

# THE SURPRISING SURREY: STANLEY S. SURREY AS EDUCATOR, MENTOR, AND INSTITUTION BUILDER

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## I

### INTRODUCTION

Stanley S. Surrey is best remembered today for his many contributions to U.S. and international tax law and policy—both as a scholar and policymaker. As he should be. The many articles in this symposium demonstrate that his scholarly and policymaking contributions to tax law were legion.<sup>1</sup> From the establishment of the tax expenditure budget to his championing of horizontal equity to his many international tax missions, and his prolific scholarship,<sup>2</sup> Surrey’s greatest legacies are embodied in the U.S. Internal Revenue Code, the international tax regime,<sup>3</sup> the tax systems of several foreign countries,<sup>4</sup> and in the footnotes of countless academic articles and books.<sup>5</sup> Policymaking and scholarship undoubtedly defined

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1. See generally Ajay K. Mehrotra & Lawrence A. Zelenak, *Foreword: The Legacy of Stanley Surrey*, 86 LAW & CONTEMP. PROBS., no. 2, 2023, at i.

2. Terrance O’Reilly, *Tax Legal Scholarship to 1970*, 34 VA. TAX REV. 269 (2014).

3. See generally Reuven Avi-Yonah & Nir Fishbien, *What Would Surrey Say? The Long Reach of Stanley S. Surrey*, 86 LAW & CONTEMP. PROBS., no. 2, 2023, at 187.

4. See generally W. Elliot Brownlee & Eisaku Ide, *Stanley Surrey, The Shoup Mission, and Tax Administration in Japan*, 86 LAW & CONTEMP. PROBS., no. 2, 2023, at 89.

5. As Larry Zelenak and I noted in our introductory essay to the Surrey Memoir, as of 1970 (and likely through till today), “Surrey was the most cited tax law scholar, with more than twice the citations of his closest contemporary and occasional rival Boris I. Bittker.” See Lawrence Zelenak & Ajay K. Mehrotra, *Introduction to STANLEY S. SURREY, A HALF-CENTURY WITH THE INTERNAL REVENUE CODE: THE MEMOIRS OF STANLEY S. SURREY*, at xii (Lawrence Zelenak & Ajay K. Mehrotra eds., 2022) (citing Terrance O’Reilly, *Tax Legal Scholarship to 1970*, 34 VA. TAX REV. 269, 273, tbl.1 (2014)).

Surrey's professional identity.

But there is another side to Surrey, one less explored and celebrated.<sup>6</sup> A side that is present but often understated in his memoirs.<sup>7</sup> Larry Zelenak and I have referred to this side as the “Surprising Surrey.”<sup>8</sup> In addition to his many accomplishments in tax law scholarship and policymaking, Surrey was a dedicated teacher, a supportive mentor, and a leading institution builder. As a law professor, he taught for nearly three decades, traversing back and forth between the worlds of academia and policymaking. As a mentor, he guided and advanced the careers of many former students and junior colleagues in the U.S. Treasury Department, in the elite tax bar, and at Harvard Law School (HLS). And, as an institution builder, he played a pivotal role in establishing and running the International Tax Program (ITP), among many other activities at HLS.<sup>9</sup>

In advancing these lesser-known activities, Surrey also amassed a great deal of power, authority, and prestige. His relentless ambition drove him to seek the highest tax policy position in the U.S. government, in the face of a withering confirmation process. That same ambition and drive were also the foundation for his desire to become part of the academic elite, so that he “could immediately join the top circle,”<sup>10</sup> as he recounted in his memoirs. This desire to be among the elite shaped Surrey's sense of meritocracy. Given his own background and experiences, it is not surprising that Surrey had an unalterable faith in his particular sense of meritocracy—a sense that led him at times to counter traditional biases, and also to reproduce the hierarchical structure of American legal education and the profession.<sup>11</sup>

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6. Surprisingly, Surrey is almost wholly absent from some of the standard histories of the legal profession and Harvard Law School (HLS). See, e.g., JOEL SELIGMAN, *THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL* (1978) (offering an overview of the history of HLS). A more recent history of HLS credits Surrey for his role in establishing the International Tax Program and hiring Elizabeth A. Owens as his research assistant, but it has little to say about his teaching. See BRUCE A. KIMBALL AND DANIEL R. COUILLETTE, *THE INTELLECTUAL SWORD: HARVARD LAW SCHOOL, THE SECOND CENTURY* 518, 525 (2020).

7. See generally STANLEY S. SURREY, *A HALF-CENTURY WITH THE INTERNAL REVENUE CODE: THE MEMOIRS OF STANLEY S. SURREY* (Lawrence Zelenak & Ajay K. Mehrotra eds., 2022). Although personal memoirs can be informative, they come with significant challenges in providing accurate descriptions of the past. To address these challenges, this article attempts to use archival materials and recent interviews to verify some of the claims made by Surrey in his memoirs. For more on the challenges of memoirs, see generally, MARK FREEMAN, *HINDSIGHT: THE PROMISE AND PERILS OF LOOKING BACKWARD* (2010).

8. Zelenak & Mehrotra, *supra* note 5, at i, xlviii.

9. Surrey dedicated a significant portion of his memoir chapter on “International Tax Activities” to the origins and early aims of the International Tax Program (ITP). See SURREY, *supra* note 7, at 132–42 (reflecting on the origins and early aims of the ITP).

10. SURREY, *supra* note 7, at 77.

11. See generally Daniel Shavero, *Moralist' Versus 'Scientist': Stanley Surrey and the Public Intellectual Practice of Tax Policy* 86 LAW & CONTEMP. PROBS., no. 2, 2023, at 247–249 (exploring Surrey's sense of meritocracy). See also DANIEL MARKOVITZ, *THE MERITOCRACY TRAP: HOW AMERICA'S FOUNDATIONAL MYTH FEEDS INEQUALITY, DISMANTLES THE MIDDLE CLASS, AND DEVOURS THE ELITE* (2019) (examining the underlying elitism of meritocracy); MICHAEL J. SANDEL, *TYRANNY OF MERIT: CAN WE FIND THE COMMON GOOD?* (2021); Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982).

From a broader perspective, Surrey's career reflected the different ways that the legal profession and legal education changed and stayed the same over the course of the mid-twentieth century.<sup>12</sup> Although in his memoirs Surrey is surprisingly unreflective of how his historical context shaped his life and career, he was both a product of his times and a pioneer. In some ways, he was emblematic of a modern twentieth century American lawyer and law professor. Like others who were educated during the height of American legal realism, Surrey viewed and taught law as part of a larger social and political system.<sup>13</sup> His early experiences as a New Deal lawyer—first at the National Labor Relations Board and then later in the U.S. Treasury Department—informed nearly all aspects of his career.<sup>14</sup> His privileged background and his connections to the highest rungs of policymaking and the organized tax bar also led him to help reinforce some traditional inequalities in legal education and the profession.

In other ways, Surrey was a true innovator. Time away from the corridors of power gave him an opportunity to reflect on new ways to communicate ideas and educate the next generation of lawyers and policymakers. In this sense, this article about “The Surprising Surrey” is not simply a reflection on Surrey's lesser-known achievements as a law professor. Rather, it is a window into the changes and continuities in American legal education and the profession across the second half of the twentieth century. As a tax law professor for over thirty years, Surrey left a lasting—and perhaps surprising—legacy as a teacher, mentor, and institution builder. This article explores that side of Stanley Surrey.

This article proceeds in three parts. Part II begins with a summary of Surrey's career as an educator, which began well before his formal appointment as a law professor at the University of California, Berkeley in 1947. This initial part explores Surrey's attempts at innovative teaching methods, from his casebook writing to his multidisciplinary seminar teaching. Part III then explores Surrey's role as a mentor. It takes a closer look at the impact he had on his many students and junior colleagues—inside and outside of the classroom. This part focuses on Surrey's hiring and promotion of key members of the HLS tax law faculty, particularly those who fit within Surrey's sense of meritocracy. Part IV investigates Surrey's role as an institutional leader mainly at HLS. It focuses on Surrey's leadership in establishing the ITP and the impact that the program had on expanding—and exporting—tax knowledge and training to the next generation of global tax law scholars and policymakers, while advancing

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12. See generally ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (2001) (exploring the continuity and differences in legal education); Robert W. Gordon, *The American Legal Profession, 1870-2000*, in 3 *THE CAMBRIDGE HISTORY OF LAW IN AMERICA* 73, 73–126 (Michal Grossberg and Christopher Tomlins eds., 2008); Robert W. Gordon, *The Return of the Lawyer-Statesman*, 69 *STAN. L. REV.* 1731 (2017).

13. Zelenak & Mehrotra, *supra* note 5, at xv.

14. See generally Catherine L. Fisk, *When an Aspiring Tax Lawyer Considered Labor Unions Important to the Future of Capitalism* 86 *LAW & CONTEMP. PROBS.*, no. 2, 2023, at 1; Joseph J. Thorndike, *Stanley Surrey, the New Deal, and the Virtues of Incremental Tax Reform*, 86 *LAW & CONTEMP. PROBS.*, no. 2, 2023, at 15; SURREY, *supra* note 7, at 11–20.

American foreign policy interests. The article concludes with a brief summary of the many aspects of the Surprising Stanley Surrey.

## II

### SURREY AS EDUCATOR

As he indicated in his memoirs, Stanley Surrey enjoyed being a tax law professor.<sup>15</sup> He began his fulltime academic career at the University of California, Berkeley School of Law, where he taught for three years (1947–50), before moving to HLS, where he remained throughout his career (1950–84), except for his time as Assistant Secretary for Tax Policy (1961–69). When he first began considering teaching in 1947, after over a decade of government service, he was eager to replicate his experiences in the New Deal Treasury Department. Years later, he recognized that teaching was the right career path for him because “teaching seemed clearly closer to” the goals of a government official to determine “the correct overall answer to problem solving.”<sup>16</sup> Teaching at prestigious institutions like Berkeley and Harvard also fueled Surrey’s career ambitions and his desire to stay connected to top policymakers. Public service and teaching hence went hand in hand for Surrey. As his longtime Harvard dean, colleague, and fellow tax expert Erwin N. Griswold put it, Surrey “was always an educator, explaining his approach to difficult problems in measured, understandable terms.”<sup>17</sup> Thus, for Surrey, becoming an academic was not necessarily a new career, but rather a continuation of his longstanding commitment to public service and his desire to improve the tax system, while furthering his own career aspirations.

To get to “the correct overall answer” in the classroom,<sup>18</sup> Surrey relied on several creative and innovative types of pedagogy. He co-authored, with William C. Warren, a popular 1950 tax law casebook, *Federal Income Taxation: Cases and Materials*,<sup>19</sup> that went through multiple editions and was adopted by many tax law professors throughout the country, as Surrey noted with satisfaction.<sup>20</sup> While the casebook was not completely revolutionary, it reflected the legal academy’s shifting emphasis away from traditional legal sources such as case law and

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15. SURREY, *supra* note 7, at 81–3.

16. *Id.* at xxiii.

17. ERWIN N. GRISWOLD, *MEMORIAL REMARKS IN STANLEY S. SURREY, 1910–1984: PROGRAM OF MEMORIAL SERVICE HELD OCT. 3, 1984 AT MEMORIAL CHURCH, HARVARD UNIVERSITY (1984)* (copy on file with the author).

18. SURREY, *supra* note 7, at xxiii.

19. STANLEY S. SURREY & WILLIAM C. WARREN, *FEDERAL INCOME TAXATION: CASES AND MATERIALS* (1950) [hereinafter SURREY & WARREN, *FEDERAL INCOME TAXATION*]. In the same year, Surrey and Warren also published a popular casebook on wealth-transfer taxes. See WILLIAM C. WARREN & STANLEY S. SURREY, *FEDERAL ESTATE AND GIFT TAXATION: CASES AND MATERIALS* (1950) [hereinafter WARREN & SURREY, *FEDERAL ESTATE & GIFT TAXATION*].

