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Cover: From the photo album of Avis Winton Walton '45. Taken in 1943, this snapshot shows (l-r) Gloria Midgely Beutler '44, Margaret Morten Feinlieb '44 (since deceased), and Mrs. Walton. (The young woman in back, whose name is unknown, is thought to be an assistant law librarian.) An article on early women graduates of the School begins on page 4.

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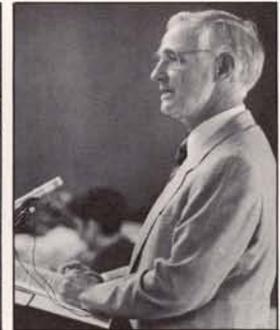
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The President's Choice: Justice William H. Rehnquist '52

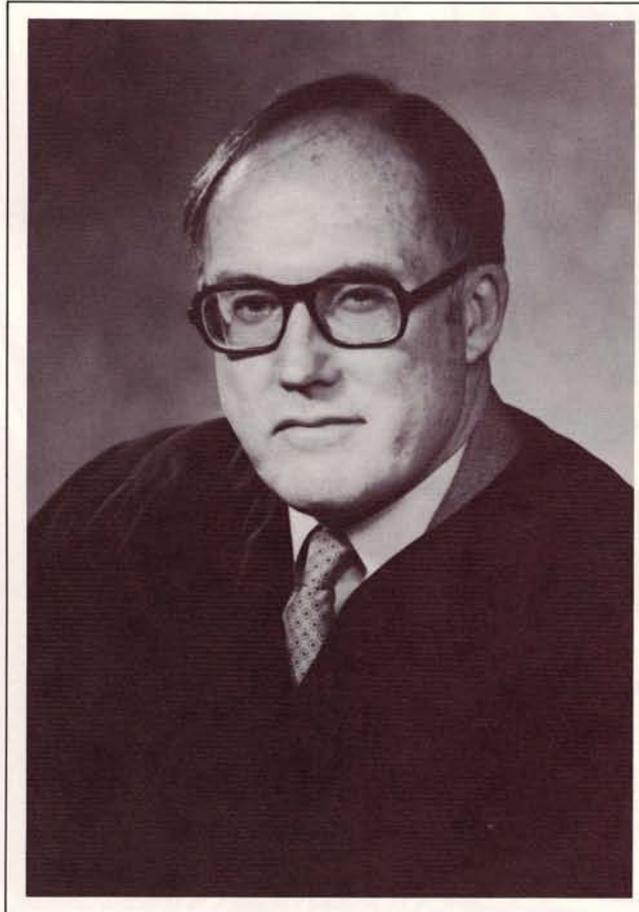
ON JUNE 17, 1986, at a White House news conference, President Reagan announced his intention to nominate William Hubbs Rehnquist as next Chief Justice of the United States.

Said the President: "Justice Rehnquist has been an Associate Justice of the Supreme Court since 1971, a role in which he has served with great distinction and skill. He is noted for his intellectual powers, the lucidity of his opinions, and the respect he enjoys among his colleagues."

Rehnquist, in response to questions from the press, said that he was "deeply gratified by the confidence that the President has shown in me... [I]t's not every day when you're 61 years old that you get a chance to have a new job."

His new eminence—and the concurrent appointment of Judge Antonin Scalia—will deepen the association between Stanford Law School and the High Court. Rehnquist, a 1952 alumnus of the School, was in 1971 the first Stanford graduate named to the Court. He was joined in 1981 by classmate Sandra Day O'Connor '52, the first and only woman ever to be so honored. Scalia's connection to Stanford is as a visiting professor of law in 1980–81.

Rehnquist was born October 1, 1924, in Milwaukee, grew up in the suburb of Shorewood, and attended Kenyon College for a year, before joining the Army Air Corps in 1943. After the war, he enrolled at Stanford, where in 1948 he received both an A.B. ("with great distinction") and an M.A. in Political Science and was elected to Phi Beta Kappa. The following year he earned a second M.A., also in Political Science, from Harvard. Returning to Stanford for law school, he graduated first in his class, was a revising editor of *Stanford Law Review* and a member of the Order of the Coif.



Professor George Osborne later described him as "the outstanding student of his law school generation."

Rehnquist's first introduction to the U.S. Supreme Court was as clerk, in 1952–53, to Associate Justice Robert Jackson. He then settled in Phoenix, Arizona, where he practiced for sixteen years, ending as a senior partner of Powers & Rehnquist. In 1969, he was called to Washington to serve at the Justice Department as Assistant Attorney General, Office of Legal Counsel. He was 47 when, in 1971, President Nixon elevated him to the Supreme Court.

The Justice has maintained his ties to Stanford, including acting as presiding judge of the Kirkwood Moot Court final competitions in 1973, 1981, and 1983. In 1984 the School honored him with its first

Award of Merit, given in recognition of distinguished public service.

Rehnquist enjoys visiting law schools as a way to overcome the "monasticism" of the High Court. "You just have to keep anchors to the outside world," he recently said. Other extrajudicial pastimes include weekly tennis with his law clerks, stamp collecting, night-school classes in painting, and vacations at his second home in Greenboro, Vermont.

Rehnquist and his wife, the former Natalie Cornell (A.B. '51), have been married since 1953. Their three children—James, Janet, and Nancy—are all grown.

Though the ultimate influence of the new Chief Justice on this nation's legal system cannot yet be known, one interesting clue emerged at the summer confirmation hearings: his interest in exploring alternative methods of dispute resolution (ADR)—"as important to me," he said, "as penal reform is to [retiring] Chief Justice Burger." □



The Venturesome Women of Stanford Law

1920–1945

One of the most striking differences between Stanford Law School today and in past decades is the high proportion of female students—now nearly half (48 percent). Only once before, when in the midst of World War II the School shrank to less than fifty students, were women similarly represented. The current pattern is, however, no such blip, but rather part of a deep and probably irreversible societal trend. An absence of women would today seem abnormal.

Stanford Law School has of course always been open to females (including the 1949 admittee who became the first woman to sit on the Supreme Court). But even at Stanford—a young, Western, coeducational university—female law

students were, until recently, a very small percentage of the whole. The times were simply against it.

Still, they came—few in number, but a persistent presence—venturing (like Lewis Carroll's Alice) into a land of curious ambiguity. What led these young women to study law? How did they experience law school? And what opportunities and difficulties did they later find in an undeniably “man's world”?

We were delighted when Leelane Hines offered to explore these questions. Her report, which follows, is based on questionnaire responses and interviews with 12 of the 18 surviving alumnae of classes graduating from 1920 (our senior living alumna) to 1945. We thank them for their candor and salute their achievements. —ED.

by LEELANE ELLIS HINES '59



I had hoped in beginning this project to identify a personality profile of the Stanford woman “trailblazer.” But I soon discovered that to

speak of a group profile of individualists is an oxymoron.

My first surprise was that not one of the respondents even thought of herself as a pioneer—this despite the unusualness of a woman studying for the overwhelmingly male profession of law. “What seemed much more unusual,” recalls Elizabeth Spilman Rosenfield ’24, “was a woman student who was majoring in engineering and worked over at the forge.”

There was no sense of cause or making history in any of the responses. I found no militant suffragettes. The choice to study law seems to have been an individual response to the opportunities each student saw for herself at the time. To Josephine Welch Wood ’20, for example, law school seemed like “a natural thing to do. I never thought of law school as a way to become a lawyer,” she explains. “To me, it was part of my general education to do what I wanted to do in the world, and that was to follow in the footsteps of [social reformer] Jane Addams.” Wood remembers her mother telling her that legal studies would “help me deal with the realities of getting things done.”

The importance of having a profession had been impressed on Gloria Midgley Beutler ’44 from an early age. “My mother, who had been widowed when I was nine years old, emphasized strongly the need for women to be self-supporting, as she had had no profession except through marriage.”

Avis Winton Walton ’45 was finishing up her third year as a Stanford undergraduate when “some fellows I knew at Stanford Law School told me they needed students. I mentioned this to my mother, who was excited. It was her

ambition for me—she was the feminist.”

An historical note is appropriate here. Virtually every woman graduate we interviewed began her law studies while still an undergraduate. Under this option (available until the mid-1960s) Stanford students could, as early as the end of their sophomore year, declare a “Pre-Legal” major and spend their senior year taking the regular first-year postgraduate legal curriculum. They would then have earned an A.B. and, with two more years of law study, could gain an LL.B. The existence of this option made the barrier between college and professional study relatively permeable and enabled the women to make their professional choices early. Many of the alumnae I talked with remember being eager to do so, believing that unless they acted quickly, they would be drawn into traditionally female professions that held less appeal for them. “I knew I didn’t want to be a teacher,” was a frequent response. One woman saw being a nurse as the alternative to avoid; for another it was becoming a nun.

Miriam E. Wolff ’39 felt less limited in her options—Egyptology had its attractions—when she designated Pre-Legal as her undergraduate major. Though at first unsure whether it would be her final choice, she found that her interest increased in direct proportion to accusations that she would not finish law school. “I really got kind of burned,” she recalls. (Lawyers probably have a genetic predisposition to take the opposite of whatever position is being urged on them.)

Others in our survey “always knew” they would go to law school. “I do not remember when I was not going to be a lawyer or writer,” says Elizabeth Rosenfield. Her attorney father considered law “the finest of professions and an intellectual pursuit,” she adds, recalling a mountain trip where he took a new edition of *Blackstone* along as vacation reading. Another attraction of law school was that she wanted “to do something difficult.”

Christine Murdoch Goble ’25 also mentions her father—a lawyer unable

to practice because of a hearing loss—as influencing her choice of profession. Besides, “there were several girls in law school, and perhaps it seemed exciting and glamorous.”

Nora Blichfeldt Bower ’35 and Lois Berry Betzenderfer ’45, who date their interest in law back to childhood, have no idea how it all began. Betzenderfer describes herself as a vocal child, which inspired people to remark, “You ought to be a lawyer.” Other respondents also remember being loquacious or argumentative—characteristics apparently perceived as necessary for the practice of law—and were counseled accordingly. Mary Rechif Mulcahy ’36 was one such: “I had been on debate teams and in oratorical contests, and received encouragement from speech teachers.”

The appeal of “logic and reason” drew Rhoda V. Lewis ’29 to law. She also cited another critical but little-mentioned factor: “My father was willing to pay for my legal education.”

In short, the reasons given by these women for studying law are not so very different from those of their male peers: evident aptitude, intellectual drive, supportive parents, and avoidance of less appealing career alternatives.

What was, of course, different for the women was the degree of social acceptance and support for their aspirations. Josephine Wood remembers the statement of a Stanford University president (at a dormitory gathering in the teens) that he preferred the Stanford woman to be “a cricket on the hearth.” In such times it took a special kind of person to join, as Wood did, a law school registration line in which she was the only woman.

One ubiquitous remark seems to have launched many a career: “Why go to law school—why don’t you just settle down and have children?”

School Days

Was the experience of law school different for women and men? “Absolutely,” replies Avis Walton, while Rho-

da Lewis says, "No." Their answers are not so much contradictory as they are reflective of what was in fact a mixed picture. A few professors were seen as outspokenly discriminatory. But most members of the faculty — and the preponderance of fellow students — were not. Furthermore (as noted above) it was not in the nature of these pioneering women to be intimidated by derogatory remarks or even to be supersensitive to them.

Miriam Wolff recalls: "Some of the discrimination didn't filter down to me. I took jokingly some remarks that were probably serious, for example, that women are only here to catch a husband." She describes law school as "closely knit, friendly, supportive."

