

California Law Review

VOL. 80

JULY 1992

No. 4

Copyright © 1992 by California Law Review, Inc.

TRIBUTE

Professor Preble Stolz

Ira Michael Heyman†

Over the years when I was Chancellor and Vice-Chancellor I would, from time to time, ask Preble to write something for me—a speech, a public letter, what-have-you. Indeed, during the last semester of my chancellorship he was formally designated as a faculty advisor to the Chancellor half-time, and most of what he did was to work on speeches for me and the texts of a variety of documents defining the relationship between the campus and the City of Berkeley concerning the Long Range Development Plan and People's Park. We've known each other for a long time and communicate with each other in the oral equivalent of shorthand. One of the nice things about working with him is that I can tell him what I want in a sentence or two and I'll get back pretty much what I ordered, sometimes even somewhat improved by the translation.

But something went wrong this time. I told Preble that the Review had asked me to write a few pages about him and what I wanted was the bare biographical facts about him: when did he come to Berkeley, what had he written, and so forth. What I got back is what follows; what is in italics is what I have added.

Preble Stolz was born in Chicago in 1931, the only child of Marcia and Leon Stolz. Although his mother was devoted to him, constantly referring to him as a “nice boy,” she was never able to shake her belief that he was a little slow since he didn't start talking until he was nearly 4. (Compare J.S. Mill, who was learning Greek at 3.) Young Preble's aca-

† Professor of Law, Boalt Hall School of Law, University of California, Berkeley; formerly Chancellor, University of California, Berkeley. In a just world, Professor Stolz would receive this byline.

demetic career started auspiciously when he was obliged to repeat kindergarten.

The years of primary and secondary education we may pass over as of no lasting interest. His youth was without significant achievement. (Well, there were a few things that he thought at the time of startling originality and importance, but in truth very close counterparts can be found in any "coming of age" novel or movie.)

Why he chose to go to Reed College in Portland, Oregon for his undergraduate studies has always mystified students of his thought. He majored in Economics and graduated without honors, but he did graduate, although it was a near thing with both the basic science and foreign language requirements. He is not a legend at Reed; if his name is known at all it is only in the alumni office for very modest gifts to the annual alumni drives made with reasonable but not perfect regularity. The main accomplishment of his undergraduate years seems to have been the first of his three unsuccessful marriages.

Preble Stolz's contact with the law began when he enrolled at the University of Chicago Law School where, much to his mother's surprise, he did quite well. He was always the first man in his class, but he was able to graduate first in his class only because his classmate, Vivian Hannawalt, chose to marry and follow her new husband to Stanford for her last year. In that happy age when class rankings were maintained it was customary for the person with the highest grades to be selected as Editor-in-Chief of the Review. Despite the serious misgivings of some, that tradition was still strong enough to give Preble the job.

Following graduation Preble did the usual thing, clerking first for Judge Walter L. Pope of the Ninth Circuit in San Francisco and then for Justice Harold H. Burton of the U.S. Supreme Court. Preble's admiration for Judge Pope was colossal;¹ his feelings towards Justice Burton were more complex.²

Justice Burton was never a major figure on the Warren Court. Preble's year (1957-58) was one when the liberal wing of the Warren

1. Preble, as a representative of his law clerks, wrote an appreciation of the judge at the time of Judge Pope's death, 411 F.2d 14 (1969).

2. Preble told me much later about the difficulty of his year with Justice Burton. The Justice was suffering from Parkinson's disease and Preble's year (1957-58) was his last on the Court. Justice Burton was a deeply conscientious man who had great difficulty doing the work that year mostly because his disease made reading very difficult for him. The Chief Justice did what he could by giving the Justice a much reduced opinion writing load, but Justice Burton's illness, combined with his exceptionally diligent character, forced him to rely on his clerks in an unusual way; the Justice wanted to be assured that he fully understood the arguments being presented in each case before he made his decision. That exercise of making sure that the Justice understood in a neutral way the merits of every argument in each case (and, of course, in all the circulating opinions of the other Justices) was very hard on Justice Burton's clerks, but when you think about it, the process was superb training for a career as a law teacher. Not many start their teaching careers as tutor to a Justice of the Supreme Court.