20. Letter from John C. Tinnelly, Sec’y, Found. Press, to Stanley S. Surrey, Professor of L., Harv. L. Sch. (Mar. 16, 1953), Box 3, Folder 6, Stanley S. Surrey Papers, Harvard Law School, Historical & Special Collections, Cambridge, MA [hereinafter SSSP] (copy on file with the author. All subsequent archival materials from the Surrey papers are also on file with the author).

appellate decisions to more policy-oriented and administrative materials including interdisciplinary scholarship and agency rulings and regulations. Likewise, in his classroom teaching, Surrey was among the first law professors to bring external co-teachers and student group assignments into legal pedagogy. He invited local practitioners into his Advanced Tax Seminar, and he frequently co-taught Tax Policy with scholars from other disciplines. Moreover, he used group assignments as a way to foster teamwork among his students. Interacting with the local elites of the legal profession and prestigious academics further fueled and satisfied Surrey's relentless ambitions. It also helped him find jobs for some of his best students, many of whom went on to influential law firms and policymaking roles.<sup>21</sup>

Surrey formally began his law teaching career in 1947 when he left the U.S. Treasury Department and accepted a tenure-track position at the University of California, Berkeley School of Law. Surrey's timing was excellent. The immediate post-World War II years witnessed a boom in higher education and law school enrollment.<sup>22</sup> The return of a throng of young veterans combined with the G.I. bill ensured that law schools and colleges would have plenty of students. And that meant law schools needed more law professors. At the same time, many of the country's leading law schools, including Berkeley and HLS, began to increase admissions standards. Thus, Surrey made the transition to teaching just as American law schools and higher education more generally were starting a golden era.<sup>23</sup>

Even before he began as a fulltime academic, Surrey had been interested in legal education, or at least legal scholarship. Indeed, his attraction to research and scholarship began during law school and his early career. He may not have published a student note during his time at Columbia Law School,<sup>24</sup> but he took on a variety of senior editing positions during his tenure on the *Columbia Law Review*. More importantly, his first job after graduating from law school in 1932 was working as a full-time research assistant for Roswell Magill, one of his influential law school teachers and mentors. "Law school was thus interesting, rewarding and enjoyable," Surrey noted in his memoirs.<sup>25</sup> After graduating, he was reluctant to leave "the interesting world of the Law School and the fascination [he] had found in the Law Review work."<sup>26</sup> Fortunately, Magill rescued him, allowing Surrey admittedly to "postpone a career choice that [he]

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21. See text accompanying notes 124–26.

22. STEVENS, *supra* note 12, at 205.

23. *Id.* at 205–07.

24. In his memoirs, Surrey is surprisingly circumspect and uncertain about whether he wrote a student note. There are several unauthored student notes in the *Columbia Law Review* during Surrey's time as a student. Yet unlike other parts of the memoir where he is quick to take credit for his contributions to publications, Surrey indicates that he is uncertain whether he authored a note. Thus, his authorship of a student note remains somewhat of a mystery. See SURREY, *supra* note 7, at 4.

25. *Id.* at 6.

26. *Id.*

did not want nor know how to make.”<sup>27</sup>

In many ways, the experience working with Magill accelerated Surrey’s interest in research and scholarship, which in time would inform his teaching. Surrey recounted proudly that Magill gave him “a completely free hand” to explore a variety of topics related to the federal income tax.<sup>28</sup> Surrey claimed that he researched and wrote entire chapters, and boasted that he was practically a co-author, though Magill’s official book acknowledgements do not seem to support Surrey’s claim.<sup>29</sup> While he was assisting Magill with his book,<sup>30</sup> Surrey also co-authored an article on the federal estate tax with his classmate Jack Aronson.<sup>31</sup> And, with Magill’s permission, Surrey transformed materials related to his research for Magill into a second publication, a single-authored law review article on tax law’s “assignment of income” doctrine.<sup>32</sup> Surrey’s highly productive career as a scholar had begun.<sup>33</sup> Even more importantly, the year working with Magill provided Surrey with a solid foundation about the overall structure of the federal income tax system. “I saw the income tax not as a random body of rules and edicts but as an internally consistent framework,” Surrey recalled. “All of my later work has been dominated by that approach.”<sup>34</sup>

The year as Magill’s research assistant may have ignited Surrey’s interest in research and scholarship. But his interest in teaching appeared to blossom later, mainly as a result of his Treasury Department connections. Before he accepted the full-time teaching position at Berkeley, Surrey had taught income taxation during occasional summers, first at Berkeley and then at his alma mater, Columbia Law School. His first teaching experience came in 1940, at the behest of Berkeley Law Professor Roger Traynor, whom Surrey worked closely with during his early years in the New Deal Treasury Department.<sup>35</sup> That summer, Surrey taught a small Income Taxation class to about twenty students while he remained a Treasury employee.

The blissful summer in Berkeley, as Surrey described it,<sup>36</sup> illustrated his early commitment to teaching, as well as his desire to rethink legal pedagogy. As

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27. *Id.* at 7.

28. *Id.*

29. *Id.* at 7–8.

30. ROSWELL MAGILL, *TAXABLE INCOME* (1936). Surrey also mentions in passing that he did some research for a casebook authored by his other mentor, Milton Handler. But unlike the Magill experience, Surrey concedes that the Handler research, likely on the law of sales, was “most uninspiring.” SURREY, *supra* note 7, at 5.

31. Stanley S. Surrey & Jacob P. Aronson, *Inter Vivos Transfers and the Federal Estate Tax*, 32 COLUM. L. REV. 1332 (1932).

32. Stanley S. Surrey, *Assignments of Income and Related Devices: Choice of the Taxable Person*, 33 COLUM. L. REV. 791 (1933).

33. Surrey later suggested that his two early publications were responsible for Harvard Dean Erwin Griswold’s interest in recruiting him to HLS. SURREY, *supra* note 7, at 9.

34. *Id.* at 7.

35. *Id.* at 81.

36. *Id.* at 83.

Surrey recounts in his memoirs, the class was going well, but his teaching was abruptly interrupted when he was called back to Washington to work on drafting an excess profits tax. Rather than simply abandon the class, Surrey prepared materials in advance for the students to review, and he collaborated with the Berkeley law school dean and Treasury officials to ensure that his absence would be brief.<sup>37</sup> Within two weeks, Surrey returned to Berkeley to complete his class.

During that summer, Surrey also had his first opportunity to consider his teaching materials and methods. Although there were income tax casebooks available at the time, including one co-authored by his mentor Magill,<sup>38</sup> Surrey chose to create his own materials. He “assigned cases, statutory sections, Regulations and Rulings for the students to read and then somewhat informally discuss.”<sup>39</sup> This focus on supplementing canonical cases with other legal sources foreshadowed Surrey’s future teaching, when he brought in his government experience to emphasize the importance of policy, administration, and the tax legislative process. It also reflected the changing tide in American legal education, as more and more law professors who came of age during legal realism and out of the New Deal began to rethink their teaching materials, moving away from purely cases to more interdisciplinary sources.<sup>40</sup>

If the summer teaching experience excited Surrey, it was hardly the only reason that he turned to full-time teaching after his initial Treasury service. As we’ve seen, Surrey viewed teaching as something akin to government service in terms of determining “the correct overall answer to problem solving.”<sup>41</sup> Yet he had other more self-interested justifications for joining the legal academy. Surrey was relentlessly ambitious and eager to be a part of the legal elite. After consulting with other former New Deal lawyers who had gone into law teaching, he surmised that teaching gave him “an excellent base of operations” from which he could continue high-level, government-like work, and prepare for a return to prestigious, public service.<sup>42</sup>

Similarly, Surrey selected academia because it gave him the best opportunity to rise quickly to the top ranks of the legal profession. In a rare moment of candid self-reflection, he noted in his memoirs “how difficult it was for a tax lawyer, even a skilled lawyer, to move rapidly into the top tax circles of his city since there were simply too many good tax lawyers.” By contrast, Surrey reasoned, “there are few tax professors in any city and a respected tax professor could immediately

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37. *Id.* at 81–82. Surrey gleefully writes about how he orchestrated both ends of his brief absence by drafting both the initial letter sent by the Berkeley dean and the reply by the Treasury official. *Id.*

38. JOHN M. MAGUIRE & ROSWELL MAGILL, *CASES ON THE LAW OF TAXATION* (Edmund M. Morgan et al. eds., 2d ed. 1936).

39. SURREY, *supra* note 7, at 81.

40. STEVENS, *supra* note 12, at 131–41. For more on how legal realism influenced law school teaching, see generally, NEIL DUXBURY, *PATTERNS OF AMERICAN JURISPRUDENCE* 82-92 (1995); LAURA KALMAN, *LEGAL REALISM AT YALE, 1927-1960* 77-78 (1986); JOHN HENRY SCHLEGEL, *AMERICAN LEGAL REALISM AND EMPIRICAL SOCIAL SCIENCE* 164-5 (2000).

41. SURREY, *supra* note 7, at 77.

42. *Id.*

join the top circle.”<sup>43</sup> Indeed, Surrey joined the tax law academy at a time when there were relatively few tax experts teaching. This gave him the opportunity to research, write, and teach about many different tax topics from a variety of unchartered perspectives. In 1950, when he had the opportunity to move to HLS, Surrey noted upon reflection that because Harvard was “the preeminent law school” it was “a better—and closer—base of operations for one interested in tax policy.”<sup>44</sup> After he moved to Harvard and began collaborating with the Boston tax bar, Surrey reaffirmed his view that teaching was the correct career path for someone like him who was eager to rise to the highest ranks of a city’s tax bar.<sup>45</sup> Finally, Surrey selected teaching because law teaching paid well. Although “teaching salaries were low compared to private practice, they were comparable, perhaps a bit higher, than government salaries,”<sup>46</sup> he recounted.

When Surrey set his mind to pursue a teaching position, Berkeley did not appear to be his first choice. Rather, like many in his position at the time, he turned naturally to his alma mater, Columbia Law School. In fact, he taught at Columbia during the summer of 1947 when he was presumably searching for a law teaching position. But, according to his memoirs, Surrey found his initial interactions with Columbia Dean Young B. Smith “decidedly unsatisfactory” because the dean had the audacity to suggest that Surrey start as an Assistant Professor and that he might advance to a full professorship after he “had written some articles and become known in the tax field.”<sup>47</sup> Offended by the offer, Surrey allegedly rejected the dean’s proposal with a smug letter of his own noting that he “had already written more articles than most full professors, implying Dean Smith included.”<sup>48</sup> Surrey was obviously not one to be outdone by others.

Although Surrey also received a teaching offer from New York University Law School in 1947, he decided to start his academic career at Berkeley mainly because of his relationship with Traynor, and because of his pleasant and memorable visit during the summer of 1940.<sup>49</sup> The first years at Berkeley seemed to agree with him. In his memoirs and personal correspondence, he reflected on how he was part of a “younger group” of junior faculty who “would play handball at the nearby university gym, then have lunch at the swimming pool, and talk over school policy.”<sup>50</sup> Even after he left Berkeley, Surrey stayed in contact with former colleagues and staff members, exchanging stories about faculty politics, student job prospects, and even college football.<sup>51</sup>

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43. *Id.*

44. *Id.* at 87.

45. *Id.* at 89.

46. *Id.* at 77.

47. *Id.* at 82.

48. *Id.* Indeed, by 1947, Surrey had already published thirteen law review articles. See Mark Sullivan, *The Writings of Stanley S. Surrey*, 98 HARV. L. REV. 346, 346–47 (1984).

49. SURREY, *supra* note 7, at 82–83.

50. *Id.* at 83. Playing handball was one of the few Surrey leisure activities, beside sailing, mentioned in the memoirs.

51. See, e.g., Letter from Norma Occelli to Stanley Surrey (Oct. 4, 1950); Letter from Stanley Surrey



It was at Berkeley that Surrey honed his innovative teaching practices. He taught individual income tax, corporate income tax, and gift and estate tax—all in one course. In addition, he taught Legislation and Administrative Law, classes that clearly reflected his professional background at the Treasury. Just as he had done earlier, Surrey once again supplemented his teaching materials with administrative rules and regulations and a smattering of interdisciplinary policy-focused readings, mainly from economics, history, and political science.<sup>52</sup> For his Legislation class, he also shared his “assignment sheets” with friends in the D.C. bar and congressional staffers, requesting their assistance to make sure he was still on the cutting-edge of important legal matters and congressional procedures.<sup>53</sup> These materials eventually found their way into the casebooks that Surrey co-wrote at the time.<sup>54</sup>

To be sure, Surrey was not alone in pushing for such novel teaching materials. During the post-World War II period, as many New Deal veterans moved to the legal academy, such casebooks became increasingly popular. Policy-oriented textbooks and classes were a legacy of both legal realism and the rise of the New Deal administrative state.<sup>55</sup> A greater focus on casebooks was also occurring at HLS when Surrey joined the faculty. Dean Griswold was eager to encourage the law faculty to conduct more “applied” research.<sup>56</sup> In his personal correspondence with other law professors, Surrey exchanged teaching and draft casebook materials, along with ideas about effective teaching.<sup>57</sup> Yale law professor Boris Bittker, Surrey’s contemporary and occasional rival, was writing a tax casebook at roughly the same time, and Surrey and Bittker exchanged pertinent sections of their respective casebook manuscripts.<sup>58</sup> One reviewer of Surrey’s co-authored casebooks approvingly noted how the authors demonstrated that “court opinions are but only a small part of the stuff of which law is made.”<sup>59</sup>

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to Norma Occelli (Aug. 17, 1951), Box 386, Folder 5, SSSP (copies on file with the author).

52. Surrey sought to reprint materials from Randolph E. Paul’s early history of taxation and Harold Groves’s book on postwar taxation and economic progress. *See generally* Letter from Randolph Paul to Stanley Surrey (Sept. 21, 1948); Letter from Stanley Surrey to Marjorie Mitchell (Sept. 24, 1948), Box 3, Folder 2, SSSP (copies on file with the author).

53. Letter from Stanley Surrey to Philip Levy (July 21, 1950); Letter from Jerome Springarn to Stanley Surrey (Apr. 12, 1950), Box 388, Folder 2, SSSP (copies on file with the author).

