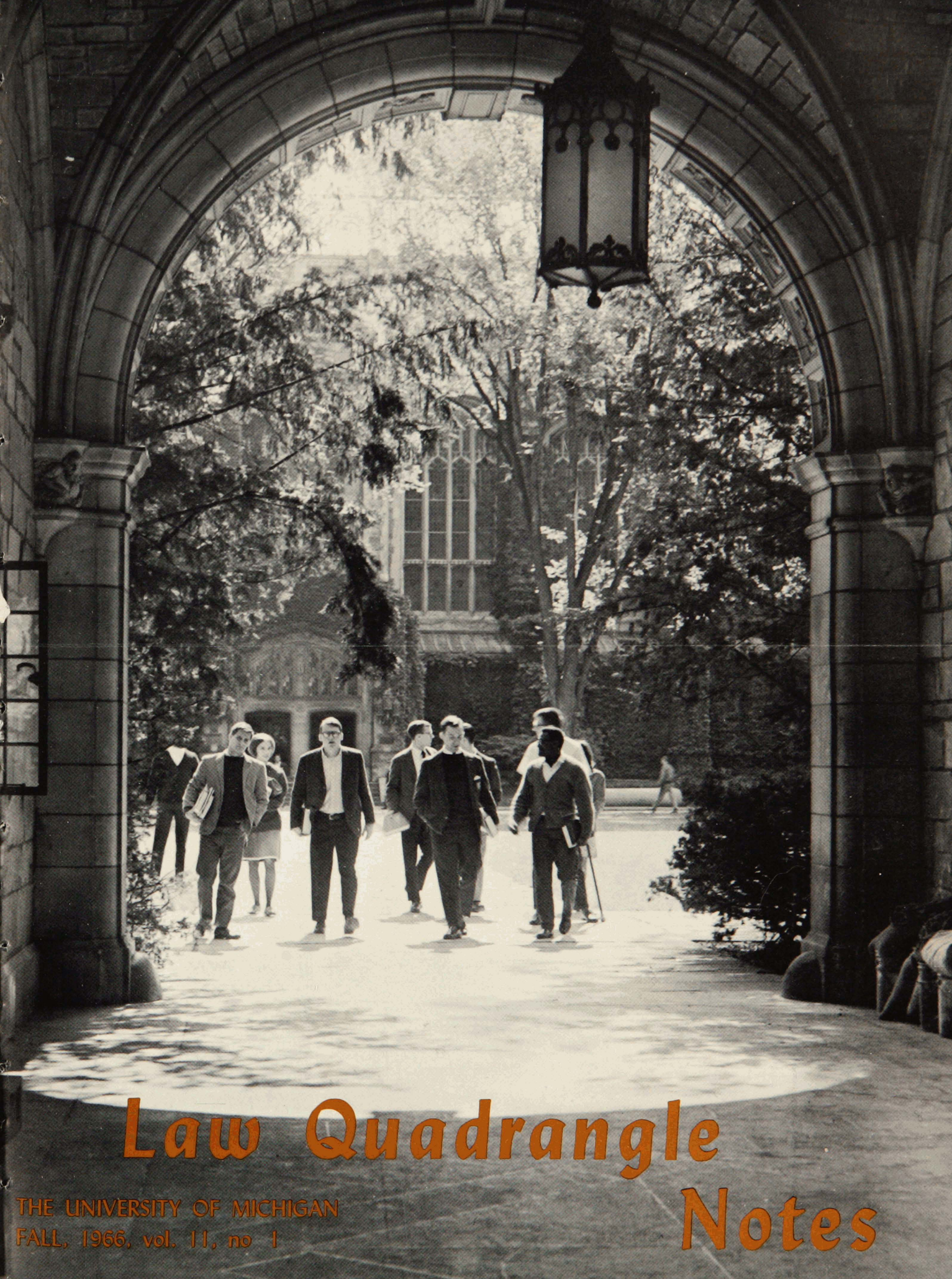


Law Quadrangle Notes

THE UNIVERSITY OF MICHIGAN
FALL, 1966, vol. 11, no 1

QUAD BRIEFS

All Graduates To Receive J.D. Degree

Dean Francis A. Allen has announced that beginning with the graduating class of 1967, the basic degree for all graduates of the Michigan Law School will be the Juris Doctor (J.D.) degree instead of the Bachelor of Laws degree (LL.B.).

The LL.B. degree has been awarded by the Law School since its first graduating class in 1860. At that time the requirements for admission were that the candidate be at least 18 years of age, and that he furnish "certificates giving satisfactory evidence of good moral character." To earn the degree the student was required to be 21 years old, to have "pursued the full course of two years in the Department" (10 lectures a week), passed an approved examination, and written "a dissertation not less than forty folios in length, on some legal subject selected by himself."

Since then there have been many changes in the requirements for both admission and the LL.B. In addition, new degrees were made available: LL.M. (Master of Laws) for postgraduate work in law, 1890; J.D. (Juris Doctor), 1909; S.J.D. (Doctor of the Science of Law), 1927; and the M.C.L. (Master of Comparative Law), 1957. The latter two degrees are also awarded for postgraduate work in law.

When the J.D. degree was first awarded in 1909, it was to distinguish between the candidates for the law degrees who were graduates of approved universities and colleges and those who were not. Within a few years it was also used as a mark of distinction for the students who maintained superior academic records. Since 1952 this has meant that to receive the J.D. degree the student had to maintain an average grade of B or better in all work carried after entering the Law School.

By awarding the J.D. degree to all graduates, the Michigan Law School concurs with the recommendation of the Association of American Law School that there should be a greater degree of uniformity in the law degrees issued by law schools. Assistant Dean Roy F. Proffitt pointed out, "In this regard, it seemed appropriate to recognize that the degree offered by the Michigan Law School was recognition for postbaccalaureate work, although not a graduate degree in the traditional sense. The Juris Doctor degree was selected."

