For the problems we are discussing, however, these responses are of doubtful relevance. The stark and inescapable fact is that the *feeling* of security has suffered serious erosion in American society; and perhaps the most significant consideration is this sense of insecurity, whatever reality a valid statistical analysis might reveal. As insecurity has increased, indignation has intensified: hence the mounting denunciations of lawlessness and the demands for its forcible repression. That the phenomenon we are observing is far from simple is illustrated by the highly selective nature of indignation that has been expressed. Perhaps the most massive instance of civil (and often violent) disobedience that has occurred in the United States since World War II is the calculated resistance of the southern states to the school-segregation decision and to other constitutionally defined rights of the black population. This resistance and non-action has, of course, been widely deplored; but it has not signalled the breakdown of law and order for most persons. Even the most offensive instances of extreme violence were borne by the population as a whole with remarkable equanimity—as when four little girls attending church school in Birmingham were blasted to Kingdom Come, or when the heroic black children of Little Rock braved the hate and barely controlled aggressions of the white mob.

If we wish to think seriously about the relations of law to order, we shall need to inquire into the factors that lead to widespread support for the law and those which

erode or destroy that support. There can be no doubt, of course, that the law's contribution to order rests in part upon the public force. The very word "enforcement" testifies to this reality. But adherence to the law in a free society has never rested primarily on applications or threats of force by public authority. Perhaps the principal attraction of a political system that seeks order through law is that it promises to reduce the amount of force that the state would otherwise be required to employ against its citizens to obtain and preserve order. A legal system is viable when law violation evokes general disapprobation and disapproval in the community. Conversely, threats of even stringent penalties may be inadequate to prevent unlawful behavior when the offense

"A response to the disorders of our time which calls for the application of massive force without concern for the justice and good reputation of the legal order is a prescription for disaster."

does not deprive the offender of the esteem of persons or groups in the community who are important to him. There is no lack of examples. We have discovered that the law's penalties will not be likely to deter a member of a juvenile gang from delinquent behavior if the illegal conduct elevates the young man's prestige and status among those whose good opinion he values. So also, in dealing with the habitual adult criminal we often find that a convicted offender, having already suffered apparently irreparable loss of status by reason of his earlier conviction and having little further to lose in this respect, is remarkably uninfluenced by threats of formal sanctions for his subsequent behavior. But the most acute and striking cases illustrating the general proposition are those that involve conscientious violations of law. Recent history has given us ample proof that persons persuaded that the agencies of justice are oppressive and the society of which they are a part is corrupt, will violate the law despite the application of penalties and retaliatory violence, and will do so without loss of self-esteem and without forfeiting the support of others in the community who hold similar views.

A large part of this complex matter can be fairly summarized by saying that persons tend to obey the law when the groups with which they identify withhold approval and acceptance from those who violate it, and that group attitudes about the importance and respectability of lawful behavior will depend, in turn, on widely shared views concerning the justice of the legal order and of the society which created it. If this is true, it will seem that the justice and decency of the law and its enforcement are not merely desirable embellishments of the system. On the contrary, a widespread and confident conviction of the essential decency of the law and its agencies is an indispensable condition of "law and order" in a free society. If because of perceptions of injustice, substantial portions of the population are disposed to deny to the

law their voluntary support, escalation of force will almost inevitably be employed by the state in its efforts to preserve the good order of the community. But as the state brings greater force to bear on its citizens, doubts of the justice of the system are intensified and fidelity to the law is eroded further. There is thus created a tendency for progressive increases in the amounts of force administrated by the agencies of law enforcement. There is no assurance that this process will result in the speedy re-establishment of order; but even if resistance is successfully overcome, the costs may include loss of the liberties of the people.

A response to the disorders of our time which calls for the application of massive force without concern for the justice and good reputation of the legal order is a prescription for disaster. This is not to say that losses in fidelity to the law by the disaffected groups within our society have been caused simply by defects in the administration of criminal justice. The declining sense of obligation to the law in these groups is evidence of a much more fundamental alienation from the larger society. Clearly this alienation cannot be corrected simply by measures to improve and reform the criminal law and its administration. Nevertheless, reform of criminal justice is a necessary, if not a sufficient, measure in efforts to reestablish the good reputation of the law; and at a time when allegiances to orderly processes of social change are wavering and hanging in the balance, concern for the decency of the law and its enforcement becomes of critical importance.

It is my contention that those who seek not simply order but also the preservation of a liberal society, must concern themselves with the justice and good reputation of the law. This is true because the alternative to widespread voluntary compliance with legal norms is brute repression. When the problems of law and order are viewed from this perspective, much that is being said today, including much being said by persons of great public prominence, is revealed as fatuous and mistaken. The Supreme Court of the United States has been selected to bear the weight of culpability for the crime and disorders of these times. That the Supreme Court is "handcuffing" the police and that the police are thereby prevented from restoring public order are propositions repeated so frequently that they have gained the assent of even some persons of sophistication and good sense. Yet one need not be an uncritical admirer of all that the Court has done or believe that it has always revealed an infallible sense of timing, to conclude that there is no reliable evidence that the constitutional rules of evidence which the Court has announced in recent years have made the slightest adverse impact on American crime rates, or that these rulings have prevented the police from performing their routine functions of crime prevention and law enforcement.

If one were inclined to attribute the modern problems of crime and disorder to courts, he could with a much greater show of reason call to account, not the Supreme Court of the United States, but the host of trial courts of initial criminal jurisdiction in urban centers throughout the country. These are the courts that deal directly with members of our disaffected groups, and unfortunately they regularly damage the good reputation of the law with these groups. In part this damage is inflicted by judges sitting in these courts. Although there are men of ability and dedication on the criminal bench, the methods of judicial selection prevailing in most localities bring to judicial office many who are encumbered by political obligations, often of minimal competence and of even less sensitivity and compassion. But criticism confined to the hard-pressed judges would be unfair and inaccurate. The courts are simply representative of a system of criminal justice that is inadequate to cope with the problems that face it. It is a system of justice that in such matters as bail and monetary fines quite explicitly discriminates against persons of meager financial resources and in many other ways disadvantages the poor and helpless. It encompasses a correctional apparatus that at times seems deliberately calculated to aggravate the alienation and antagonisms of those within its purview. It is a system of conflicting objectives and motivations, and one that staggers under the weight of overwhelming numbers. We as a society have shown no disposition to invest adequate resources of men or money in it. In consequence, the system fails in its basic obligations, including that of capturing the respect and allegiance of disaffected and disadvantaged groups.

Perhaps the best evidence of the present dangerous state of public opinion is provided by the widespread discussions of lawless conduct by police officers. A great deal of controversy that surrounds the recent events in Chicago has centered on the issue of whether the police were "provoked," as if this were the end of the inquiry rather than the beginning. I believe it can safely be assumed that in virtually all of these situations, the police have suffered provocation. But the justification for the use of extreme force requires a showing of more than provocation, even extreme provocation. The relevant inquiry is and has always been: Was there reasonable necessity for the force actually employed? Was the force necessary to effect the arrest of wrong-doers? Was it necessary to protect the life and limb of the peace officers? Was it necessary to prevent the commission of serious crimes? The principle of economy in the use of public force de-

mands that these standards be satisfied; and it will be noted that the standard is not whether you or I would have been angered by the conduct of the hostile mob. These points are elementary, but they require restatement: The police have *not* been made custodians of the public force in order that revenge and satisfaction may be obtained for insults and injuries suffered by them. The society has *not* designated the police as executioners of punishment on citizens who offend the law; allocation of punishment is a function exclusively lodged in the courts. That much is asked of the police officer is clear;

"[T]he standard is not whether you or I would have been angered by the conduct of the hostile mob. . . . The police have not been made custodians of the public force in order that revenge and satisfaction may be obtained for insults and injuries suffered by them. . . . [T]he dignity of the police officer rests precisely on the fact that we require more of courage, skill and restraint from him than we do from many other citizens."

and, considering the niggardly investment of resources in law enforcement, our demands are perhaps unrealistic. Yet the dignity of the police officer rests precisely on the fact that we require more of courage, skill, and restraint from him than we do from many other citizens.