Mary Mulcahy recalls the following: "At the very start, several of the professors announced that they did not approve of women taking law, but could not prevent it; however, they would be rough on the women." More than one of our respondents remembers Professor Osborne's saying, "A woman should do what her husband tells her to do." Yet, he is also fondly remembered by several alumnae for the generous encouragement and praise he gave for work well done.

Criminal law classes seem to have generated the most differential treatment. Professor Vernier apparently made a practice of calling on the women students when discussing rape and other sexual cases. The women turned this to their advantage, reports Mulcahy, by "always being well prepared" (leading, in her case, to an invitation to help Vernier with a book). Mulcahy also

recalls that some professors seemed to enjoy humiliating women — but then, she adds, they seemed to enjoy humiliating the male students, as well. (Other evidence of a "paper chase" atmosphere was cited by Frances Sheldon Bower '24, who remembers a professor's pointing out to a first-year class

that only one of three would return. Predictably, she resolved to be — and was — among that one-third.)

In general, our respondents seemed to have expected not to be treated "differently" from male students and for the most part did not perceive that they were. Whatever discrimination they might have felt was put in the category of facts of life to be dealt with like anything else. Since the facts of life during this period consisted of the end of World War I, the Great Depression, and World War II, being singled out to recite rape cases must have seemed of comparatively little consequence.

Our respondents, on balance, describe law school as a positive experience — even a high point — of their lives. "My Stanford days were happy ones, and in law school I think I was totally accepted," says Christine Goble, who attended in the mid-1920s. She sensed a certain awkwardness among the men in criminal law classes ("because of the language") but in other respects remembers no problems.

Nora Bower of the mid-1930s remembers being the only woman in her class but not feeling "anything particular about that." Bower acknowledges that the kindness of her classmates enabled her to pass her first year of law school. When an appendicitis attack took her out of school during the second quarter, James Boccardo '34 gave her his notes, and others provided rides. She adds that Stanford law men were "broader minded" than most males she met in her work — an observation frequently expressed by our respondents.

The School was, of course,



**"I've a right to think,"
said Alice sharply.
"Just about as much right,"
said the Duchess,
"as pigs have to fly."**



relatively small in those early years and even smaller during the war years at the end of our survey period. By 1943, enrollment had plunged to thirty-one students, for whom there were

seven professors. Lois Betzenderfer remembers Professor Owens lecturing with his usual formality to a class with only two students, one of whom was asleep! Such intimate, if not informal, circumstances increased the likelihood of women students being treated as individuals.

Whatever problems the women may have encountered in school as a result of their sex were, however, eclipsed by those they met later. Writes Rhoda Lewis: "In law school, I was treated so well, that the obstacles I encountered upon graduation came as a shock."

An Unwelcoming World

It was a severe blow to our women graduates to discover how profoundly reluctant the legal establishment was to accept them as lawyers. Consider, for example, the tale of Justice Lewis:

Since I was a member of the Order of the Coif and first in the class, Dean Kirkwood felt he should help me. He suggested an interview with a woman lawyer in active practice in San Francisco, but it turned out the lawyer he had in mind was a man with a feminine-sounding first name. This came to nothing.

I could have worked for a Santa Barbara firm that stipulated that I would not be practicing law but merely seeing to it that the other lawyers met filing times, etc. Naturally, I declined . . .

I wrote to some of the leading law firms in Honolulu, my hometown, but without success.

The best offer I had was from Professor Brenner, the law librarian and professor in that field, who was leaving Stanford to organize the State Bar of California.

Professor Brenner made me Secretary of the Committee of Bar Examiners. Other than preparation of examination questions the work was not really in the legal field. But as I had never before earned a penny, I was happy.

Finally, in 1932, I faced up to the fact that this was a dead end. While on a visit to my sister, who then was living in Buffalo, N.Y., I made arrangements to work in a law firm there . . .

Lewis went on to build a fascinating career, eventually returning to Hawaii, where she played a key role in implementing statehood and ultimately became an associate justice on the state supreme court.

For some other women graduates of that era, however, the barriers were just too high. "Women were not accepted," wrote an alumna from the same decade. "Law firms would accept a woman as a stenographer and her knowledge of law was a bonus, but not to the extent that she could actually practice law. For example, I applied for a position in an excellent law firm at the same time as a man, graduating the same year as I did from Santa Clara. He was accepted—I was not—and I felt that my qualifications were as good as his, perhaps even better." This same graduate also reveals that her husband was "not all that keen about my practicing law."

Looking back, she said: "There has always been regret that I did not fulfill my education. Here was I—a graduate of a fine law school, but not using my education to the extent that it should have been used. It seemed as if I were up against a rock wall."

Entry into the profession does not seem to have been much easier in the 1930s. Judge Miriam Wolff and Nora Bower both remember being turned down by law firms on the grounds that "clients wouldn't like" dealing with a woman lawyer. Mary Mulcahy found employment as a stenographer and bookkeeper for a large San Francisco firm. The problem, she said, was that "it was impossible to convince any law office that a woman could be profitably employed as a lawyer."

The war years of the 1940s provided only the illusion of change, according to our respondents. Gloria Beutler reports: "During the time of World War II, when we were in law school, we were encouraged (or should I say, not completely discouraged) in our ambitions. After the war's end, the reversal was very destructive and led to a degree of bitterness." Lois Betzenderfer, graduating in 1945, also found a "huge amount" of discrimination. "Women," she explains, "were being fired from so many firms to make room for men." Avis Walton, another 1945 graduate, mentions that even women secretaries seemed to have a certain resistance to dealing with a woman lawyer.

Despite such obstacles, all twelve of the women we heard from managed to practice law or use their law school education in some way.* Three, including Rhoda Lewis, became judges. Miriam Wolff, who first distinguished herself in the field of maritime law, has just retired after eleven years on the bench of the Santa Clara County Municipal Court. And Mary Conway Kohler '28 served for seventeen years as a San Francisco Juvenile Court referee before moving to New York, where she was active in public service (see In Memoriam section).

Several of the graduates entered full-time practice after first raising their children. Some went into other professions: Josephine Wood, for example, used her legal education to help her in the social work inspired by Jane Addams, and in participating actively in politics; Elizabeth Rosenfield became an editor, and credits her law school education with training her to think logically and analytically; Avis Walton practiced for a while, then added a teaching cre-



dential; Mary Mulcahy, finding herself unable to support herself and her three children during the Depression as a lawyer, became an escrow officer, and in time was head of the Land Acquisition Branch of the U.S. Bureau of Reclamation in Sacramento. Other women went into business with their husbands, using their legal training in that way. The respondents have also done a large amount of *pro bono* work.

Though many wish they had been able to go farther in the legal profession, none of our respondents expresses regret at having studied law. As one 1920s graduate said: "It was a wonderful experience in itself."

Challenges and Choices

Professional acceptance for women as lawyers has, of course, changed dramatically in the decades since these women first approached the practice of law. The kind of up-front rejection they confronted is largely a thing of the past. Another challenge they faced has, however, a more modern sound: the difficulty of managing the competing demands of personal life and career.

We asked a number of questions relating to the career/family dichotomy, and got almost as many different answers.

A minority of our respondents chose not to marry at all—a "necessity," said one, for her career. Interestingly, two of the three judges in our sample are in this group.

The rest of our respondents did, however, attempt to combine career and family. All found it possible, at least to some degree—in sequence if not simultaneously. Two who felt compelled to put their careers on hold while raising children express mixed feelings about the situation. "I gave up the law for many years for a personal life," says one. "That was what my generation was expected to do. However, I always felt a victim of the system."

I asked one of the graduates who had managed to balance both career and family how she did it. "Mediocrity," she replied. That response—sincerely felt,



**"No room! No room!" they
cried out when they saw Alice coming.
"There's plenty of room!" said
Alice indignantly.**

but patently untrue—was representative of the attitude of many of the women responding. They had in their own lives accomplished much, made many hard choices, and faced and responded with originality to formidable social obstacles. Yet all too often, their self-evaluation amounted to, "I wish I had done more."

In general, however, the responding women recognized that the choices they faced had been difficult and did not regret the ones they had made. Even among those who had not practiced full time, there was not one who failed to appreciate the relevance of her law school education to the rest of her life. What comes through, in many cases, is a frustration that they were capable by education and inclination of much more

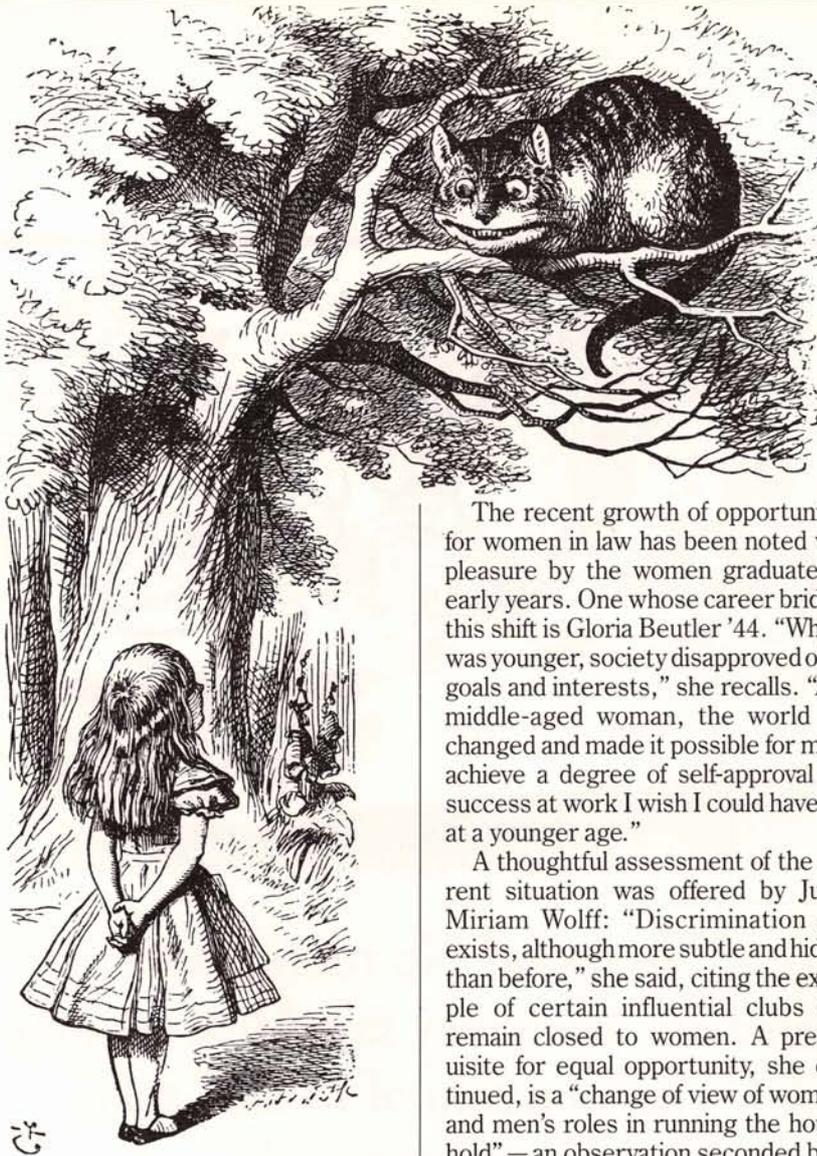
than they were able to do.

What advice do our trailblazers have for young women entering the profession today? Responses ran the full range from pessimism to optimism, i.e.:

—"Stop beating your head against the wall. You can't have it all. You have to decide what's important in life."