With the J.D. for all students, distinction for academic excellence will be denoted by the additional and traditional phrases *cum laude, magna cum laude* and *summa cum laude.* The last will be awarded only in individual cases, on recommendation of the faculty. The degree *magna cum laude* will be awarded to those graduating at the end of the winter term in the top five per cent of their class; *cum laude* to those graduating in the next twenty per cent of their class.

Law Review In Sixty-fourth Year

In 1902, a group of Law School professors decided to fill a need for a legal periodical that was neither hornbook nor casebook—and so was born the *University of Michigan Law Review.*

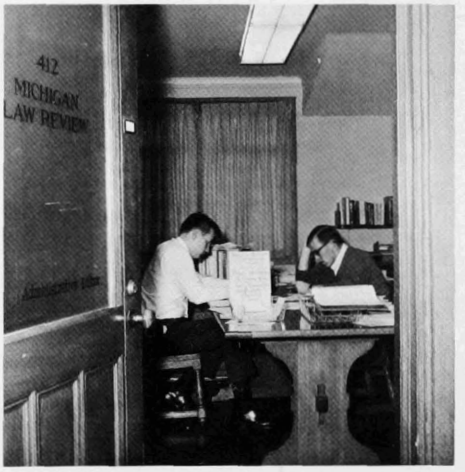
In 1966, the *Law Review* employs the talents of thirty editors and a number of candidates auditioning for next year's staff. The number of writers has burgeoned by one-third again as many as in 1902, but the *Review's* function is essentially the same.

The top forty students of each junior class are offered the chance to write for the *Review.* There are two qualifications to try out—academic achievement and a willingness to undergo a rigorous year.

After his selection and acceptance of candidacy, the student is assigned a series of three "Notes" or "Recent Developments" to complete. (A "Note"

CONTENTS

Professor Yale Kamisar, publications chairman, University of Michigan Law School. Student Editor, Arthur Dulemba, Jr.; Student Reporters, William H. Conner, George A. Dietrich, Madeleine Spehar, Jay Witkin; Student Photographer, Kenneth Stein. Edited in the University Publications Office.



LAW REVIEW EDITORS AT WORK
Reaching a Varied Audience

is a treatment of a general problem in the law, while a "Recent Development" approaches from the opposite tack—from specific cases to their relevant areas.) Two of these assignments are completed the first semester, one the second. The candidate is usually given four weeks for each first draft.

Depending upon the first draft and its revisions, the candidate may be "cut" from competition after the second round of articles is completed. After the third round, usually finished in February, successful candidates are finally chosen. Qualification depends upon writing skill, organization, research, and use of authorities.

Thirty students were elected to this year's staff. Twenty serve as assistant editors. Editor-in-chief is Miss Sally Katzen, who presides over a nine-man upper staff of two article editors, two administrative editors and five note and comment editors.

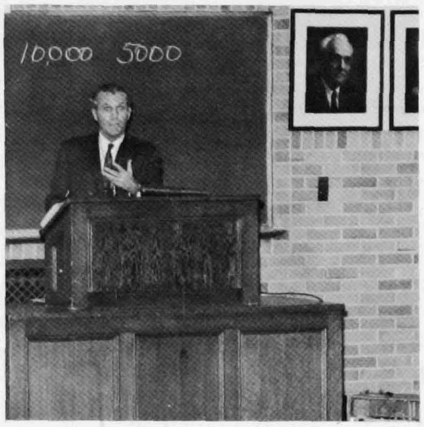
The role of the faculty has changed since 1902 from an editorial to a consultative function. A Faculty Advisory Committee at present offers its counsel to Miss Katzen. She says they are "informally very helpful," and has discovered during her tenure that the student autonomy of the *Review* is not necessarily exclusive of faculty cooperation.

The importance and significance of the *Law Review* to each editor varies with his individual motivation, but there are common factors that make them work such demanding hours. First, they gain technical skills, such as writing and editing. Secondly, they may learn to deal with fractious, demanding writers and fellow editors. Perhaps the greatest common factor is the thought of what Miss Katzen calls a three-part audience: the curious student; the practitioner who has been away from, or perhaps never entered, an area of the law; and the judge seeking the brightest legal commentary available.

The *Review* attempts the worthwhile goal of keeping the law a cohesive, intelligible whole for the people who live in it. Its two functions are analysis and communication —what are the current issues and problems, and how does the lawyer learn about them?

THE BOARD OF DIRECTORS SPEAKERS PROGRAM last month included Chief Justice Thomas M. Kavanagh and Associate Justice Otis M. Smith of the Michigan Supreme Court, left above. Discussing law practice in a Wall Street firm, right, are Mike Neubolt (L'66), Lawrence Morris, Edward Schmultz, and Mike Matthews (L'65), representing White and Case.

Faculty-student dinners are again being held at the Lawyers Club. Pictured at three of the dinners this term are Professor Allan Polasky (second from left in picture at left, above); Assistant Dean Roy Proffitt, (right, above); and Professor James White (left).



Lewis H. Van Dusen, Jr., of Drinker, Biddle, and Reath of Philadelphia, delivered one of the series of ethics lectures to seniors in October. Professors Marcus Plant, L. Hart Wright, and Robert Harris also took part in the week-long program.