54. SURREY & WARREN, FEDERAL INCOME TAXATION, *supra* note 19; WARREN & SURREY, FEDERAL ESTATE & GIFT TAXATION, *supra* note 19. *See also* FRANK C. NEWMAN & STANLEY S. SURREY, LEGISLATION: CASES AND MATERIALS (1955). Surrey noted that he was working on his casebook at the same time that he was a reporter for the American Law Institutes’ income tax project and that the two activities provided important synergies. SURREY, *supra* note 7, at 84.

55. STEVENS, *supra* note 12, at 158-60; DUXBURY, *supra* note 40, at 179-82.

56. KIMBALL & COQUILLETTE, *supra* note 6, at 506. Dean Griswold particularly recommended casebooks in the early 1950s as helping fulfill the faculty’s “responsibility to legal education in the United States” and to extend the school’s academic influence. *Id.*

57. Letter from Stanley Surrey to Harry Jones, Professor, Columbia L. Sch. (Sept. 14, 1950); Letter from Harry Jones to Stanley Surrey (Oct. 19, 1948), Box 385, Folder 5, SSSP (copies on file with author).

58. Letter from Boris Bittker to Stanley Surrey (Nov. 11, 1949); Letter from Stanley Surrey to Boris Bittker (Nov. 17, 1949); Letter from Stanley Surrey to Boris Bittker (Jan. 28, 1950), Box 385, Folder 4, SSSP (copies on file with the author).

59. Leo Diamond, Book Review, 19 U. CHI. L. REV. 147, 149 (1951) (reviewing SURREY &

Surrey did not take his authorship of casebooks lightly. In fact, he assiduously kept track of their adoption among law professors throughout the country. Once again, Surrey was fortunate to co-author a tax law casebook at a time when the market for such texts was relatively shallow. There were, in fact, only three or four casebooks competing for the attention of instructors. By 1953, Surrey was likely quite pleased when his publisher informed him that his tax law casebook with Warren was second in number of national course adoptions, trailing only Erwin Griswold's well-established tax casebook, and well ahead of the older Magill and Maguire text.<sup>60</sup>

While Surrey's casebooks may have matched the trends of the times, his classroom teaching appeared to be truly novel and creative. He was clearly dedicated to teaching and to finding new ways to learn about, and impart, cutting-edge topics. When he joined HLS in 1950, the faculty and administration were considering revising the curriculum and moving the basic, year-long, introductory tax course from the third to the second year, and perhaps increasing the number of credit hours devoted to the course.<sup>61</sup> The faculty discussion gave Surrey and his tax colleagues an opportunity to make the case for a greater focus on tax law. Although he had just joined the faculty, Surrey took it upon himself to survey leading tax scholars at comparably sized law schools to learn more about their tax curriculum.<sup>62</sup> He then used the results from his ad hoc survey to help draft a memo to the faculty calling for "increased hours in the Federal Taxation field."<sup>63</sup> Apparently, Surrey was never shy about sharing his views with others. There were several reasons why Surrey believed the current tax curriculum at HLS and elsewhere was inadequate in the early 1950s. The "sheer scope of the subject matter," the "complexity" of a "new technical vocabulary," a "complex maze of largely artificial rules," and the "constant change in tax structure and rules" all meant that a simple four-hour course was woefully insufficient.<sup>64</sup>

Yet, from Surrey's viewpoint, the most important reason why the tax curriculum needed to change was the need for greater attention to "policy aspects." Reflecting his own personal predilection and experiences, Surrey explained:

One of the greatest weaknesses of most tax lawyers is a lack of understanding of the basic policy issues and the basic policy judgments that are involved in the tax field. This is in large part the result that these matters were neglected in their legal education since federal taxation has only recently developed as a full-fledged course. The law schools do have a responsibility in this area. This is especially true since the adverse interests in this area are largely considered as those of taxpayer versus the government. Unless an overall sense of

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WARREN, FEDERAL INCOME TAXATION, *supra* note 19; WARREN & SURREY, FEDERAL ESTATE & GIFT TAXATION, *supra* note 19).

60. Letter from John Tinnelly, *supra* note 20.

61. KIMBALL & COUILLETTE, *supra* note 6, at 514, 725.

62. Letter from Stanley Surrey to Walter Blum (Feb. 26, 1951); Letter from William Cary to Stanley Surrey (Mar. 28, 1951) Box 27, Folder 35-7, SSSP (copies on file with the author).

63. Stanley S. Surrey, Memorandum on the Federal Taxation Course (March 28, 1951) 1, Box 27, Folder 35-7, SSSP (copy on file with author)

64. *Id.*

proportion and policy is presented in the law school, the lawyer is not likely to develop it later on in practice. But the consideration of policy issues takes time and in a crowded course is likely to be sacrificed to sheer coverage of substantive rules.<sup>65</sup>

No former Treasury official could have put it better. Ultimately, HLS did expand its tax curriculum as did many other law schools, though it is unclear whether it was the force of Surrey's arguments that carried the day.<sup>66</sup>

It was not only in his introductory tax class that Surrey's dedication to teaching was on display. From the start, Surrey's advanced classes also illustrated his willingness to go to great efforts to try new ways of teaching. He not only supplemented his readings with works from the social sciences and public administration while focusing on current and significant legal matters; he also brought in visitors from the local, elite tax bar and co-taught seminars with prominent experts from other parts of the university. In his Legislation class, for instance, Surrey sought to go beyond the conventional topics and sources. He wanted to have the "course oriented around the vital issues in the area of Congressional operations."<sup>67</sup> To him, this meant focusing on topics such as "the regulation of lobbying activity" and the "conduct of Congressional investigations"—not your typical mid-twentieth-century law school subjects.<sup>68</sup>

At times, Surrey worried that his Legislation class was more akin to "a graduate course in Political Science."<sup>69</sup> Nevertheless, he thought it was important for advanced law students, working in groups, to engage with timely and important matters, and to have their research go beyond the seminar room and law library. "It is in legislative work," Surrey and his co-author Frank C. Newman wrote, "that the profession of law has its greatest impact on law and governance."<sup>70</sup> In considering appropriate teaching topics for Legislation, Surrey insisted that "these topics should be of some immediate importance so that the students can feel their work is worthwhile and will produce practical dividends to some official or unofficial body."<sup>71</sup> Reflecting his legal realist tendencies, Surrey also insisted that students learn about how the law operated in practice. "Moreover, the topics should be such as to permit the students to interview and talk with persons in the vicinity who are concerned with the subject matter and

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65. *Id.*

66. By 1952, the introductory tax class, which was a survey of federal individual, corporate, and estate and gift taxes, became a required second-year course at HLS. See Stanley S. Surrey, *Seminar in Current Problems in Taxation*, 4 HARV. L. SCH. BULL. 7 (1952).

67. Letter from Stanley S. Surrey to Dr. George B. Galloway, Libr. of Congress (July 12, 1950), Box 388, Folder 3, SSSP (copy on file with author).

68. *Id.*

69. Letter from Stanley S. Surrey to Columbia Law Prof. Harry W. Jones (Nov. 6, 1948); Jones to Surrey (Oct. 19, 1948), Box 385, Folder 5, SSSP (copies on file with author). Surrey's co-authored Legislation casebook was in many ways a groundbreaking text, foreshadowing casebooks used presently in law school "Regulation and Legislation" courses. See NEWMAN & SURREY, *supra* note 54; WILLIAM N. ESKRIDGE ET AL. CASES AND MATERIALS ON LEGISLATION AND REGULATION: STATUTES AND THE CREATION OF PUBLIC POLICY (2020).

70. NEWMAN & SURREY, *supra* note 54, at vii.

71. Letter from Stanley S. Surrey to Harry W. Jones (Sept. 14, 1950), Box 385, Folder 5, SSSP (copy on file with author).

who will have practical and policy information to transmit to the students.”<sup>72</sup> The pragmatic goal of learning by doing was a key part of Surrey’s pedagogy. To achieve these teaching goals, Surrey consulted with colleagues outside of the law school and with civic leaders engaged in national as well as state-level legislative matters in California and Massachusetts.<sup>73</sup> This provided Surrey with yet another opportunity to connect with prominent policymakers and elite members of the legal profession.

In his Advanced Tax Seminar, Surrey similarly structured his teaching to be timely and practical. At a time when other law professors were likewise turning to a “problems-based method” of teaching,<sup>74</sup> Surrey went beyond hypothetical problems by bringing in leading lawyers from outside of campus. As he recounted, Surrey invited a different tax practitioner each week to “present to students a combined tax and business problem.”<sup>75</sup> The students, who were organized into groups of roughly four, prepared “their suggested solutions, which the practitioner could read in advance.”<sup>76</sup> Then during class, Surrey and the invited tax lawyer “led the students through the problem, their solutions, and [a] course of action.”<sup>77</sup> The advanced tax class was targeted at those students who had developed an “Oliver Twist hunger for more” after the introductory tax class.<sup>78</sup> The goal was to stress the practical side of real-world tax matters, which Surrey noted, “the library research of the students will not disclose.”<sup>79</sup>

Like the Legislation class, the Advanced Tax Seminar provided Surrey with many personal material benefits. Inviting a prominent local tax lawyer helped him widen his professional network among the elite local and national bar,<sup>80</sup> something he continued to cultivate with his monthly “Surrey Clubs,” lunchtime gatherings of tax scholars and practitioners to discuss recent tax matters.<sup>81</sup> He continued this type of engagement with leading members of the tax bar throughout his teaching career and noted that it helped him reach “the tax bar elite of the locality.”<sup>82</sup> Joining the tax bar elite also meant that Surrey could

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72. *Id.*

73. Letter from Milton Chernin, Berkeley Dep’t of Soc. Welfare, to Stanley S. Surrey (Mar. 27, 1948); Letter from Stanley S. Surrey to Mayo Shattuck, Esq., President, Mass. St. Civic League (July 14, 1950), Box 388, Folder 3, SSSP (copies on file with author).

74. STEVENS, *supra* note 12, at 228.

75. SURREY, *supra* note 7, at 84.

76. *Id.* at 84–85.

77. *Id.* at 85.

78. SURREY, *supra* note 66.

79. *Id.* at 8.

80. Letter from Harley J. Spitler, Jr., Partner, Cooley, Crowley & Gaither, to Stanley S. Surrey (Feb. 21, 1949) (thanking Surrey for the opportunity to attend his tax seminar), Box 10, Folder 3, SSSP (copy on file with author).

81. Like his classrooms, the “Surrey Clubs” were all business, starting exactly at noon and running for the entire lunch hour with little time for socializing. See E-mail from Daniel I. Halperin, Stanley S. Surrey Professor of L., Emeritus, Harv. L. Sch., to Author (Apr. 25, 2021) (copy on file with author).

82. SURREY, *supra* note 7, at 85. Surrey noted that he could leverage the prestige of teaching at Berkeley or Harvard to entice leading tax lawyers to attend his class – many of whom were grateful for the opportunity. *Id.*

remain connected to the leading-edge of tax practice and procedure. “In taxation,” he recounted, “the problems faced by law firms and their solutions are the frontier, ahead of the cases and generally the statute.”<sup>83</sup> His advanced seminars “provided a very simple way by which [he] could see this frontier.”<sup>84</sup>

At times, Surrey’s vision for the “frontier” was clouded by an elitism and commitment to professional hierarchy that could verge on self-righteousness. In the 1950s, a Chicago-based upstart law firm established by Russell Baker—a tort lawyer turned tax attorney—was quickly making a name for itself in international tax circles. In the process, Baker & McKenzie was challenging the traditional pecking order of “the established law firms and their spiritual mentors at Ivy League law schools.”<sup>85</sup>

One particular Baker tax transaction seemed to raise Surrey’s ire. Baker had been advising its international business clients, including the Chicago-based pharmaceutical company Abbott Labs, that they could reduce U.S. taxes by selling their products through an offshore, foreign based subsidiary. More specifically, Baker was exploiting the Western Hemisphere Trade Corporation (WHTC) provisions that provided U.S. companies with a preferential tax rate on foreign-source income from countries in Latin America.<sup>86</sup> Surrey was well aware of the original WHTC provisions of the Revenue Act of 1943; he contended in his memoirs that the legislation was “poorly drafted”—not by him of course but by the Office of House Legislative Counsel—because of the general ignorance of international tax transactions at the time.<sup>87</sup>

Although the courts had upheld the WHTC structures that Baker & McKenzie was using for its clients,<sup>88</sup> Surrey adamantly opposed these transactions. As one former HLS student recalled, Surrey lectured his class that “Russell Baker thinks . . . WHTCs will work and that is nonsense.”<sup>89</sup> Surrey was convinced that these transactions were tax shelters and thus he had little appreciation or respect for the law firms that peddled such tax avoidance techniques. A Baker & McKenzie tax partner later noted that “Stanley Surrey was the archenemy of Baker & McKenzie. He criticized any evaluation that anybody from Baker & McKenzie came up with.”<sup>90</sup> Because the courts had upheld the transaction, Surrey had to wait until he returned to the Treasury Department in 1961 to correct the early “drafting error” with the creation of what is referred to today as the taxation of Subpart F income.<sup>91</sup> Surrey’s disdain for the

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83. *Id.*

84. *Id.*

85. JON R. BAUMAN, PIONEERING A GLOBAL VISION: THE STORY OF BAKER & MCKENZIE 38 (1999).

86. *Id.*

87. SURREY, *supra* note 7, at 58, 129.

88. BAUMAN, *supra* note 85, at 41.

89. *Id.*

90. *Id.*; SURREY, *supra* note 7, at 129.