—"Don't expect perfection on all fronts. But then I don't think young men lawyers should try to do it/have it all at the expense of their families, either. You really need to find someone who is willing to form a marriage partnership."

—"Try for it all, both as a woman and a lawyer. Many have proven that it can be done. If a woman wants marriage and children along with her practice, she should make every effort to fulfill her dream."



“Would you tell me, please, which way I ought to walk from here?”
 “That depends a good deal on where you want to get to,”
 said the Cat.

The recent growth of opportunities for women in law has been noted with pleasure by the women graduates of early years. One whose career bridged this shift is Gloria Beutler '44. “When I was younger, society disapproved of my goals and interests,” she recalls. “As a middle-aged woman, the world had changed and made it possible for me to achieve a degree of self-approval and success at work I wish I could have had at a younger age.”

A thoughtful assessment of the current situation was offered by Judge Miriam Wolff: “Discrimination still exists, although more subtle and hidden than before,” she said, citing the example of certain influential clubs that remain closed to women. A prerequisite for equal opportunity, she continued, is a “change of view of women’s and men’s roles in running the household” — an observation seconded by all those who spoke to the issue. At the same time, Judge Wolff pointed out, “Women have to reassess what they mean by equality of treatment. The bearing of children is a valid difference, and one that needs to be addressed.”

I found, along with such cautious realism, a profound appreciation for the progress so far made. One alumna said simply: “I am very proud of what women have attained in this field.” And another: “My gratitude goes out to those such as Betty Friedan who have made that possible.” The writer is too modest. In fact, the Friedans of the world might well be looking back at the “trailblazers” with gratitude. For it is the venturesome few of earlier generations who opened the doors of higher education and the professions for the great numbers of today’s young women, who can almost forget that the doors were ever, anywhere, closed. □

Footnotes

*A more formal survey of Stanford Law alumnae conducted in 1970 by Virginia Nordby '54 indicated that women graduates of the School — then 130 in number — utilized their legal educations at very high rates. Of 90 respondents, some 66 percent were employed full time in the legal field, 12 percent part time, and another 18 percent had been at some time previously — for a total of 91 percent.

The engravings and accompanying quotations are, of course, from Lewis Carroll’s *Alice in Wonderland*, as originally illustrated by Sir John Tenniel (1820–1914).



Leelane Ellis Hines has been a solo practitioner in the Peninsula area since her graduation in 1959. Her specialty is criminal appeals. The experiences described by the women in this article are, she says, very like those she remembers as one of just five women in her graduating class. She credits her mother with steering her towards a professional career. “I don’t think I would have been permitted to go to secretarial school even if I had wanted to!” she says. In talking to alumnae of former years, Hines felt “a great sense of honor—as if I were contacting my roots and discovering a lot to be proud of.”

Overruled: Jury Neutrality in Capital Cases

by SAMUEL R. GROSS
Acting Associate Professor of Law

HARD CASES, we were taught, make bad law. But why is this supposed to be so? The answer I was given in law school runs something like this: If the case in which a precedent is set has some unusual features that attract the sympathy or excite the contempt of the court, it might tempt the judges to announce a rule that would have bad implications in other more common contexts. You may not wish to let a loan company foreclose a second mortgage taken out by the deceased alcoholic husband of a widow with three children, but to create a rule to accommodate the widow may wreak havoc elsewhere.

I never found this argument entirely persuasive. Some hard cases simply pose hard questions, and may produce good and useful changes in the law; others point out the limits of the courts' power, and may help direct people's attention to other forums. The determinative issue, I think, is what makes the case hard — the worse the reason, the worse the likely effect. The recent Supreme Court case of *Lockhart v. McCree* (106 S.Ct. 1758 [1986]) is an unfortunate example: It was a hard case for all the wrong reasons, and it made terrible law.

At the outset, I should make my point of view clear. I argued the *Lockhart* case in the Supreme Court on behalf of the respondent, Mr. Ardia

McCree, and I lost. Needless to say, I am not a detached observer. It should not be difficult, however, to separate my biases from the facts; all it takes is to point out what the Court did.

The issue in *Lockhart* was the constitutionality of "death qualification," the procedure by which strong opponents of the death penalty are identified and excluded from capital juries. McCree's claim was simple: Under the law of most states (including Arkansas, where McCree was tried and convicted of murder), strong opponents of the death penalty are excluded from the determination of guilt as well as penalty in capital cases — even if they can be fair and impartial and follow the law on the issue of guilt or innocence in such a case — on the ground that they could not follow the law on *penalty*. The result is a biased jury on the question of *guilt*, a jury that is more likely to convict (or convict of a higher degree of homicide) than an ordinary, fully representative jury.

The claim in *Lockhart* was first presented to the Supreme Court in 1968 in *Witherspoon v. Illinois* (391 U.S. 510). In *Witherspoon* the Court found that the evidence before it was "too tentative and fragmentary" to form the basis for a constitutional decision, but that additional evidence might demonstrate that death qualification does in fact produce juries that are "less than neutral with respect to guilt." If so, a state that wishes to use death-qualified juries to *sentence* capital defendants might have to take special steps to protect the fairness of the jury that determines guilt or innocence — for example, use separate juries for these two decisions.

McCree produced the evidence that

the Court found lacking in 1968. He put on an extensive evidentiary hearing at which several expert witnesses testified about some fifteen surveys and experimental studies (mostly conducted after *Witherspoon*), all of which support his position. This evidence convinced both a federal district court and the Eighth Circuit Court of Appeals (758 F.2d 226 [1985]), but the Supreme Court reversed, in a five-justice opinion written by Justice Rehnquist.

At the outset, the Court finds "several serious flaws" which undermine the social scientific evidence presented by McCree. This is a surprising discovery. At the time of *Witherspoon*, in 1968, most lawyers and judges *believed* that death qualification produced juries that were uncommonly prone to convict, but the scientific evidence was thin — only a few early studies. By 1985 the evidence had changed entirely. The Eighth Circuit opinion points out that "the record [in *Lockhart*] is exhaustive" — it includes not only the many studies that support McCree's claim, but also detailed cross-examinations of McCree's experts and lengthy testimony by witnesses for the state — and "there are no studies which contradict the studies submitted." In the Supreme Court, the American Psychological Association filed a brief *amicus curiae* evaluating the social scientific evidence, and concluded that "without credible exception, the research studies show that death-qualified juries are prosecution prone [and] unrepresentative," and that "the research clearly satisfies the criteria for evaluating the methodological soundness, reliability and utility of empirical research." But the Supreme Court finds fault.

The Court begins its discussion of the empirical record by observing that “McCree introduced into evidence some fifteen social science studies...”; five paragraphs later the Court concludes that it should not base its holding on the one “lone study” that it found worthy of consideration. I will mention only a few of the steps in the remarkable winnowing process that happens in between:

■ Several of the studies show that jurors who are excluded by death qualification differ greatly from those who remain, in their attitudes toward the criminal justice system — on questions such as whether a defendant who does not testify in his own defense is probably guilty. The Court immediately dismisses these studies as “at best, only marginally relevant” because they “dealt solely with generalized attitudes,” and never considers them again.

■ Three of the remaining studies — which show directly that death-qualified jurors are more likely to vote to convict than those who are excluded — had been presented to the Supreme Court in *Witherspoon*. Therefore, the Court says, “[I]t goes almost without saying that if these studies were ‘too tentative and fragmentary’...in 1968, the same studies, unchanged but having aged some eighteen years, are still insufficient.” In fact, the studies *had* changed. The most important (by Professor Hans Zeisel) bore little resemblance in 1986 to the fragment of a “confidential first draft” that was before the Court eighteen years earlier, and the record on the methodology of all three studies (a specific complaint in *Witherspoon*) was vastly more informative. But more important, the fact that these studies were *insufficient* to prove a claim *by themselves* hardly means that they can be written off and ignored entirely when they are presented together with other evidence — which is exactly what the Supreme Court does.

■ One of McCree’s studies shows that the *process* of questioning jurors about their death penalty attitudes pre-



STEVE RECOUTT

disposes them to believe that the defendant is guilty. The Court disposes of this study by pointing out that “counsel for McCree admitted at oral argument” that this problem “would not, standing alone, give rise to a constitutional violation.” Needless to say, the effects of this type of questioning do not occur (and were not litigated) “standing alone” — they are an inseparable aspect of the process of identifying and excluding death penalty opponents — but the Supreme Court, having made this apparently irrelevant observation, acts as if it has one less study to think about.

The most striking thing about the Supreme Court’s method of treating the social scientific studies on death qualification is what the Court does *not* do. The Court never even attempts to weigh all the evidence collectively, and reach a decision on the underlying facts. On this claim, that would have been easy: the evidence in support is uncommonly strong — and it is supported by anecdotal wisdom and common

sense — while the evidence in opposition is non-existent. Instead, the Supreme Court shops around to find some objection to each study, and having found one, however tenuous, it rules that study out of bounds.

But, the Court does not rest on its criticism of the evidence. It proceeds to “assume for purposes of the opinion that the studies are . . . valid and adequate” to show that death-qualified juries are more prone to convict than ordinary juries, and holds “nonetheless, that the Constitution does not prohibit the States from ‘death-qualifying’ juries in capital cases.” In other words, a state may use special juries to pass on guilt in capital cases only, despite the fact that this procedure is not necessary to a fair trial (since those who are excluded would be fair and impartial on that issue), and despite the fact that this practice makes it easier to obtain convictions.

This holding is at odds with a strong constitutional and humanistic policy

that defendants who might be sentenced to death are entitled, if anything, to greater constitutional protections than other criminal defendants, and certainly to nothing less. As a result, the Court has some difficulty explaining its decision, and the justifications it produces are perhaps even more disturbing than its statements on the factual record. Again, I will give only a couple of examples:

■ The Eighth Circuit concluded that death qualification violated McCree's Sixth Amendment right to a representative jury. The Supreme Court holds that this right does not apply to exclusions that take place in the process of selecting a particular trial jury, citing previous cases that held that a defendant is entitled only to a fair cross-section of the community in the pool from which his jury is drawn, not on his individual jury panel. The principle the Court cites is sound—it is impossible to achieve representativeness on every twelve-person jury—but irrelevant. McCree did not ask the State to do anything to *achieve* representation on his jury; he asked that it stop systematically *excluding* an entire class of jurors. Under *Lockhart*, the timing of such a pattern of exclusion becomes inexplicably important: a defendant would have a good Sixth Amendment claim if a clerk excused all Roman Catholics from appearing for jury duty, but not if the judge in each case did so in *voir dire*.

■ McCree argued that because death qualification increases the likelihood of conviction, it undermines the impartiality of the jury. The Court finds this argument "both illogical and hopelessly impractical" because "McCree admits that exactly the same twelve individuals [who convicted him] could have ended up on his jury through the 'luck of the draw,' without in any way violating the constitutional guarantee of impartiality. . . . [I]t is hard for us to understand the logic of the argument that a given jury is unconstitutionally partial when it results in a State-ordained process, yet impartial when exactly the same jury

results from mere chance." I have difficulty believing that the Court really means this. All-white juries can occur by chance; does that make them constitutional if they "result from a State-ordained process"? And what is the reach of this test? Residential segregation could occur by chance; so could an all-male work force. Does that make the arguments against them illogical and impractical when it is proven that chance had nothing to do with it?