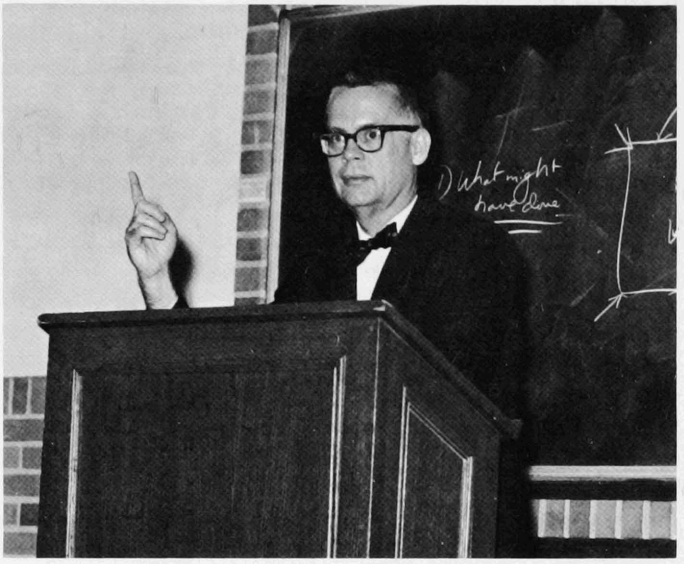
Civil Disobedience

Excerpts from the Robert S. Marx Lectures by Dean Francis A. Allen at the University of Cincinnati, November 16–18

Civil disobience is a species of law violation, and it is from this point that any effort to define the concept must proceed. But civil disobedience is law violation characterized by certain kinds of motives and directed to the attaining of certain kinds of ends. It is moreover, law violation in which the means employed and the circumstances in which it occurs are subject to certain restrictions. Any useful definition must distinguish civil disobedience from lawful protest, even those forms of lawful protest that take place on the streets and involve large groups of persons. The definition should also be capable of distinguishing civil disobedience from what might be called ordinary criminal acts, on the one hand, and from acts of revolution, on the other.

Despite the obvious complexity of the civil disobedience concept and the intricacy encountered in resolving it into its component parts, one might reasonably assume that there are at least some elements of the definition that are clear and therefore unlikely to produce disagreements and ambiguity. The proposition that civil disobedience consists of acts of deliberate and purposeful law violation might be thought to be one of these. Yet even here difficult problems have emerged. The first of these difficulties stems from a widespread and surely mistaken popular tendency to label as civil disobedience all mass protest in public places, even in situations when the protesters threaten no unlawful violence but are themselves the objects of unlawful violence by police officials or by other private individuals or groups. The emergence of a right on behalf of protesting groups to employ the streets, highways, or parks as what Professor Harry Kalven has called "the public forum" and in this fashion communicate their grievances and solicit the support of the larger community, is one of the very significant developments in the law of the First Amendment. Despite limitations dictated by the necessities of public order, safety, and convenience, the right is one of the highest importance to protesting minorities; for it is characteristic of such groups that they lack direct access to other modes of communication effective to engage the attention and conscience of the general population.

It is important also that the larger community—understandably disturbed by the emergence of conscientious law violation—should avoid confusing the illegal activities of such groups with those that represent the exercise of constitutionally defined and protected rights. For a community whose respectable and influential members are unable to distinguish between legal and illegal protest is not likely to be effective in its attempts to persuade dissenting minorities of the virtues of legality.



The open violation of law, the use of non-violent means, the willing acceptance of penalties, are viewed in part as gestures of good faith by the civil resister to the larger community. Civil disobedience is a "terrifying synonym for suffering"; and in willingly undergoing such suffering the protester offers evidence to himself and to others of his conscientious motivation. In so doing he seeks to establish his claim that he is entitled to be regarded as other than a common criminal. Moreover in willingly suffering the law's sanctions he seeks to demonstrate his fundamental allegiance to the legal and social order of which he is a part, to reveal his concern for the community by eradicating its injustices, and to make clear that his desire is to reform, rather than to destroy, the structure of the constitutional order.

The distinction between civil disobedience and revolution however, presents substantial difficulties of theory and practice. This is true in part because the techniques of civil disobedience are capable of being employed by persons with unspoken objectives that are genuinely revolutionary. More important, the point at which civil disobedience may become truly subversive of the principle of majority rule will rarely be clearly perceptible, particularly to those caught up in a moral crusade involving the use of conscientious law violation. Nevertheless, the distinction between civil disobedience and revolution is ordinarily clear enough for practical purposes. Surely the larger community, whose interest lies in lessening rather than increasing the alienation of its dissentient minorities, harms chiefly itself by a too-precipitous identification of civil disobedience with treason and subversion.

"Civility is not simply a matter of etiquette; it is part of the essential strategy of the democratic way of life."

A landlord's efforts at token compliance with Civil Rights Laws, at preventing the fact of his violations from coming to the attention of the authorities, or at avoiding the legal consequences of his misbehavior by corrupting officials or through other means, reveal a consciousness of legal guilt and a perverse but genuine concession to the law's authority. The civil resister presents a very different case; for his conscious and deliberate law violation is founded upon a theory of right. The right asserted is not that ultimately derived from the state or the legal order; but, insofar as the individual is concerned, it proceeds from a higher source of obligation and transcends any imperatives arising solely from the legal or political institutions of the community.

We in the United States have unhappily had occasion to discover that some of the important objectives of a legal order can be achieved even when many laws are frequently and widely violated. But the serious issue that is raised (or many people believe to be raised) by the modern protest movements, is whether even our imperfect dedication to the rule of law can survive a widespread acceptance of the belief that the individual is morally licensed to withdraw his compliance from laws offensive to his own moral scruples, and (what is perhaps more important) the practical application of this belief by significantly large numbers of individuals and organized groups.

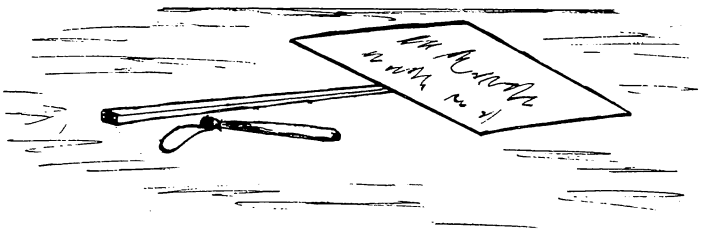
The difficult question seems to be, what lesson is being taught to the wider community by the precept and example of civil disobedience? Is it tutelage in nonviolence or in defiance of authority, in rational confrontation of social ills or in undisciplined activism? Here, as elsewhere, the teacher may discover that the lesson being learned is different from that which was intended or anticipated.