Court was becoming increasingly self-confident, although it did not yet have a clear majority; Burton's vote was often potentially critical and occasionally his was the swing vote. (Warren, Black, Douglas, and Brennan were usually on one side; they were usually angling to pick up one more vote from the others more or less to their right—Frankfurter, Clark, Harlan, Burton, and Whittaker.)

Preble seemed to land in institutions in transition, as with the Supreme Court. His first job as a lawyer was in the California Attorney General's Office which he joined as the then Attorney General, Pat Brown, was running successfully for Governor. Stanley Mosk replaced Pat Brown as A.G., but the new governor took a considerable number of his former colleagues into the Democratic administration of state government. As a practical matter from Preble's point of view that meant that there was a great deal of upward mobility in the A.G.'s office in terms of assignments (although not in pay); Preble ended up handling a number of cases in the California Supreme Court that in normal circumstances would have been assigned to much more senior deputies.

One of the cases Preble looked forward to arguing to the California Supreme Court was *Cash v. Superior Court*,³ but the case ended up on a special docket of the California Supreme Court to be held in historic Colton Hall in Monterey in celebration of something. The City Fathers asked the Attorney General himself to argue one of the cases and Mosk picked *Cash* (perhaps he had no other choice). It was, in any event, a bad choice. From the very outset of his argument Stanley Mosk was in heavy weather and it did not take the court long to issue a snippy little opinion dismissing his (and Preble's) arguments as nearly frivolous. Mosk in his characteristically kindly way assured Preble that it was his weak oral argument, not Preble's brief, that lost the case. Preble was nearly young enough to believe him.

Probably the high point of Preble's career as a Deputy A.G. was when he was loaned to the Governor's Office as part of his legislative staff, mostly to assist in analyzing bills for possible vetos. Preble did that twice in 1959 and 1961, for a few months at the end of the general sessions of the Legislature. His job consisted of writing a brief analysis of every bill passed by the Legislature and summarizing comments made by interested persons seeking the Governor's approval or veto. Of course, most bills were of no great consequence and uncontroversial. But there were exceptions, such as a so-called consumer protection bill which served to severely cut back judicially declared implied warranties.

Commonly, whenever a veto was seriously being considered Pat Brown would hold a "hearing" at which time the proponents and opponents of the bill would be given a final chance to express their views

3. 346 P.2d. 72 (Cal. 1959).

before the Governor made his decision. The Law Revision Commission one year had made an elaborate study and proposed a package of bills revising the procedural law relating to condemnation cases. In any case, the Department of Public Works (now CalTrans) was persuaded that the Commission's bills would cost the state a fortune and the Department strenuously urged a veto and did its best to orchestrate opposition elsewhere in state and local government. In his memorandum for the Governor, Preble bought the arguments of the Department of Public Works and urged a veto. He treated rather glibly the arguments to the contrary made by the Commission and its friends.

The "hearing" on these bills was jammed with dignitaries from the Commission, the Legislature, and several departments of state government, as well as local government. The Governor strode in a little late and opened the hearing with an apology saying, in substance, "I'm very sorry, it is my practice to read up on these bills before these hearings but something came up this morning and I was unable to do so today. So I think what I will do instead is simply read to you the memo that has been prepared for me by Preble Stolz. Stand up, Preble, so that everyone can know who you are." The Governor did that in all innocence, without the slightest intention of embarrassing Preble, but the bulk of the succeeding discussion consisted of Herman Selvin (Boalt '27), Senator Jim Cobey, Assemblyman Bob Crown, and other important figures telling the Governor quite plainly that he might usefully consider taking advice from people somewhat less wet behind the ears than Preble. Mr. Selvin took particular exception to being described as "greedy," and the Senator and Assemblyman felt quite strongly that their arguments had been mischaracterized as "dumb" and "silly." Meanwhile Preble, who had not heretofore expressed the slightest interest in Eastern religious thought, saw nothing to be lost in attempting to metamorphose himself into a potted plant.