The root problem with the Court's opinion in *Lockhart* is that on the merits, the case was all too easy. The legal claim seems unanswerable—that a state may not constitutionally devise a procedure that makes it easier for a prosecutor to get a conviction in a capital case than in a drunk driving trial—and the factual record is extensive and one-sided. It would also have been quite easy to implement a holding against death qualification in future cases; as the Eighth Circuit pointed out, this can be done simply and cheaply by empanelling a sufficient number of alternate jurors at the outset of the trial so that a death-qualified *penalty* jury could be selected from the entire group of jurors, if a penalty decision becomes necessary. What made *Lockhart* hard was not anything about this individual case or the issue it raised or the rule it ought to have created; it was the implications of that rule for *past* cases—a point emphasized at length by the Arkansas Attorney General, and by thirty-two states as *amici curiae*.

In theory, the *Lockhart* case could have had an enormous impact. If McCree had won, and if the ruling had been made retroactive, hundreds of prisoners on death rows, and thousands of others who were convicted by death-qualified juries but not sentenced to death, would have had their convictions vacated; they would have to be re-tried or released. Clearly, this was an unacceptable consequence.

But why not rule for McCree and make the holding non-retroactive? This possibility was raised by the Court at oral argument, and seemed plausible, but I think the Justices balked at the

unattractive manner in which it would play out: Many defendants would be executed after a determination by the Supreme Court that they were convicted by an unconstitutional and unfair procedure, simply because they had been tried before some arbitrary date.

Assuming that these consequences made the decision inevitable, the Court had a choice: deny the facts, or announce an untenable rule of law. But why do both? The Court could have held, as a matter of law, that the biasing effects of death qualification are immaterial, without taking on the task of contradicting a body of proof that no one seriously doubts. But that would have made their legal argument sound callous: "You may have proven that your jury was biased toward conviction, but it doesn't matter, not even if you are executed as a result." On the other hand, the Court could have held that the evidence is still insufficient, without adding a tortuous legal holding—but that would have posed even greater difficulties. Such a decision would have rested on a single shaky leg: on an empirical question where the scientific community is uncommonly single minded, the Supreme Court has little credibility to assert the opposite. Worse, a holding based solely on the insufficiency of the evidence would have been an invitation for future litigation based on additional studies and even fuller records, and the last thing the Court wanted was to face this claim again.

The opinion the Court wrote closes off all future argument. It says, in effect, "We don't think you ever proved that death qualification biases juries, but no matter, don't bother trying again because it won't make any difference if you succeed." It is a complete solution to the problems that made this case hard, but it is very bad law indeed. □

Samuel R. Gross has worked since 1980 as a cooperating attorney with the NAACP Legal Defense and Educational Fund, and has litigated the constitutionality of death qualification in a series of cases starting in 1979.

The U.S. and the World Court: Facing the Facts

by MICHAEL J. DANAHER '80

UNITED STATES acceptance of the compulsory jurisdiction of the Court of Justice ended on April 6, 1986. In the last issue of *Stanford Lawyer* this was criticized—by a lawyer who represented Nicaragua in its case with the U.S.—as a break with America's commitment to the rule of law.¹

I have twice helped represent the U.S. before the World Court: in the case brought by Nicaragua (*Case Concerning Military and Paramilitary Activities In and Against Nicaragua*) and in the maritime boundary dispute with Canada (*Case Concerning the Delimitation of the Maritime Boundary in the Gulf of Maine Area*). I believe the U.S. was wise to terminate its acceptance of the Court's compulsory jurisdiction. I also believe the issue requires honest analysis rather than political rhetoric.

First, the facts.

Jurisdiction over a case is conferred on the Court only by the consent of the states involved. States may consent by "special agreement" to submit a specific case to the Court. The U.S. did this with Canada in the Gulf of Maine case and has recently agreed with Italy to submit an expropriation dispute to the Court.

States also may consent by treaty to give the Court jurisdiction over a category of potential disputes. For example, some of the parties to the Vienna Convention on Diplomatic Relations

have also become party to the Optional Protocol to that Convention, thereby agreeing to accept the Court's jurisdiction over disputes arising out of the interpretation or application of the Convention. The U.S. is party to over 75 treaties and international agreements giving the Court jurisdiction over specific categories of cases.

Finally, a state may file a declaration with the United Nations recognizing as compulsory the Court's jurisdiction over all cases that might be brought. The declarant state may, however, exclude certain categories of cases by making reservations to its declaration. Jurisdiction conferred by declaration is called "compulsory jurisdiction." In fact, such jurisdiction is no less consensual and no more compulsory than jurisdiction conferred by special agreement or by treaty.

Only a minority of states have declarations in force accepting the Court's compulsory jurisdiction, and many of these are subject to significant reservations. The declarant states include only 42 of the 154 member states of the United Nations, only 1 of the 5 permanent members of the Security Council (the United Kingdom), and only 6 of the 15 states whose nationals now sit on the Court. None of the Soviet Bloc states has ever accepted the Court's jurisdiction by declaration or, to my knowledge, by special agreement or by treaty.

In 1946 the United States filed a declaration accepting the Court's compulsory jurisdiction. It was this declaration that the U.S. terminated, effective in April of this year. The lawyer for Nicaragua called this termination a "blanket withdrawal of U.S. submission

to the Court's jurisdiction in any contentious case." This, of course, is wrong. The U.S. by special agreement and by treaty has accepted the Court's jurisdiction over countless categories of cases and continues to do so.

The lawyer for Nicaragua also called the U.S. action "a serious break with our traditional commitment to the rule of law." This too is wrong. By terminating its declaration, the U.S. simply joined the majority of states—over 70 percent of United Nations members—that choose not to accept the Court's compulsory jurisdiction.

Now, some theory.

The issue is not, "Are we for or against international law?" but rather, "How should international disputes be resolved?" States deal with international disputes in many ways, including negotiation, neglect, retaliation and, very rarely, litigation. The World Court has decided less than fifty cases since it began its work in 1946. The scarcity of cases should be no surprise. On the contrary, it is extraordinary for any state to submit an issue of great national significance to the decision of a group of 15 foreigners, some of whom are from hostile states.

By accepting the Court's compulsory jurisdiction, a declarant state not only accepts the possibility that important disputes may be decided by the Court, but also concedes to other states the decision whether to submit a dispute to litigation. Why would any state agree to be defendant in any future case another state might bring, and before a court whose future composition is unknown? Why concede to other states the decision whether to litigate a dispute and when? The reasons are complex and

vary from state to state, but two factors are especially important: reciprocity and the expectation of fairness.

Reciprocity is the foundation of international law. A state agrees to restrict itself in order to obtain the agreement of other states to restrict themselves in the same manner. A state accepts the Court's compulsory jurisdiction and exposes itself to litigation in order that it, in turn, may bring other states before the Court. Indeed, at the time of its declaration, the U.S. hoped that all states eventually would accept the Court's compulsory jurisdiction.

The Court's Statute requires reciprocity: only a state that has filed a declaration accepting the compulsory jurisdiction of the Court may invoke the declaration of another state. But the reciprocity of compulsory jurisdiction is more theoretical than real. On one hand, the U.S. as declarant was exposed to suit by other declarants, including Soviet Bloc proxies, and to any "hit and run" declarants who might file a declaration and a suit the same day. On the other hand, the U.S. could not bring suit against most of the world's nations or against any Soviet Bloc state.

Moreover, invoking compulsory jurisdiction against another state is unlikely to help the U.S. resolve a particular dispute: World Court litigation has successfully resolved disputes brought to the Court by agreement of the parties, but generally has not helped resolve disputes where the defendant state has been brought before the Court against its will. In short, accepting the Court's compulsory jurisdiction greatly compromises a state's ability to control the handling of potential disputes but does not confer significant reciprocal advantages.

Declarant states also accept compulsory jurisdiction with the expectation that the Court will observe strict standards of justice and fairness. Is this expectation realistic? The Court is elected by a General Assembly and a Security Council that consistently oppose U.S. interests on ideological grounds. The judges come from various states, some of which are hos-

tile to the U.S. and many of which have different concepts of international law and different traditions of judicial impartiality. Equally important, most of the judges come from states that have not accepted the Court's jurisdiction. Many of these judges have no vested interest in maintaining a tradition of strict impartiality because their states are unlikely to appear before the Court.

In retrospect, the U.S. was naive ever to expect the Court to deal impar-

tially with politically controversial cases. Certainly no case has been more politically charged than *Nicaragua v. U.S.*, which concerned U.S. activities in Central America, including support of the Contras. (By comparison, the Iran hostages case was uncontroversial—the sanctity of embassies was important not only to every state represented on the Court but also to the judges personally, 14 of whom had served abroad in their countries' foreign missions.)

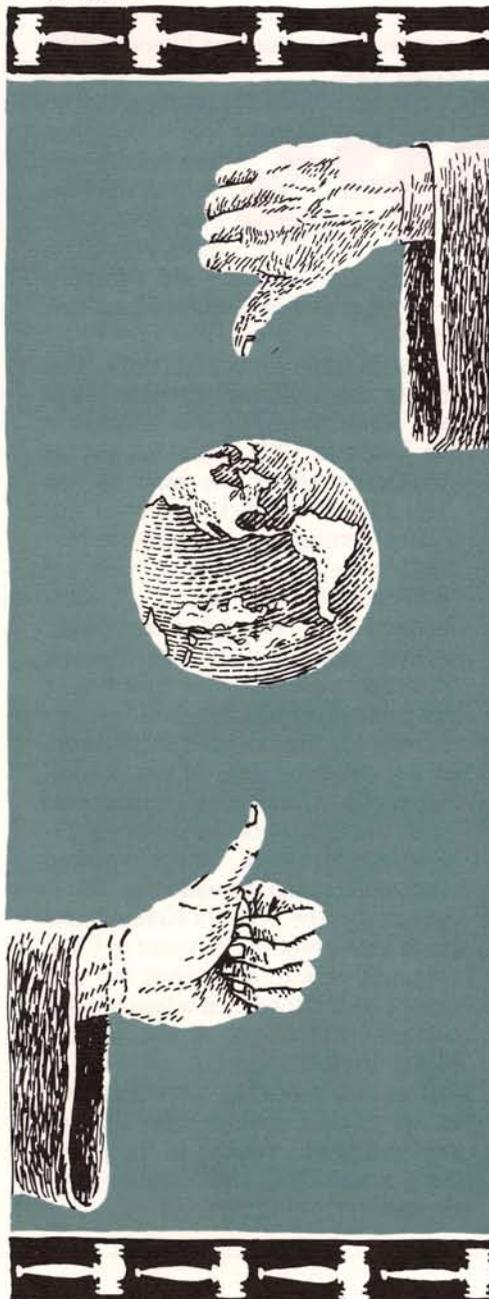
The U.S. argued that the Court had no jurisdiction over the Nicaragua claim. On the key issue, the Court held 11 to 5 that the U.S. declaration did establish a basis of jurisdiction. Scholars have been debating whether that decision is or is not "preposterous" or "hopelessly biased."² In my own, admittedly biased, view, many aspects of the Court's decision on jurisdiction could not have been arrived at honestly. I invite anyone concerned about the Court's role in international law to study the majority and dissenting opinions in the jurisdictional phase of the case.³ I think you will find the majority opinion disquieting.

Other aspects of the case are also disturbing. For example, the Court denied El Salvador's motion to intervene, without a hearing and without a written opinion, both of which are required by the Court's Statute and rules.⁴ And in deciding the merits of the case (as Judge Schwebel's dissenting opinion documents exhaustively), the Court systematically ignored all evidence contrary to the Nicaraguan position—including even documents put into evidence by Nicaragua, admissions by Nicaraguan officials, and the testimony of Nicaragua's star witness.