* * * * *

The short of the matter is that the task of estimating the dangers of civil disobedience as a progenitor of widespread criminality and disorder involves levels of complexity that have only rarely been exposed in public discussions of the problem. But this is far from saying that no such dangers exist or that concerns about the social costs of civil disobedience are frivolous or mistaken. We know comparatively little about the stress levels a legal order can withstand, nor do we have secure knowledge of how far public defiance of the law can proceed without inflicting serious or even irreparable injuries on a democratic society. Such a confession of ignorance, it will be noted, encompasses the substantial possibility that the widespread practice of civil disobedience will at some point produce consequences both dangerous and unanticipated. A possibility of this sort surely demands the most sober consideration, not only of those invested with responsibilities for the administration of the law, but of those committed to achieving objectives of social reform.

* * * * *

But the perils posed by reform movements admitting the use of conscientious law violation encompass some of less immediately devastating consequences: Even if events should prove that fears of a breakdown of public order or of a collapse of democratic procedures are overdrawn, there is a range of costs incurred by the practice of civil disobedience that cannot be dismissed as simply the product of speculative forecasts; for these latter exactions have already been made. I refer here to what may perhaps be best described as a loss of civility in the conduct of public controversies in the United States. These losses are clearly discernible, not only on the streets, but on the campuses of colleges and universities, and even in white middle-class neighborhoods of our cities. The loss of civility is revealed by a widespread tendency to assume that public or private action condemned by the protestors is to be combatted by direct, if passive, resistance as the ordinary and normal form of opposition, by a tendency to shirk the hard tasks of rational persuasion of those of opposing views, and by a deep suspicion of the usual devices through which a minority group may ultimately obtain a democratic consensus.



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In reviewing recent events in our colleges and universities the striking fact is not that there have been instances of student protest and disorder. On occasion student unrest has reflected genuine issues of policy arising out of efforts by American higher education, not always successful, to adapt itself to the new demands of the mid-twentieth-century world. But if the fact of student protest is understandable and in some sense salutary, there is much in the situation to inspire reflection and concern. What is perhaps most disquieting is the apparent ease and lack of tension displayed by the student activists in their decisions to employ the most extreme methods to express and enforce their demands.

(continued on page 12)

The Class of '69

Statistics and Some Views

For longer than anyone would care to remember, institutions of higher learning have hailed each year's entering class as "the best ever." Nevertheless, after looking at the credentials of this year's law school freshman class, one cannot help but feel that if ever a freshman crop did, this one certainly merits such hurrahs.

The freshmen are indeed a select group: bright, conscientious, varied in background, and excited about the study of law. These conclusions are evident both from the statistical analysis of the class and their responses to a special survey prepared by the *Law Quadrangle Notes.*

The freshmen are "survivors" of a highly selective admissions policy. In comparison to past years they stack up as follows:

	1966	*1965*	*1964*	*1963*	*1962*
Applications completed and processed	1,963	1,779	1,374	1,166	1,165
New Registrations	362	380	396	371	352

Furthermore, on the basis of the Law School Admission test score, the class is significantly above any in the history of the Law School:

	1966	*1965*	*1964*	*1963*	*1962*
Median LSAT Score	638	616	601	584	582
Mean LSAT Score	638	614	598	583	580

These results place the class well above the 90th percentile of all students who took the exam nationwide. Even more revealing is that sixteen percent of the current freshmen have scores of 700 or above (top one percentile) as opposed to only five percent of last year's freshmen and two percent of the entering class of four years ago, and only ten percent of the current freshmen have scores under 575 (top twentieth percentile), as opposed to twenty-three percent a year ago and forty-seven percent four years ago:

Analysis of Distribution

LSAT Score	*Percent of total 1966*	*Percent of total 1965*	*Percent of total 1962*
700 or above	16	5	2
675–699	11	8	4
650–674	14	13	8
625–649	18	16	11
600–624	19	19	15
575–599	11	16	13
550–574	5	13	13
Under 550	6	10	34

The undergraduate grade point averages also have undergone a significant rise. To insure equality, the admissions process adjusts these averages so that an unadjusted 3.0 (out of 4.0) becomes roughly a 2.5 (out of 4.0) on the adjusted scale. Over the past five years the median and mean adjustments are as follows:

Adjusted Grade Point Analysis

	1966	*1965*	*1964*	*1963*	*1962*
Median Adjusted GPA	2.64	2.53	2.39	2.38	2.31
Mean Adjusted GPA	2.63	2.51	2.42	2.41	2.36

Eighty-one undergraduate schools are represented in the freshman class, the leaders being:

Michigan	106	Oberlin	9
Harvard	20	Stanford	9
Michigan State University	17	Duke	8
Yale	16	University of Wisconsin	8
Dartmouth	12	University of Pennsylvania	7
Princeton	10	Miami (Ohio)	6
University of Illinois	10	Wayne State University	6
Amherst	9	Notre Dame	5
Cornell	9		

Thirty-three states are represented, the leaders being:

Michigan	150	Missouri	8
Ohio	41	New Jersey	7
New York	33	Connecticut	6
Illinois	32	Colorado	5
Pennsylvania	12	Iowa	5
Wisconsin	9	Massachusetts	5
Indiana	8		

This, basically, is the statistical breakdown of the class of '69. On a more human level, these men and women are going through the same hardships their predecessors experienced before them. In order to get a sampling of how the freshmen were reacting to these initial weeks of their law school careers, the *Law Quadrangle Notes,* in a specially prepared questionnaire, posed questions covering the following areas:

(1) Satisfaction thus far in terms of (a) the Law School and (b) the University.

(2) Amount of hours studying per week and sufficiency of time for hobbies, social life, and non-legal reading.

(3) Opinion of the Socratic teaching method.

(4) Any other general comments, especially an evaluation of how work compared to what student expected.

The answers represented the opinions of 80 freshmen out of the 200 who took the forms (40 per cent return or roughly 20 per cent of the class).

(1) Satisfaction with the Law School and University

Almost every form indicated a great deal of satisfaction with the Law School; several students emphasized approval of the library, the quality and availability of the

faculty, Case Clubs, and the compact classes and facilities. Others pointed out that the school "lived up to its image" and was indeed competitive. Nevertheless, one student complained that the Law School, unfortunately, was "terribly impressed with itself" while another felt it was too difficult to adjust to the teaching method.