William Prosser was still Dean at Boalt when Preble was hired in the spring of 1961, but Frank Newman was Dean when Preble joined the faculty that fall along with Dick Buxbaum and Bob Cole—yet another institution in a transition period. Young faculty were thrown into the deep end of the pool in those days; Preble's first year of teaching consisted of a full year of Civil Procedure and a semester of Federal Jurisdiction and Admiralty. It was enough for him to decide, one weekend around Thanksgiving, that he would tell the Dean on Monday that he would finish out the year but would not return the following year. And indeed, he did go to see Dean Newman on Monday morning but for better or worse Frank was away for the week and somehow during that week teaching for the first time began to be fun.

The early years of teaching were hard work, but vastly aided by a very supportive relationship with the then much smaller law faculty.

Preble was especially helped in the early years by his colleague in Civil Procedure, Geoff Hazard, and a few years later by Ron Degnan when he joined the faculty. Preble picked up other courses as the years went by—Legal Process, Criminal Law, Judicial Administration, and Administrative Law among others. With Frank Newman, Hans Linde, and Bob O'Neill, Preble invented a new course, Legislative and Administrative Process, that had everything going for it except student enthusiasm.

Up to 1964, the year of the Free Speech Movement (FSM), Boalt Hall had been very much an autonomous part of the University, physically present but with the faculty and student body otherwise largely disconnected. FSM changed that dramatically; Boalt faculty became central figures very quickly—Dick Jennings as Chairman of the Berkeley Division of the Senate, Bob Cole moved into the Chancellor's office, Mike Heyman became one of the first chairmen of the Senate Policy Committee, Ron Degnan as Chairman of the Student Conduct Committee and Dick Buxbaum undertook the criminal defense of a large number of students who had been arrested (Lowell Jensen, Boalt '52, was the prosecutor). Relative to those colleagues, Preble's official roles during the '60s and early '70s were marginal; he did a stint as Chairman of the Privilege and Tenure Committee and of the Student Conduct Committee. But Preble experienced, as everyone at Boalt did, a subtle but enormously significant shift in perspective. Boalt Hall had been a good law school with a fine tradition; now, many on the faculty suddenly found themselves not just law professors with an obligation to maintain a high standard of legal education, but stewards of a great University, the premier public University in the world, that was being threatened from many angles.

It would be wrong to sentimentalize that period. Much was accomplished, but there was a lot of hostility and anger openly expressed and often aimed unfairly at anyone in authority, including the most sympathetic and indulgent faculty members. Most faculty enjoy teaching in large part because they like students and they like being liked by students. When the prevailing student attitude is openly antagonistic as it appeared during much of that time, Preble found going to class each day was about as much fun as going to the dentist.

Furthermore, and not surprisingly, there were sharp differences of view within and among the law faculty; there were times when hard words were spoken and passionate differences expressed. But withal, something of the civility of the old Boalt Hall was always present. Law faculty bloodied by battles elsewhere always knew that they were part of a special community, where even those who disagreed with them would care about them as people and be supportive of their emotional and human needs.

Preble was a part of that community, deeply loyal to all his law colleagues of every persuasion on the political spectrum. There was nothing unusual about that; Preble's behavior was of a piece with the tradition of Boalt Hall. Preble listened to at least his fair share of anguish, and from time to time he volunteered advice.