91. For more on the origins of Subpart F, see generally, Nir Fishbien, *From Switzerland with Love: Surrey’s Papers and the Original Intent(s) of Subpart-F*, 38 VA. TAX REV. 1 (2018); Avi-Yonah &

WHTC deals might be attributed to his relentless defense of the national fisc. It is equally possible, though, that he singled out the Baker firm for its less than stellar credentials and reputation among tony tax lawyers. Surrey was, after all, one of the “spiritual mentors at Ivy League law schools” that the elite bar relied upon.<sup>92</sup>

With his growing reputation and his many contacts in the affluent sectors of the organized bar, Surrey also developed a lucrative consulting practice while he was teaching.<sup>93</sup> Inviting practicing attorneys to his classes had its benefits. So too did his deep knowledge about the legislative history of numerous tax provisions, and his understanding of international and comparative tax law. From his perspective, such consulting did not conflict with his academic objectives. Rather, it broadened “insights into the practice of tax law and contributed to more effective law teaching.”<sup>94</sup> Surrey’s consulting was wide ranging, befitting his knowledge and experience. He assisted leading law firms in Boston and elsewhere on tax controversy cases, providing counsel to the private firms representing taxpayers.<sup>95</sup> Similarly, he provided guidance to the Tax Division of the U.S. Department of Justice in its interpretation of U.S. Treasury Regulations.<sup>96</sup> He helped structure complex commercial transactions to maximize after-tax profits; in some cases, he brought his brother Walter Surrey’s D.C.-based international law firm into his consulting.<sup>97</sup> He assisted the government of Israel as it drafted regulations governing the taxation of oil.<sup>98</sup> And, perhaps most importantly, he worked in 1949 while still at Berkeley with the Ford Foundation in reviewing its operations and programs to ensure its tax exempt status.<sup>99</sup> This early relationship with Ford would prove crucial when Surrey moved to HLS and helped establish the ITP.

It was not only interactions with the elite bar that Surrey craved when he returned to the academy, he also sought to keep up his contacts with prominent economists. During his first term in Treasury (1937–47), he worked closely with

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Fishbein, *supra* note 3.

92. BAUMAN, *supra* note 85, at 38.

93. SURREY, *supra* note 7, at 101–02.

94. *Id.* at 102.

95. Letter from Kenneth W. Bergen, Bingham, Dana & Gould, to Stanley S. Surrey (Dec. 10, 1958); Letter from Stanley S. Surrey to Kenneth W. Bergen, Bingham, Dana, & Gould (Dec. 12, 1958), Box 2, Folder “Bingham, Dana,” SSSP (copies on file with author).

96. Letter from Stanley S. Surrey to H. Brian Holland, Assistant Att’y Gen. (Nov. 21, 1955), Box 17, Folder 6, SSSP (copies on file with author).

97. Memorandum from Stanley S. Surrey Regarding Laurence Fordham’s Client (Oct. 16, 1969); Letter from Stanley S. Surrey to Laurence Fordham, Foley, Hoag & Eliot (1969) (draft agreement for consulting services); Box 104, Folder 2, SSSP (copies on file with author). The consulting agreement with Foley indicates that Surrey charged \$150 per hour for his services, which is over \$1,200 in 2023 dollars. *Id.*

98. Letter from Meir Sherman, Isr. Econ. Minister, to Stanley S. Surrey (Jan. 25, 1955), Box 17, Folder 4, SSSP (copy on file with author).

99. Letter from Stanley S. Surrey to H. Rowan Gaither, Esq., Director, The Study for the Ford Found. on Pol’y and Program (Mar. 28, 1949); Letter from H. Rowan Gaither to Stanley S. Surrey (Mar. 1, 1949), Box 10, Folder 3, SSSP (copies on file with author); SURREY, *supra* note 7, at 85–86.

many liberal New Deal economists, including Carl Shoup, whom Surrey in later years would accompany on many international tax missions. Staying connected to economists provided Surrey with an opportunity to continue to learn about public economics, which he believed improved his teaching.<sup>100</sup> It also gave him yet another way to increase his academic credibility, prestige, and status. When he first joined the Berkeley faculty, Surrey seemed disappointed that there were few economists on campus with tax policy experience.<sup>101</sup> His Treasury experience had spoiled him. But when he decamped to Harvard, Surrey quickly reconnected with colleagues in economics and the business school by co-teaching a class on Current Tax Policy.<sup>102</sup> The class was, according to Surrey, “the first interdisciplinary seminar in the Law School.”<sup>103</sup>

Ever the pragmatist when it came to his intellectual curiosity and search for prestige, Surrey was willing to collaborate with faculty from across the political spectrum. At Harvard, he co-taught with Dan Throop Smith, a Dwight D. Eisenhower Treasury Official who was much more politically conservative than Surrey.<sup>104</sup> He also co-taught a tax policy class with Richard Musgrave, a leading left-leaning public finance economist whom Surrey had met while assisting Randolph Paul with Adlai Stevenson’s failed 1952 Democratic presidential candidacy.<sup>105</sup> Musgrave and Surrey became life-long friends, and they co-taught Harvard’s tax policy seminar several times.<sup>106</sup>

### III

#### SURREY AS MENTOR

Surrey’s role as an educator, of course, extended beyond the formal boundaries of his law school classrooms. Indeed, Surrey’s teaching informed how he advised and mentored numerous future lawyers, policymakers, and legal academics. Former students recounted that Surrey was an excellent and dedicated, if somewhat demanding, teacher and mentor.<sup>107</sup> Many of his former students followed his lead into government service, with some reaching the highest ranks of national tax policymaking. Others even mirrored his career, moving back and forth between the academy and government service, including the U.S. Treasury.<sup>108</sup> Many former Treasury officials recounted how their service with him “became wondrous travels in the world of ideas.”<sup>109</sup> Perhaps more

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100. SURREY, *supra* note 7, at 44.

101. *Id.* at 88.

102. *Id.*

103. *Id.* at 88–89.

104. *Id.* at 123.

105. *Id.* at 102–03, 207.

106. See generally Richard A. Musgrave, *Pathway to Tax Reform*, 98 HARV. L. REV. 335 (1984).

107. See Victoria A. Judson, *An Exemplary Teacher*, 36 HARV. L. SCH. BULL. 56, 56 (Winter/Spring 1985); E-mail from Daniel I. Halperin, *supra* note 81; Interview with Leonard Gilbert, Stanley Surrey’s Former Student & Rsch. Assistant (Dec. 7, 2022) (recorded video and audio on file with author).

108. SURREY, *supra* note 7, at xxiv–xxxi.

109. Paul R. McDaniel, *Remarks at Surrey Memorial* (copy on file with author).

importantly, Surrey promoted and advanced the careers of his junior colleagues. For example, he hired Elizabeth A. Owens as his research assistant, furthered her career as a leading international tax law scholar, and supported her as she became the first woman to receive tenure at Harvard Law School.<sup>110</sup> He provided similar support for others, including Oliver Oldman, who would succeed Surrey as the director of the law school's ITP. In short, several generations of aspiring lawyers and colleagues learned at the feet of Stanley Surrey.

Many of the HLS students who took his taxation and legislation classes reflected on Surrey's role as an advisor and sponsor. They noted that he was a rigorous and demanding instructor but also a modest person about his policymaking achievements. Those who served as his research assistants recalled that Surrey expected his research assistants to be completely dedicated to their duties. Although Surrey himself was a thoroughgoing liberal Democrat, he rarely brought politics into his teaching or counseling of students or colleagues, or even in his hiring decisions at Treasury. When he returned to HLS in 1969, Surrey had amassed a great deal of power and authority in tax circles as well as the legal academy. By this time, his most significant contributions as a mentor may have been to his junior HLS colleagues—some of whom owed their entire research agendas and academic careers to Surrey's pivotal role as an advisor and advocate.

From the student perspective, Surrey was a popular yet demanding professor. One former student recalled that he was "exuberant and inspired by his work and modest about his accomplishments."<sup>111</sup> Unlike some of his HLS colleagues, who spoke "first and often" about their "vital roles in various projects," Surrey focused on "the principles involved in the policies he promoted, not his personal role in implementing them."<sup>112</sup> He was "all business all the time," noted another student and former Surrey research assistant, who also recalled that Surrey expected his research assistants to be working alongside him regularly, even on snowy winter Sundays.<sup>113</sup> As a result, Surrey attracted "serious students who paid attention."<sup>114</sup> Reflecting back on his teaching, Surrey noted that "one thing a law school teacher learns, often painfully, is that you cannot reach or appeal to every student in the class."<sup>115</sup>

For those who impressed Surrey, he was willing to go to great lengths to assist them with their job search. While he was teaching at Berkeley, Surrey contacted his former colleagues and associates on congressional staffs and in the

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110. KIMBALL & COQUILLETTE, *supra* note 6, at 525–26.

111. Judson, *supra* note 107.

112. *Id.*

113. Interview with Leonard Gilbert, *supra* note 107.

114. *Id.* Students were also attracted to Surrey because he was one of the younger tax law professors at HLS during the late 1950s. As Leonard Gilbert recalled, students euphemistically noted that while Professor Ernst "Brown taught the 1939 Code, Surrey taught the 1954 Code." *Id.*

115. SURREY, *supra* note 7, at 4. Surrey went on to conclude: "Some students will consider you the very best professor they had in school while others will see you as the embodiment of the evils of the tenure system." *Id.*



Washington D.C. bar to recommend some of his top students.<sup>116</sup> He also assisted former congressional staffers who were trying to make career moves from government service into the private sector.<sup>117</sup> Similarly, he kept in touch with his former Berkeley administrative assistant and advised her on studying accounting and pursuing future career opportunities.<sup>118</sup> It does not appear that Surrey provided such assistance to all of his students and colleagues, but for those who were in his good graces Surrey was fiercely loyal. Indeed, he was even willing to overlook differences in political alliances when supporting students or hiring new associates.

While Surrey thought of himself as a “good Democrat,”<sup>119</sup> having served only in Democratic presidential administrations, politics rarely entered his classroom or mentoring. Students recalled that his lectures were “apolitical” and “impersonal.”<sup>120</sup> He would criticize some of the existing provisions in the Internal Revenue Code, but he rarely attributed them to political motives, as he sometimes did in his writings.<sup>121</sup> Moreover, he rarely discussed non-tax matters or mentioned his family, besides a passing reference now and then to his brother Walter, the Washington, D.C. international lawyer. “The one time he let his hair down was in January 1961,” recalled a former student, “when there was a story in the [*New York Times*] to the effect that he and Kennedy had met the day before and outlined what they discussed. He told us with some bewilderment that there were only two people in the room, and he did not talk to the *Times*. He seemed human for the first time.”<sup>122</sup>

For someone as politically astute as Surrey, it is surprising that he rarely reflects in his memoirs or personal communications on how broad political trends shaped his career, let alone his teaching or mentoring. For example, by 1960, Surrey was undoubtedly an established and well-regarded tax law professor. But he was able to rise to the highest level of national tax policymaking mainly because he was a professor at a university with strong ties to the incoming U.S. president. But for this connection, Surrey may not have become Assistant Secretary for Tax Policy. To be sure, Surrey seized the opportunity to advise the John F. Kennedy campaign on tax policy at a relatively early stage in the political

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116. Letter from Stanley S. Surrey to Charles Oliphant, Esq., Chief Couns., Bureau of Internal Revenue (Mar. 29, 1950) (recommending David Hardy for a position with the Bureau), Box 386, Folder 5, SSSP (copy on file with author).

117. Letter from Eugene E. Oakes to Stanley S. Surrey (May 10, 1951), Box 386, Folder 5, SSSP (copy on file with author).

118. Letter from Stanley S. Surrey to Norma Occelli (Aug. 17, 1951), Box 386, Folder 5, SSSP (copy on file with author).

119. SURREY, *supra* note 7, at 213.

120. E-mail from Daniel I. Halperin, *supra* note 81.

121. Interview with Leonard Gilbert, *supra* note 107; Stanley S. Surrey, *The Congress and the Tax Lobbyist: How Special Tax Provisions Get Enacted*, Harv. L. Rev. 70.7 (1957): 1145-1182. For more on how Surrey’s criticism of Congress led to a challenging confirmation process, see, Zelenak and Mehrotra, *supra* note 5.

122. Email from Daniel I. Halperin, *supra* note 81.

process,<sup>123</sup> which ensured that he would have access to a new Democratic administration. But, for the most part, Surrey took his historic political context as a given, leaving unrecognized how transformative political factors outside of his own ambitions and efforts shaped his career and life.