How far we as a society have strayed from this elementary but vital understanding is revealed by the outcry that greeted recent remarks of the Attorney General of the United States, Mr. Ramsey Clark. This outcry was not confined to the ignorant and powerless segments of our community, but has been led by men of great political and public prominence. What was Attorney General Clark's heresy? He advanced the following proposition: "Of all violence, police violence in excess of authority is the most dangerous." If this moderate statement is shocking, it is certainly not because of its novelty. The Attorney General was restating a perception at least as old in western civilization as Plato—Who will watch the watchers, who will guard against the guardians? Surely this concern is always indispensable to the preservation of political liberty and constitutional government. If the Attorney General is to be criticized it is for not going far enough. The reason for particular concern about police lawlessness is not simply (as the Attorney General observed) that the people have no place to turn "when the police violate the law." The larger point is that such behavior destroys the moral authority of the official agencies of society, teaches a lesson of lawlessness to the entire community, and provides excuses and inducements for private citizens tempted to violate the law.

I do not doubt that the technical efficiency of many aspects of American law enforcement can be and should be improved. And yet I do not believe that the problem of "law and order" in the United States today is basically a problem of technical efficiency. Even if we were to make the enormous efforts and expenditures necessary to increase our rate of convictions and punishments by 25, 50, or 75 per cent, our basic problems would not be touched; and, indeed, they might be deepened and aggravated. This is true because the fundamental problem is one of the legitimacy of law and the society of which it is a part in the minds and hearts of very large groups of American people. That sudden increases in the level of police activity may in some circumstances increase, rather than decrease, the possibilities of disorder, may be illustrated by the outbreak of the Detroit riots in the summer of 1967. Thus Dr. Nathan S. Caplan of the University of Michigan's Institute for Social Research has pointed out that the riots erupted at a time of increasing police presence in the Detroit ghetto following a "blue flu" period when policing of that area was at a minimum.

There is no great mystery about at least some of the measures that might be taken to re-establish the legitimacy of criminal justice. Certainly we need to lessen the differential impact of the system on the poor and disadvantaged. We need to eliminate from our correctional system features that have been recognized as intolerable by dispassionate observers from the time of John Howard in the Eighteenth Century. Very few communities have succeeded in fully implementing even such elementary measures as the separation of the young from the adult offenders. We need to do some effective work on the "we-they" syndrome of the police, which not only prevents many departments from ferreting out wrongdoing within the organization, but also induces some decent police officers to protect and defend the wrongdoing of their colleagues when it comes to light. We need to make the law more responsive to the particular needs of our disadvantaged population and to provide legal services to the same groups in order that they may have access to orderly means of dispute settlement. Our problem, however, is not that of devising a program of reform. We have at hand the recommendations of the Commission on Civil Disorders and of the President's Commission on Law Enforcement and the Administration of Justice to guide our policy if we have the will to create new policy and make it effective. These recommendations have been largely ignored in current political discussions of law and order, despite substantial investments of time, money, and talent in their production. Although the political process has failed to define the choice facing us, a choice exists. It is a choice between a policy that seeks order and at the same time the preservation of the values of a liberal society, and one that seeks order regardless of the consequences to our political values. Moreover, if the first alternative is not speedily embraced, we may even be deprived of the power of choice.

The threat to the rule of law, however, and to the kinds of order that are the product of the rule of law comes not only from those who place exclusive and unthinking reliance on force and repression. The danger also arises from those groups whose commitments to social reform and the eradication of injustice lead to the defiance of law and the creation of disorder. We are learning that the rule of law can be destroyed through lack of

(continued, page 20)

France and NATO:

Law and Peaceful Change

Excerpts from an address delivered by Professor Eric Stein on April 10, 1968 at the University of Chicago Law School under the sponsorship of the Norman Wait Harris Committee and based on a study which was published in 62 American Journal of International Law 577–640 (July 1968).

Our able Ambassador to France, Charles E. Bohlen, who just recently relinquished his post in Paris, has said before a Senate Committee that the withdrawal of France from the NATO integrated commands was "probably the most serious event in European history since the end of the war." When we weigh this assessment we might keep in mind the wise observation by Alexis de Tocqueville. "I am tempted to think," wrote de Tocqueville, "that what we call essential institutions are often only the institutions to which we are accustomed, and that where the pattern of society is concerned, the range of possibilities is far wider than the men living in this society imagine." Yet there is little question that the French move was a significant development in postwar Europe.

The basic thesis underlying the French decisions in the late winter of 1966 was the following: "Although the North Atlantic Treaty itself remained valid and necessary, the measures which were subsequently taken to apply it no longer met the new situation in Europe." As a consequence, France decided *first,* to terminate the assignment to NATO of its forces stationed in Germany, *second,* to withdraw all French personnel from the integrated NATO commands, *third,* to evict, at one year's notice, the headquarters of the two integrated NATO commands located on its territory—and these, incidentally, were the "nerve centers" of NATO—and, *fourth,* to terminate a series of bilateral agreements with the United States and Canada concerning the use of military installations and facilities on French territory, and this, in turn, meant an eviction, again at one year's notice, of a number of United States commands and some one hundred thousand American personnel from French territory.

Legal and Institutional Aftermath

Although some have questioned the continuing military viability of NATO after the French "withdrawal," none of the governments concerned seriously considered its dissolution; on the contrary, intensive activity has centered on seeking solutions of the many multilateral issues within the NATO organs and of the bilateral issues between France, on the one hand, and Germany, the United States, and Canada on the other.

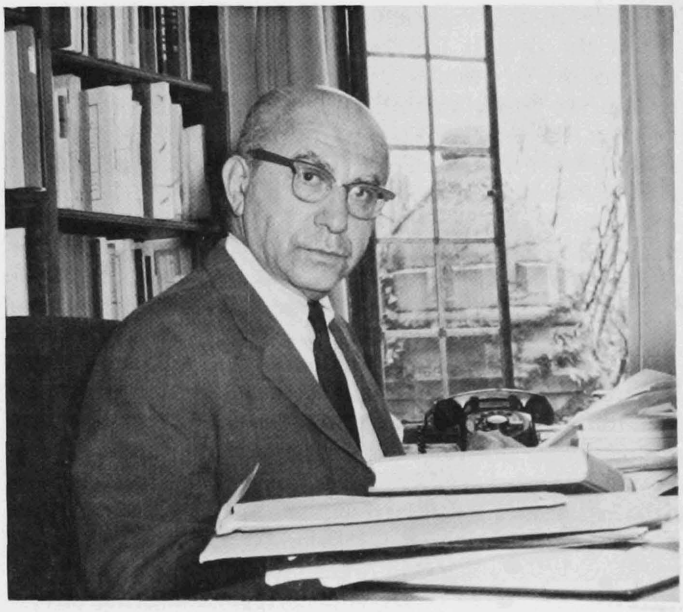
Adjustments of Multilateral Issues

Relocation of NATO establishments: financial and political problems

Responding to the NATO Council invitation, Belgium made available an appropriate site for the Supreme Headquarters Allied Powers Europe (SHAPE), Italy for the NATO Defense College, and The Netherlands for the Headquarters of the Allied Forces Central Europe, and the removal of the NATO establishments was completed within the deadline laid down by France. Since the relocation entailed substantial expenditure, the question arose whether the cost should be borne by France alone, or by the fourteen other NATO members, or whether it should be shared by France and its former partners. Thus far France has not been willing to make any contribution. Moreover, the question of compensation for the NATO buildings and installations taken over by France had to be faced. To the extent that France had violated its international commitments, it could be held liable, since, in the words of the Permanent Court of International Justice, "it is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form" and "the reparation of a wrong may consist in an indemnity corresponding to the damage." France has held the title to the jointly financed NATO infrastructure facilities on its territory, subject, however, to what may be described as an equitable user-interest on the part of the NATO members. Even if the fourteen members should decide not to rely on a violation of any international agreements or decisions, they could invoke an agreed NATO procedure and demand "the residual value" of the installations turned over to France as "no longer required," but, perhaps, no further compensation. In the alternative, they could seek redress on the grounds of unjust enrichment on the part of France or abuse of right.

Reorganization of NATO: simplification, broader planning, new integration

In the first place, in a move toward simplification, the staffs of the Central Europe Commands were consolidated, and the Standing Group composed of American, British, and French military representatives was abolished. The Group's function of coordinating strategic planning was transferred to the Military Committee.