In terms of published pages of scholarly work, Preble's output was reasonable but not great. His literary executor will have a half dozen or so virtually complete manuscripts to publish if he wants to. Preble's problem seems to be a deep uncertainty that anyone would find his ideas worth reading; another way to phrase it is that he has a hard time taking himself very seriously. He does have something of a genius for anticipating issues that only the Supreme Court can resolve, but his timing is terrible. His "tenure" piece, published in 1963, argued forcefully that federal admiralty law ought not to govern noncommercial torts of pleasure boat enthusiasts.⁴ A divided Supreme Court decided Preble was wrong in 1982,⁵ by which time he could not have cared less. In February 1992 the Supreme Court granted certiorari in a case in which they might agree with the position Preble took in 1969, that the U.S. Senate can hear the evidence in impeachment cases by committee.⁶

Much of Preble's scholarly activity has involved law reform efforts of one sort or another. Generations of law students, having slogged painfully through *Pennoyer v. Neff* and *International Shoe* and all that, have been awestruck by the classic directness and almost biblical beauty of California Code of Civil Procedure section 410.10: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." Preble wrote those immortal words.⁷ He was also the principal author of the California law on judicial disqualification.⁸

4. Preble Stolz, *Pleasure Boating and Admiralty: Erie at Sea*, 51 CALIF. L. REV. 661 (1963).

5. *Foremost Insurance Co. v. Richardson*, 457 U.S. 668 (1982). Justice Powell's dissent, joined by Chief Justice Burger and Justices Rehnquist and O'Connor, quoted from Preble's article at some length.

6. Preble Stolz, *Disciplining Federal Judges: Is Impeachment Hopeless?*, 57 CALIF. L. REV. 659 (1969). The case is *Nixon v. United States*, 938 F.2d 239 (D.C. Cir. 1991), cert. granted, 112 S. Ct. 1158 (Feb. 24, 1992) (No. 91-740).

7. At least he thinks he did. He was a consultant to the Administration of Justice Committee of the State Bar that proposed the section, and the Legislature ultimately passed a revision of the law relating to service of process that included, rather incidentally, CAL. CIV. PROC. CODE § 410.10 (West 1973). Preble is certain that he invented the "acknowledgement" that can be used with service of process by mail. See CAL. CIV. PROC. CODE § 415.30 (West Supp. 1992). If used, that mechanism avoids all the costs involved in hiring a process server for purposes of personal service. The Judicial Conference of the United States picked up the idea and it is now in the Federal Rules of Civil Procedure, FED. R. CIV. P. 4(e)(2)(C)(ii), from which it has migrated into the law of many other states. In any particular case the amount saved by using the mails to serve process must be trifling, but cumulatively the dollar savings must be huge.

8. CAL. CIV. PROC. CODE §§ 170-170.5 (West 1973 & Supp. 1992). As an attempt at reform, the effort was in significant part a failure. The State Bar had unanimously passed a resolution, sponsored by Jerome Falk (Boalt '65), deploring the unbelievably wooden per curiam decision of the

Preble got to play a more direct role in law reform when Governor Jerry Brown asked him to join his administration shortly after he took office in 1975. Preble served for roughly a year as the Director of the Governor's Office of Planning and Research (OPR), and then for another year as the Assistant to the Governor for Programs and Policies.⁹ Soon after the first appointment, Preble was asked to speak at a luncheon of an association of planners. Since he was head of OPR, Preble felt he ought to accept although he had not the dimmest notion of what planning was all about, or indeed what his official responsibilities were. In due course he made the usual kind of banal speech that said nothing at suitable length and then he opened himself up to questions from the audience. As a law professor, Preble was confident he knew how not to answer questions. Someone, however, asked a very narrow and specific question: What was Preble's (and the Governor's) view of A.B. 15, Assemblyman Charles Warren's bill to preserve prime agricultural land? Preble gave the answer you might expect—difficult question . . . requires careful analysis . . . close study . . . affects many people and interests, et cetera. When he got back to his office a letter from Assemblyman Charles Warren, Chairman of the Assembly Committee on Energy, Land Use, Resources and nearly everything else, had already been hand delivered. It read as follows:

Dear Preble,

I have had a report of your views on my bill, A.B. 15. I look forward to the announcement of your departure from state service.