Given that Surrey may have been reticent in bringing partisan politics into his memoirs, as well as his classroom teaching, it is no surprise that he focused more on his sense of merit than politics when he hired former students for key political and high-level policymaking roles. Indeed, Surrey was a role model for many of his former students, including those with differing political allegiances. Surrey, for instance, recruited and hired Donald C. Lubick to become Tax Legislative Counsel in the Treasury Department when Surrey was Assistant Secretary for Tax Policy in the Kennedy administration.<sup>124</sup> Lubick at the time was a registered Republican, which led some Kennedy officials to challenge his appointment initially.<sup>125</sup> Surrey's support for Lubick proved vital.<sup>126</sup> And subsequently, Lubick himself became Assistant Secretary, Surrey's position, during the Democratic Carter and Clinton administrations.<sup>127</sup> Lubick considered himself one of "the great number of [Surrey] disciples whom [Surrey] inspired and motivated to follow his path."<sup>128</sup>

There were others. Jerome Kurtz was another former student and Treasury Department protégé, who initially served under Surrey during the Johnson administration and then become Commissioner of the Internal Revenue Service during the Carter administration.<sup>129</sup> Surrey even had one former student, Daniel I. Halperin, who followed his path of traveling between the academy and Treasury. Halperin worked for Surrey at the Treasury during the late 1960s and became Deputy Assistant Secretary from 1978–80. He was also the inaugural Stanley S. Surrey Professor of Law at HLS from 1996 until his retirement in 2015.<sup>130</sup> Ultimately, despite his seemingly apolitical nature, Surrey was both a product of, and an advocate for, New Deal and Great Society liberalism. He believed that policymakers had a duty to advance the public interest, including

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123. SURREY, *supra* note 7, at 175–77.

124. Dale Anderson, *Donald C. Lubick, 95, Renowned Buffalo Tax Attorney Served Under Five Presidents*, BUFFALO NEWS (Mar. 9, 2022), <https://buffalonews.com/obituaries/features/donald-c-lubick-95-renowned-buffalo-tax-attorney-served-under-five-presidents/article1c80e942-9f63-11ec-af2a-eb1cf1aa50d3.html>.

125. C. Eugene Steuerle, *Donald Lubick: Public Servant*, TAX POL'Y CTR. (Apr. 6, 2018), <https://www.taxpolicycenter.org/taxvox/donald-lubick-public-servant>.

126. *Id.*

127. *Id.*

128. Donald C. Lubick, *A View from Washington*, 98 HARV. L. REV. 338, 338 (1984) (Lubick's remarks for Surrey Memorial).

129. Emily Langer, *Jerome Kurtz, IRS Commissioner Under Carter, Dies at 83*, WASH. POST (Mar. 5, 2015), [https://www.washingtonpost.com/national/jerome-kurtz-irs-commissioner-under-carter-dies-at-83/2015/03/05/4adf10fe-c282-11e4-9ec2-b418f57a4a99\\_story.html](https://www.washingtonpost.com/national/jerome-kurtz-irs-commissioner-under-carter-dies-at-83/2015/03/05/4adf10fe-c282-11e4-9ec2-b418f57a4a99_story.html).

130. Carolyn Kelley, *Undisguised Value: Daniel Halperin Has Shaped U.S. Tax Policy and Practitioners for More Than a Half-Century*, HARV. L. TODAY (July 8, 2015), <https://hls.harvard.edu/today/undisguised-value-daniel-halperin-has-shaped-u-s-tax-policy-and-tax-practitioners-for-more-than-a-half-century/>.

by protecting the national fisc through a fair and an equitable tax system. Thus, it is notable that most of his intellectual proteges worked in Democratic administrations.

If Surrey was willing to look beyond partisan politics in his mentoring, he did not appear to shy away from faculty politics. As we have seen, he was an active participant in curricular reform at HLS in the early 1950s, promoting the need for a greater focus on tax courses.<sup>131</sup> He was also involved in advancing faculty scholarship, along the lines of Dean Griswold's business school-like vision of "applied research."<sup>132</sup> Perhaps most importantly, Surrey was a trusted advisor to many of his mentees.<sup>133</sup> As we have seen, Surrey was fiercely loyal to former students and colleagues, willing to help them with their job searches. But Surrey's most significant form of mentorship came in the instrumental role he played in hiring and mentoring several tax law colleagues. Even those who did not have him as a teacher learned from their many interactions with him.<sup>134</sup> Others were indebted to him for the opportunities and encouragement he provided. Elizabeth "Betsy" Owens, for example, became the first woman faculty member tenured at HLS due in part to Surrey's efforts.<sup>135</sup>

In 1955, just a few years after HLS began admitting female students, Surrey hired Owens as his research assistant. As a trained economist and lawyer, Owens embodied many of the traits that Surrey admired, including credentials from some of the country's most prestigious schools.<sup>136</sup> Owens graduated from Smith College in 1940 *summa cum laude* with a degree in economics. She then spent a year in the University of Chicago's graduate economics program, before becoming a government economist during World War II, and then working for the United Nations soon after the war. Her time in government convinced her that lawyers played a pivotal role in economic policymaking and thus she entered Yale Law School in 1948 "to learn how law fit into the economy."<sup>137</sup> After graduating in 1951, she practiced with the prestigious Boston law firm of Hill, Barlow & Adams—one of the few women to enter the elite bar at the time.

While at the law firm, Owens learned from a colleague that Surrey was interested in hiring a research assistant to help him with international tax matters.<sup>138</sup> Her elite education and experience in government likely appealed to Surrey. He hired her as a key member of the burgeoning ITP's research group. One of her first assignments was assisting Surrey in revising a United Nations report on international tax rules, which provided her with a modest co-authored

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131. Zelenak & Mehrotra, *supra* note 5, at xii.

132. KIMBALL & COQUILLETTE, *supra* note 6, at 506–07.

133. Zelenak & Mehrotra, *supra* note 5, at xii.

134. *See, e.g.*, Bernard Wolfman, *Statesman, Scholar, Mentor*, 98 HARV. L. REV. 343, 343 (1988).

135. KIMBALL & COQUILLETTE, *supra* note 6, at 525–26.

136. *Id.*

137. Herma Hill Kay, *In Memoriam: Elizabeth A. Owens*, 112 HARV. L. REV. 1403, 1405 (1999). As Kay recounted based on personal interviews, Owens "was interested more in the sociological facets of the law than the law for its own sake." *Id.*

138. *Id.*

publication.<sup>139</sup> She also assisted Surrey in preparing teaching materials for his international tax class.

Indeed, working with Surrey helped Owen develop her scholarly potential. As Owen recounted many years later, Surrey played an active role in helping her set her research agenda. “I think at one point, Professor Surrey asked me, ‘What is a creditable tax?’ My answer turned into three books.”<sup>140</sup> The first of those books, *The Foreign Tax Credit* (1961),<sup>141</sup> received uniformly positive reviews and garnered Owen a prominent international reputation as a leading tax expert.<sup>142</sup> Surrey recalled that the book “was instantly recognized as the authority on the topic.”<sup>143</sup> Owens graciously acknowledged Surrey to whom she was “especially indebted” not only because he proposed “the idea of a study of the foreign tax credit of which this book is the result, but he has given very generously of his time and knowledge in reviewing the manuscript.”<sup>144</sup> Surrey responded by writing a preface to the book, citing it as “the first intensive study made of the United States tax credit.”<sup>145</sup>

Owens’s time at HLS coincided with many challenges for gender equality in legal education and the profession. HLS had graduated its first class of female students—all 13 of them—in 1953, just two years before Owens was hired.<sup>146</sup> Despite the presence of women students at the law school, HLS administrators believed that “spartan manliness continued to guide academic policy.”<sup>147</sup> Nowhere was this more apparent than in faculty appointments. Several years before Surrey hired Owens, HLS had unsuccessfully attempted to break the faculty’s gender barrier. For two successive years (1947–49), Dean Griswold appointed Soia Mentschikoff as a visiting professor with the intention of possibly making her the first tenured female professor at HLS.<sup>148</sup>

Mentschikoff’s career was extraordinary. At a time when few law schools were admitting women, let alone giving them opportunities to advance in the profession, Mentschikoff had not only graduated from Columbia Law School in 1937 (five years after Surrey), but by 1944 she had become a partner at a leading

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139. STANLEY S. SURREY & ELISABETH A. OWENS, 1956 SUPPLEMENT TO S.S. SURREY, D.T. SMITH & I.T. WENDER, UNITED STATES INCOME TAXATION OF PRIVATE UNITED STATES INVESTMENT IN LATIN AMERICA, U.N. Doc. ST/ECA 18 (1953).

140. Emily Newburger, *Elisabeth Owens: Tax Innovator*, 39 HARV. L. BULL. 23, 23 (1988) (quoting Owens).

141. ELISABETH A. OWENS, *THE FOREIGN TAX CREDIT: A STUDY OF THE CREDIT FOR FOREIGN TAXES UNDER THE UNITED STATES INCOME TAX LAW* (1961).

142. Kay, *supra* note 137, at 1406. For more on Owens, see ELINOR PORTER SWIGER, *WOMEN LAWYERS AT WORK* (1978), as well as the other essays in the Harvard Law Review memorial honoring Owens, 112 HARV. L. REV. 1403, 1403–1419 (1999).

143. SURREY, *supra* note 7, at 141.

144. OWENS, *supra* note 141, at v. Owens also acknowledged funding from the Ford Foundation for her book. *Id.*

145. *Id.* at viii.

146. KIMBALL & COQUILLETTE, *supra* note 6, at 462.

147. *Id.* at 505.

148. *Id.* at 524-5.

Wall Street law firm.<sup>149</sup> During her visit, she seemed to impress her HLS colleagues, but her husband Professor Karl Llewellyn, who visited the law school in the fall of 1948, apparently did not. And, consequently, neither received an offer from HLS and instead they moved to the University of Chicago.<sup>150</sup>

After the Mentschikoff visit, HLS did not have a tenured female law professor until 1972, when Owens was finally given the distinction. Her road to tenure was difficult. For roughly a decade, she held many important titles and roles in the ITP, rising from Research Assistant (1955–61) to Associate in Law and Editor of Publications (1961–63) to Lecturer in Law and Research Associate in Law (1963–65); along the way she took a brief hiatus to work for Surrey while he was in the Kennedy Administration.<sup>151</sup> Throughout her first years, Owens remained within the administrative confines of the ITP, while others in similar positions quickly joined the research tenure-track faculty. Although Surrey may have been late in recognizing her talents, he ultimately became “her chief advocate.”<sup>152</sup> Surrey was in Washington when Owens became a Lecturer in Law and moved to the tenure track—a feat she achieved due mainly to her growing international reputation as a tax scholar, which even Griswold acknowledged.<sup>153</sup> Moreover, Surrey’s continued absence from HLS likely had an impact on her not getting tenure until 1972 when he was back on the faculty, actively engaged with the appointments process, and “extremely supportive of her case.”<sup>154</sup>

In supporting Betsy Owens’s career, Surrey was reflecting changing attitudes in legal education and the profession toward gender equality, and perhaps his own affinity for meritocracy over conventional biases.<sup>155</sup> As Owens acknowledged, the passage of Title IX of the Education Amendments of 1972 played an important role in her securing tenure.<sup>156</sup> An equally important factor was the growing presence of women at law schools throughout the country, and the calls for greater female representation on the faculties of the country’s leading law schools. When Surrey returned to HLS in 1969, he was among the more senior faculty members. But his social politics remained progressive and aligned with some of the younger faculty, as his support for Owens indicated. He was, after all, a direct product of New Deal and Great Society liberalism. Surrey “defied the notion that with age one becomes more conservative,” noted colleague Bernard Wolfman. “He supported affirmative action when many in his age group did not. He did so with openness and honesty.”<sup>157</sup> Surrey’s support for

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149. George Volsky, *Soia Mentschikoff, Professor and Ex-Law Dean, Dies at 69*, N.Y. TIMES, June 19, 1981, B10.

150. KIMBALL & COUILLETTE, *supra* note 6, at 524–25.

151. Kay, *supra* note 137, at 1406.

152. *Id.*

153. *Id.*, at 1405–6.

154. *Id.*, at 1407.

155. For more on Surrey’s view of meritocracy, see Shaviro, *supra* note 11, at 247–49; on meritocracy more generally, see MARKOVITZ, *supra* note 11; SANDEL, *supra* note 11.

