

Address To Membership Of The Benchers Society

BY ROBERT B. L. MURPHY '31
Delivered March 27, 1993

Dean Bernstine, Members of the Faculty,
Ladies and Gentlemen of the Bar and
other attending Ladies and Gentlemen —

As it happens I was an early member of the Benchers Society at a time when only one person was selected per law firm. After the lapse of some years, I received intimations to the effect that if I would step aside that might create a vacancy which one of my associates might fill. I obliged, and have not been a member of your organization since then, although I continue to hear well of it.

When he invited me to speak on this occasion your Dean seemed more interested in my brevity than in my subject matter. I offered to talk on the emergence of the English legal profession which is in so many ways our professional ancestor. I have been interested in the subject for many years and wish I could locate an audience. Your Dean said that the subject was too technical and would take too much time. He then asked me to speak briefly on my years in this Law School, my memories of the faculty, curriculum and student body and any broad observations I might offer as I complete my 61st year as a member of the Wisconsin Bar. He then cut the conversation short saying he had to hurry back to Singapore or some other distant place to interview a newly discovered prospect, whether donor, teacher or student, I know not. I compromised and adopted the Dean's rather than my own subject. By then I was in Ed Reisner's

hands and he said I should aim at covering the Dean's assignment within 15 minutes, but in no event beyond 20 minutes. I have aimed at a middle ground of 17.5 minutes, which I don't warrant that I shall achieve.

Admission to this Law School was rather informal in the fall of 1928 when compared with the awesome current job of selecting each year 280 or so of 3,000 or so applicants. At the time of my first year in law school an applicant must have completed two years of university, college or normal school work in institutions approved by the UW. It was also required that he, or the very occasional she, possess good character, conclusive tests for which are still being sought. Beginning with 1929 applicants, three years of university, college or normal school were required. The UW Law School was 60 years old in 1928, having been established in 1868, although it had no building for its first 25 years. To assure a sustained level of attention on the part of my class the faculty imposed the then Harvard practice of an annual exam in contracts, criminal law and torts.

The curriculum was but a fraction of the number of courses offered today, possibly only a fifth. This law school had pioneered in several areas by 1928 and offered such new courses as administrative, income tax and labor law. I had the good fortune to be in what was described as the first seminar established by the Law School in the spring term of 1931. It was concerned with some of the problems of corporate reorganization.

Commercial law was then described as "bills and notes." A modern, more comprehensive criminal code was under study but was not adopted until years later. There was a fragmentary business corporation statute which, for example, conferred only those powers which were expressly granted in the articles. The non-stock, nonprofit statute was incomplete and unsatisfactory. Both areas greatly improved when uniform laws were adopted in the 1950s. There was only a rudimentary securities law on the Wisconsin statute books, although the statute and rules were comparatively advanced for the time and were influential when federal securities legislation was drafted in the 1930s. The Supreme Court of this state had not yet adopted the comparative negligence rule in which I believe it stood alone for many years. The antitrust course was described as "imperfect competition." There was no state or federal unemployment compensation law in 1928, no federal securities legislation, no comprehensive state or federal labor code nor a social security law. The incredible state and federal volume of regulatory legislation in which we must practice today did not exist.

In brief, the Congress had done virtually nothing in 1928 to federalize labor, securities, welfare, education or other major areas of our institutional society and thus the law. Great credit is due the National Conference of Commissioners on Uniform State Laws for easing the crossing of business and other interests between states so far as legislative policy allowed.

The American Law Institute was established in the mid-twenties, and by painstaking examination of tens of thousands of American court opinions and the writings of many legal scholars determined first what the law was in major areas and then sought to restate it.

As a consequence of the substantial areas of nondevelopment of statutory or court law the faculty could revel in the common law and in such subjects as equity in which I took three courses. Our training and outlook were probably the better for it and our minds more receptive when major changes came as they did in the very next decade.

In brief, we were taught common law and equity principles rather than having to work through ever-changing legislation which now aggregates so many thousands of pages and regulations which present a virtual jungle through which we have to cut our way.