Warmly,
Charlie

Despite this mash note, or maybe because of it, Preble and Charlie became good friends and close political associates. The Assemblyman was crucial to what turned out to be the largest single responsibility given to Preble during his two years with the Governor: he was made the

California Supreme Court in *Kaufman v. Court of Appeal*, 647 P.2d 1081 (Cal. 1982). Preble was a member of the State Bar's Committee on Administration of Justice and he persuaded his colleagues that a general revision of the law relating to judicial disqualification was needed as well as a reversal of *Kaufman*, and of course Preble ended up doing the bulk of the work. Much of what was proposed Preble borrowed from a report of an ABA Committee chaired by Roger Traynor (Boalt '27). The resulting bill somehow aroused the unyielding opposition of the California Judges Association. Nonetheless, most of the bill survived and is now law, but the attempt to overturn *Kaufman* was defeated on the floor of the Senate.

9. The titles are not meaningful. That is nearly always the case; it was especially true in the early years of Jerry Brown's administration. The head of OPR was the traditional contact point for local government with the Governor's Office; Programs and Policies was a fancy name for a second Legislative Secretary (Marc Poche, Boalt '61, was then the Legislative Secretary). In addition, Preble performed the functions of the Higher Education Adviser although he never held that title.

Governor's point man, as it were, on the bill that created the Coastal Commission and implemented the plan that had been developed by the interim Coastal Commission created by the passage of Proposition 20 in 1972. Despite the positive attitude of the public, the bill's passage through the Legislature was by no means a sure thing. Indeed, the first time through it was defeated in the Senate. Local government, both cities and counties, many departments of state government, business interests, organized labor, and many others were at best lukewarm if not in flat out opposition. There was some very complex legislative maneuvering. A bill authored by Senator Jerry Smith, which had already passed the Senate and was languishing in Assemblyman Warren's Committee, was kidnapped and made the vehicle for a second attempt, but the effect of that was that the bill had to be in virtually final form as it came out of Warren's Assembly Committee.

Preble's job was to get as many people as possible who opposed the bill to support it or at least to go neutral. Sometimes that meant crafting amendments that would solve a "problem," without, of course, giving away the store, sometimes a little stroking was needed, sometimes some arm twisting. All this had to be done while keeping in contact with the environmental groups supporting the bill—chiefly the Sierra Club, the Coastal Alliance and the Planning and Conservation League—to make sure that they would not object. Preble had a lot of help from some important people, perhaps most notably, the Speaker, Leo McCarthy, and the President Pro Tem of the Senate, Jim Mills, but there were many others as well.

Finally, it all came down to a vote on the Senate floor and it was clear on the first roll call that the bill's supporters did not have the votes. With one exception, every group or lobbying interest either supported the bill or had gone neutral. The exception was organized labor, and in particular the building trades unions. Preble and others had done what they could, but the building trades organizations were absolutely immovable in opposition and they influenced enough Senators when combined with those who opposed the bill from the very outset¹⁰ to defeat passage of the bill. Indeed, the President of the Building Trades Unions chose that time to take a vacation. Obviously, the Governor wanted to talk to him and hours were spent by the Governor's secretaries trying to locate him—and those women were amazingly successful at finding people, sometimes in very remote places. But this guy had disappeared and simply could not be found. This was the format and situation where the Governor was at his very best; with a reasonably well focused issue and one-on-one, the Governor was immensely persuasive, a genuinely domi-

10. One of them, of course, was George Deukmejian, who later as Governor did what he could, which was a lot, to render the Coastal Commission a nonentity. His attempt to abolish the Commission, however, was unsuccessful.

nating personality. But even the Governor was helpless if there was no one to talk to concerning the issue.

With a little discreet but highly effective coaxing from the Governor, Jack Henning, the head of the AFL-CIO, finally broke the logjam and agreed to withdraw labor's opposition to the bill. Why did Henning do that? Perhaps partially because he thought the disappearance of his colleague was irresponsible, but mostly, Preble thinks, because Jack Henning was a statesman concerned about labor's image in a political world that was increasingly concerned about the environment. In any event, all Henning asked in return was that the bill be amended in some way to give him a little cover when his absent colleague reemerged, as sometime he surely would, no doubt enraged at what Henning had done. Marc Poche came up with an ingenious idea that was mostly show and very little substance. Preble had a little trouble selling the Poche formula to the environmental groups, and especially to Charlie Warren, but he succeeded and within moments the bill was passed, indeed so fast that some Senators missed the chance to change their vote from Nay to Aye.