156. Kay, *supra* note 137, at 1406.

157. Wolfman, *supra* note 134, at 329.

Owens might accurately reflect the triumph of meritocracy over traditional gender biases.<sup>158</sup> But, at the same time, Surrey's notion of meritocracy — with its fetishization of prestigious credentials, expert knowledge, and an endless work ethic—also furthered the mid-twentieth century American concept that elite intellectuals were destined to be the best and brightest.<sup>159</sup>

Betsy Owens was not the only junior tax scholar that Surrey mentored and supported. He played an equally important role in the development of Professor Oliver “Ollie” Oldman’s academic career.<sup>160</sup> Oldman graduated from Harvard College in 1942 with a degree in economics, and he was a 1953 *cum laude* graduate of HLS.<sup>161</sup> His senior thesis at Harvard was on retail sales taxation.<sup>162</sup> After college, he joined the Office of Price Administration, where he might have met Elisabeth Owens. Like Surrey, Oldman left the confines of Washington, D.C. during the war to enlist.<sup>163</sup> Oldman became a private in the U.S. Army Signal Corps and rose to lieutenant when he left the Army in 1946 and began teaching economics at the University of Buffalo, while assisting his family with a real estate business.<sup>164</sup> A few years later, he enrolled at HLS on the G.I. Bill and after law school he practiced tax and real estate law briefly back in Buffalo, while still teaching part time. In 1955, Oldman returned to HLS to join the ITP as one of Surrey’s first Directors of Training.<sup>165</sup>

Surrey was instrumental in hiring and promoting Oldman. Although it appears that Surrey did not have Oldman as a student, he recognized that Oldman had the requisite training and skills to join the ITP and later the full-time research faculty. In a series of private 1958 communications with Dean Griswold, Surrey singled out Oldman as one of the country’s leading experts on state and local taxation and international tax matters. “As matters now stand,” Surrey wrote to Griswold, Oldman’s “background is certainly the best we can find in academic, or even government circles, for this work.”<sup>166</sup> Ever the academic entrepreneur,<sup>167</sup> Surrey initially contacted Griswold to recommend that the law school hire two full-time, tenure-track tax law faculty members, but it was

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158. See Shaviro, *supra* note 11, at 253–54.

159. See generally MARKOVITZ, *supra* note 11; SANDEL, *supra* note 11.

160. Surrey was involved in the hiring of several key members of the ITP research team, including Leo Ruskin. Stanley S. Surrey to Milton Katz (April 8, 1955), Box 11, Folder 7, SSSP (copy on file with the author).

161. *Oliver Oldman, Expert in International Tax, 1920–2008*, HARV. L. BULL. (Dec. 9, 2008), <https://hls.harvard.edu/today/oliver-oldman-expert-in-international-tax-1920-2008/>.

162. Memorandum from Stanley S. Surrey to Dean Griswold, Regarding Oliver Oldman (Oct. 6, 1958), Box 11, Folder 3, SSSP (copy on file with author).

163. Surrey left the Treasury Department in late 1943 to join the U.S. Navy. SURREY, *supra* note 7, at 68.

164. Bryan Marquard, *Oliver Oldman, 88; Taught at Harvard Law School*, BOSTON GLOBE, Dec. 26, 2008, B15.

165. *Id.*

166. Memorandum from Stanley S. Surrey to Erwin Griswold, Dean, Harv. L. Sch., Regarding Faculty Appointments in the Tax Field (Oct. 6, 1958), Box 11, Folder 3, SSSP (copy on file with author).

167. See generally Mirit Eyal-Cohen, *The (Tax) Policy Entrepreneur*, 86 LAW & CONTEMP. PROBS., no. 2, 2023, at 203.

Oldman whom Surrey identified in 1958 as the top candidate “for a permanent appointment to the Law School faculty.”<sup>168</sup> Oldman joined the tenure track the following year.

Like Betsy Owens, Ollie Oldman had many traits that likely appealed to Surrey. As Surrey noted in his memo to Griswold, Oldman had the elite credentials that were typical of most HLS faculty. He had practical experience both before and after law school in state and local taxation. He was developing a deeper knowledge of economics and public finance by taking classes in the economics department while teaching at HLS. He had recently participated in a Shoup-led tax mission to Venezuela, due mainly to Surrey’s recommendation. And since joining the ITP, Oldman had become the leader of a training program that, Surrey noted, “has met with unrestrained approval and commendation of the United Nations.”<sup>169</sup> In sum, “all who have participated with Mr. Oldman in his International Program work have found his contributions imaginative and competent,” Surrey concluded.<sup>170</sup> “At present he is one of the best informed academic persons in these fields, and I doubt that his experience could be presently duplicated anywhere.”<sup>171</sup> In the following year, Oldman became a full-time faculty member on the tenure track, while Owens continued her research and administrative work with the ITP.

In many ways, Owens and Oldman carried on Surrey’s teaching and mentoring legacy. As key members and leaders of the ITP, they worked closely with Surrey and the hundreds of foreign students who over the years participated in the program. They also shared other attributes of their mentor. Both were interdisciplinary scholars with training and backgrounds in economics — a discipline that, as we have seen, Surrey greatly admired.<sup>172</sup> Owens and Oldman also learned from Surrey the importance of effective administration for a well-functioning fiscal system. Their scholarship and teaching emphasized tax administration.<sup>173</sup> Perhaps most importantly, Owens and Oldman—each in their own way—carried on Surrey’s legacy of globalizing legal education and attending to the increasing importance of international tax matters. As Surrey himself acknowledged, international taxation became increasingly important in the post-World War II period.<sup>174</sup>

As two of his most important lieutenants and mentees in the ITP program, Owens and Oldman took the ITP to new heights. Owens wrote the defining text on foreign tax credits, was a longtime program administrator, and, as we shall see, played a vital role in running the World Tax Series, the ITP’s publication arm.

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168. Memorandum from Stanley S. Surrey to Erwin Griswold, *supra* note 166.

169. *Id.*

170. *Id.*

171. *Id.* at 3.

172. SURREY MEMOIR, *supra* note 5, at 88. Surrey began co-teaching with economists from Harvard in part to help him “keep up with the current trends in economic and fiscal policy so that [he] could use this learning in [his] basic tax course.” *Id.*

173. See, e.g., Richard M. Bird, *In Memoriam: Oliver Oldman*, 122 HARV. L. REV. 1285, 1290 (2009).

174. SURREY, *supra* note 7, at 130.

Likewise, Oldman became the ITP's director when Surrey returned to government service in 1961 and he expanded the program significantly. As one pair of colleagues noted, "If Stanley Surrey created the [ITP], it was Ollie [Oldman] who brought it to life."<sup>175</sup>

Surrey's support for Oldman, Owens, and other junior colleagues was probably not a surprise to many HLS students and colleagues. Former students noted that Surrey appeared to get along well with many of his colleagues, and that he was held in high regard by several of the leaders of the law school.<sup>176</sup> Surrey's collegiality and ability to collaborate with others would become essential in his less well-known role as a major institution builder at HLS.

#### IV

##### SURREY AS INSTITUTION BUILDER

Surrey's boundless energy as an educator and mentor flowed into his institutional commitments.<sup>177</sup> Law school deans and university presidents, to be sure, counted on him "to take on the most difficult tasks at the school" and the university, as one former law school dean recounted.<sup>178</sup> He helped oversee the law school's clinical programs. He assisted in promoting faculty research. He mediated faculty and student disputes. And he advised Harvard University in evaluating its responsibilities as an institutional investor, during tense political times.<sup>179</sup> But Surrey's greatest institutional contributions may have been his role as a founding member and leader of the law school's ITP.

Surrey helped create this tax program at a crucial time for legal education and U.S. history. During these early Cold War years, the legal academy was a key institution in the increasing post-World War II globalization of higher education and the concomitant advancement of American foreign and economic policy interests. Through the tax program, Surrey influenced many aspects of international and comparative tax law, from the creation of policy to the advancement of knowledge about foreign tax systems to the teaching of future treasury officials and finance ministers throughout the world. A commitment to teaching and mentoring are thus only parts of the Surprising Surrey. The other is the work that he did in building institutions, particularly at HLS.

To be sure, Surrey's tax policymaking and scholarship were forms of institution building. The annual tax expenditure budget was a signal achievement, creating a new fiscal institution. So too was his international work. As a member

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175. Minorsu Nakazato & Mark Ramseyer, *In Memoriam: Oliver Oldman*, 122 HARV. L. REV. 1296, 1296.

176. Interview with Leonard Gilbert, *supra* note 107; JAMES VORENBERG REMARKS AT SURREY MEMORIAL (on file with author).

177. For Surrey's reflections on his role in Harvard Law School and university activities, especially after his return in 1969, see SURREY, *supra* note 7, at 226–35.

178. JAMES VORENBERG REMARKS AT SURREY MEMORIAL, *supra* note 176.

179. *Id.* See also SURREY, *supra* note 7, at 226–27 (explaining how Surrey conducted meetings with students and faculty at the peak of the Vietnam War student unrest in 1969).



of several Shoup-led tax missions, Surrey helped build the administrative institutions that became the foundations for the development of sound tax laws and policies in many foreign nations, particularly in the developing world.<sup>180</sup> Likewise, Surrey's tax work for the American Law Institute helped steer that organization's focus away from "restatements of the law" to more policy-focused model codes.<sup>181</sup> Those efforts, however, are well known and well documented. Much less is known or written about Surrey's role in establishing and running HLS's ITP in the 1950s.

In 1952, just two years after Surrey joined the faculty, the law school created the ITP with financial support from the Ford Foundation and in cooperation with the United Nations.<sup>182</sup> As part of the post-World War II wave of globalization, leading philanthropic organizations, like Ford, partnered with elite universities by providing substantial grants to advance U.S. interests in spreading democracy, advancing free markets, and containing communism.<sup>183</sup> Ford was particularly interested in funding professional schools of business and law.<sup>184</sup> Initially, the creation of the Ford-funded tax program was part of a larger effort to establish a "World School of Law" at Harvard. Although the World School of Law did not materialize, the tax program gradually became the entry point for future Ford funding and the growth of HLS's International Legal Studies program.<sup>185</sup> Surrey was one of the catalysts in securing external funding from Ford and many other organizations—funding that allowed Surrey and others to establish and grow the ITP and its many activities. Although he downplayed his abilities as a fundraiser,<sup>186</sup> Surrey's early ties to the Ford Foundation and his growing reputation as an international tax expert made him the ideal person to help HLS attract funding and establish and run the ITP.

In the wake of World War II, American legal education became increasingly globalized and outward facing—an important factor in the development of the

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180. See Brownlee & Ide, *supra* note 4, at 105 (discussing Surrey's impact on tax administration and analysis in post-war Japan).

181. SURREY, *supra* note 7, at 107-109. For more on the American Law Institute's 1954 income tax project, see generally Lawrence Zelenak, *The Almost-Restatement of Income Tax of 1954: When Tax Giants Roamed the Earth*, 79 BROOK. L. REV. 709 (2014); Charlotte Crane, *Stanley Surrey, the American Law Institute Income Tax Project, and the Normative Structure of the Income Tax* 86 LAW & CONTEMP. PROBS., no 2, 2023, at 137.

182. KIMBALL & COUILLETTE, *supra* note 6, at 511-12.

183. See generally Ron Levi, Ronit Dinovitzer & Wendy H. Wong, *Strategic Philanthropy and International Strategies: The Ford Foundation and Investments in Law Schools and Legal Education*, in THE GLOBALIZATION OF LEGAL EDUCATION: A CRITICAL PERSPECTIVE 79, 79-122 (Bryant Garth & Gregory Shaffer eds., 2022) (discussing how Ford's grantmaking advanced certain ideals).

184. See, e.g., Rakesh Khurana, Kenneth Kimura & Marion Fourcade, *How Foundations Think: The Ford Foundation as a Dominating Institution in the Field of American Business Schools* (Harv. Bus. Sch., Working Paper No. 11-070, 2011); Jayanth K. Krishnan, *Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India*, 46 AM. J. LEGAL HIST. 447 (2005).

185. KIMBALL & COUILLETTE, *supra* note 6, at 509-13.

186. See SURREY, *supra* note 7, at 241 (noting that financing the income tax project was "not [his] forte").

ITP. With the United States emerging after the war as one of two world powers, American law schools became core institutions promoting liberal democracy and western capitalism. U.S. law schools attracted elites from many periphery countries, particularly those in the developing world caught in between Cold War tensions. Consequently, the graduate law programs of leading U.S. law schools began to cater more to foreign lawyers. Whereas in the prewar period these programs, leading to L.L.M and S.J.D degrees, were focused mainly on training future American law professors, after the war the emphasis shifted to educating graduates of foreign law schools, most of whom returned to their home countries to become government officials, faculty members, or leading members of their local bars.<sup>187</sup> To match the shift in enrollment, law schools began offering more comparative and international law courses and hiring faculty with greater knowledge and experience in these areas. It was this broader historical context that gave birth to the ITP.<sup>188</sup>

While law schools were becoming more transnational, U.S. philanthropies were reassessing how they could use their abundant resources in a post-World War II world not only to improve society, but also to advance American foreign policy interests. The Ford Foundation led the way by providing large grants to higher education, including professional schools, both to make American education more global and to help reform foreign models of learning to make them more “modern,” or rather more like the United States. Ford Foundation funding became crucial in transforming American management schools from vocational institutions to serious centers of academic research and teaching.<sup>189</sup> Ford also spent a tremendous amount of its resources on legal education. During the 1950s, total Ford funding for legal education approached nearly \$2 billion, accounting for almost half of Ford’s commitments to law or justice-related grantmaking during the decade. This funding increased over time. By the end of the 1950s, Ford was investing nearly 90% of its overall justice work into legal education.<sup>190</sup>

Several elite law schools benefited from Ford’s largess, with Harvard among the top grant recipients. From 1950 through 1961, Harvard University received over \$33 million from the Ford Foundation.<sup>191</sup> During that same period, the Foundation provided grants of nearly \$36 million to twelve universities specifically for “international training and research.”<sup>192</sup> Harvard’s share of that

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187. Gail J. Hupper, *Educational Ambivalence: The Rise of a Foreign-Student Doctorate in Law*, 49 *NEW ENG. L. REV.* 319, 396–97 (2015); Gail J. Hupper, *The Academic Doctorate in Law: A Vehicle for Legal Transplants?*, 58 *J. LEGAL EDUC.* 413, 444 (2008).