Professor Eric Stein

France has withdrawn from the Military Committee but the Council, in which France continues to sit, deals with the more general military problems in addition to the political and economic subjects within its competence.

Second, in the field of strategic planning the NATO Ministers in 1967 discarded the "massive retaliation" doctrine and formally adopted the "flexible response" strategy, with France participating neither in the discussion nor in the decision. However, potentially the most important development was the establishment by the Council (with France again not participating) of two new bodies for nuclear planning.

Third and last, an instance of additional military integration may be discerned in the creation of a new Standing Naval Force Atlantic, consisting of a squadron of several destroyer-type ships from several NATO countries, placed under the Supreme NATO Commander, Atlantic.

Present legal position of France in NATO: "the uneasy ally"

France remains bound by the North Atlantic Treaty and by the Western European Union Treaty in which the commitment is formulated with considerably greater precision than in the North Atlantic Treaty.

In reaffirming its treaty commitments to the Alliance, the French Government offered to establish French liaison missions at the NATO Commands, and such liaison, in fact, has been preserved following the relocation of the several headquarters, but the efforts to formulate new, meaningful terms of cooperation between NATO and France have met with very little success.

French military cooperation in peace and in war

France has agreed to continue its participation in the air defense warning, communications and control systems; it retains the fuel pipeline to Germany on its territory; and, what is most important, it has continued the permission to Allied military aircraft to fly over French territory. Again, French naval units have continued to participate in NATO maritime exercises.

However, the French Government's determination to retain the utmost freedom of decision in wartime, including the freedom to remain neutral, has made it impossible to reach an understanding on such vital questions as the role of French forces on French territory, access in wartime to French territory and installations, and the definition of circumstances in which France would use its national forces in case of a European conflict involving NATO.

Adjustment of Bilateral Issues

The bilateral issues that required settlement in the wake of the French "withdrawal" concerned the Federal Republic of Germany, because of the French troops stationed in its territory under the Supreme Allied Commander Europe (SACEUR), and the United States and Canada, because of their facilities on French territory.

French troops in Germany: old law and new policy

In the agreement of December, 1966, consisting of two exchanges of notes, the Federal Government surrendered its legal position and recognized that the legal status of the French forces in Germany remains governed as before by the 1954 Convention, without any impairment of the rights of France. On the other hand, the Federal Republic obtained a more specific voice with respect to the command, strength, equipment, and deployment of the French forces on its territory, and thus this important Franco-German issue appears to have been settled.

Franco-American issues: use of facilities in France and financial responsibility

The negotiations thus far have led only to an agreement which assures the United States of the continuing use and maintenance in peacetime of the 390-mile pipeline system across France, under the management of a French contractor, but the French Government refused to give any guarantee for wartime use.

Similarly, little if any progress has been reported toward the settlement of claims arising from the forced relinquishment of United States-financed military installations in France that represent an investment by the United States estimated at more than $550 million.

Although the United States and the other members will no doubt continue to pursue in principle a political rather than a legal approach in dealing with France, the issues of financial responsibility may find their way to an arbitration tribunal if they are not settled by negotiation.

Summary and Conclusions

1) The legal obligations of member states with respect to national force levels and commitments of troops to NATO are essentially of procedural nature only. However, when France decided to withdraw all military personnel from the integrated commands and order them removed from its territory, to refuse the common use of joint infrastructure undertakings on its territory, and to end its numerous bilateral agreements, it could have executed its decision lawfully, either by obtaining an agreement with its partners or by ceasing to be a party to the North Altantic Treaty (on August 24, 1970, at the earliest), in accordance with the termination provisions of the Treaty. France did not follow either of these two alternatives, and thus must be considered in violation of its multilateral and bilateral international obligations, including the North Atlantic Treaty itself, unless the French action could be upheld by the *rebus sic stantibus* (fundamental change of circumstances) exception to the rule prohibiting unilateral termination of international obligations.

2) At some risk to the community policy of stability and respect for shared expectations of parties to a treaty, it may be advisable, as suggested by the United Nations International Law Commission, to legitimize the *rebus sic stantibus* exception in international law as an element of community policy favoring peaceful change, subject, however, to all the feasible safeguards against abuse, including the recourse to the available dispute-settlement procedures. The application of any such rule, however, poses special risks to organized common interests, if it is invoked with respect to obligations arising from constituent instruments of international organizations, or agree-

(continued, page 12)

The Law, Lawyers, And Labor Relations

An article by Russell A. Smith, Edson R. Sunderland Professor of Law, reprinted from the *Michigan Challenge Magazine*

Professor Russell Smith

In 1806 some cordwainers (bootmakers) were charged with a criminal conspiracy for banding together in what we would now call a "labor organization" with the intention of using their combined strength, through strike action if necessary, to increase their wages. The judge, instructing the jury, condemned the conspiracy on the ground that it was designed to interpose arbitrary and artificial restraints in the determination of employee wages and hence was inconsistent with public policy. The judge was reflecting some basic policy premises, obviously anti-union, held at that time by those in position to govern.

Time has wrought radical revisions of these early attitudes. Our public policy now views unionism and collective bargaining at least in private employment—and even increasingly in public employment—as an acceptable, even desirable, and perhaps in any event inevitable, institutional part of our democratic society. This change of basic attitude has not been accomplished easily and without travail.

Many unfortunate and even bloody episodes are part of our relevant, recorded history. And many problems remain. The functions of the law remain today, as in the early years of the Republic, to reflect the consensus of our society and in the implementing of that consensus, to illuminate, shape and develop it.

"[T]he rules of plant life emerging from collective bargaining are far more important to the parties concerned—employer, employees, the labor organization and, indeed, the public—than most of our formal labor legislation."

Thus, today's law concerning labor relations establishes the framework within which today's policies apply. Some laws, unrelated directly to trade unionism, but obviously supported by unions, impose standards of employment on all employers, whether "organized" by unions or not.

Examples are our workmen's compensation, wage-hour, child labor and factory health and safety regulations. Other laws are concerned with the employment relation as affected by trade unionism, and with the internal functioning of labor organizations.

These, especially those establishing the so-called "rights of unionization and collective bargaining," accept the premise that the determination of working conditions, beyond those minimum standards represented by the first-mentioned kinds of laws, are best left to the collective bargaining process.

In a very real sense, then, collective bargaining agreements, and the principles resulting from their application, have become part of our basic "law" of labor relations. Indeed, it can be argued with much persuasiveness that the rules of plant life emerging from collective bargaining are far more important to the parties concerned—employer, employees, the labor organization and, indeed, the public—than most of our formal labor legislation.

Moreover, the importance of the agreement-making process is obvious. I suggest that the public is becoming increasingly tolerant of failures of parties to reach agreement without recourse to "economic" force.

In this entire fabric of labor relations the lawyer has a vital role. In earlier times he was called upon to handle strictly legal problems as advocate for employer or union. He was concerned with the assertion or protection of legal rights, usually in relation to union attempts to organize a plant although sometimes in the post-organizational, collective bargaining phase.

One of his principal tasks was to seek or oppose an attempt to obtain a court injunction against a strike, picketing or a boycott. The moving party was usually the employer, and courts were more easily persuaded then than now to grant relief. This was the era of "the labor injunction" and of the development on the side of labor of a strong distaste for the law, lawyers, and judges.

The last two decades have produced a change in the lawyer's "job specifications" concerning labor relations. The "organizational" phase of union activity is largely over except in the public employment sector and among white collar employees in the private sector.

Collective bargaining has become an accepted way of life in large segments of industry and increasingly in the public sector. So the labor relations lawyer of today finds himself very much involved, directly or indirectly, with the post-organizational collective bargaining process, and less involved with the strife and bitterness associated with labor's attempts to organize.

In general, the collective bargaining process assumes

the existence of an established employer-union relationship. The tasks confronting the parties are not those of litigants who hope they will not see each other again but are those of participants with some mutual and some conflicting or competing interests in a continuing enterprise and association.

The labor relations lawyer of today, therefore, has the opportunity—and, in my view, the responsibility—of providing a service which includes but goes far beyond that of legal representation in litigious situations. In connection with the collective bargaining process he can, should and, indeed, must develop and use the skills of advisor, mediator and negotiator, not only at or behind the bargaining table, but in the private, preparatory counsels of his client, whether employer or union.