The University did not fare nearly as well. While many obviously liked the cultural aspects and football team (one even went so far as to say that the U-M is "almost as exciting as the Left Bank"), there were complaints about high prices (37 cents to have a shirt laundered), difficulty of adjustment and "unwashed, unshaven, generally strange undergraduates who seem to be the rule."

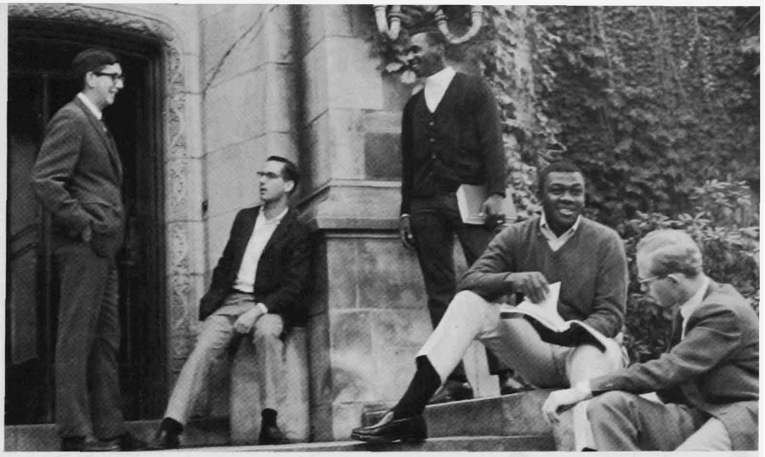
(2) Hours of study and time for hobbies, social life and non-legal reading

Without a doubt, the class seems to indeed be putting in a good deal of study time. Although responses ranged from seven to ninety hours per week, the overwhelming majority said they studied between 30 and 60 hours per week. This figure includes the one freshman who said that he "studies 40 hours per week, but only 10 effectively." In regard to social life only four students felt they had no time. One student went so far as to say he 'wouldn't give it up for anything!"

As an extra incentive question on this part, the questionnaire asked if they agreed with a remark made by a professor in the Law School newspaper to the effect that he would rather climb the hills of Korea again than go through the first year of law school. Girls notwithstanding, the answers strongly indicated that law school was indeed preferable to Korea. On the other hand, some students noted an insecure feeling building up, while others saw some truth to the remark as their work piles up. One man was willing to wait "until I get first semester's grades." Several men saw the obvious analogy to Viet Nam, and so felt that law was indeed "preferable to being dead." Another said "as in the Rule Against Perpetuities, it's conceivable that the first year could be worse than it is now; therefore, be thankful." Finally, one student stated flatly, "I have already climbed the hills of Korea; therefore, *no*!"

(3) Opinion of the Socratic (or case) method

The students were overwhelmingly in favor of the Law School's use of the case method. Over and over again they noted how the method 1) provides an incentive to keep up, 2) helps move the class along, 3) provides a good opportunity to discuss problems with the professors if the professors are good. Many said it kept them on their toes and made them think, and some even felt they were put in the judge's shoes. Thus for some it was a "bath in legal thinking and terminology," while for others it was an "ordeal" which was motivated by "fear of annihilation." One felt he liked learning the law in this fashion, rather than "lapping it up like a machine to be fed back on the tests." Finally, besides those who complained that the method was often wasted on minor points, there were the



inevitable "victims" who felt, "I don't feel a poor hapless naive man like myself should be plunged head first into something so completely foreign." Perhaps he should talk to the other student who believed that an individual research program would be better to emphasize than the large classes and historical perspective so much a part of the first year.

(4) General comments and comparison to what student expected

In general, the freshmen praised the faculty and physical aspects of the Law School. As to studies in general, frequent descriptions were "exciting," "impressed," "as expected," "competitive," and the like. The rest of the comments touched all over. "I've never had to think so hard in my life," said one; "What's difficult is the search for 'definite law' and not understanding the process of decision," said another. Many wonder if they are "getting it"; they want to see more concrete results in relation to the time they put in. "The work load has lived up to my expectations, and so has the confusion."

On the whole criticism was rather mild. One man complained that the library and study facilities provided were not adequate, especially when many students make use of the library at one time. Yet other complaints were quite serious. One felt Michigan was "too much like a trade school; I prefer academics." Another said, "Students are too inhibited, and most of them are philistines. Besides that, not enough are well-rounded and able to function without their law books."

The young ladies answering the questionnaire were, on the whole, quite happy with their new surroundings. As to general comments, one girl made this observation: "The law seems generally to be a process; but also a language which is dead and hence precise and technical. I am intrigued by the spectacle of live people learning to speak a dead language with the purpose of using it in connection with crucial contemporary issues. The work is much more interesting than I was afraid it would be, and it's a real pleasure to find that the obscure complexities are not just trivial remoteness but are elegantly essential to the work. The effort is really worth it!"

It is perhaps natural that there is a great deal of enthusiasm during these early weeks of law school. Upperclassmen frequently tell them about pressures to come, which they at present can push aside but never completely forget. As one student aptly put it, "I like it now but try me again in December." •

FACULTY NEWS

Five New Professors Join Faculty Of Michigan Law School

In this issue, the *Law Quadrangle Notes* interviews Professors Layman Allen, John Jackson, and Terrance Sandalow, who have joined the faculty this fall. (see below). Other new additions are: Joseph Sax, LL.B. 1959, U. Chicago; from the University of Colorado, and Stanley Siegel, LL.B. 1963, Harvard, from the Office of General Counsel, Department of the Air Force. Interviews with Professors Sax and Siegel will follow in the next issue.

Prof. Layman Allen: It's How One Plays That Counts

Layman Allen plays games, and it's all quite logical. He is the creator of the nationally known Wff'N Proof games, designed to entertain players while they learn symbolic logic, mathematical logic, or modern logic.