188. STEVENS, *supra* note 12, at 209; KIMBALL & COQUILLETTE, *supra* note 6, at 509.

189. Khurana, Kimura & Fourcade, *supra* note 184, at 1.

190. Levi, Dinovitzer & Wong, *supra* note 183, at 81–82 (Figure 2.1); *Id.* at 85 (Figure 2.2).

191. Letter from Thomas S. Lamont to John J. McCloy (June 5, 1962), Box 233, Folder: Ford Foundation, 1961-1962, Harvard University Archives, Pusey Library, Harvard University, Cambridge, MA (copy on file with the author).

192. *Id.* at 2.

figure was nearly \$6 million.<sup>193</sup> The law school did not receive the bulk of the Ford grants, but it was one of the first units at the university to establish the relationship, mainly because former HLS professor Milton Katz was serving as the Foundation's vice president at the time.<sup>194</sup> In addition, Dean Griswold was careful to cultivate his own personal relationship with Ford Foundation leaders to ensure that the law school remained at the top of Ford's list of grant recipients.<sup>195</sup>

Even before HLS received any external grants, Griswold had bold ambitions to make HLS the leading exporter of American legal education. "With the scientific developments of our times, it becomes apparent that the preservation of civilization depends upon the extension of the rule of law from local to international and world affairs," Dean Griswold declared in his 1947 annual report. "Harvard Law School, as one of the centers where rule of law is nurtured, may well feel that it is performing an important task in the service of mankind."<sup>196</sup> To achieve this aim, HLS relied on its library's unparalleled collection of foreign legal texts and a growing faculty of international and comparative law experts, including Harold Berman and Arthur von Mehren. But more was needed.

In the late 1940s, the HLS faculty and administration began exploring the bold idea of an Institute for International Legal Studies. By the summer of 1947, with the leadership of Professor Lon Fuller and Associate Dean David F. Cavers, the faculty approved a formal proposal for "A Project for a World Law School" that was forwarded to Harvard University President Paul Conant with a request for a staggering \$5 million to fund a new building, five endowed professorships, and a new foreign law library.<sup>197</sup> After further consultations, Harvard approached the Ford Foundation in 1949 with an astonishing \$7 million grant proposal to underwrite the World School of Law. The new school would bring together foreign and U.S. students to develop a better understanding of international legal matters and to share how their respective legal systems operated in addressing legal and social problems.<sup>198</sup>

The Ford Foundation found Harvard's initial proposal and subsequent early refinements "pretentious and vague."<sup>199</sup> Although they tabled the broad

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193. *Id.* The law school, of course, was only one of the units that received Ford grants. In fact, the business school and the Faculty of Arts and Sciences received significantly more than the law school. *Id.* at 3.

194. KIMBALL & COQUILLETTE, *supra* note 6, at 511. In subsequent years, HLS secured even more funding from Ford before Katz returned to the law school to run the International Legal Studies program. Some HLS colleagues referred to the grants as Katz's "dowry." *Id.*

195. Letter from Erwin N. Griswold, Dean, Harvard L. Sch., to H. Rowan Gaither, Jr., President, Ford Found. (Sept. 23, 1954), Box 11, Folder 5, SSSP (copy on file with archive).

196. ERWIN N. GRISWOLD, ANNUAL REPORT OF THE DEAN OF HARVARD LAW SCHOOL, 1946-47, at 405 (1947).

197. Donald F. Cavers, A Report to the Faculty Concerning Research Activities in the Harvard Law School and Some of the Problems They Present (Oct. 1, 1955), Box 11, Folder 5, SSSP (copy on file with author); KIMBALL & COQUILLETTE, *supra* note 6, at 511.

198. KIMBALL & COQUILLETTE, *supra* note 6, at 511.

199. Nancy A. McCarthy, The International Tax Program at Harvard (draft memo undated), Ford

program, Foundation officials were intrigued by one of its research components, dealing with a United Nations-Harvard collaboration in studying world tax laws. This part of the program “gained favor with Foundation staff because of the beneficial effect it might have on the regressive tax laws of some (particularly Latin) countries.”<sup>200</sup> Subsequently, Katz endorsed the idea of a grant to his former employer because it also furthered the “concrete and constructive phase of UN activities in assisting developing nations and promoting world peace through international trade and investment.”<sup>201</sup>

While Surrey was not at HLS when the idea for a World School of Law first took shape, he played an important role in cultivating a fruitful relationship with the Ford Foundation. He was, after all, an important consultant to the Ford Foundation well before he moved to HLS, and he continued to provide counsel to the Foundation after receiving ITP funding. When he first arrived at Berkeley, he was recruited by Rowan Gaither, the San Francisco lawyer running the Foundation’s assessment of future programs and operations, to assist with the program review.<sup>202</sup> As Surrey recounted, his “assignment was straightforward—how to organize the foundation so that it could stay out of tax trouble over the years if government ever showed an interest in how foundations operated.”<sup>203</sup> In assisting the Foundation, Surrey leveraged his government contacts to monitor pending legislation and even lobbied key staffers on behalf of the Foundation.<sup>204</sup> This contact with Gaither,<sup>205</sup> whom Surrey likely met as he was expanding his contacts with the elite Bay Area bar, would gradually lead not only to future HLS grants, but also to significant and lucrative consulting work for Surrey with the Foundation.<sup>206</sup> Surrey’s relationship with Gaither would prove to be vital. After successfully leading the program review, Gaither would become Associate

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Foundation Records, Education and Culture program, Office Files of Nancy McCarthy (FA530), Box 1, International Tax Program, undated, Rockefeller Archives Center, Sleepy Hollow, NY (copy on file with author).

200. *Id.* at 2.

201. *Id.* at 2–3.

202. THE FORD FOUND., REPORT OF THE STUDY FOR THE FORD FOUNDATION ON POLICY AND PROGRAM (1949).

203. SURREY, *supra* note 7, at 85. Surrey acknowledged that many of his recommendations were followed by Gaither and the Foundation and that they “proved sound.” *Id.*

204. Letter from Stanley Surrey to Rowan Gaither, Adm’r, Ford Found. (May 12, 1949); Letter from Lawrence N. Woodworth to Stanley S. Surrey (Oct. 17, 1949), Box 10, Folder 3, SSSP (copy on file with author).

205. Letter from Rowan Gaither, Adm’r, Ford. Found., to Stanley S. Surrey (Mar. 1, 1949), Box 10, Folder 3, SSSP (on file with author) (summarizing Surrey’s assignment).

206. From 1955–1960, Surrey was a consultant to Ford, first, on a major “Study of Philanthropy,” and then later in steering a significant grant to the Brookings Institution and Surrey’s friend Joseph Pechman. *See* Letter from Thomas H. Carroll to Stanley S. Surrey (Feb. 17, 1955) (copy on file with author), (Feb. 13, 1956) (copy on file with author); Letter from Carl B. Spaeth, Dean, Stanford. L. Sch., to Austin Scott, Stanley Surrey, and Albert Sacks, Professors, Harvard L. Sch. (Mar. 21, 1956) (copy on file with author) (requesting assistance for the Study of Philanthropy project); Letter from Kermit Gordon, President, Brookings Inst. to Stanley S. Surrey (Oct. 4, 1960) Box 8, Folder 6, SSSP (copy on file with author) (confidential letter informing Surrey of \$750,000 grant to Brookings Institution).

Director of the Ford Foundation in 1951 and then president two years later.<sup>207</sup>

Surrey likely played only a modest role in the initial 1951 HLS grant application to Ford for the World School of Law. As he explained to his former Berkeley colleague and friend Dick Jennings in May 1951: “There is a good deal of activity here [HLS] respecting a World Law School, and taxation does figure in the plans, so that I will probably have to do some work in that respect.”<sup>208</sup> Nonetheless, Surrey became a key figure in the many subsequent grants that funded the ITP—perhaps more so than he let on in his memoirs.<sup>209</sup>

The initial ITP grant was a collaboration with the Fiscal Division of the United Nations. Surrey and Dan Throop Smith were part of an earlier United Nations project that led to a preliminary report on “the relation of Latin American tax laws to American investment.”<sup>210</sup> This was undoubtedly the United Nations project that Katz had in mind when he supported the ITP grant by referring to the “concrete and constructive phase of UN activities.”<sup>211</sup> At the same time, other international law scholars at HLS, led by William S. Barnes, were working with the United Nations in developing a proposal for a series of publications on the income tax laws of various foreign nations, which they referred to as the “World Tax Law Service.”<sup>212</sup> The United Nations even drafted a resolution to collaborate specifically with Harvard in establishing a “World Tax Service,” to produce “comprehensive and authentic information on the tax systems of Member countries.”<sup>213</sup>

Initially, HLS and the United Nations together submitted a proposal in December 1951 to Ford and the Falk Foundation to fund the World Tax Service. HLS officials supported the proposal because they believed “work relating to taxation would lead naturally to knowledge of other governmental and business activities.”<sup>214</sup> Tax was seen as an entry point for HLS administrators. When those initial requests were rejected, Surrey became more directly involved with a revised May 1952 proposal to Ford that focused “primarily on research and training, with special emphasis on the problems of underdeveloped countries.”<sup>215</sup> The “Cooperative Tax Research Project” grant was formally funded by the Ford Foundation as a “pilot project” in July 1952. It provided \$200,000 over three years.<sup>216</sup>

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207. *H. Rowan Gaither, Jr. Dies at 51; led '57 Study of U.S. Defense*, N.Y. TIMES, Apr. 8, 1961, at 19.

208. Stanley S. Surrey to Richard Jennings (University of California School of Law) (May 4, 1951), Box 385, Folder 5, SSSP (copy on file with author).

209. SURREY, *supra* note 7, at 241, 273.

210. Memorandum from Don Cavers, Assoc. Dean, Harvard Univ., to Erwin Griswold, Dean, Harvard L. Sch. (Dec. 1, 1952), Box 11, Folder 5, SSSP (copy on file with author).

211. MCCARTHY, *supra* note 199, at 2.

212. SURREY, *supra* note 7, at 132–33.

213. *Id.* at 133 (quoting a 1951 draft resolution). The final UN resolution became broader, appealing to “the possible cooperation of universities in this undertaking,” without specifically naming Harvard as a partner. *Id.* at 135.

214. Memorandum from Don Cavers to Erwin Griswold, *supra* note 210, at 13.

215. *Id.* at 16.

216. McCarthy, *supra* note 199, at 1. The original proposal had requested \$325,000, but the Ford

Surrey relationships with Ford and U.N. officials made a difference. In addition to his earlier contact with Gaither at Ford, Surrey knew Katz and he had close ties to Henry S. Bloch, Director of the United Nations Fiscal Division, whom Surrey had met as part of their cooperative United States–United Nations 1946 European travels. In the end, Ford financing led to Surrey becoming ITP Director and the inaugural Jeremiah Smith Jr. Chair in International Studies, one of the two new chairs funded by Ford grants. As Surrey noted, the grant and his new role came about mainly because of his “friendship with Bloch.”<sup>217</sup>

From the start, the ITP’s formal two-fold mission aligned with Surrey’s own academic pursuits. First, the ITP was intended to enrich “the life of the Law School through increased and more fruitful participation by students, scholars, lawyers, public officials, and university teachers from other countries.”<sup>218</sup> The goal was to bring the world to HLS. This was surely one way to make American legal education more global. It was also a way to advance Surrey’s notion of pragmatic teaching. Just as Surrey had brought the practical world of tax transactions into his Advanced Tax Seminars, so too did the ITP seek to bring applied knowledge about foreign tax systems to the United States. Meanwhile, the ITP’s global reach helped develop Surrey’s professional network with elite tax experts throughout the world. The ITP advanced Surrey’s continuing ambitions to be part of the influential circles of tax law and policymaking.

The program’s second formal objective focused on publications and teaching. The goal was to develop “an extensive and varied program of tax research and training to organize and increase the world’s store of knowledge about taxation and to provide materials and guidance for those involved in the development or improvement of tax systems throughout the world.”<sup>219</sup> This research component was advanced through the creation of the World Tax Series, which published “basic reference works on the tax systems of foreign countries.”<sup>220</sup>

The ITP also published several influential texts beyond the World Tax Series. These reports included studies of taxation and development in particular countries, comparative studies of tax policy and tax administration,<sup>221</sup> as well as more technical handbooks on tax administration in Latin American countries, which the Ford Foundation highlighted as important components of their initial

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Foundation cut much of the administrative expenses, to the chagrin of Surrey and others. David F. Cavers to Stanley S. Surrey (Jan. 13, 1953), Box 11, Folder 5, SSSP (copy on file with the author).