He often participates in the discussions of the group of individuals attempting to formulate the collective bargaining policies of his client. If he is skilled, and has gained perspective through experience, he can perform a valuable service in this role frequently as a kind of mediator. In acting for his client at the bargaining table and in disputes concerning the implementation of the collective bargaining agreement he can develop a constructive, good faith rapport with the other party which will make an important contribution to the collective bargaining relationship.

Finally, the lawyer of today has the opportunity and the responsibility, along with others, of helping in the continuing evolution of the basic legal framework of labor relations. Important questions remain unresolved or call for review and re-examination of existing policy.

I will conclude by mentioning only two areas of major concern. One is the dispute settlement process; the problem is how to achieve fair settlements while decreasing interruptions of production. The other is the entire range of questions associated with the extension of the rights of "self-organization" and collective bargaining to public employees, federal, state and local. Here lie some of the most intriguing and challenging issues of our day, including the accommodation of collective bargaining to traditional constitutional and statutory delegations of decision making authority and the extremely difficult problem of producing methods of dispute resolutions while maintaining a "no strike" policy.

FRANCE AND NATO, from page 10

ments reached within such organizations or, indeed, from the authoritative acts of international organization organs. In such setting the duty to exhaust the prescribed settlement procedures is particularly compelling. In the case of the French action, the end of the United States "impermeability" to nuclear attack and the widely held perception of the change in the nature of the Soviet threat in Europe might arguably be considered as constituting a sufficiently "fundamental" and not "foreseen" change of circumstances the existence of which was at the basis of the consent. Such change could conceivably be viewed as "radically" transforming the scope of the French NATO obligations, particularly in the light of the acquisition by the Soviet Union of a massive nuclear arsenal and the United States involvement in a war in Asia. However, France has not met the procedural prerequisite of proposing specific modifications of its commitments in the North Atlantic Council, and it has not observed the agreed procedures prescribed in the bilateral agreements. Moreover, its unilateral decision may have been due at least as much to a reorientation of its own national policy after 1958 as to the environmental change in the international system.

3) The NATO rôle as a military alliance suggests a liberal application of the *rebus sic stantibus* rule to allow for peaceful change. The rule, however, lends itself to abuse, if employed in the pursuit of a policy of an unlimited "sovereignty" with its derivatives of complete "independence" and absolute "equality." Even though such policy may be motivated by the lawful objective of reducing great-Power influence, it may stimulate destructive nationalism, substitute narrow-based diplomacy for modern, institutionalized common-interest procedures, and defeat any rational pattern of collective security and international organization.

4) The concept of a "partial" withdrawal from an international organization is hardly compatible with a rational development of international organizations; yet in the case of the French action, all parties concerned appeared to prefer it, as the lesser of two evils, to a complete withdrawal from the Treaty itself, evidently because they recognized the reality of the continuing common interests. France was willing to discuss the consequences of its unilateral action, but the ties that it has retained with NATO are tenuous and highly ambiguous in both legal and military terms; and the many questions of the financial responsibility of France remain unsettled. The arguments advanced by France against the Organization apply in large measure to the Treaty itself and, in the absence of a change in French policy, it is not unlikely that France may withdraw from the Treaty as well.

5) Although weakened militarily and politically by the French action, the NATO subsystem adjusted rapidly and with relative ease through multilateral and bilateral negotiations. The new strategic and political realities have generated differences of national objectives among the member states, and, since the new "flexible response" strategy contemplates still further centralization of the decision-making in the hands of the United States, the issue of increasing the understanding and influence of the other members on nuclear planning has become still more pressing. The new institutional arrangement within NATO, in which France does not participate, goes some distance toward meeting this need, but any further step that would allow the other members to share in the actual decision-making in this area would require a high degree of integration of national foreign policies. In the short run, there is little question of the continuation of NATO, as long as the global confrontation of the two super-Powers continues in Europe and the German question remains unsolved. Its long-range future will depend upon NATO's ability to play a constructive rôle in a modified subsystem, in which the European element would play a substantially stronger part and which, hopefully, would function on a lower level of armaments balance.

Is Legal Education Relevant To New World?

Extracts from the Report of Dean Francis A. Allen to the President of the University, 1967–68.

. . . I believe that a great deal of what is currently being done at this School reflects the faculty's conception of the new demands being made on legal education; hence the activities of the School are fully comprehensible only by reference to broad considerations of educational policy. That we are living in an era of precipitous change and that these changes are producing profound alterations in the structure and assumptions of higher education are propositions that require no great elaboration in these remarks. Legal education has gained no immunity from the stresses and doubts afflicting all of American higher education. In addition, it faces the peculiar problems associated with the responsibility of training young persons for membership in a vital public profession.

No single formula encompasses all of the problems that now face the law schools and which will surely become more acute in the course of the next twenty years. But I believe that a significant part of these problems can be located by putting the following question: Do lawyers know enough about the right things to insure their relevance in the new world that is rapidly unfolding? That lawyers, themselves, are asking this question represents a significant revolution in attitudes. If there is any one conception about themselves that lawyers have cherished more than any other, it is that lawyers are the great generalists of our society. No question involving man in his social aspects is too complex (it has been thought) for the lawyer to understand, resolve into its component parts, and thus assist in its wise and prompt solution. That this is not an entirely idle boast is demonstrated by the remarkable involvement and contributions of lawyers in almost every facet of our national life since the birth of the republic. I believe that the lawyer's role of skilled generalist still possesses high social utility and may, indeed, be of greater importance in the future than in the past. Yet, paradoxically, we are learning that in many areas of business and governmental activity, the performance of the generalist's role requires a great deal more specialized knowledge than heretofore. Moreover, we are learning that merely analytical skills, although of unchallengeable importance, are not enough. We need to develop greater research skills, among other things. If we had done so earlier, the profession would not now find itself in the embarrassing position of being confronted by a nation-wide crisis in the administration of justice without the necessary knowledge and techniques to deal with it promptly and effectively.

> "Do lawyers know enough about the right things to insure their relevance in the new world that is rapidly unfolding?"

There is of course nothing new in the comments just made. This is a period of ferment in American legal education, and diagnoses of its ills and prescriptions for its cure are in good supply. In reading recent literature on this subject, however, I have been struck by how little specific attention has been focused on the training of the law professor in the future. Yet it seems clear that insuring the presence of teachers in the law schools who, in the aggregate, command sufficiently broad areas of knowledge and who are capable of relating that knowledge to the demands of the legal order in the years ahead, is an objective of great importance and one deserving immediate attention.

A concern about the preparation of young persons for the teaching of law does not imply past failure. At present most faculty members in American law schools of quality are recruited in the first instance from among young men and women who possess an undergraduate college degree and who have completed a basic course in a good law school. They will have had perhaps two to five years' experience in private practice, as a judicial law clerk, as a member of the legal staff of a government agency, or some combination of these activities. In general, this policy of recruitment has worked well. In the course of the past ten years, for example, it has brought to the law schools a large number of unusually able and dedicated young teachers and scholars. My suspicion is that these new teachers are, on the average, by far the best equipped group to enter law teaching in any comparable period in the history of American legal education.

Although I do not anticipate dramatic changes in the patterns of faculty recruitment in the next decade, either at this School or in other law schools of quality, the necessities of the situation will, I believe, force modifications of these practices. Perhaps the most important factor to generate change is the rapid accumulation of knowledge relevant to the pactice of law both in its public and private aspects. Little in the academic backgrounds or professional experience of most law teachers has equipped them to deal with these new issues. The law faculties themselves have been the first to perceive this truth, and accordingly a remarkable effort of self-education has manifested itself in law schools throughout the country. I recently commented on this development in the following terms: "There are few other departments of the modern American university in which efforts at self-education by faculty members in areas outside the traditional definitions of their discipline are being so widely and conscientiously undertaken. This is a fact in which we are entitled to take satisfaction. But the phenomenon also constitutes one measure of our needs." ("One Aspect of the Problem of Relevance in Legal Education," 54 Va. L. Rev. 595, 599 (1968)).