It was great political theater; the final act happened very fast, basically in an afternoon and an evening; it was lots of fun, probably mostly, as Preble says, because "we won." There were other triumphs, although none that were as dramatic in which Preble played a major role, and there were also, of course, some flat out defeats.¹¹

In any event, not long thereafter Preble returned to Boalt Hall. In the meantime Sandy Kadish had become Dean. Preble, who had been a member of the search committee that selected Sandy, had taken the lead in arguing that Sandy should insist on the creation of a new position of Associate Dean, even to the point of making it a condition of his accepting the deanship. The Chancellor agreed that the law school needed an Associate Dean and Sandy asked Preble to be the first Associate Dean. At that point, however, Preble disappeared into Sacramento. Rather than fill the job with someone else, Sandy held it vacant pending Preble's return.

Predictably, that was a mistake. After his heady experiences in the Governor's Office, Preble found the challenges of the Associate Deanship pretty thin gruel—whining students who could not possibly be expected to attend classes before noon; prima donna faculty colleagues who thought they had a prescriptive if not a constitutional right to teach between the hours 10:00 and 11:00 and who eagerly threatened to bring any infringement of this right to the attention of the Privilege and Tenure Committee as well as, of course, the Chancellor and the President of the

11. But not many, and none of any great consequence. The first two years of Governor Jerry Brown's administration were very successful. Things became more problematic after Preble and Marc Poche left in August of 1976.

University. Within a week, if not a day, Preble was in Dean Kadish's office, his resignation in hand. With some difficulty Sandy persuaded Preble to finish out the year.¹²

The next stage in Preble's career started wholly fortuitously and ended up as a book, *Judging Judges*. Preble had a sabbatical leave scheduled for the academic year 1979-80 and he was planning to spend at least part of that time doing a law review article on judicial elections of trial judges. The fall of 1978 was the year that Rose Bird's appointment as Chief Justice was on the ballot and that exploded into a major controversy which led to public hearings by the Commission on Judicial Performance. Preble attended most of the hearings and found himself spending a fair amount of time trying to help reporters covering the events. It occurred to others, notably Mary Ellen Leary, one of the state's best political reporters and the wife of Preble's colleague Arthur Sherry (Boalt '32), that Preble ought to write a book about the Bird episode, aimed not so much at lawyers as at the intelligent layman. The world had recently received the benefit of a rather bad book about appellate courts by non-lawyers, *The Brethren* by Woodward and Armstrong; a good book might do something to correct the public understanding.

If that was the goal, *Judging Judges* was a failure mostly because very few people read it. The book was predictably, if unfairly, characterized as an anti-Bird tract and dismissed as politically motivated and therefore presumably unreliable.¹³ In fact, the book was highly critical of nearly everyone involved and quite apolitical in any partisan sense of the word. Today most of the characters are no longer public figures, so there is hardly any reason for anyone to read it.

The book was published in 1981; Preble retired in 1991. That decade was not without its amusing episodes, but this exercise in hagiography has gone on long enough.

The temptation has been great to edit out Preble's self-deprecatory

12. Although Preble has no special gifts as an administrator he is the only person who has held, albeit briefly, every major administrative position at the law school. He was half a dean for a summer (Frank Newman appointed Preble and Mike Heyman to act as co-Deans while Frank went off to Europe); Preble was an Assistant Dean for a semester under Ed Halbach; and he served as Law Librarian for a year while the school was searching for Bob Berring. And, as discussed above, he was the school's first Associate Dean.