Returning to the subject of our law class in the fall of 1928, it had about 100 members, including not more than five women, if my memory be correct. One of the women was already married to a practicing attorney who later served on the state Supreme Court. At least three others married members of the state bar. All this, mind you, without any counseling service or state-funded matrimonial machinery. A small proportion of the males were from out-of-state; some 50 to 60 of the 100 were graduated 1931.

While I am engaged in a broad but necessarily brief survey of law school life 60 plus years ago, I may as well make passing reference to law school fees. They were about \$25 per semester and that included Memorial Union membership, library privileges and unlimited medical services, hospitalization at the infirmary or UW Hospital on University Avenue and all prescribed drugs. It also included psychiatric services, although that form of dependency was not then so often employed as in more recent years.

As an example of excellent school spirit, around 1939, and following two favorable student votes, but after discussions long antedating my years in the law school, a new library was built to supplement the original room which had long been inadequate. Since public funding



Robert B. L. Murphy ('31) in the old Reading Room

was not available, the William F. Vilas Trust Estate offered funding which was repaid by several generations of law school students through an increase in student fees. This represented a commendable joint effort of regents, deans, faculty and students, and, while limited in scale, was a significant event in the 125 year history of this law school.

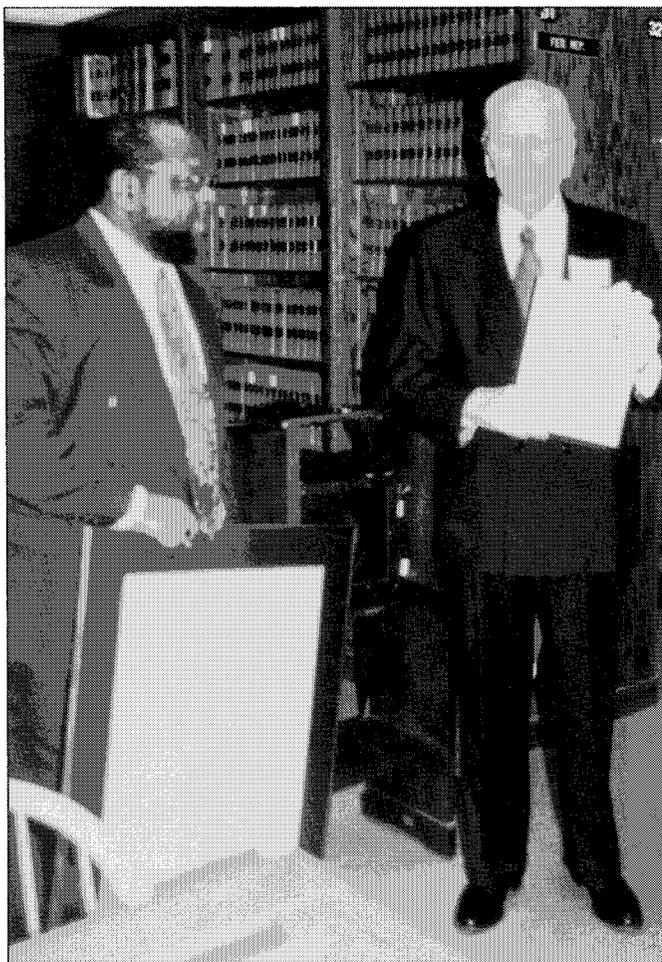
The three essentials of a good law school are an able and dedicated faculty, a bright, stimulated and hard working student body and an adequate library. Time and my assignment limit me to a quick survey of the faculty for the period 1928-32. The other two elements must await another occasion and another audience.

I begin my vignettes of the 1928 faculty with Harry S. Richards, who came to Wisconsin as Law Dean in 1903, and died while attending an ALI meeting in the spring of 1929. He was a courtly, gentleman of strong character who developed the first full-time faculty this Law School had ever known. He was a specialist in corporations and had edited a casebook with Columbia Law Dean Harlan F. Stone, later a member of the US Supreme Court.

Dean Richards was active in the American Law Institute in its early years. His administration emphasized faculty research and higher admission standards for students. He encouraged the founding of the Wisconsin Law Review around 1920.