Regardless of the credentials of academic training and experience the law teacher brings to his task, the rapid movement of knowledge and events will demand continuing and substantial efforts of self-education on the part of the individual faculty member if his full contribution is to be made and obsolescence avoided. While this is very largely a matter of individual effort and motivation, I believe the law schools bear a substantial re-

sponsibility to encourage these efforts and to facilitate them in every feasible way. One of the most useful devices to fulfill this institutional responsibility are judicious policies relating to academic leave and released time. On February 9, 1968, our faculty adopted a statement of policy relating to academic leave which I shall quote in part; for I believe it is significant and in some small measure responsive to the problems I have outlined:

> Grants of funds from the William W. Cook Foundation for Legal Research are available for (among other uses) released time to pursue designated research projects. These may include education and training of faculty members to add to their existing talents, as (for instance) to learn languages, social science research methods or any other useful matter. There should be no postponement of eligibility for new or young teachers.
>
> In awarding grants among competing applicants, the Committee should give weight to the special need of a young teacher for leave time in order to bring himself to the research frontier of his subject. It is the policy of the faculty, therefore, that young faculty members should normally expect, upon appropriate application, to receive a semester research leave at full pay after they have taught six semesters at this school and have received tenure. This leave may be to pursue *1*) special research, or *2*) special training or education. . . .

The statement is notable both because of the frank recognition of the uses of released time to advance the efforts at self-education of the faculty and the affirmation of the importance of a period of leave rather early in the teaching career. After three years, a young teacher will normally have made good progress in the development of his teaching skills and will at least have begun to define his program of research for future years. At this point he will often be in a position to evaluate the deficiencies in his background which must be remedied if his scholarly interests are to be successfully pursued. In many instances, therefore, a period of leave granted at this point in the teacher's career may be expected to pay substantial dividends in his future development as a scholar and instructor.

There are, of course, other strategies open to a law school concerned that its faculty possess the knowledge and techniques necessary to insure the continuing relevance of its instructional and research programs. Utilization of the joint appointment constitutes one example. The University of Michigan Law School has for many years understood the advantages of having on its faculty persons trained in other disciplines who continue actively to cultivate the disciplines in which they were trained. This school was one of the first to add a psychiatrist to its regular faculty, and for several years Dr. Andrew S. Watson has enriched our intellectual life by his insights and techniques, and sometimes by his thorough-going criticisms of what we do. For some time, also, the School has enjoyed the part-time services of Professor Angus Campbell, distinguished Director of the Survey Research Center of the University's Institute for Social Research. Professor Campbell offers a seminar in quantitative research methods, available to both our graduate and undergraduate students. In the year just ended we added further strength to this area of instruction by inviting one of the country's leading investigators of police behavior and the administration of criminal justice to join our staff as a Lecturer. Professor Albert J. Reiss, Jr., Chairman of the University's Department of Sociology, will be offering a seminar in criminal law research methodology in the Fall Semester, 1968. For several years the School has been interested in adding an economist to its staff to enlarge its instruction in the law-economics area and to enhance its already close relations with the Department of Economics. It is a pleasure to say that the able young economist, Peter O. Steiner of the University of Wisconsin, accepted our invitation and will be contributing his half-time services to the School beginning in the fall of 1968.

We are employing still other approaches to the problem. One of the most interesting of these, and an expedient that I believe will be turned to with increasing frequency by law schools in the generation ahead, is that of adding to our faculty persons who have or who are in the process of acquiring full credentials both in law and in another discipline. Associate Professor Layman E. Allen and his wide-ranging work in law, learning theory, knowledge retrieval, and other areas provide a prime example. In the year just ended invitations were extended to two young men of outstanding scholastic achievements in their law school studies and who will be pursuing work at the doctoral level while teaching part-time in the Law School as regular members of the faculty. Mr. Richard O. Lempert, a graduate of this School, will be completing his work in sociology as he undertakes his career as a law teacher. Mr. Donald H. Regan, who studied at the University of Virginia Law School and at Oxford, will be pursuing his doctoral studies in philosophy while teaching part-time in this School.

There are those in the law school world who profess to view developments of the sort that I have been describing with some disquiet. While conceding that the rise of new knowledge and the burgeoning of new social issues demand, even force, responses from the law schools, they see a danger that in the efforts to meet these challenges something of the distinctively legal contribution will be lost. I do not share these fears. The "legal approach" is a product of the lawyer's role and retains great toughness and vitality. This is true because the lawyer's role continues to possess high social utility. So long as this prevails, I do not fear either the seduction or contamination of the law schools from close contacts with other bodies of knowledge and their practitioners. In my judgment, the much more realistic fear is that legal education may become so isolated from the main intellectual currents of the twentieth-century world that its products will be handicapped in, and ultimately incapable of, performing the traditional lawyer's functions in the new society that is emerging. The position of the law schools, it seems to me, is well expressed in the observation of a character in a popular modern novel: "If we want things to stay as they are, things will have to change."

Awards for Overseas Study Given to 14 Law Graduates

Fourteen members of the 1968 Law School class have won fellowships for overseas study and research during the 1968–69 academic year.

The awards include five Fulbrights, three DAAD'S (German Government fellowships, similar to the Fulbright awards), a Marshall Fellowship from the British Government, and five fellowships under the Ford Foundation grant for International Legal Studies at the U-M Law School.

The Marshall award was the first one given to the U-M Law School and the only one awarded in the state of Michigan this year. The British government gives only 24 such fellowships to outstanding United States graduates each year.

Fulbright recipients:

Stephen B. Hrones, to work in Paris at the Sorbonne on comparative criminal procedure.

Charles E. McCormick, to work at Oxford University on problems of redundancy (technological unemployment) under the British Industrial Tribunal.

Miss Linda Silberman, to study comparative methods of legal procedure, under Master Jacob at the Royal Law Courts, London.

Thomas R. Trowbridge III, to study French copyright law in Paris at the Sorbonne.

John H. Vogel, Jr., to study in the international legal program at the Free University of Brussels, in the area of the European Common Market, especially corporate and tax laws.

Marshall Fellowship recipient:

Stephen F. Black, to work at Balliol College, Oxford University, on English legal history.

DAAD recipients:

John D. Gorby, to work at the University of Heidelberg and the European Court of Human Rights on problems of enforcement of human rights.

Warren Grimes, to work at the Max-Planck Institute of Public and International Law, Heidelberg, for study and research on international business problems.

Mark Sandstrom, to study comparative problems of anti-trust law in Germany, relevant to American enterprises desiring to do business in that country.

Ford Grant recipients:

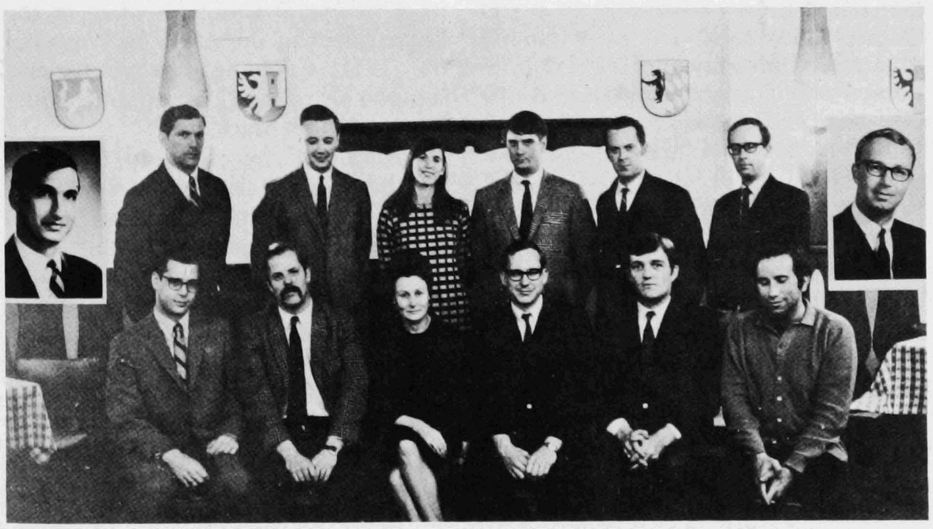
David Callies, to work at the University of Nottingham, England, on urban planning and public control of land use.