13. It was predictable and Preble certainly should have anticipated a politically motivated hostile reception that distorted the book's content and made no attempt to weigh it fairly on its merits. Preble had, after all, just come off two years of active involvement in politics at a fairly high level and was quite familiar with the rhetorical techniques used to minimize the public impact of what otherwise might be politically damaging. But in fact Preble was shocked, disappointed, and as surprised at the book's reception as the most naive and sheltered academic might have been. He was even a little hurt that prominent people in the Brown Administration, including the Governor, did not come to his defense. (A notable exception was Paul Halvonik, Boalt '63, a close associate of the Governor and a supporter of Rose Bird but no particular friend of Preble, who publicly objected to the scurrilous attacks on Preble's motivation for writing the book.)

observations. But that would not be in the spirit of this undertaking. Rarely is one who is the object of honor permitted to tell his story his own way. Preble is as he speaks here—funny, self-depreciating, a clever and stylistic writer, and a man imbued with loyalty to this institution. He has been a special friend of mine whose counsel and support was of great consequence to me during those days of heady administration. I am glad that he will continue to occupy his Boalt office, located quite close to mine, for the foreseeable future.

Paul D. Carrington†

An early American poet observed that one of the perils to self-government is moral influenza, which can attack a people at almost any time. One can tell, he said, where such epidemics begin and mark their progress from north to south or east to west.¹ What is hard to know is the cause or cure. The best hope, the poet suggested, was sensible, self-disciplined leadership that manifests the traits of calmness and forbearance and eschews greed, vanity, and quixotic flights from reality.²

Others have suggested, and I perceive, that there is presently an epidemic of anomie that besets our country. Anomie is not a good thing in a democracy, for it begets mistrust, and mutual trust is the essential element in self-government. It is perhaps the moral influenza that the poet had in mind.

No one can be certain that one's observation of such an epidemic is not the product of the observer's dyspepsia or nostalgia, but if there is such a phenomenon, few would doubt that its origin is California. California is the place where all the phenomena of American culture, good or ill, have originated for almost a century. And our current anomie gives no evidence of difference in this respect.

This is no place to speculate on the multiple causes of this apparent phenomenon. But it is an occasion to observe the remedy, which is, as the poet urged, disciplined leadership that manifests passionate concern for the institutions that hold us together as a culture and as a nation but remains calm in the pursuit of that concern. A place where such leadership should be found is a university law school.

Indeed, that very mission was an aim of those who created the Uni-

† Harry R. Chadwick Professor of Law, Duke University.

1. HUGH H. BRACKENRIDGE, *MODERN CHIVALRY* 641 (Claude Newlin ed., American Book Co. 1937) (1792).

2. This is the theme of *Modern Chivalry*, a novel. For my efforts to reduce Brackenridge's work for the casual contemporary reader, see Paul D. Carrington, *Law and Chivalry: An Exhortation from the Spirit of the Hon. Hugh Henry Brackenridge of Pittsburgh (1748-1816)*, 53 U. PITT. L. REV. (forthcoming 1992).

versity of California School of Jurisprudence.³ And the persons who inherited that mission were the law teachers who have in the intervening decades been afforded the opportunity to serve the people of California and the nation as academic citizens. The words of William Carey Jones, the guiding spirit of the School, resonate:

Never was a people more responsible for its difficulties than is the American nation today. But, again, never did a people have more fully in its own hands the power and opportunity to surmount peaceably its difficulties and come out upon the open highway of political and economic progress, purified and remoralized, than has the American nation today.⁴

To Berkeley lawyers, Jones gave this mission:

The unrest and agitation which are conspicuous in politics, in morals, in religion, is at work in the field of law. It is for you to turn that disquiet, that criticism, that dissatisfaction, that tendency to overthrow and destroy, in right ways—to give a constructive character to such tendencies.⁵

Few have performed that role with greater passion and commitment than Preble Stolz. For three decades he has served as an exemplar of public virtue, in his rigorous teaching, in his public service, and in his writing on public affairs. Indeed, if there are persons today in California, and I believe there are many, who are depressed about the moral state of their government, Preble Stolz has provided them with a ready dose of just the right medicine.