217. SURREY, *supra* note 7, at 135.

218. *Id.* at 136. The ITP’s formal objectives were similarly spelled out in program brochures and retrospective descriptions. See generally Oliver Oldman & Elisabeth A. Owens, *The Harvard Law School International Program in Taxation*, 54 PROC. OF THE ANN. CONF. ON TAX’N UNDER THE AUSPICES OF THE NAT’L TAX ASS’N 570 (1961) [hereinafter Oldman & Owens, *The Harvard Law School International Program in Taxation*] (referring to the ITP’s formal objectives); Oliver Oldman & Elisabeth A. Owens, *The International Tax Program*, 13 CAN. TAX J. 444 (1966) (describing the ITP’s formal objectives).

219. SURREY, *supra* note 7, at 136–37.

220. Oldman & Owens, *The Harvard Law School International Program in Taxation*, *supra* note 218, at 574.

221. *Id.* at 575, 581.

grant to the ITP.<sup>222</sup> The training objective was furthered by bringing to HLS annually about twenty participants consisting of foreign tax officials, teachers of taxation or public finance, and graduates in law, economics or public administration, “who were about to enter government service in the tax field.”<sup>223</sup> Both programs achieved great success in the first few decades.

In contrast to the program’s formal intentions, the ITP also helped advance American foreign policy objectives. Surrey’s own wartime service, his postwar tour of a shattered Europe, and his early consulting work with the Ford Foundation informed his view of how increased legal knowledge about private international relations was needed “to keep pace with America’s emergence as a great trading and investing nation.”<sup>224</sup> Although he did not rely on Griswold’s bombast about “the preservation of civilization,”<sup>225</sup> Surrey shared with his dean “the recognition of the fundamental importance of law in the institutional framework for international trade, investment, and economic development.”<sup>226</sup> Comprehensive reports on the domestic tax laws and technical aspects of various nations that were also trading partners and markets for U.S. goods were welcomed by government officials and the many U.S.-based multinational corporations investing in foreign countries. Likewise, training foreign tax officials and future tax experts about the importance of Western-style, rational and routinized tax laws and administration helped further U.S. aims in spreading the rule of law, preserving liberal democracy, and advancing capitalist interests. The ITP was thus an opportunity for Surrey to continue his government service, albeit indirectly.

While the ITP may have been hailed as a success in later years, it got off to a slow start. There were the usual challenges of recruiting a staff, finding office space, and keeping a close eye on the use of Ford funds.<sup>227</sup> But one of the greatest difficulties was Surrey himself. His demanding schedule and his own inability to focus exclusively on the ITP hindered the program in its first year.<sup>228</sup> HLS officials and Ford Foundation administrators took note. Just six months into the grant, Cavers reported back to Griswold that “the tax project has not been inactive although its progress has been limited.” Cavers listed the many expected difficulties, and “that Stan was in an extremely poor condition to give them the

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222. McCarthy, *supra* note 199, at 16–17.

223. Oldman & Owens, *The Harvard Law School International Program in Taxation*, *supra* note 218, at 571.

224. SURREY, *supra* note 7, at 137.

225. Griswold, *supra* note 196.

226. SURREY, *supra* note 7, at 137.

227. Memorandum from Don Cavers to Erwin Griswold, *supra* note 210. For an example of Griswold’s supervision of Surrey’s grant spending, see Erwin Griswold to Stanley S. Surrey (Jan. 20, 1954) (questioning Surrey’s ITP-related travel expenses), Box 11, Folder 5, SSSP (copy on file with author).

228. Caver and Griswold discussed the possibility of providing additional summer stipends to Surrey and others working on the tax project. Cavers also noted that Surrey was reluctant to give up his summertime leisure activity of sailing to take on more administrative tasks. Cavers to Griswold (May 27, 1953), Box 11, Folder 5, SSSP (copy on file with author).

attention they deserved until the casebook was off his neck and the years of work for the ALI underway.” Cavers was sympathetic. “Stan has been under really severe pressure and I could see little to be gained by moving earlier,” he reported to Griswold. “I may be biased in this view by the degree of pressure to which I have been subject myself.”<sup>229</sup>

Reflecting on the program, Ford officials similarly concluded many years later that the “training portion” of the “pilot project” was “not very successful.”<sup>230</sup> In the early years, the foreign participants’ limited English proficiency posed serious constraints, as Surrey noted in his memoirs, but Surrey’s own lack of attention to the start of the program played a part in its slow start. Indeed, it was not until Oldman became director of training in 1955, toward the end of the first Ford grant, that the training became more rational, coherent, and systematized.<sup>231</sup>

Despite the slow start, the ITP accomplished a great deal under Surrey’s leadership. By the time he departed for the Kennedy administration, the program had secured two additional Ford grants, bringing ITP’s funding total to nearly \$1.2 million, not including the amounts that went to Surrey’s endowed chair and the portion of other Ford grants to the International Legal Studies program allocated to ITP.<sup>232</sup> With such lavish resources, the research and training flourished. Under Owens’s guidance, the program’s publications included World Tax Series reports for Australia, Brazil, India, Mexico, Sweden, and the United Kingdom, with several more in the works.<sup>233</sup> The World Tax Series, in fact, was a particularly important project for Surrey, who worked assiduously in managing the project and raising funds for the series from law firms, corporate counsel, and prominent HLS alumni.<sup>234</sup> On the training front, with Oldman’s leadership, the program by 1961 had welcomed over 120 participants from well over forty countries.<sup>235</sup>

In a characteristically immodest manner, Surrey reflected on how he witnessed the success of the ITP’s training program. He recalled that when he was in Treasury during the 1960s negotiating tax treaties with foreign nations, he often found “that sitting across the table as the representative of the other country was an official who had earlier been an ITP trainee.”<sup>236</sup> Such an official often proved to be a formidable rival. “As the negotiations progressed and the

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229. Memorandum from Don Cavers to Erwin Griswold, *supra* note 210, at 3.

230. MCCARTHY, *supra* note 199.

231. *Id.* at 4.

232. *Id.* at 1. Overall, the Ford Foundation gave more than \$2 million to the ITP over nearly two decades of funding.

233. Oldman & Owens, *The Harvard Law School International Program in Taxation*, *supra* note 218, at 574. Surrey was working with Owens and several others in completing the U.S. report. SURREY, *supra* note 7, at 139 (footnote 27).

234. William Barnes to Stanley S. Surrey (Dec. 8, 1959) (Surrey’s management of the ITP), Box 29, Folder 3; Stanley S. Surrey to E.C. Alvord (Dec. 5, 1953) (soliciting financial support for the ITP), Folder 11, Box 5, SSSP (copies on file with author).

235. Oldman & Owens, *The Harvard Law School International Program in Taxation*, *supra* note 218, at 571.

236. SURREY, *supra* note 7, at 136.



representative acted with skill and knowledge in advancing his countries' objectives, I saw that the training had indeed left a mark," Surrey self-assuredly recalled.<sup>237</sup> "A negotiation with a country so represented was far more satisfactory than with a country whose official had no such training."<sup>238</sup>

By the time Surrey returned to the HLS faculty in 1969, the ITP had already reached great heights. During the 1950s, the ITP had opened the way for further Ford Foundation grants to underwrite the establishment and spectacular growth of the International Legal Studies program, which was led by Katz when he returned to HLS after the Ford Foundation.<sup>239</sup> The ITP continued to get its share of Ford funds, but it soon became subsumed under the International Legal Studies program. By the 1970s, as Ford support began to wane, the ITP and the International Legal Studies program appeared to be victims of their own success. Their early ambitions and achievements led to even higher expectations.

Toward the turn of the twenty-first century, the ITP began to dissipate. By the time Surrey passed away in 1984, the program was already being run by others, mainly under the leadership of Oldman, who was ITP Director from 1964 to 1989.<sup>240</sup> As external grants became scarcer, Oldman was forced to spend more time fundraising.<sup>241</sup> Gradually, Harvard's John F. Kennedy School of Government became more involved with the ITP. Because an increasing number of trainees from the developing world came without any legal background and often received degrees in Master of Public Policy, scholars and professors at the Kennedy School began to take on more of the teaching and training responsibilities in conjunction with the Harvard Institute for International Development (HIID).<sup>242</sup>

A combination of leadership changes and the end of the HIID eventually led to increased challenges for Harvard's ITP.<sup>243</sup> Still, in its final years the ITP continued the program's original mandate of providing educational and research opportunities to scholars and policymakers throughout the world. From Surrey's early years as director, as we have seen, the program trained government officials from Latin America, Asia, and Europe. But it had made little inroads in Africa. Under the leadership of Eric Zolt, and with support from HLS, the ITP partnered with several South African universities to establish in 2001 the Southern African Tax Institute (presently known as the African Tax Institute), "an independent institute dedicated to training, research, and technical assistance in tax policy and

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237. *Id.*

238. *Id.*

239. KIMBALL & COQUILLETTE, *supra* note 6, at 511.

240. Minoru Nakazato and J. Mark Ramseyer, *In Memoriam: Oliver Oldman*, 122 HARV. L. REV. 1285, 1296-98.

241. MCCARTHY, *supra* note 199.

242. Email from Eric Zolt (ITP Director 2000 – 2003) to Author, February 8, 2023 (copy on file with the author). For more on the Harvard Institute for International Development, see generally, Andrew A. Green, Harvard Institute for International Development, HARV. CRIMSON, Jun. 6, 1996, available at: <https://www.thecrimson.com/article/1996/6/6/harvard-institute-for-international-development-peven/>

243. *Id.*

tax administration in Africa.”<sup>244</sup> Over the past twenty-plus years, the African Tax Institute (now at the University of Pretoria) has trained over 2,000 African government tax officials in its many educational programs.<sup>245</sup> Thus, in many ways, even after Surrey and Oldman had passed away, their vision continued – just not at HLS.<sup>246</sup>

## V

### CONCLUSION

To the contemporaries who knew Stanley Surrey well, the Surprising Surrey portrayed in this essay may not be all that surprising. The many memorials and reflections published after Surrey’s death demonstrate that he was remembered by his former students, colleagues, and friends as a dedicated, if demanding, teacher; a thoughtful and loyal mentor; and a committed—perhaps at times overcommitted—institution builder. Surrey’s own memoirs corroborate many of these assessments. But memoirs and posthumous reflections often make for dubious history.<sup>247</sup>

Yet even contemporaneous documents from the archives illustrate that Surrey’s professional contributions extended well beyond the worlds of tax policymaking and legal scholarship. He was a dedicated teacher. He solicited advice from senior instructors and government officials to ensure that his curriculum covered timely and practical topics. His classroom materials were on the frontier of a new wave of post-World War II interdisciplinary legal pedagogy. His pioneering teaching methods, likewise, brought experts from the elite local bar and other parts of the university into his advanced tax law seminars. Teaching was thus much more than just an extension of his government service.

Surrey was also a fiercely loyal mentor to students and junior colleagues. He helped former colleagues and students—mainly his top students—get jobs in government, at leading law firms, and elsewhere. He played a pivotal role not only in hiring key HLS tax faculty, such as Betsy Owens and Ollie Oldman, but also in advancing their careers. Finally, Surrey was a committed institutional citizen and leader at HLS. Despite his many other obligations, he was a central figure in the establishment and early operations of the ITP. As ITP Director for nearly a decade, Surrey helped secure the funding to start and run the program; he assisted in selecting the program’s key researchers and staff members; and through his efforts, he ensured that the research and training program continued to grow. Stanley Surrey thus left a lasting—if not surprising—legacy as teacher,

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244. Eric Zolt, *In Memoriam: Oliver Oldman*, 122 HARV. L. REV. 1285, 1303-6. *Southern African Tax Institute Established*, July 19, 2002, HARV. L. TODAY, available at: <https://hls.harvard.edu/today/southern-african-tax-instituteestablished/#:~:text=Post%20date%3A%20July%2019%2C%202002,at%20the%20University%20of%20Pretoria>

245. Eric Zolt email to author, April 14, 2023 (copy on file with the author).

246. *Id.*

247. FREEMAN, *supra* note 7.

mentor, and institution builder.

But there is another surprising side to Surrey, one that can be understood only by reading the silences of his memoirs and against the grain of his archived personal papers. Surrey was generally unreflective of how his teaching, mentoring, and institution building were part and parcel of larger continuities and changes in American legal education and the profession. His memoirs and personal correspondence illustrate that Surrey seemed to have had few doubts about his views on teaching, mentoring, and building institutions.

Moreover, there is little recognition by Surrey of how broader historical forces shaped his career as a law professor. There is no sense of how he entered law school teaching during the golden age of American higher education, when students and financial aid were abundant and law professors were in high demand. There are no thoughts about how his mentoring of elite law students and junior colleagues might have contributed to a particular sense of meritocracy that over the decades would fuel the relentless pursuit of power and prestige within legal education, thereby perpetuating the traditional hierarchies and anxieties of the legal profession. And even in his work in establishing and running the ITP, Surrey is relatively reticent about how this international and comparative tax project was indirectly advancing American foreign policy and economic interests, from the promotion of free markets to the containment of communism. This lack of thoughtfulness from such a significant historical figure may be one last part of the Surprising Surrey.