Among Dean Richards' significant additions to the faculty was the famed William Herbert Page, one of the country's three top authorities on contracts, the pre-eminent writer on wills, and learned in conflicts and other areas of the law. While a great teacher, he was a demanding and dominating personality in the classroom, particularly in contracts. However, he was generous and understanding with any student between classes who had prepared as best he could and still had a problem with some contract or other legal doctrine. There is an extensive body of anecdotes surrounding Professor Page, some of which may be true, but they cannot be recounted on this occasion.

Another of Dean Richards' prize appointments was Oliver S. Rundell, one of the handful of top authorities in the country on the law of real property. He was at once deliberate, thorough, profound and patient. He was a splendid



Dean Bernstine and Mr. Murphy

teacher in a difficult area of the law. He also did much to assure the continuity of the Law School by serving as acting dean during the years 1929–1931 and as dean from 1942–1953.

The second trio of faculty members, also outstanding, was comprised of Professors Brown, Rice and Wickhem. Ray Brown taught personal property, administrative law, taxation and constitutional law. He had the unusual habit of summarizing very helpfully at the beginning of each class period the ground covered in the previous period. He was a splendid teacher.

William Gorham Rice, Jr. came to Wisconsin in the early 1920s after a top record at Harvard and a stint as clerk for Associate Justice Brandeis. His long professional and

for the quality of his opinions. He was also a major player in the development of the Uniform Commercial Code as a project of the American Law Institute which required more than a decade of hard work to complete. He had a delightful, mellow personality and was highly regarded by students, faculty, judges and the practicing bar.

The 1928 faculty had a third trio of younger teachers, Professors Gregory, Hall and Sharp. They were just launching their respective teaching careers. Gregory specialized in torts; Hall in agency, bankruptcy and sales while Sharp ultimately specialized in corporations. I had the good fortune to take a course or more with each of them.

The nine full time faculty of 1928 also

service career in Madison exemplified and honored his liberal creed. He was a stimulating teacher in the areas of introduction to law, equity, labor, public service companies and constitutional law.

The third of this trio was John D. Wickhem who taught some 20 legal subjects at one time or another, but whose areas of preference were corporations, evidence, and bills and notes. He had special teaching gifts such as the capacity to elucidate in intelligible language abstract legal concepts and, just as important, their relationship to public policy or human conduct. He was named to the Supreme Court of Wisconsin in 1930 and enjoyed a national reputation

had the assistance of four able lecturers. They were: Frank Boesel, pleading; Phil LaFollette, criminal law; M. B. Rosenberry (soon to be Chief Justice of the Wisconsin Supreme Court), legal ethics; and John Sanborn, a Madison lawyer, in practice and procedure.

The instructional team of 13 who constituted the UW law faculty in 1928–1929 would have been a credit to a law school and to the profession any time and anywhere. Eleven of the 13 were my instructors at one time or another and I also knew and admired the other two. We were fortunate in the quality of the faculty which began our training.

Despite the financial constraints felt throughout the University as the Great Depression struck every level of our society, the Law School had a top flight new dean in 1931, Lloyd Garrison of New York City. He accomplished a great deal in his decade here and gave the school a new social direction. He also held or recruited such first rank people as Jake Beuscher, Bob Bunn, Richard Campbell, Nate Feinsinger, Al Gausewitz and Will Hurst. Their careers here, important as they were, go beyond my assignment or the time allotted me.

After the lapse of 61 years the law faculty as constituted between 1928 and 1932 continues to command my admiration and my gratitude. It is my fond hope that the reactions of each listening attorney are similar for his or her years of training in the UW Law School. The faculty I knew best were and lived as gentlemen. They also imparted knowledge skillfully and preached professionalism with conviction.

I have not been asked by the Dean or anyone else to push the Law School endowment effort on which the very quality of this law school increasingly depends. However, I cannot think of a better opportunity or occasion than this to begin or expand a real payback to the professional school in which we were trained at so modest a cost by an able and committed succession of faculties.

I thank the Dean for his invitation and each of you for listening to me.