Richard G. Hildreth, to work at Oxford University with Dr. Kahn-Freund in the field of labor relations between government departments and their public employees.

David H. Mendes, to work on comparative problems of maritime law in Norway, in the field of personal injury.

Gregg H. Wilson, to work on anti-trust law in Italy, with Dr. Giorgio Bernini of the University of Padua.

Lee Yates, to work in the field of European legal studies at the Europa Institute of the University of Amsterdam, the Netherlands.

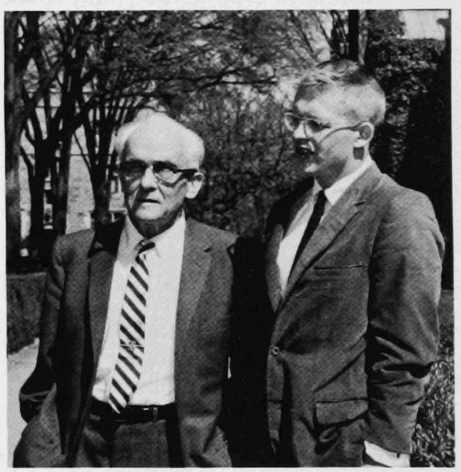


U-M Law School graduates receiving fellowships to study abroad for the 1968–69 academic year: Back row (L-R): Stephen F. Black (inset); Richard G. Hildreth; Charles E. McCormick; Linda Silberman; John H. Vogel, Jr.; Stephen B. Hrones; Warren Grimes; John D. Gorby (inset). Front row: David Callies; Thomas R. Trowbridge, III; Mrs. Mary B. Gomes (Adviser); Mark Sandstrom; Gregg H. Wilson; David H. Mendes. Absent is Lee Yates.

A Memorial Scholarship For German Students

A memorial scholarship honoring a distinguished faculty member and his wife, Prof. and Mrs. Burke Shartel, has been established.

Devoted to the financial assistance of German students studying at the Law School, the Prof. and Mrs. Burke Shartel Memorial Scholarship Fund was set up by a gift of $5,000 from the Shartel's son-in-law and daughter, Mr.



The late Prof. Shartel is shown here with Frederic Brace, Jr., associate editor of the Michigan Law Review in 1958.

and Mrs. Brooks Crabtree of San Diego, Calif. They will make four additional yearly donations of $5,000 to the fund, bringing its total to $25,000.

Prof. Shartel, who took both his bachelor of arts and his law degrees at the University, joined the Law School faculty in 1920 and served until his retirement in 1958.

He shared a life-long love of Germany with his German-born wife, Betty, and served as guest professor at

the Universities of Munich and Heidelberg. Widely known as a distinguished teacher and scholar, Prof. Shartel in 1948 delivered the Law School's Thomas M. Cooley Lectures, which were later published as a book entitled "Our Legal System and How It Operates." Prof. Shartel died at the age of 79 in San Diego last January. Mrs. Shartel, who died earlier, was well known in Ann Arbor for her interest in German students at the University.

Dean Francis A. Allen described the memorial fund as "a fitting method to perpetuate the benign and friendly influence of Burke and Betty Shartel." He also said donations to the fund by friends of the Shartels will be welcomed.

First-Year Law Class Draws from 35 States

The 435 students who make up the current first-year class come from 35 states and 1 foreign country and from 123 undergraduate schools. Forty-three of the new registrants were awarded scholarships (as opposed to 31 in last year's entering class.) Of the 2,371 applications for admission to the first year class, more than three-fourths were from outside Michigan.

The states most heavily represented in the freshman class are:

Michigan	(178)	Iowa	(10)
Ohio	(45)	Massachusetts	(6)
Illinois	(42)	Wisconsin	(6)
New York	(37)	California	(5)
Indiana	(19)	Connecticut	(5)
Pennsylvania	(19)	Kansas	(5)
New Jersey	(14)	Oklahoma	(4)
Missouri	(11)		

The undergraduate schools most heavily represented are:

The University of Michigan	(117)
Michigan State University	(31)
Princeton University	(13)
University of Pennsylvania	(12)
Harvard University	(10)
Northwestern University	(10)
Yale University	(10)
Miami University	(9)
Cornell University	(8)
Indiana University	(7)
University of Notre Dame	(7)
Dartmouth College	(6)
DePauw University	(6)
Wayne State University	(6)
City University of New York	(5)
Marquette University	(5)
Stanford University	(5)
University of Missouri	(5)
College of Wooster	(4)
Denison University	(4)
Duke University	(4)
Georgetown University	(4)
Kalamazoo College	(4)
Oberlin College	(4)
United States Naval Academy	(4)
University of Detroit	(4)
Carleton College	(3)
Colgate University	(3)
Ohio State University	(3)
Pennsylvania State University	(3)
University of Hawaii	(3)
University of Kansas (The)	(3)
University of North Carolina	(3)
University of Pittsburgh	(3)
University of Wisconsin (The)	(3)

Although the current first-year class has 70 more students than last year's freshman class, 39% had Law School Aptitude Test scores of 650 or better (the 93rd percentile) as opposed to 37% of last year's class and only 17% of the 1964 first-year class. Only 1% of the current freshmen had LSAT scores below 525 (the 59th percentile) as opposed to 5% of last year's entering class and 11% of the 1964 freshmen. The median (630) and mean (629) LSAT scores of the current first-year class is just about the same as last year's.

Four New Assistant Professors Begin Teaching This Fall

(**Editor's Note:** *Of the new law faculty members, five are assistant professors. One of them, Richard B. Sobol, will take on his teaching duties in the winter term. What follows is based on interviews with the remaining four professors who are currently teaching.*)

John G. Kester

"It is interesting to speculate on the contents of a Constitutional Law casebook thirty years from now," John G. Kester, new assistant professor on the Law School's faculty, commented recently in his first year class.

He noted that presidential power to grant reprieves and pardons for offenses against the U.S. under Article II of the Federal Constitution, once a fashionable topic, was relegated properly to the relative obscurity of a footnote in Paul G. Kauper's current casebook.

"This might be the trend for civil rights cases and cases involving state power in areas of federal authority," Kester predicted, "as constitutional limitations on federal power diminish and these matters become more and more a question of statutory interpretation."

What issues will warrant prominence in the Constitutional Law casebooks of the sons of today's students?

Among them may be problems of presidential power and the separation of powers, thinks Kester, as the federal government grows larger and the office of President more powerful. U.S. Attorney Generals' opinions may well be included in future casebooks to bring out the issues which the U.S. Supreme Court does not handle.

Also, the expansion of the Equal Protection Clause of the Fourteenth Amendment from an ultimate restriction on irrational discrimination to a judicial check on the substance of legislation may be tempting the Court to assume again a role of super-censor which it appeared to have renounced in the 1930's.

Kester has personal experience to support his ideas. He came to Ann Arbor this summer after three years in the General Counsel's office of the Department of the Army in Washington, D.C., a job he took after clerking two years for U.S. Supreme Court Justice Hugo Black.

He valued the clerkship not only for the obvious attraction of working closely with a Supreme Court Justice, but also for the personal qualities of Justice Black, who still plays tennis though in his 80's.

"It was exceptional good fortune to have come to know a man whose role in history is already assured and who has thought about constitutional problems for a period covering nearly one-quarter of the U.S. Reports," Kester remarked. "That is not to say that we always agreed. But one of the Judge's finest qualities is an eagerness to hear the views of law clerks who were not yet born when he was already sitting on the Court."

Kester found both Washington jobs

Kester

Regan

stimulating, in somewhat different ways, and enjoyed the opportunities the Army General Counsel's office offered for troubleshooting and handling small policy decisions personally, in addition to advising.

He was graduated from the University of Wisconsin in 1959 and attended Harvard Law School from 1960–63, after returning from a year of studying the influence of French culture on the form of that nation's labor movement, as a Fulbright student at the University of Aix-en-Provence. He was president of the *Harvard Law Review*.

He teaches Unfair Trade Practices (including copyright) in addition to Constitutional Law. Both courses involve subject matter which readily engages students, he finds. "Most students who have completed their second year are qualified to practice," he ventured. "At least they are not much less qualified than they will be a year later. Third year really contributes only substantive knowledge which can be gained on one's efforts," he said.

