

MEMORIAL RESOLUTION

HERBERT L. PACKER (1925 – 1972)

Herbert L. Packer, Jackson Eli Reynolds Professor of Law, died on December 6, 1972, at the age of 47. His brief life was full, rich, and intense. He was an unusually creative, productive, and influential scholar and colleague. During his 16 years of academic life, all of them at Stanford, he had an enormous influence on the University, the School of Law, and the field of criminal law, enjoyed a full family and social life, and found time to read widely and to contribute regularly to journals of social criticism and comment. When his body began to fail him he continued, his intellectual energy unabated. At the end he was immersed in a typically imposing variety of undertakings.

Professor Packer was born in Jersey City, New Jersey, in 1925. He received a B.A. (government and international relations, 1944) and an LL.B. (1949) from Yale University. As an undergraduate he was Phi Beta Kappa; in Law School he was Article Editor of the Yale Law Journal. After clerking (1949-1950) for judge Thomas W. Swan of the U.S. Court of Appeals, Second Circuit, he joined the Washington law firm of Cox, Langford, Stoddard and Cutler, which he left to come to Stanford as Associate Professor of Law in 1956. He became Professor in 1959. From 1967 to 1969 he was Vice Provost for Academic Planning and Programs of Stanford University. In 1969 he suffered a massive, physically crippling and nearly fatal stroke, from which he never fully recovered. Overcoming extreme physical difficulty, he returned to the Law School in the fall of 1969. He was named Jackson Eli Reynolds Professor of Law in 1971. He is survived by his wife, Nancy, a short story writer and Assistant Professor of English at Stanford, and two children, Ann and George.

The Law School was transformed during the years of Professor Packer's presence in it. Through his own example and his extraordinary personal force as a colleague, he deeply affected faculty attitudes towards the objectives, methods, and standards of legal education. His emphasis on productive scholarship and his quality as a scholar were crucial to the development of a strong scholarly tradition in the Law School. His impact on faculty recruitment decisions and his own ability to attract outstanding people to Stanford changed the character of the faculty. Under his leadership the Law School curriculum was fundamentally reformed. If it is true that the Stanford School of Law has become a leading law school in the past decade and a half, much of that progress is the result of Professor Packer's influence and effort.

Always an active citizen of the University, Professor Packer was responsible for a number of significant innovations at Stanford: he conceived and was principal architect of the Senate of the Academic Council; he led in revising the system of faculty discipline; and the University Fellows program resulted from his initiative. From 1967 to 1969, during some of Stanford's most difficult years, Professor Packer served the University well as Vice Provost for Academic Planning and Programs. During this period he organized and directed the Study of Education at Stanford, an imaginative, searching inquiry whose ten published volumes of discussion and recommendations have significantly affected every aspect of the University (and

have been influential at a number of other universities). In recognition of this major achievement he was given the Lloyd W. Dinkelspiel Award for Service to Undergraduate Education at Stanford to a standing ovation at commencement ceremonies in Frost Amphitheater in June, 1969.

For those students who could stand the pace, a course or seminar under Professor Packer was a memorable and enriching experience. His brilliance and the breadth of his learning in the humanities, the social sciences, and law made his classes formidable. Although he had special impact on the better students, particularly those at the very top of the class, he was interested in and attentive to all students. He derived great satisfaction from the fact that a number of them, with his encouragement and help, went on to academic careers.

Professor Packer's first book, "Ex-Communist Witnesses: Four Studies in Fact Finding," was conceived at the time he came to Stanford and was supported by a research grant from the Fund for the Republic. This project became the basis for a nation-wide attack, led by Fulton Lewis, Jr., on Packer's appointment to the faculty. Dean Carl Spaeth and the faculty of the School of Law stood firm, and the University withstood the attack. The book was published in 1962 and failed to satisfy extremists of the right or the left. It was a thoughtful, balanced study of the testimony given by a group of ex-communist witnesses, with particular emphasis on the process of fact-finding. One chapter, dealing with the testimony of Whittaker Chambers in the Alger Hiss matter, was separately published as "A Tale of Two Typewriters" and is memorable for its combination of imaginative insight, careful, sophisticated analysis, and elegant style. The book established Professor Packer as an original and imposing scholar and brought new prestige to the Law School.

Professor Packer's major field of scholarly and teaching interest was criminal law. He began working in that field when it was narrowly conceived and neglected by scholarship. He was in large part responsible for redefinition and rejuvenation of the field through his influential articles and in his work for penal law reform commissions at the Federal and state levels. His chef d'oeuvre, "The Limits of the Criminal Sanction," was published in 1968 and is the culmination of his thinking about criminal law and policy. Addressed to the general reader, as well as to professional lawyers, "The Limits of the Criminal Sanction" received the triennial Coif Award, the highest honor that can be bestowed on a work of legal scholarship, in 1970. Like everything he wrote, this book is as remarkable for its style as for the imagination and quality of its substantive content.

Among the impressive features of Professor Packer's bibliography are its scope and variety. Even if one limits his attention to the legal writing the range is extraordinary: from the ex-communist witnesses fact-finding study to a classic example of empirical investigation (Therapeutic Abortion: A Problem in Law and Medicine, 1959). From a masterful summation of the anti-trust field (The State of Research in Antitrust, a monograph published in 1963) to the large body of work in criminal law. At the end he had just seen the publication of his report on legal education for the Carnegie Commission on Higher Education. He was at work on a biography of Judge Jerome Frank and on a history of the United States Court of Appeals for the Second Circuit. The galley proofs of three shorter pieces lay on his desk.

A wide reader, a lively and witty talker, a lover of good food and fine wine, and a generous host, Herb Packer contributed much to the quality of life at Stanford for his friends and

colleagues. There was always good company and good conversation at the Packers'. His friendships extended beyond the law to other disciplines and beyond academia to people in the arts, in the professions, in business, and in government. Still, he placed the highest value on collegial relationships. Those fortunate enough to have belonged to that circle have lost a demanding but constructive critic, a stimulating companion, and a warm and loyal friend.

A memorial fund has been established at Stanford to honor the memory of Professor Packer.

Thomas Ehrlich
Gerald Gunther
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John Henry Merryman, Chairman