Professor Allen joins the law faculty this year after teaching at the Yale Law School since 1958. He received his A.B. from Princeton in 1951, an M.P.A. from Harvard in 1952, and his LL.B. from Yale in 1956. This semester he is conducting a seminar in "Symbolic Logic and Legal Communication" and also is on the staff of the University's Mental Health Research Institute as a research scientist.

Though he does not use the Wff'N Proof games in the law seminar, Professor Allen's tests in New Haven area elementary schools pointed out definite advantages of the games as a teaching device.

"Players have an immediate use to which they can put a new idea," he says. "Furthermore, the students themselves have control over the level of the complexity of the problems they generate for each other in playing the game. Working on problems that require some thinking, but most of which the players can solve, leads to a sense of self as competent and a sense of accomplishment."

Mathematical or modern logic," Professor Allen points out, "can be regarded as a series of carefully and systematically constructed artificial language systems." The games themselves are based upon three main principles: 1. a mathematical goal set by the players, 2. constraints on the resources each player can use, and 3. the use of mathematical symbols and techniques to reach the stated goal. In effect, the players begin with the conclusion of an argument and then must not only construct a set of premises from which that conclusion follows with a particular logic system, but also must construct the appropriate logic system as well.

Although there are a variety of ways in which the techniques of modern logic can be of assistance to a practicing attorney, says Professor Allen, these are probably not the most significant justifications for a lawyer's becoming acquainted with modern logic. Rather, it is the increased sensitivity to the tricky nature of English prose and the perspective that is developed in approaching and inventing strategies for solving problems in general that are probably the most important benefits that a law student derives from studying modern logic.

"A person who has been exposed to mathematical logic," he says, "is likely to be more sensitive in detecting syntactic ambiguities in ordinary natural language; and ambiguities of syntax are frequently brought before the appellate courts. Consider the following California statute: 'Any male person who knowing a female person is a prostitute . . . solicits or receives compensation for soliciting for her, is guilty of pimping, a felony. . . .'

"Is Mr. Smith, who knew that his female friend was a prostitute and solicited for her guilty of pimping? Well the answer depends upon how the syntax of the statute is interpreted.

"There are at least two alternate interpretations of the satute:

Alternative 1 solicits for her or receives compensation for soliciting for her

Layman Allen

Alternative 2 solicits compensation for soliciting for her or receives compensation for soliciting for her

"Under the first alternative, Smith is guilty. Under the second, he is not. If the second seems fanciful, see *People v. Smith* 279 P2d 33, (1955)."

Professor Allen is currently working on a judicial decision-making game. "I've been working on it for five years," he says, "but it's still not quite off the ground. One of the features of such a game that makes it particularly interesting is the fact that the process being represented in the game is so complex that the game cannot hope to capture the full richness of the total social process itself. Certain aspects must be abstracted out to achieve a manageable game. However, to the extent that the game is to be representative and sufficiently realistic, one must locate in context the role of policy in its relation to other aspects of the judicial decision-making process. This is the element which is difficult to embody realistically in the game."

Articles by Layman Allen on modern logic and the legal process include: "Symbolic Logic and Judicial Decision Making: A Sketch of One View" 28 Law and Contemporary Problems 213 (1963); "Some Uses of Symbolic Logic in Law Practice," 8 Practical Lawyer 51 (1962); 62 M.U.L.L. 119 (1962); "Toward Autotelic Learning of Mathematical Logic by Means of the Wff'N Proof Games, 30 Monographs of the Society for Research in Child Development 29 (1965).

Jackson Studies Problems of GATT

With the return of 1959 graduate John H. Jackson as a professor of law, the University of Michigan Law School has added not only a youthful, but experienced instructor, but also a man active in the rapidly expanding field of international trade and economic relations.

Jackson graduated from Princeton in 1954 after which he served for two years as a counter-intelligence officer in the United States Army in Japan. He came to Michigan following his tour of duty and, among other distinctions, was awarded the Howard B. Coblentz Prize his senior year as the member of the *Michigan Law Review* staff whose work during the year had been the most satisfactory.

He was associated briefly with Foley, Sammard, and Lardner in Milwaukee, Wisconsin, and then went to the University of California at Berkeley as a professor of law, remaining there until he accepted the professorship at Michigan.

John Henry Jackson

It was during his tenure at Berkeley that Jackson developed an interest in the field of international trade and economic relations which led to his spending nine months during 1965 in Geneva at the headquarters of The General Agreement on Tariffs and Trade (GATT). "In my studies I found that, in contrast to such institutions as the World Bank and the International Monetary Fund, GATT had been pretty much ignored both from a legal and functional standpoint," Jackson notes.

Therefore, the time spent in Geneva resulted in his recognition of a need for some indexing system for the voluminous number of documents the body has accumulated, in addition to his defining many of the legal problems related to GATT.

His solution to the indexing problem was a computerized system which combines the advantages of human coding by persons who have a knowledge of the field, and quick, relatively inexpensive printed output. "I estimate that this scheme is probably about 1/20th the cost of full text processing by the computer, and probably comparable or a little less costly than using humans alone without the assistance of the computer," Jackson told those at a meeting on "Electronic Data-Processing and International Law Documentation" sponsored by the American Society of International Law in Washington, D.C. in February of 1966. "In addition the result is somewhat superior to that which a human can do without the computer."

The results of his work with the legal problems surrounding GATT are not complete, but it is likely that a series of articles or a book will appear in the not too distant future, while he continues to explore the organization as it grows in importance. "Only about 20 countries were associated with GATT at its inception, but today it has grown to over 70 including virtually all the countries of the Western World and such Communist countries as Poland, Yugoslavia, and Czechoslovakia," Jackson explains. "It is of the nature of the Agreement that it should continue to grow in membership as well as in scope."

GATT's growth in scope comes through its periodic tariff negotiation "rounds," of which there have been seven since its beginning, the latest being known as The Kennedy Round. It is from these that the many legal problems associated with the organization arise.

"We have to deal with questions such as sanction and dispute-settlement procedure, treaty law problems, the legality of different internal practices under GATT, and the impact of national (municipal) laws upon the agreements and vice versa."