Donald Regan

At 23, Donald Regan is the youngest of the Law School's four new assistant professors this year.

Regan received his LL.B. in 1966 from the University of Virginia, where he edited the *Law Review* and led his class academically. Between leaving Virginia and coming to Michigan, he spent two years as a Rhodes Scholar at Magdalen College, Oxford, completing a graduate degree in economics.

In addition to teaching two small sections of Torts, Regan is working towards a Ph.D. in philosophy in the University's philosophy department. He plans to make jurisprudence his major field for teaching and scholarship in the Law School.

While at Magdalen he wrote comprehensive examinations in economic theory, international economics, underdeveloped countries, and public policy. Regan observed that the exam in international economics was made more interesting, and, less happily, more forbidding, by its coming in the wake of a major monetary crisis. "The apparent unconcern of public officials in this country with the ills of the world's monetary system, except in the face of imminent disaster, is disheartening," Regan commented.

"Of course, the apparent unconcern may be in part a mask for simple unwillingness to accept the obvious remedies. Among these I would number, in the short run, a reduction of military expenditures abroad, and, in the longer run, arrangements which would supplant the U.S. in its current function of issuing the world's principal reserve currency. Gold is not an appropriate medium for international reserves; dollars are only marginally better," he added.

He will write his dissertation for the philosophy department in some area of legal philosophy, although he has not yet decided on a specific topic.

He mentioned as areas of special interest to him the problem of justifying legal interference in the economic order; the connection between non-enforcement or variable enforcement of laws and their validity (with special reference, perhaps, to issues raised by prosecutorial discretion and discrepancies in sentencing practices of different judges); and similarities which, as Regan says, he sometimes thinks he sees between the legal and the scientific method.

Regan currently spends much of his spare time ("I'm not sure you should say that—I don't know if first-year law professors are supposed to have any," he smiled at his interviewer) in rehearsal for the Gilbert and Sullivan Society's production of "Gondoliers," indulging in a penchant he acquired at Oxford where he sang with the Bach Choir and the Oxford Opera Club.

His sports are tennis, golf, and squash, at which he says he has been going downhill since he won one plastic trophy at age sixteen. "The important things about sports are enjoyment and exercise," he remarked. "By careful selection among the possible athletic enterprises I contrive to have the enjoyment and avoid the exercise almost completely."

Charles Donahue

Charles Donahue arrived in Ann Arbor this summer, ensconced himself in an office between the turrets high above the Law Library's main doorway, and now entertains the entire first year class with informal bulletin board notices to his first year Property section.

Energetic and receptive, he belies the midwesterner's stereotype of a New Yorker with a Harvard B.A. and a Yale LL.B.

Suspendered and pipe-puffing, this new assistant professor is an engaging medievalist interested in urban planning and regulated industries.

These dual interests of history and economics account for his teaching repertoire of a seminar on law, history and society on the Continent between 1100–1600 A.D., the first year Property course, and Regulated Industries.

Before coming to Ann Arbor, he spent a year as Assistant General Counsel of the President's Commission on Postal Organization, in which post he was involved with such matters as the economics of postal ratemaking and the prospects for the Post Office if it becomes a corporation. He thinks the latter will not come to pass without presidential support and the understanding of postal workers' unions that their working conditions would improve significantly. The idea has the advantages of bipartisan support and the promise of more efficient operations, however.

After graduating in 1965 from Yale Law School, where he was Article and Book Review Editor of the *Yale Law Journal,* Donahue went to work for the Secretary of the Air Force in the General Counsel's office.

He became engrossed in the concern of the Air Force to sell the Alaska Communications System, the military-owned enterprise responsible for long distance telephone and telegraph communications for that state. This involved complicated questions of tariff regulations, government and private ownership, and evaluation of bids from prospective buyers. Donahue is still interested in the project,

and is preparing an article on the sale of the System for *The Public Utilities Fortnightly*.

This fall Donahue was instrumental in providing to the Law School faculty a legal memorandum on the invalidity of Selective Service Local Board Memorandum No. 87, which denies the statutory right of a student who has not had a II-S undergraduate deferment since June 30, 1967 to receive a I-S deferment to permit him to finish out the school year. As a result of Donahue's efforts a letter was sent to national and local newspapers and to the Michigan Congressional delegation.

He enjoys the quality of Ann Arbor professional and student theatre and likes to scout around Detroit for good Greek delicatessens. Both these interests derive from his undergraduate days when he produced and acted in plays and majored in Greek and English. For diversion at Yale he directed a choral group of Gregorian chanters, a pastime now sadly subverted by the recent changes in the language of the Roman liturgy.

Richard Lempert

Richard Lempert, new assistant professor on the faculty, is a 1968 graduate of the Law School. Next term he plans a course in Administrative Law and a new seminar entitled Problems of Justice and Control in Mass Civil Disorders.

The seminar topic received extensive Comment discussion in connection with the 1967 Detroit riot in the May 1968 *Michigan Law Review*, of which Lempert was a member. He and a dozen students will investigate problems of behavioral control and the administration of justice during and after periods of civil disturbance. They will focus their attention on the empirical and theoretical relevance of the riot context on such issues as bail, search and seizure, curfews and martial law.

Lempert came to Ann Arbor in 1965 with a B.A. from Oberlin and a year behind him at Harvard Law School to pursue his law studies in conjunction with work towards a Ph.D. in sociology.

He began his teaching career last year as a teaching fellow in sociology at the University's new Residential

Donahue

Lempert

College, where he led a section of the two-term course in human behavior.

Lempert is already imbued with the traditional ethos of Michigan law professors. "The best teachers I have had did not give me answers," he said. "Instead they gave me a perspective from which to ask relevant questions. I hope to be able to do the same in my courses."

It is the relationship of law and sociology and the possibilities of law as an instrument of social change that interest Lempert most. His Ph.D. dissertation, which he will write while fulfilling his duties as assistant professor, deals with the process of eviction from public housing.

Because he feels there is such a wide range of areas in the sociology of law for valuable contributions, Lempert thinks students interested in pursuing socio-legal subjects should follow their own interests and abilities. He professes faith in students' ability to run their own lives and plan their own academic careers.

Outside the Law School Lempert involves himself with the Peace Committee of the Friends and with draft counseling work. He and his wife Cynthia enjoy camping, long walks, and cider and donuts.

Civil Disputes Discussed In Book by Carrington

A new casebook for the course in Civil Procedure features a new story line which distinguishes it from other books designed for similar courses. The book, entitled "The Judicial Process," is edited by Professor Paul D. Carrington, and is soon to be published by Little, Brown & Co.

Speaking of the book, its editor says: "The hero is the romantic idea that power can be made to serve principle rather than the men who wield it." He expects that most students will conclude that "the hero survives the melodrama, but bloody and somewhat bowed."

Professor Carrington asserts that the judicial process is a very blunt instrument for accomplishing social change. He believes that law students should be helped to recognize the deficiencies of the process, as a utensil for change, at an early stage of their careers:

> "Many students today come to law study with high hopes for the legal system and a readiness to believe that the evils of the world result from the misuse of power by a few bad men. This has at least two consequences for the educational process. One is a tendency for study and discussion of substantive principles to become somewhat detached from reality. The other is for students who discover this unreality for themselves to become cynical, not only about the judicial process, but about their education as well. The course in procedure should undertake to correct for these tendencies by directing students' attentions to the melancholy facts of life which make it so difficult to translate an abstract legal principle into effective application of the lash of power."

The new book is devoted largely to problems arising in the administration of the courts of the United States. The Federal Rules of Civil Procedure and the Judicial Code are the focus of the study. The organization of the material is unusual in that it describes an inverse chronology of the usual steps in the decision-making process.

The point of beginning is the general problem of remedies: the formulation and enforcement of judgments and decrees. This is followed by an examination of the relation between trial and appellate courts; next by an examination of the problems of conducting a trial in accordance with legal precepts; then by an examination of the problems of preparing for trial. The problems of jurisdiction, judgments, and parties are saved for last.

The reason for this organization is to assure that more deliberate attention is given to the inter-connected purposes of the various rules and statutes under study. These purposes

are most clearly defined, and most comprehensible, at the later stages of the decision-making process, perhaps for the reason that more information about the real values at stake is then available.

