FROM THE EDITOR

Legal institutions are inevitably surrounded by myths which, by definition, distort institutional reality. As this distortion increases, and the credibility of the myth is threatened, the response tends to be a new myth. This process of myth-making, demystification, and remythification was notably illustrated by the Watergate scandal, in which the myth of the rule of law was shaken by gross illegality at all levels of the federal government, eliciting a response of selective prosecution which was proclaimed as evidence that "the system works." An equally striking, if less notorious example, is contained in the following story, compiled from several news reports (*Los Angeles Times*, November 1, 2, 3, 5, 7, 10, 1977).

> Richard M. Helms was the director of the Central Intelligence Agency when Salvador Allende won a plurality in the Chilean presidential election on September 4, 1970. He was instructed by the then President Richard M. Nixon to prevent Allende from winning the October 24 runoff election and to unseat him if he did win, and to do this without the knowledge of the Department of State and the Department of Defense. He did so in collaboration with ITT.
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> When Helms was later nominated by Nixon as Ambassador to Iran, he was questioned about these events during Senate confirmation hearings in February and March 1973. Senator Stuart Symington asked him two questions: "Did you try to overthrow the government of Chile? Did you have any money passed to the opponents of Allende?" To each, Helms answered: "No, sir." In 1977, Helms was charged with two counts of the misdemeanor of failing to testify fully and accurately in those confirmation hearings. On July 25, President Jimmy Carter held a lengthy meeting with Attorney General Griffin B. Bell in which he instructed Bell to accept a plea bargain, for fear that a trial would disclose national security secrets. But on September 29, Carter said in a news conference that Bell "has not consulted with me nor given me any advice on the Helms question." And in mid-October Bell also told reporters that he had talked only casually with Carter about Helms.
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> On October 31, Judge Barrington D. Parker, of the U.S. District Court for the District of Columbia, held a hearing. The Department of Justice did not inform reporters in advance of the hearing, contrary to its usual practice when a national figure is involved, on the ground that publicity might upset the sensitive negotiations. Consequently, no reporter was present. The agreement reached between the Department of Justice and Helms, and recommended by the Department to Judge Parker, was a plea of no contest to the two misdemeanors, which the judge accepted. The offense carried a maximum penalty of a year's imprisonment and a $1,000 fine, but the Department recommended that Helms not be imprisoned, and that the minimum sentence of one month in jail be suspended. The

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I am grateful to the authors of the articles in this issue for their helpful comments on and criticism of this editorial. The interpretations of those articles that I advance here are entirely my own; they do not necessarily represent the views of any author, and in some instances I know that the authors would disagree.

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special case of the fiscal crisis of the state)[1] caused by the unwillingness of taxpayers, either directly or through their elected representatives, to authorize increased expenditures for such public goods as the courts (or even a constant level of real expenditures in an inflationary economy). Both indifference and ignorance naturally increase as legal institutions become more remote. At the extreme—the Supreme Court or the President—there may be a residuum of trust, analogous to the traditional faith in a good king misled by venal counselors, but this trust does not necessarily extend to any specific act by the Court or the President, which may always be attributed instead to those counselors.

This reality—an ignorant, indifferent public—is obviously intolerable in a democratic society, where the legitimacy of all political institutions is said to rest on informed consent. It is therefore masked. First, the failure of the people to engage in active opposition to legal institutions is interpreted as a mark of their respect for those institutions. Here again we have a myth, in the sense indicated above, since the absence of opposition could equally well signify indifference, or a utilitarian calculation that most legal institutions are largely irrelevant to most people most of the time, or a sense of impotence and despair. In order to eliminate those plausible alternative hypotheses, the myth of respect is substantiated by an empirical inquiry, in which interviews or questionnaires force the respondent to voice an opinion about the legal institution (where the observation of spontaneous behavior might reveal no concern for the institution whatsoever), and compel him to choose among fixed responses (none of which may reflect his actual feelings). Caldeira demonstrates that, when the latter constraint is removed, children exhibit little or no affect towards the Supreme Court. The legitimacy of the Court (and of other legal institutions) is also a myth in the sense that policy recommendations are deduced from it. If courts possess popular respect, that respect may be essential to their effectiveness and they must be careful not to lose it. Controversial decisions inevitably anger some segments of the population. Therefore courts should avoid controversial decisions whenever possible (cf. Bickel, 1962). Thus the assumption that legitimacy is tenuous justifies the judicial

1. The most recent instance of this crisis is the refusal of taxpayers in many cities in Ohio to vote the funds necessary to operate their public schools (e.g., *Los Angeles Times*, October 3, 1977, Part I, p. 4). Their anger appears to have been directed specifically at the increased costs associated with efforts to equalize the resources available to poor and wealthy school districts, and to integrate the schools. Thus as attempts are made to alter reality to conform more closely to the myth of equality, the reality of public hostility toward government diverges more markedly and more explicitly from the myth of public support.

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them, so the myths about attitudes towards legal institutions tend to hide true attitudes (again preserving the institutions from criticism and change), and to direct scholarship and reform along paths that are simultaneously conservative and self-serving. First, studies of attitude are invariably based on the implicit assumption that people ought to have a positive attitude toward legal institutions. I can think of no scholarly research that begins by looking for signs of indifference toward legal institutions, or alienation from them, as fulcra for social change (although many studies end by concluding that such attitudes prevail). There is a second assumption: that attitudes can be divorced from experience, that people can share a common attitude toward law although their experiences of it have been radically different. Together, these assumptions lead toward the conclusion that attitudes can and should be changed, and that this can occur without any fundamental transformation of the institutions about which attitudes are held, or of the way people experience those institutions. This conclusion necessarily limits reform to the superstructure—indeed, to attitudes toward institutions of the superstructure—leaving the base unaffected. Such reforms are epitomized by public relations campaigns. If we look at the legal institutions around which controversies have raged in recent decades, we can see how demands for reform have repeatedly been trivialized into schemes for "better public relations": in the community relations programs of the police;[2] in the call for improved communication between lawyers and the public, voiced by so many bar associations after Watergate;[3] and most recently in the courts, which are under attack for delay, costliness, "coddling criminals," and other public grievances.[4] Were these efforts at public relations successful, a professional elite would have persuaded the people to relinquish their power and competence to criticize legal, and other political, institutions; fortunately, legitimacy is not so easily conferred by propaganda.

The interaction between myth and reality, attitudes and behavior, is complex. Myths about the behavior of legal institutions

2. The literature on police-community relations is endless. For an example of concern by a governmental commission, see The President's Commission on Law Enforcement and Administration of Justice (1967: Chapter 6).
3. See the recent statement by the then president of the California State Bar Association (Casey, 1975: 456). The massive, expensive study by the American Bar Association and the American Bar Foundation of "The Legal Needs of the Public" also devoted significant attention to public attitudes toward lawyers, presumably because they thought these should be improved (Curran and Spalding, 1974; Curran, 1978).
4. The National Center for State Courts has just launched the first national survey of public opinion about the courts as part of its task force on the Public Image of the Courts (National Center for State Courts, 1977).

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help to create attitudes toward those institutions. Myths about attitudes toward legal institutions can influence behavior within those institutions. Demystification can also affect attitudes and behavior. But demystification produces a counterreaction in the form of new myths. The effort to demystify must therefore be continuous.

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