Although the U.S. realized late that the Court's judgments in highly politicized cases may be based on politics rather than law, the French lost their illusions long ago. In 1975 Australia and New Zealand requested the Court to order France to stop its nuclear tests in the Pacific. The claimants sought to base jurisdiction in part on the French

(Continued on page 81)

STEVE REOUTT



Board of
VISITORS

AVIGOROUS couple of days” was how Board of Visitors Chair William A. Norris '54 characterized the twenty-eighth annual meeting of the Board of Visitors, April 17-18, 1986.

It began Thursday morning with a well-attended tour of the offices of the East Palo Alto Community Law Project, the legal services and education center founded by Stanford Law students.

Norris formally welcomed the Visitors at the traditional opening luncheon. Remembering the beginnings of the Board in 1958, when he was its youngest member, he said: “I was skeptical as to whether alumni and friends coming together once a year could make any difference.” He has been pleasantly surprised. “I think Stanford Law School has benefited,” he said, adding that, “There is almost no subject relating to the Law School that is out of bounds.”

Dean Ely then briefed the Visitors on the current “State of the School” (see pp.18—). Innovative approaches to legal education were the subject of the afternoon program, which sparked much interest and discussion (pp.20 —). Paul Brest, the School’s Kenneth and Harle Montgomery Professor of Clinical Legal Education, chaired the session. The Visitors then adjourned for cocktails and dinner at the elegant Meyer-Buck estate.

The next morning, after breakfast in the Faculty Lounge, the Visitors explored issues related to the placement process with a six-speaker panel chaired by Dean Ely (pp. 24 —).



Student organizations were the focus both of lunch—which the Visitors spent in small-group discussions in the offices of various organizations—and of the subsequent classroom presentation: a panel discussion chaired by Assistant Dean Margo D. Smith '76. The organizations described were *Stanford Law Review* (represented by the incoming and outgoing presidents, Ivan Fong '87 and Peter Blanck '86, respectively), *Journal of International Law* (Laura Hills '86), Environmental Law Society (Eric Christensen '87), Moot Court (Hardy Callcott '86 and Frank McGuire '86), and Stanford Law and Technology Association (Michael Sears '87).

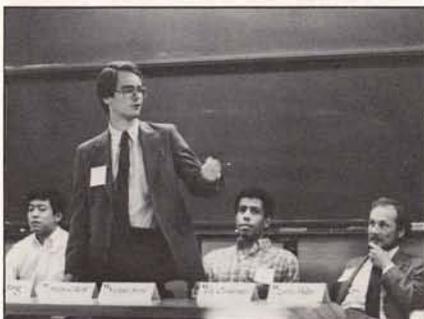
At the Advisory and Summary session that followed, several Visitors spoke enthusiastically about their interactions with students and of how important they thought Visitor-student contact to be. Most of the session was, however, spent in further discussion of subjects raised in the panels on innovative teaching approaches and on placement. (These discussions are reported with the accounts of those panels beginning on pp. 20 and 24.)

“The state of Stanford Law School is very, very good indeed,” declared



**“If one wants
not only to dream
but also to build,
there is no better
spot than Stanford.”**

—PROF. MANN



Judge Norris, as he concluded the formal agenda. “John Ely and his administration and staff are to be congratulated.”

The Board adjourned in time to attend a very special event—the 1986 Herman Phleger Lecture, featuring former U.S. Attorney General Nicholas deB. Katzenbach (p. 47). Katzenbach, who has also been a U.S. Under Secretary of State and IBM Senior Vice-President for Law and External Relations, spoke on “The Impact of Television on the Political Process.” He and several members of the Phleger family joined the Visitors at the Board’s farewell banquet that night.

Dean Ely, in his after-dinner remarks, paid tribute to Katzenbach, for his thoughtful address, Judge Norris, for chairing this most successful Board of Visitors meeting, and Board member George Sears ’52, for heading up the Law Fund “the year we broke \$1 million” (see *Annual Report*).

Also honored that evening was Professor J. Keith Mann, for many years Associate Dean for Academic Affairs and twice Acting Dean of the School. “There is no one who has had more to do with the development of excellence at this school than Keith Mann,” said

Dean Ely. “A good test of an associate dean is whether, when you leave town, you trust him to act with good judgment and fidelity to the programs you have set forth. The answer in Keith’s case is, Yes!”

The Dean then presented Mann with a baseball cap emblazoned with the Stanford Law School crest—a somewhat eccentric Ely tradition signifying respect and fondness for the recipient.

Professor Mann’s eloquent reponse provided a fitting finale to the Board’s annual meeting: “I believe these years, capped by the Ely era, have been extraordinary ones in the history of the School itself and of the University of which it is such an integral part. If one wants not only to dream but also to build, there is no better spot than Stanford. How lucky Virginia and Keith Mann are to have found such a place! It is one of its special glories for us that in the years to come we will be able to join so many of you in working toward its bright future.” □

Board of Visitors

STATE OF THE SCHOOL, 1986

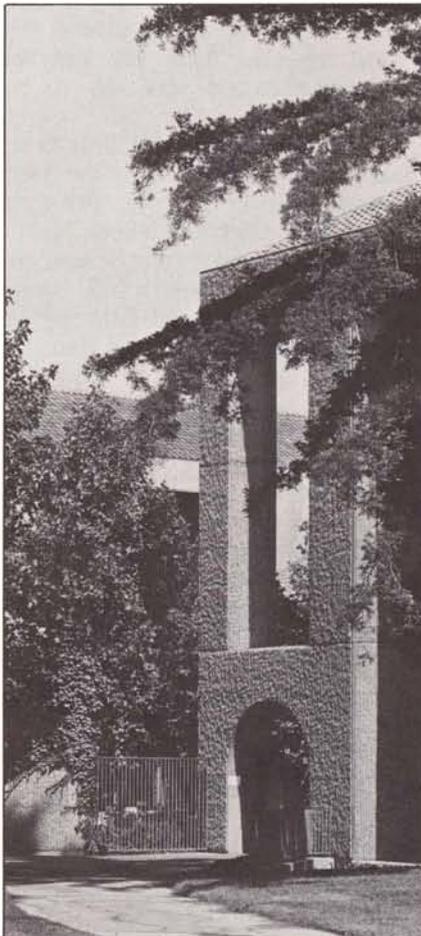
John Hart Ely

*Richard E. Lang Professor of Law
and Dean*

The state of the School continues to be a matter for celebration," said Dean Ely. "In fact, there's probably no place better to go to school or to teach."

Changes in the past year include the loss of one faculty member (Tom Jackson, to Harvard) and the gain of two other "very exciting" people: Chuck Lawrence, an expert in race relations who was on the tenured faculty at the University of San Francisco; and Buzz Thompson '76, late of O'Melveny & Myers, where he gained considerable practical experience in business litigation. (See pp.36-). Ely was also pleased to report the return to teaching of John Barton, an expert in international law and in law and technology, who has been on leave the last two years.

"Overall," said the Dean, "we're



ahead in terms of where the faculty is now as opposed to a year ago." Independent measures of scholarly output indicate that Stanford Law faculty members are among the most productive in the country. At the same time, said Ely, "we care seriously about teaching." Furthermore, the School maintains with preternatural harmony a "broad ideological spectrum."

Though the representation of women on the faculty is not, he continued, "as high as we would like," it nonetheless compares well to that of other law schools. There are two women full professors (Barbara Babcock and Deborah Rhode), one on tenure track, and two visitors. Said Ely: "We continue to look."

A larger change can, he reported, be seen in the representation of minorities—now 11 percent. Just four years ago, the School had a single tenured minority faculty member—Bill Gould. He has since been joined by Miguel Mendez and Jerry Lopez, both now full professors, and most recently by Lawrence.

Turning to the subject of students, Ely reported that the School continues to look for people with "post-college experience." Inevitably, these students will also be a little older. Though generally salutary in its effect, this admissions policy has put a strain on the School's scholarship resources. Contributing to the strain is our new policy—unusual among law schools—of allowing students to claim "independence" if they have not been supported by their parents for four or more years. The net effect, he explained, has been a jump in our scholarship budget of some 40 percent. This has forced the School to modify its policy on independence to a degree, so that "independent" students with well-to-do parents get half their aid in loans rather than scholarships. However, such students are still financially better off at Stanford than at most other law schools.

Admitting older students has also, as noted in previous years, increased the proportion of women—now 44

percent, which is down somewhat from the 49 percent quoted last year but still roughly 10 percent higher than our law school counterparts.

Minority admissions, Ely was happy to report, are markedly up—from 28 students in the 1984 entering class to 40 in 1985. The 40 (our current first-year students) include 16 blacks, 17 Hispanics, and 7 Native Americans.

In regard to the School's administration, the Dean noted a number of changes in staff: Elizabeth Lucchesi's promotion to Director of the Law Fund, newcomer Susan Huch's arrival as Director of Alumni/ae Relations, and John Gilliland's appointment as Associate Dean for Development and Alumni/ae Relations (see p. 38). Ely expressed "great appreciation" for the contributions of Gilliland's predecessor, Barbara Dray '72, who has been selected to serve as Associate Director of Planned Giving for the University's Development Office.

The Law Fund, as has been announced, topped the \$1 million mark in calendar 1985—"a symbolic threshold that we hope leads to further growth," said the Dean. An effort is now being renewed, by Ely and the deans of several other law schools, to persuade more law firms to institute matching fund programs for their associates and partners.

Total giving, including the Law Fund and all other gifts, came in 1985 to a gratifying \$3.3 million in major gifts and another \$2.5 million in pledges and other forms of deferred giving (see *Annual Report*). Ely gave particular thanks to the donors of seven new, endowed scholarship funds: Mort Friedman '56, Carla and Rod Hills '55, the Anheuser-Busch Foundation, and the Classes of 1953, 1955, 1959, and 1960. Each of these classes has pledged to raise \$185,000 for a "silver anniversary fund" commemorating 25 years from graduation. The Class of 1955 fund will be in honor of Prof. Keith Mann.

Ely also mentioned two "innovative" gifts. Bill Saunders '48 and his wife, Trudy, have donated stock to help with



"The state of the School continues to be a matter for celebration."

—DEAN ELY

faculty housing costs (a pressing need in the local real estate market). And Dick Mallery '63 has laid the basis for an endowed professorship by taking out a \$1-million life insurance policy with the School as sole beneficiary. (The premiums, which are being paid on an accelerated seven-year schedule, qualify as a tax-deductible charitable gift.)

Other gifts mentioned were: a \$100,000/year scholarship fund donated by banker S.K. Yee of Hong Kong in honor of Stanford Medical School graduate Collin H. Dong, M.D.; bequests from the estates of Elaine Sweet and Lilian Nichols (p. 40); and a planned Mark Taper Law Student Center to provide needed fitness and meeting facilities adjacent to Crothers Hall (p. 39).

After reviewing the School's major fund-raising priorities—programs in law and technology, alternative methods of dispute resolution, and clinical legal education as seen at the East Palo Alto Community Law Project—Dean Ely said simply, "Welcome. I'm glad you're here." □

Board of Visitors

INNOVATIVE APPROACHES TO LEGAL EDUCATION

The Panel

■
Paul Brest, *Chair*
Kenneth and Harle Montgomery
Professor of Clinical Legal Education

■
Timothy Hallahan
Scholar-in-Residence

■
William Simon
Professor of Law

■
Miguel Mendez
Professor of Law

■
Jack H. Friedenthal
George E. Osborne Professor of Law
and Associate Dean, Academic Affairs

■
Samuel R. Gross
Acting Associate Professor of Law

■
Gerald P. Lopez
Professor of Law

The aim of much of the pedagogical innovation taking place at Stanford Law School," began Professor Brest, is "to integrate academic and clinical experience." The seven panelists will describe a number of such attempts in and out of the classroom.