What I prescribe is a reading or a re-reading, as the case may be, of *Judging Judges*,⁶ Stolz's 1981 book about the Supreme Court of California. There are, to be sure, very few heroes in this account. Stolz is nothing if not judgmental. His subject is a minor event during the unhappy tenure of Chief Justice Rose Bird, the 1978 investigation of an

3. The political founders of the institution hoped that the school would have a constructive effect on the politics of the state. Sandra P. Epstein, *Law at Berkeley: The History of Boalt Hall 30* (1979) (unpublished Ph.D. dissertation, University of California, Berkeley) (available in the Boalt Hall library). When the Department of Jurisprudence opened in 1894, courses were taught in Constitutional Law, International Law, Roman Law, and Jurisprudence. *Id.* at 41, 42. The leader of the institution was William Carey Jones, who had been appointed to the University in 1877. *Id.* at 6. An ardent progressive, Jones was a leader in the public school movement in California and was an early proponent of city management. He drafted the Berkeley City Charter and the state's school code. *Id.* at 73-75.

4. *Id.* at 74. Jones also expressed an optimism that seems difficult to sustain in 1992:

[T]he most hopeful sign for the solution of our manifold problems is the awakening of the public spirit that is manifest throughout the land That sense of civic obligation that has been developed which demands good local government. We are beginning to feel that our city is home and should be as clean and pure as our fireside. . . . And by this token we are becoming better citizens of the Republic. Citizenship above partisanship. Public welfare above private interest. . . . [T]hey are the emblems that point the way to a sure and steady progress toward a resumption of political power by the people, to a new realization of the ideals of democracy.

Id.

5. *Id.* at 75.

6. PREBLE STOLZ, *JUDGING JUDGES* (1981).

alleged delay in the release of a Court opinion for the possible purpose of shielding the Chief from criticism while her confirmation election was pending. His purpose was to reveal the inner workings of a very important public institution. Almost no one,⁷ not the judges, or the lawyers, or the staff, or the press, or the litigants, or the people of California, performed their role in a manner that met entirely with the approval of the author. Very little escaped Stolz's attention and many, if not all, of the warts are painted in his picture of the court.

Yet the book is an antidote for cynicism. The warts are attached to human beings who have public motives as well as selfish ones, who are alternately possessed of positive attributes as well as faults. If there are few heroes, there are fewer villains because Stolz is always careful to observe the wise injunction against attributing to malice what can be explained as ignorance or inadvertence. He is a severe critic, but kind in his appreciation of the limits of human capacity to serve selflessly. He sees men and women who generally accept the obligations of public service and strive to meet them, imperfect though their performance may be.

At the outset, Stolz reveals that he held Governor Pat Brown in near idolatry. Were that revelation not made, it would be difficult to determine the politics of the author, for his criticisms and his reassurances are extended in all directions. To be an associate or ally of the author is no shield against his searching examination. Likewise, one could not detect the race or gender of the author from any comments presented in the book. Faction does not control his judgments, unless California or America can be deemed factions. All one can say of the author, judgmental though he is, is that he cares deeply about the institutions of California and holds its officers to very high standards of public service.

What Stolz has been teaching the law students, indeed the people, of California are some of the essential truths about self-government. There is no escape for the public from the need to trust at least some of its officers. Their humanity must be tolerated. On the other hand, public officers can and must hold one another to a standard of performance that entails self-discipline and sometimes even self-suppression. Their failures can be redeemed only by their commitments in that regard.

We all must hope that Stolz will continue to express himself in these matters. This is no time for him to rest. There are too many knights errant on the loose, who see only virtue or only evil in every public event, who shape their perceptions to justify their impulses and desires. And we must hope that California can find more like Stolz, who will impose upon themselves and their associates the same standards they would have

7. With the exception, perhaps, of Seth Hufstедler who served as special counsel to the Commission on Judicial Performance that investigated the incident.

imposed upon others. That is not an impossible task, but it will not be easy, for Preble Stolz is no ordinary sort.