A result related to this GATT work has been Professor Jackson's materials for a new course called "International Trade and Economic Relations." It begins with a consideration of international trade contracts generally, moves to a study of government regulations of trade (tariffs and quotas), and concludes with work on international regulations of the nature of GATT, IMF, and Trade Treaty Commodity Agreements.

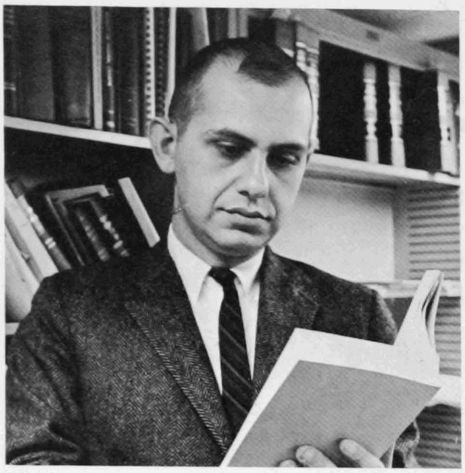
In addition to this winter-term course, Jackson presently is teaching Conflicts of Laws and a freshman Contracts section.

Civil Liberties And Land Use Expert Added

"By offering a growing number of electives, seminars, and special courses, Michigan Law School is recognizing the varied functions performed by a great law school," states new faculty member Terrance Sandalow.

"Not only do these courses help to provide the background and to develop the technical skills so valuable in the practice of law, but they serve what I think are two other important functions," Sandalow explained. "They help prepare students for the diverse roles which lawyers play in today's society and, by acquainting students with the research in which the faculty is engaged, assist in bringing them within the 'community of scholars' heretofore reserved chiefly for the faculty members. Of course the law school is a professional school, but it also is an integral part of the intellectual community of the university. It should not only be creating craftsmen," Sandalow feels, "but students of the legal system as well."

Professor Sandalow was graduated from the University of Chicago undergraduate school in 1954 and from the Law School in 1957. He served as clerk for one year to Judge Sterry R. Waterman of the United States Court of Appeals for the Second Circuit, and then another as clerk to U.S. Supreme Court Justices Harold H. Burton and,



Terrance Sandalow

following Burton's retirement, as clerk to Potter Stewart before returning to Chicago in 1959 to practice. Two years later he accepted a professorship at the University of Minnesota Law School which he retained until coming to Michigan.

Sandalow's primary non-professional activities, both in Chicago and Minneapolis have involved civil rights and civil liberties. He has been an active member of the American Civil Liberties Union, serving as Vice-President of its Minnesota Branch, and a member of the Minneapolis Commission on Human Relations. Among the cases in which Sandalow participated for the ACLU are *Times Film Corp. v. City of Chicago,* in which the ACLU unsuccessfully urged the invalidity under the First Amendment of a motion picture censorship ordinance, and *In re Jennison,* in which the ACLU successfully asserted the constitutional right to refuse, on religious grounds, to serve on a jury.

Here at Michigan, Sandalow will be teaching Municipal Corporations, The Federal Courts and the Federal System, Public Control of Land Use, and a section of the freshman course "Introduction to the Legal System." He is taking a different approach to this course by exploring the process of decision-making by courts and legislatures, rather than stressing the historical development of the law.

Currently, Sandalow is Assistant Reporter for the American Law Institute Project on the Public Control of Land Use and Development, the purpose of which is to draft model enabling legislation for adoption by state legislatures. "Present-day legislation dates back to the Standard Acts prepared under the auspices of the Department of Commerce in the 1920's," he explains. "Experience under these Acts and the changes in urban America since that time have made a revision of the legal framework both advisable and timely."

He points out that the Standard Zoning Enabling Act contemplated the division of each urban area into districts, some for residential use, others for business activity, and still others for industry. "In recent years, however, there has been a stress on the mixture of land uses rather than their separation, a technique which the Standard Act did not contemplate, and for which, consequently, it did not provide an adequate legal framework."

In addition increased migration into suburban areas and the proliferation of special districts in the years since World War II have brought to the fore problems only dimly perceived when the Standard Acts were drafted. Consequently, Sandalow explains, "existing legislation is inadequate to cope with the consequences of the fragmentation of governmental power characteristic of the nation's metropolitan areas. The system not only permits, it encourages each local government to act without regard for the impact of its policies on those who reside beyond its boundaries. The result has often been the sacrifice of the larger public interest to the short-range goals of each community."

Paul Carrington Heads Circuit Court Study

Are United States Courts of Appeals obsolete in their present form?

This is the question Professor Paul D. Carrington will try to answer as project director for a study of federal circuit courts, conducted under the auspices of the American Bar Foundation and financed with a $34,800 endowment from the American Bar Association.

"The federal appellate courts are overcrowded and overworked," observes Professor Carrington. "Although Congress has this year created ten additional circuit judgeships, this is not enough to meet the present demand for services. The workload has almost doubled since 1960, largely because of a rather puzzling rise in the rate of appeal. If the load continues to increase, there will soon be tremendous backlogs in most circuits. This will force the Courts of Appeals to become less and less deliberative; the quality of the process is in some jeopardy."

The study will give consideration to various solutions to the congestion. "One possibility," explains Carrington, "is to create more circuits, but the parochializing effect would be considerable, because the judicial business of the United States tends to be located in a few big districts.

"Another approach is to attempt to change the habits of circuit judges with respect to their use and creation of precedent, with a view to achieving greater national harmony. This seems unrealistic.

"A third approach would be the creation of specialized Courts of Appeals. The difficulties in this approach are the familiar dangers of expertism, particularly as they apply to the increasingly significant burden of criminal convictions which must be reviewed.

"Finally," notes Carrington, "there is the unattractive prospect of a fourth level, which would appear to place a heavy burden on federal litigants. Despite its initial lack of attraction, the difficulties associated with this last approach may prove to be the most tractable.