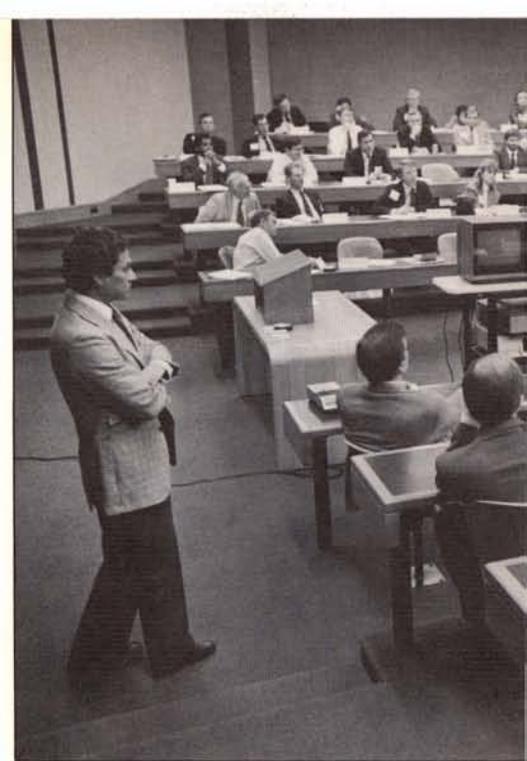
There is at Stanford, Brest explained, "constant experimentation with different modes." Some courses are largely in the field, while others are mixed academic and clinical offerings. Also important, he said, are such student-run "para-curricular" activities as Moot Court, Sarjeants-at-Law, Client Counseling, and the East Palo Alto Community Law Project. EPACLP—initiated by students who then persuaded the faculty to provide guidance—is, he said, "a particularly exciting development."

The Lawyering Process: A First-Year Course

Within the formal curriculum, Brest continued, a course has been created on The Lawyering Process, of which Professor Simon and he are the chief developers. Taught as an elective in the second semester of first year, it is chosen by two-thirds of students.

The course focuses on the legal system, issues in legal ethics, and legal sociology. A number of exercises, both simulated and clinical, are employed: interviewing, negotiation, mediation, planning, pre-trial discovery, and a vignette of a hearing (testimony of an expert witness).

For many students, said Brest, "there's an excitement in playing lawyer." The main purpose of the course, however, is "not to teach skills but to raise issues in the sociology of law, legal ethics, and the legal system generally."



Interactive Video Technology

Hallahan, a visiting scholar from Harvard, is developing computerized video teaching methods and programs. At Stanford, he has been collaborating with Professor Brest and a number of students. In addition he directs interactive video projects for the Center for Computer-Assisted Legal Instruction, a consortium of 85 law schools, centered at the University of Minnesota.

The interactive-video approach, Hallahan explained, combines video and computer technology for individualized training. The learner (who does not need to know how to type) sets the pace and gets frequent and immediate feedback. Hallahan and his colleagues are trying to make the programs "friendly as well as informative"—in effect, a "game that becomes a lesson."

The programs so far developed deal mainly with trial techniques. To demonstrate, Hallahan played a segment on objections consisting of: a brief substantive review; a courtroom enactment; questions for the user on whether and what objections would be appropriate; and, in the event of a wrong answer, further explanations.

The technique is, he said, "especially suited for skills training, but also may be used for teaching substance." Training in skills, he pointed out, is usually very costly and labor inten-



sive—a one-to-one process. Most law schools can't afford to do much of it, so lawyers end up having to learn skills under fire, with little or no supervision.

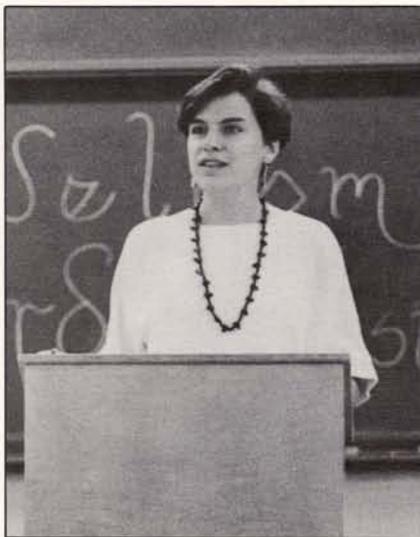
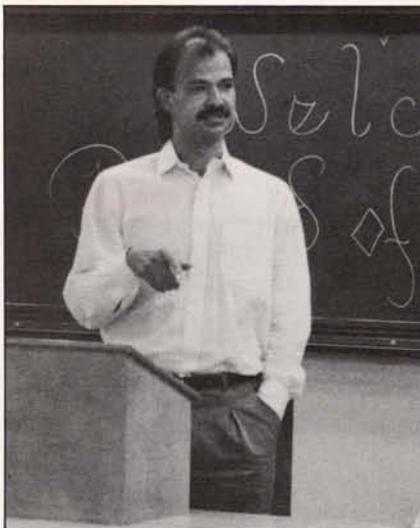
Interactive video programs, because they can deliver information up to three times as fast as conventional methods and at far less cost, may, said Hallahan, be an "effective alternative." Besides, he added, "It's better for students to make learning errors on the machines than on their early clients."

Combined Field and Class Work

The idea of integrating classroom work with field placements is not a novel one, began Professor Simon, and is in fact practiced in several other disciplines. What makes Stanford's course in Poverty Law innovative is that its approach has been little used in legal education.

The history of the course at Stanford is, he continued, "coextensive with that of the East Palo Alto Community Law Project." The original course—a 1982 seminar led by Simon and Brest—had as its prime participants the students interested in founding the Project. Field placements were mainly in county legal aid offices.

As now taught, Poverty Law includes a minimum of 9 hours/week practicing in local offices—primarily the East Palo Alto Project—and 3 hours/



week in a seminar, where Simon and Brest are soon to be joined by Professor Gerald Lopez. Supervision in the field is provided by practitioners. Students are required to write on one of the cases they work on. About half the readings in the course, Simon said, are papers by past students.

The faculty-led seminars, Simon explained, "provide discussions of ethical issues and strategic issues—questions that cut across cases." The main goal is "to equip students to reflect on practice." The advantage of an academic component, he pointed out, is that "students have a chance to stand back from what they are doing, not just imitate the practitioner." The model is "to watch, and critically evaluate the way supervisors do it."

The practicum component, on the other hand, ensures that classroom discussion is "enriched by actual experience." Simon reports that he is "deluged by stories the students bring back—about what's going on in the courts, etc."

In sum: "Students love it. The law offices love it. I love it."

Classroom Simulations

The use of clinical teaching techniques in the classroom is now well advanced at Stanford, Professor Mendez noted. His course in Advanced Evidence is taught almost exclusively in this manner. Invited upon his arrival in 1977 to "experiment," Mendez developed an intensive seminar that employs a number of role-playing experiences simulating real-world legal processes. Students play all roles—witness and juror as well as attorney—which, Mendez observed, "can be quite educational."

The course begins with three brief exercises dealing with direct and cross examination, the use of documentary evidence, and the handling of an expert witness.

Then, says Mendez, "the real course begins." Four simulated trials—two

INNOVATIVE APPROACHES continued

criminal and two civil—are staged, each lasting about 10 hours. The “jurors” are then debriefed on the reasons for their decisions. And videotapes of the trials are viewed and analyzed.

Mendez believes that after taking the course, 95 percent of the students will be able to try a case to a judge or jury.



Classroom simulations have been introduced on a more limited scale in the basic Evidence course taught by Associate Dean Friedenthal and Professor Gross. This effort, said Friedenthal, “grows out of a desire to inculcate elements of practice into coursework.” Such elements, however, need to be usable with large numbers of students, relatively economical of the teacher’s time, and brief enough to allow coverage of a large amount of other course matter.

Friedenthal joined forces with Gross, who had been pioneering (in 12-student seminars) the use of simulations to teach the handling of expert witnesses. The professors together wrote two exercises that could be added to the basic course in Evidence. These were so well received that two more exercises have been added for this year.

The purpose of the exercises, Gross explained, is “to put Evidence in a more realistic context.” They begin with lectures and demonstrations of basic courtroom procedures: direct examination, cross examination, and the use of documents. The students then enact a series of short witness-examination exercises before video cameras. The realism of the exercise is heightened by the fact that the witnesses (also students in the class) testify about experiences they have actually gone through, with all the variability and uncertainty that that entails.

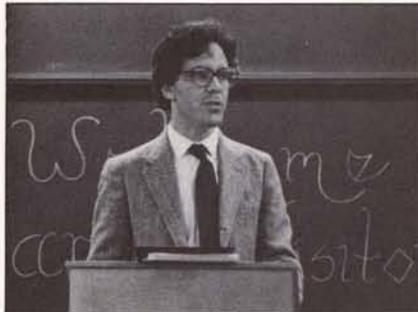
Followup includes student review of videotapes of the exercises, brief student-written reports, classroom discussion, and two classroom demonstrations of the same procedures by experienced attorneys. Though participation in the exercises is required, they are not graded. Otherwise, Friedenthal reports, the course substance and format is unchanged, and ends as usual with an exam.

Of the new exercises, he said: “Students enjoyed it. They learned Evidence in a more interesting manner.” Added Gross: “This is not the way to teach people to be terrific trial attorneys—but it does help teach them what trial lawyers do.”

Other Stanford Law courses in which simulation exercises have been used include Juvenile Law, Advanced Juvenile Law, Injunctions, Freedom of Information, Advanced Litigation, Real Estate Transactions, and Advanced Criminal Procedure.

“The aim of much of the pedagogical innovation... is to integrate academic and clinical experience.”

—PROF. BREST



Educating Laypersons

“It is my ambition,” Lopez said, “to try to take two ideas seriously. One, the notion of self-help and lay lawyering—that people who are not lawyers are capable of taking care of their own and their friends’ problems. And two, the idea of lawyers serving as teachers.”

It isn’t enough for lawyers simply to know more, he pointed out. “There are not enough lawyers to meet the need. Poor people must become largely responsible, or it just won’t happen.”

His experimental workshop, Teaching Self-Help and Lay Lawyering, has, he explained, both an academic side and field side. A set of “pedagogical exercises” and readings were developed for class use. Students are also expected to write reports and critique their fieldwork projects.

In choosing field placements, Lopez sought local groups who already had an interest in developing peoples’ self-help and lay lawyering skills. Four were found: East Palo Alto Council of Tenants, The Foundry School, Comité Latino, and the Immigrant Legal Resource Center.

Lopez then introduced two students involved in experimental field projects. Vanessa Wendenburg ’87, whose

placement is with the Immigrant Center, first described the use of street theater to teach people their Fourth and Fifth Amendment rights in police search-and-seizure incidents. She and several classmates have developed a series of three skits—showing a street stop, a house visit, and a factory sweep—which demonstrate how and how not to behave. After the performance, the students distribute information sheets and summary cards in four languages. The skit approach, she says, “makes the principles we’re trying to teach a living thing.”

The second student, Mary McComb '87, has been coleading (with Maria Kivel '87) a discussion group for adolescent girls at the Foundry School, a San Jose institution for juvenile offenders. “These kids recognize that they have messed up in a major way and want to do something about it,” said McComb. She and Kivel soon found, however, that the need for education on legal issues per se was less critical than the development of coping and survival skills—such as avoiding pregnancy, drugs, and abusive situations—that would help the girls stay out of legal trouble. “This project,” McComb concluded, “has enlarged my concept of what a feminist lawyer would be. Good representation may mean not just legal advice, but also expanding a client’s options and helping her gain more control over her life.”