Cramton Writes Book On Conflict of Laws

"Conflict of laws is not what it used to be," says Professor Roger C. Cramton of the U-M Law School. "Not too long ago personal jurisdiction depended largely upon the presence of the defendant or his property; and choice of law upon where certain events, deemed significant, had taken place."

A great deal of new law in both fields has emerged during the past 25 years, Cramton notes, "but many current treatments of conflicts underemphasize the extent of the change by retaining the traditional organization and tacking on the new learning as an addendum."

So Cramton, along with David P. Currie, professor of law at University of Chicago, have written a new teaching book, *Conflict of Laws—Cases and Materials,* published by the West Publishing Co.

The book, Cramton explains, is principally concerned with three interrelated problems—choice of law, jurisdiction, and foreign judgments—as issues of the distribution of powers in the American federal system.

"This book is based upon the view that the basic principles of jurisdiction are found in *International Shoe,* not in *Pennoyer* v. *Neff;* that there exists a deep split of judicial opinion concerning the most fundamental issues underlying choice of law; and that a substantial core of common considerations underlies jurisdiction, choice of law, and judgments, on both federal and state levels," Cramton says.

The first two chapters are the heart of the book, presenting a comparison of the principal competing theories underlying American choice of law. The third chapter is concerned with constitutional limits of choice of law, raising for the first time the question whether federal authority can serve to resolve disputes of this nature that the states have not satisfactorily settled.

In subsequent chapters, the authors deal with jurisdiction, foreign judgments, divorce, administration of estates. The final chapter centers upon the myriad conflicts between federal and state authority.

A New Professorship In Memory of Sunderland

The Edson R. Sunderland Professorship of Law was established with a gift of more than $55,000 from Thomas Sunderland of Boston, the son of the late Prof. Sunderland. Professor Russell A. Smith was appointed the first incumbent.

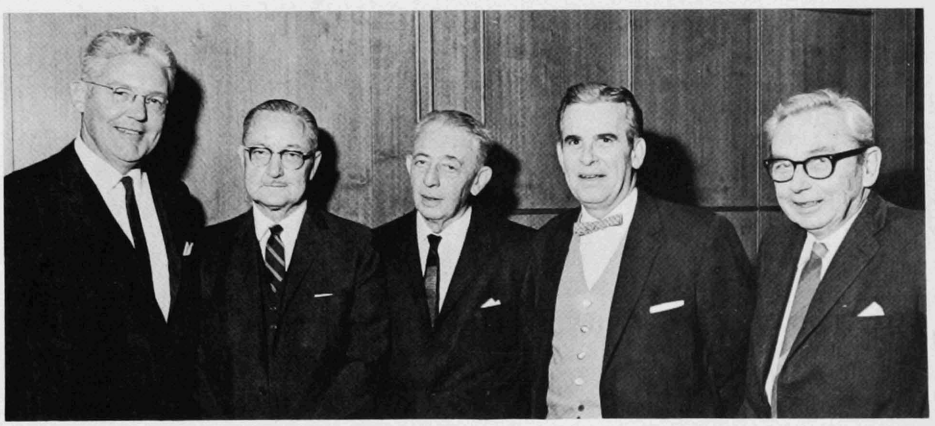
"It is our hope that many others of our alumni who knew and admired Professor Sunderland, surely one of the outstanding figures in the history of the School, will wish to add their contributions in order to convert the Professorship into a fully endowed chair," Dean Francis A. Allen said.

Prof. Sunderland, who graduated from the Law School in 1901, was a member of the faculty for 43 years. When he retired in 1944, the University Regents adopted a resolution which stated in part:

> "His active participation in the affairs of the Law School and of the University, and his many services to the legal profession as member of the Board of Directors of the American Judicature Society, President of the Association of American Law Schools, Secretary of the Judicial Council of Michigan, Editor of the Michigan State Bar Journal, member of the Advisory Committee to the Supreme Court of the United States on Rules for Civil Procedure, and in other capacities, have added greatly to the prestige of this University and its Law School."

The Late Edson R. Sunderland

Thomas Sunderland followed his father's footsteps and received his law degree from the University of California. For many years he was chief counsel for Standard Oil Co. He is former head of United Fruit Co. of Boston.



Prof. L. Hart Wright (second from right) of the Law School is one of five senior University faculty members who last September received the $1,000 Distinguished Achievement Awards in recognition of outstanding teaching and research. Other recipients, photographed with University President Robben W. Fleming (left), are: Raymond W. Waggoner, George Katona, Marston Bates. The awards are provided by the Michigan Alumni Fund of the University Development Council. Recently Prof. Wright, along with five distinguished European tax experts, wrote a new book, "Comparative Conflict Resolution Procedures in Taxation."

'LAW AND ORDER,' from page 8

fidelity to the law by large numbers of citizens as well as through abuses of authority by governmental officials.

There is, of course, more than one way in which the vitality of a free society can be sapped. Public disorders are not the only threat to liberal principles. Injustices long ignored and solutions long neglected are another. If we are candid, we shall have to concede that the American society has been slow to perceive and react to its inequities and that the stridency of the protest movement is a fair measure of our inertia and resistance to necessary change. A failure to perceive the necessity and urgency of reform is a fundamental cause of the disorders of these times; and hopes for either law or order that are not accompanied by an effective resolve to eliminate inequality and injustice will falter and die.

Acceptance of the goals of reform, however, does not validate all the means that have been employed to achieve reform. The time has come for those participating in the protest movement, on and off the college campuses, to subject their measures to realistic appraisal. The question that needs to be put by young people of generous impulses all over the country is whether tactics relying on deliberate, symbolic, and sometimes violent law-breaking are in fact contributing to the emergence of a society that will show enhanced regard for human values—for equity, decency, and individual volition. There are some persons in the protest movement for whom this is not a relevant inquiry; for their motivations are essentially illiberal and destructive. But this is not descriptive of most of those engaged today in social protest, including most who have violated the law in the course of their protest. I believe candid examination of what is occurring in the United States will lead to the conclusion that law-breaking as a tactic of protest is not contributing to the emergence of a more liberal and humane society, but is, on the contrary, producing an opposite tendency. The fears and resentments created by symbolic law violation have provided an opportunity and an occasion for the seizure of political power by the worst elements in American society. Only naivete and willful blindness can obscure the strength of these dark forces. There is an almost Newtonian process of action and reaction at work here. Fanaticism (even for laudable goals) breeds fanaticism in opposition. Just as "extremism in defense of liberty" does not promote liberty, extremism in the cause of justice may extinguish hopes for a just society. Occasionally young reformers seek to justify lawlessness and violence on the theory that "they have nothing to lose." This radical failure of imagination may prove fatal not only to the interests of those who indulge it, but of all men who are striving for a society more productive of human values.

There is one point of basic importance which, if generally understood, would remove much confusion. Insofar as rioting and large-scale public disorders are concerned, the real issue is not *whether* public order will be restored to American society. It is, rather, under what terms will order be restored and with what consequences to the character and aspirations of our society? The records of mankind suggest that the urge to escape from internal violence and disorder is one of the strongest impulses of men in society. "Thou shalt not be afraid of any terror by night: nor for the arrow that flieth by day," says the Book of Common Prayer. The strength of this basic desire has on more than one historical occasion overridden all competing claims of personal liberty, rationality, justice. Recollections of the violent anarchy of the War of Roses induced generations of Englishmen, not only to tolerate, but to embrace the totalitarian rule of the Tudors. The presence of internal disorder has always strengthened the hands of repressive political regimes. "The anarchist," says John W. Gardner, "plays into the hands of the authoritarian." Surely there is little reason to believe that violent internal disorders will prove more tolerable in the infinitely more complex society of this day. Reason points to a contrary conclusion. Because men are today more vulnerable to breakdowns in the intricate machinery of civilization than in earlier times, they will prove less tolerant of public disorders that threaten or appear to threaten the social arrangements on which they rely. The peril is that this threat may be perceived so clearly that we shall be induced to sacrifice those other values which our society has achieved or to which it has aspired.

Surely the path out of our present difficulties is neither that of brute repression or of anarchy. Indeed the one has often led to the other. Neither accords with the temper of a free society and the achievement of the goals to which such a society is dedicated.