"Whether a patchwork of palliatives can meet the problem for the next decade or so depends on what happens to the rising demand curve. If it continues to rise," warns Carrington, "the bailing-wire approach is doomed. We will have to reconsider the ability of the present structure of the federal courts to meet our needs. This should not come as too great a surprise. The Judiciary Act of 1925 was the last major revision, and it has survived longer than any major judiciary act in our history.

"As Frankfurter and Landis observed, in their classical commentary on that Act, 'judiciary acts, unlike great poems, are not written for all time. It is enough if the designers . . . meet the chief needs of their generation.' " Professor Carrington feels ". . . that the present design is not suited to accomodate another seventy-five circuit judges, and a twenty-judge circuit would be a disjointed and ineffective enterprise. The en banc procedure which presently serves with difficulty to keep a smaller group of judges in step would be overwhelmed. Although the Judicial Conference has suggested a limit of nine judges per circuit, Congress has temporarily gone beyond that limit for the Fifth Circuit, but," points out the project director of this important study, "surely Congress cannot go far in this direction if we expect to preserve any semblance of stability in the national law."

Robert Knauss to Study Securities Regulation And Capital Formation

A research project of considerable dimension and great potential importance has been launched by Robert L. Knauss, Professor of Law. The project, to be financed jointly by the American Society of International Law and the University of Michigan Law School, will be concerned with the effect of securities regulation on capital formation.

The regulation of securities, extensive in this country, is virtually nonexistent in the whole of Europe, with the limited exception of England and Belgium where some government regulation is present.

One of the underlying hypotheses of the study is that the regulation of securities in the manner undertaken in the United States is productive of many positive aspects relating to the formation of capital, despite the presence, as well, of some negative aspects. Disclosure requirements *do* increase investor confidence, regulations of the trading markets *do* encourage trading by individual and institutional investors and the broad availability of market data and the various other regulatory factors *do* promote a free and open market. The ultimate effect of these aspects of regulation, it is believed by Professor Knauss, is the promotion of risk capital availability and the creation of market liquidity—in short, the free flow of capital.

The project takes a different approach to security regulation, which in the past has been studied primarily from the viewpoint of protecting the investor from fraud. While such remains an important function of regulation, it is thought that evaluation from the opposite viewpoint will reveal that regulation performs a far broader function in the realm of capital formation. Hopefully, the critical evaluation of regulatory patterns will make it possible to suggest policy lines in this area.

An important aspect of the study will center on the flow of private capital between countries and the extent to which regulatory factors discriminate against foreign companies and foreign capital. The problems in this area are not only of particular importance in the U.S. and in the Common Market nations, but also in the less developed countries as well. Within one country the free flow of capital thought to result from some degree of security regulation will tend to put a premium on efficiency—those companies which are most efficient will attract capital at the lowest rates. Otherwise, serious distortions in capital distribution are present with resultant harm to the economy in general. The same principle would seem operative on an international level.

Security regulation is, of course, but one factor affecting capital formation. Others, such as direct government control on capital allocation; exchange controls; indirect government control through tax, fiscal and monetary policy, and public spending; government promotion of financing through its loans and guarantees; corporate law factors and the like, must be considered. The study will investigate these factors, initially, however, only to determine their relative importance in capital formation.

If the underlying hypotheses of the Knauss study can be demonstrated to an appreciable degree, it is to be expected that the regulation of securities might well become a factor of business life in Europe as well as other world markets where the raising of private capital is undertaken to any significant extent.

To Professor Knauss, the opportunity to undertake such a study is but another step in his already considerable concern with the area of securities and their regulation. His teaching career at Michigan, begun in 1960, has centered around the subject. He developed the Investment Securities course (concerned with the Securities Act of 1933), which he teaches along with a seminar dealing with the 1934 Securities and Exchange Act. In 1962–63, he served as Legal Consultant to the Securities and Exchange Commission, and helped prepare the "Special Study of the Securities Markets." He co-edited (with Professor Conard) the *Business Organizations* casebook (1965), co-edited the book *Financing Small Business* (1966), and is Editor of the *Securities Regulation Sourcebook* (1965).

Professor Knauss spent this past summer in New York City gathering secondary materials, interviewing brokers and attorneys and in Washington, D.C. interviewing members of various government agencies. He will depart in January 1967 for Europe where he will work on the international aspects of the study through August, 1967. In October, 1966, the American Society of International Law invited a small number of experts from universities, the government and the investment community to meet with Professor Knauss to hear his research plans and discuss problems in the area.

A more formal international conference is tentatively set for the Fall of 1967. The project is obviously of long range proportions, but initial reports are expected to appear beginning in late 1967.

. . . Pervading many of these incidents is an insouciance bordering on irresponsibility, a failure to calculate the larger costs of the means employed, and an unwillingness fairly to test the availability of alternative remedies more consistent with the values of order and rationality. There is, after all, danger in a situation that appears to identify the cause of liberal reform with means that reject civility and rationality. It may be that there resides here the greatest peril of all.

. . . My conclusion is that the rise of reform movements admitting the propriety of civil disobedience provides ample basis for concern on the part of the larger community. Reflection and observation demonstrate that the task of identifying the character of these perils and estimating their imminence is more difficult and complex than popular discussion of these problems sometimes suggests. It is also true that the dangers, real or supposed, arising out of the practice of conscientious law violation have proved to be a convenient distraction for many who would rather deplore the means employed by the reformers than to confront the underlying social pathologies that have given rise to modern protest movements. But the perils of law violation as an instrumentality of social amelioration are real, and neither the protestors nor their apologists have always given deserved weight to this fact in their calculations. •

NEXT ISSUE

"Who Will Watch the Watchers?"

A look at the television series on law enforcement coordinated by Professors Joseph R. Julin and Jerold Israel.

Review of Recent Faculty Publications

"Basic Property Law," Olin L. Browder, Roger A. Cunningham, Joseph R. Julin

"Historical Introduction to the Legal System," Spencer Kimball

"Modern Criminal Procedure: Cases and Commentaries," Livingston Hall and Yale Kamisar

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