Discussion

A number of Board of Visitors members, including California Attorney General John Van de Kamp '59, questioned whether a project like McComb’s—though certainly praiseworthy—is appropriately part of legal education or might instead be done better by social workers and other professionals.

Professor Lopez, while agreeing that other professionals do indeed have roles to play, noted that these may well overlap with those of lawyers. “As a

cognitive matter,” he observed, “the boundary between legal and other professions—and between the professions and what lay people do—is artificial. One of the purposes of this course is to demystify the law.”

Charles Munger agreed, saying: “Every fancy lawyer that deals with clients is always influencing them to do



or not to do something because it is better lifemanship and not just because it is advisable on some narrow, legal grounds. That’s law in the grand manner as it is practiced in the real world.”



Members of the Board of Visitors had much to add, during the Summary and Advisory session the next day, to discussion of this panel and of legal education in general.

Carlos Bea '58 said that he was “impressed with the novel approaches” for teaching trial processes. However, he noted, learning about *preparation* is also important, because “90 percent of cases are settled.”

“It also struck me as odd,” he said, “that students are going to East Palo Alto and telling possibly illegal aliens how to avoid arrest and make things more difficult for the INS.”

Judge William Norris '54 defended this approach: “The premise is that every person is entitled to education concerning their rights under the law.”

Sarah K. Hofstadter '78 concurred, likening it to “Miranda warnings—reading people their rights.”

Gregory Payne '78 applauded the use of new teaching technology, with one reservation: “As a member of the small screen generation, I hope we use it with caution. Don’t lose the interpersonal skills that we need to use with clients. It’s still very much a one-to-one business.”

Robert Johnson '64 inquired about the School’s program in business law. “Our business curriculum is quite rich,” replied Ely. The first-year elective course in Economics and Finance Theory provides the base, he noted, for a number of second-third year courses.

Kristi Spence '81 wondered about the relationship between core curriculum and electives: “How do they fit together? How much of the core curriculum has survived?”

“One hundred percent,” replied Dean Ely. “There’s a whole lot more choice around the edges,” he concluded, “but the core survives.” □

Board of Visitors

PLACEMENT ISSUES: STRATEGIES AND CHOICES

The Panel

■
Dean Ely, *Chair*

■
Peggy Russell '84
Public Advocates, Inc.

■
James C. Gaither '64
Cooley, Godward, Castro,
Huddleson & Tatum

■
Marc S. Rotenberg '87
Stanford Public Interest Law
Foundation

■
Hon. William A. Norris '54
U.S. Court of Appeals, Ninth Circuit

■
Henry Wheeler '50
Hutchins & Wheeler

The focus of discussion, Dean Ely explained, would be two interesting but largely independent issues having to do with student placement. The first is "the job-seeking process and the extent to which it may interfere with the educational process." And the second concerns "what the School is doing to encourage students to consider public interest or other alternative employment."

Job Seeking and the Educational Process

There's no doubt, said the Dean, that the educational process is "seriously affected" by students' job-hunting activities. "The whole tone is different in the Fall," he said. "First-year students encounter this just two months into law school. They get socialized by all these people in suits." And in second-third year courses, he reported, schoolday interviews and flybacks are so disruptive of attendance that some faculty try to avoid teaching courses they care about in the Fall term. The entire job-hunt process, he said, "constitutes a psychological distraction from classwork."

Ely recently served as chair of a Special Committee on Placement formed by the Association of American Law Schools (AALS). He pointed out that for many schools—perhaps two-thirds—the most visible problem is attracting employers to interview their students. It is at the other—so-called "elite"—schools that attention from potential employers begins to impinge on classwork.

The AALS Special Committee suggested that job fairs, held perhaps in the late summer, might address both kinds of problems. "Our thought," Ely said, "is that such fairs, gathering together numerous employers and students from numerous schools, would induce employers to interview at least some students from law schools that they do not currently visit." As for the "elite" schools, he said, "the hope is

that such fairs would cut down and possibly replace term-time, on-campus interviewing."

Another idea that might be helpful, he said, would be for law schools "to set aside a period of approximately ten days, probably in October, for student flybacks, so as to minimize the disruption such interruptions cause."

He then invited comment from the panelists.

■

"The very structure of the placement process perverts the educational process," agreed Peggy Russell '84. "There's a swinging door in the classrooms. Students pop in and out for twenty-minute interviews."

She feels that Stanford Law students become overly concerned with status and salaries. "They don't come here that way, but get caught up in the stampede." Some are "very young," she pointed out. "They are faced with the possibility of making \$1000 a week, staying at fancy hotels, and eating at fancy restaurants. It distorts their values."

Russell doubts whether the placement process is really effective in matching students with cities, types of practice, and firms. The law firm experiences of summer clerks may not be realistic, either, she said. "It is important to tell students what it would be like to be an associate there."

Russell (who has since been named Director of Public Interest Programs for the School—see p. 32) ended with a recommendation for more attention to "values and ethics in legal practice."

■

Jim Gaither '64 noted that "the pendulum has swung—there didn't used to be so much student interest in large corporate firms." And there's now "a lot of competition among firms for the very best students."

Law schools need not let job-hunt activities be disruptive, he said. "It's done to accommodate us, but I don't think you really have to do it."

Gaither would like to see the School consider "arrangements that stop the

need for students to go in and out of classrooms”—for example, limiting interviews to evenings or four-day (Friday-Monday) weekends. He also suggested that law schools shorten the duration of the job hunt process, especially for second-year students.

“It’s a tough problem,” he concluded, “but law firms can do much to minimize disruption.”

■
Marc Rotenberg ('87), the current president of the Stanford Public Interest Law Foundation (SPILF), reconfirmed the negative impact of job hunting on the academic atmosphere of the School. There seem, he said, to be three groups of students in any particular class: “Ones without interviews on that day, who are prepared to participate; next, those who are dressed for an interview, and not really prepared; and last—those who aren’t in class because they are on flybacks.”

Rotenberg suggests that interviews be moved to the spring, closer to the time when jobs actually occur, thus making the fall “uninterrupted school time.” Efforts should also be made, he said, to “shorten the interview process.”

■
Judge Norris '54 brought up judicial clerkship recruitment as another and complicating factor in the job hunt picture. The recent effort to persuade judges to delay acceptance of applications until July 1 of the students' second law school year has, he reported, been unsuccessful. “There are market forces at work here that schools can’t do an awful lot about,” he said. “It may be possible to reduce the level of disruption, but not eliminate it altogether.”

More serious, said Norris, is the question raised by Peggy Russell—that is: Whether the job-hunt process is eroding values that students bring with them to Stanford. Student thinking may be influenced by the “enormous debt burden” that many have. But, he said, “Wherever they choose to practice, lawyers with a set of values and a social conscience will have a good

“There are
market forces at work
here that schools
can’t do an
awful lot about.”

—JUDGE NORRIS '54

“but if you do it, do it lock, stock, and barrel.” When Columbia held a job fair, it was in addition to fall/winter interviews, he reported, and “students hung law firms out to dry.”

Wheeler ended by endorsing the idea of Spring interviewing (“more grades would be available for evaluation”), shortening the overall interview season, and scheduling of interviews in the evening (“okay”) or over long weekends (“most useful from a travel standpoint”).

DISCUSSION

“Why,” asked Dave Loring '67, “has the placement process changed so much?” Replied Ely: “Firms are getting a lot hungrier and more competitive.”

John Larson '62 concurred, saying, “It’s a shortage situation—there aren’t



impact, not only in their careers but in the community.”

■
Henry Wheeler '50, while acknowledging that the job hunt process is currently “not very good,” pointed out that “revolutionary changes may make it worse.” The summer associate program, for example, is “critically important” to his firm—both “as a recruiting tool and as a chance for us to get to know the associate and for them to know us.”

He was also skeptical about the job fair idea. “We don’t like it,” he said,

enough of the best people to go around. This creates enormous incentives for firms to do whatever they can to get what they want.” His conclusion: “It’s up to the law schools to set the limits on interview times and so forth. But you’ve got to get agreement—firms need to be confident that all are complying.”

Bill Kroener '71 pointed out that the major law schools like Stanford have “enormous market power. Firms that want students from the top schools will do what the schools require.”

Ellen Corenswet '75 suggested that schools limit the number of interviews

PLACEMENT ISSUES *continued*

each student can have. She is also in favor of substantial on-campus information programs. "We must," she said, "shorten the amount of time that employers are on campus and that offers are open."

Sarah Hofstadter '78 noted that limiting the number of interviews could be a problem "for people not at the top of the class"—or for those (such as married couples) "co-hunting with another student." She thought, however, that designating the week of Spring vacation for interviews was worth considering.

The idea of limiting the interview period did not, however, appeal to Lon Allan '68, who pointed out that small firms might have more difficulty "getting access to students." He recommended a minimum of interference, saying, "The students are smart enough to work things out."

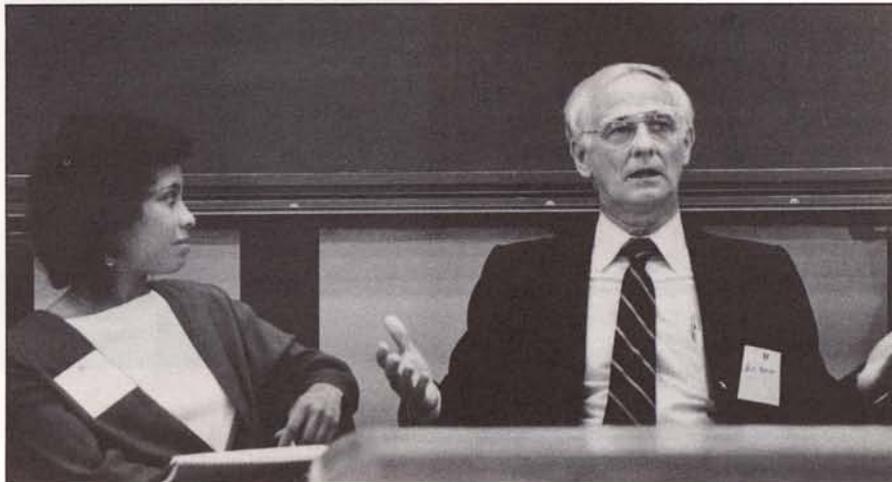
Mal Furbush '49 questioned whether the School really needed to be so concerned about disrupting the educational process. "Disruption is not terrible," he said, citing the example of athlete-scholars. "It comes down basically to whether the student is wasting his or her time—whether they are sufficiently mature not to be affected by externalities."

Henry Wheeler quoted an associate in his office as saying: "I went to law school to be a lawyer, and I rather resent faculty interference with my getting to know law firms."

Ron Noble '82 spoke in favor of summer clerkships at law firms: "We never believed that working was like summers, but it's important that we enjoy summers." He added that more information—such as how long recent graduates stay with their jobs—might be useful for students.

Kristi Spence '81 agreed, saying: "I'm appalled at how many of my classmates have changed jobs or are dropping out of law entirely. Perhaps we need more counselors, similar to high school and college counselors."

"We certainly aspire to provide generous amounts of information and guidance," replied Dean Ely. These in-



clude an extensive library of printed materials, employer questionnaire responses, accounts by recent graduates of their job experiences, individual and panel presentations on jobs in various fields, counseling by faculty and placement staff, off-campus work experiences, and an annual public interest jobs fair.

Ely closed this segment of the panel discussion by mentioning the School's newest effort to minimize class disrup-

tions from the job-hunt process: allowing within-School job interviews to be scheduled only in the afternoon and evenings.

Exploring Public Service Options

This panel began with an overview by Dean Ely of School programs that "introduce students to the possibilities of employment involving public service." Most listeners, he said, are probably familiar with the Stanford Public Interest Law Foundation (SPILF), which gives grants for relevant summer work, and the Externship program, which allows students to use one of their six academic terms in a public interest or other work setting.

To these longstanding programs, the School has during the past four years developed academic offerings involving the East Palo Alto Community Law Project, informational efforts such as the annual public interest jobs conference (mentioned earlier), financial assistance to students doing summer public interest work, and debt relief for graduates entering the public interest field. The two financial programs are, he noted, in response to student

claims that more would go into public interest work if not precluded by present and future financial obligations.

The Dean reported with some regret, however, that the School's considerable efforts in this area have so far had little apparent impact. Students and recent graduates have not been taking full advantage of the Montgomery Summer Loan Program or other measures designed to encourage public interest work. And when it comes to employment, "our students generally act as if legal aid jobs were beneath their dignity."

The School continues to search, he said, for ways "to remove or lower barriers—real or imagined—to their considering public interest employment." Effective this fall, for instance, employers interviewing at the School are required to allow graduating students awaiting offers from public interest organizations to hold open one law-firm job offer until the spring. By this and other measures, however, the School is "admittedly messing with the market," he said.

"Are we steering people away from larger law firms?" Dean Ely asked. "And, if we are, is that a bad thing? Or on the contrary, is there more we can and should do to encourage students to consider public interest work?"

NOTE: The School has, in the months since this discussion took place, taken a number of new steps to increase student opportunities to explore career alternatives. See Dean Ely's September 17 memorandum to the students, printed in full on pp. 32-35.

Peggy Russell '84 praised the School's recent efforts. "In 1981, when I started, there was no public interest law community at the School—just a few isolated individuals. That has changed," she said. "Dean Ely and other members of the faculty are much more vocal about their public interest backgrounds and talk about them to students." Also helpful, she said, were such placement office efforts as the annual Public Interest Careers Day

"In 1981, when I started, there was no public interest law community at the School—a few isolated individuals. That has changed."

—PEGGY RUSSELL '84



mentioned by Ely, and the monthly job postings in *Public Interest Newsnotes*.

The increased information is bound to have a good effect, said Russell, "not only on students choosing public interest work, but also on others who become lawyers for corporations or law firms, who will decide to devote some aspect of their careers to public interest or *pro bono* work.

"The School," she concluded, "is doing a very good job."

■
Jim Gaither '64, speaking from the law-firm point of view, said he likes Ely's idea that students applying for public interest jobs should be able to hold open only a single law-firm offer.

On the broader issue, however, he remains concerned. A large part of the problem may, he said, be "the heavy debt that we saddle students with during the undergraduate and graduate educational process. We can help, by increasing the amount of grant money available. We ought to try to address that."

Gaither also noted that there is "a bit of educating to do" in the private sector. "I have heard firm members advise students against public interest jobs because they might foreclose their opportunities in the private sector. This gets said more in the interviewing process than it ought to be."

■
Marc Rotenberg '87 expressed dismay that so few—only 2 to 3 percent—of recent Stanford Law graduates actually enter public service careers. "I know from Washington experience of nonprofit organizations, with lawyers working late hours, for low salaries, with no support staff, but who get lots of gratification from their work. And I look forward to going back to that." But, he said, "Stanford is not really represented there."

Rotenberg doubts that Stanford students are apathetic. SPILF, he reported, signed up half of the student body to devote 2 percent of their income to the group. And one-third of

PLACEMENT ISSUES *continued*

current students are participating in the East Palo Alto Community Law Project.

His impression is that Stanford Law students start with "an expectation of some sort of public interest service—but it doesn't happen. Why?" Though the debt burden may be a part of it, he doubts people are "that rational."

A more likely explanation, he feels, is the development in law school of "a sense that there are brass rings out there, and that those brass rings don't exist in public interest careers—that such careers don't offer an opportunity to do the kind of really fine, topnotch legal work that the law firms do." Stanford Law students are, he noted "very achievement-oriented."

What law schools can do, Rotenberg said, is to "enhance the prestige of public interest jobs," perhaps through fellowships and grants. "Students need to develop a sense that these career paths are valued."

Judge Norris '54 applauded the School's support of the East Palo Alto Community Law Project—"a positive way to give students an awareness of public interest needs and work."

However, student motivation may not, he pointed out, be the whole issue. "My impression is that there are very few attractive public interest jobs out there, and they have the pick of interested law students." Public interest organizations are "undernourished—they don't have the resources they need to work with." One of the interesting things about the East Palo Alto Project, he said, is that it is "encouraging area practitioners to get into the act."

Norris's conclusion: "I'm happy to see Stanford giving encouragement to public interest law, but not unhappy to see graduates going out into the private sector, where they can get their hands on the levers of power and divert resources from the private sector into the public interest sector."

Henry Wheeler '50 agreed, saying, "Student interest in public interest work

**"There's a lot that
lawyers can contribute
to the community
while working for
private law firms.
It's not a dichotomy."**

—LON ALLAN '68



is high. The question is financing. I applaud what Stanford Law School is doing."

The East Palo Alto Community Law Project is, he added, "the most exciting enterprise that I have seen in my professional life. It's not just a bunch of rich kids trying to do good. And it's not just dealing with legal rights. They're trying to meet the community's broader needs. *That's* what moves the ball down the field."

DISCUSSION

Dick Mallery '63 said that students shouldn't feel that taking a public service job precludes joining a law firm. His firm will hold a job open for an applicant who wants first to spend one or two years in public interest work. "Students can take the initiative in pushing that point," he said. "They can do public interest service before they head for the galley."

Robert Johnson '64 agreed, saying, "Students need to expose themselves to their options. They may not be aware that they have lateral choices later."

Jim Gaither affirmed that "It really doesn't hurt you not to start out with a firm." In fact, he said, "You can in most cases get a higher level of responsibility and training in the public sector."

Carol Petersen '66 was less sanguine about the transfer situation. Her experience, she reported, is that firm members considering lateral candidates "do not seem to value experience in public service areas like poverty law."

On the training issue, Gregory Payne '78 observed: "Students have the impression that to be a good lawyer you need major law firm training. They don't realize that they may be stuck in a back room reading documents and never see the inside of a courtroom."

Ron Noble '82, however, agreed with the student perception, saying: "It's important to go for your first job to a firm with a good reputation, so you have good market value. More counseling opportunities aren't going to make a real difference."

Judge Norbert Ehrenfreund '59 ex-

pressed dismay that Stanford Law School has “so little presence in public interest groups.” Perhaps, he said, it has to do with the admissions process—“that we’re not choosing students who want to work with people on real problems of the world.” The School should look for students “who have emotions of caring and humanness.” Lawyers, he pointed out, are at “a low point in public opinion, because of not caring.”

Dean Ely replied that although the School’s admissions criteria have been changed to include people who are more mature and experienced, he is “not sure we should pick a class in terms of whether they are going to go into public interest or a big firm.”

Pete McCloskey ’53 asserted, however, that “a Stanford legal education is a privilege.” In looking at applicants, he said, “We should have some concern over whether they are willing to contribute to the community interest and national interest.”

Henry Wheeler endorsed the effort to recruit older students. “I’m dismayed to hear of herd behavior,” he said. “Lawyers have got to be *independent*. Older students may be one answer.”

Mal Furbush ’49 brought up a different concern about today’s students. “I have an uneasy feeling,” he said, “that many students think they don’t have to search for truth because they’ve found it already—for example, on whether there is a threshold of toxicity for some substances in the environment.” This is not, he emphasized, “a settled point.” Furbush sees “too much polarization instead of searching together for the truth. Issues are labeled liberal and conservative.”

Ely remarked that he doesn’t think this group of students is “unduly doctrinaire.” In fact—compared to those of past decades—they are “relatively open-minded.”

Dave Loring ’67 reported a concern among students that public interest jobs are not there. Perhaps, he said, “the definition of public interest is too narrow.”

Doug Jensen ’67 observed that “what most lawyers do is something in the middle” between big corporate law firms and public interest law. Maybe, he said, “students need exposure to this.” Jensen advocated more contact between Board members and students.

Isaac Stein ’72 followed by expressing concern over “the assumed dichotomy” between corporate law and public interest work. Most Stanford Law graduates, he pointed out, *are* going into corporate law practice. He asked: “What are we doing to develop values for *those* students as to what they can do?”

The East Palo Alto Project, replied Ely, “may sow some of those seeds. We try repeatedly to point out that the world does not break into two extremes. We all hope that a few years into practice, people will do something public spirited.” However, he observed, “law firms have more influence on this than we do.”

Judge Norris reported a “gratifying



response” from students at a recent Law Review banquet where he spoke on “blending private practice with public service.”

Lon Allan ’68, another advocate of this approach, said, “There’s a lot that lawyers can contribute to the community while working for private law firms.” He personally feels that he gives “as much to the community” as when he worked in a legal aid office. “It’s not,” he concluded, “a dichotomy.” □

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Suren M. Saroyan '29
San Francisco, California

William W. Saunders '48
Honolulu, Hawaii

Joseph B. Scudder, AB '27
Pennington, New Jersey

Patrick T. Seaver, JD/MBA '77
Los Angeles, California

Talbot Shelton, AB '37
(Harvard, JD '40)
New York, New York

Preston N. Silbaugh '53
Del Mar, California

Larry W. Sonsini
(Boalt Hall, LLB '66)
Palo Alto, California

James C. Soper '53
Oakland, California

Kristi Cotton Spence '81
Burlingame, California

Isaac Stein, JD/MBA '72
Palo Alto, California

Roy H. Steyer
(Yale, LLB '41)
New York, New York

Nancy Stockholm '81
Washington, D.C.

Louise A. Sunderland '73
Chicago, Illinois

John A. Sutro, AB '26
(Harvard, LLB '29)
San Francisco, California

Arthur V. Toupin '49
San Francisco, California

Clyde E. Tritt '49
Los Angeles, California

Harry L. Usher '64
New York, New York

Hon. John Van de Kamp '59
Los Angeles, California

John W. Weiser
(Harvard, LLB '59)
San Francisco, California

Henry Wheeler '50
Boston, Massachusetts

Charles Rice Wichman '52
Honolulu, Hawaii

Charles B. Wright '81
New York, New York

Student Exposure to Career "Alternatives"— Further Initiatives

Dean Ely announced—at a meeting of the student body September 17—a number of new steps taken by the School to encourage student consideration of public interest/public service work. A memorandum describing these initiatives, along with related programs already in place, was distributed to all students that afternoon. Here is the text of Dean Ely's memo.

A major priority of the Law School over the past four years has been to open the realistic possibility of your sampling and considering careers other than the large-city large-firm law practice chosen by the overwhelming majority of our students. There is no desire on the part of the School to "channel" anyone into, or away from, any particular kind of work—only to make sure that you are aware that alternatives do exist and to remove certain disabling financial disincentives to your considering them.

Soon after I became Dean we took a number of steps in this direction.

- We introduced, on an experimental basis, a *Summer Public Interest Loan Program*, so that students working in public interest jobs could borrow, at low interest, enough money to support themselves through the summer and satisfy their expected contributions toward

tuition and related expenses the next year. In the event a student chose subsequently to enter public interest or public service work, this summer loan was to be forgiven.

- We instituted a *Public Interest Careers Day*, which is still held annually, open not only to Stanford students but also to interested law students from other Bay Area law schools.
- Material was developed and made available in the

Career Services Office indicating the public interest or public service law background of *faculty members and deans*, aimed at encouraging interested students to seek counsel from us about such opportunities.

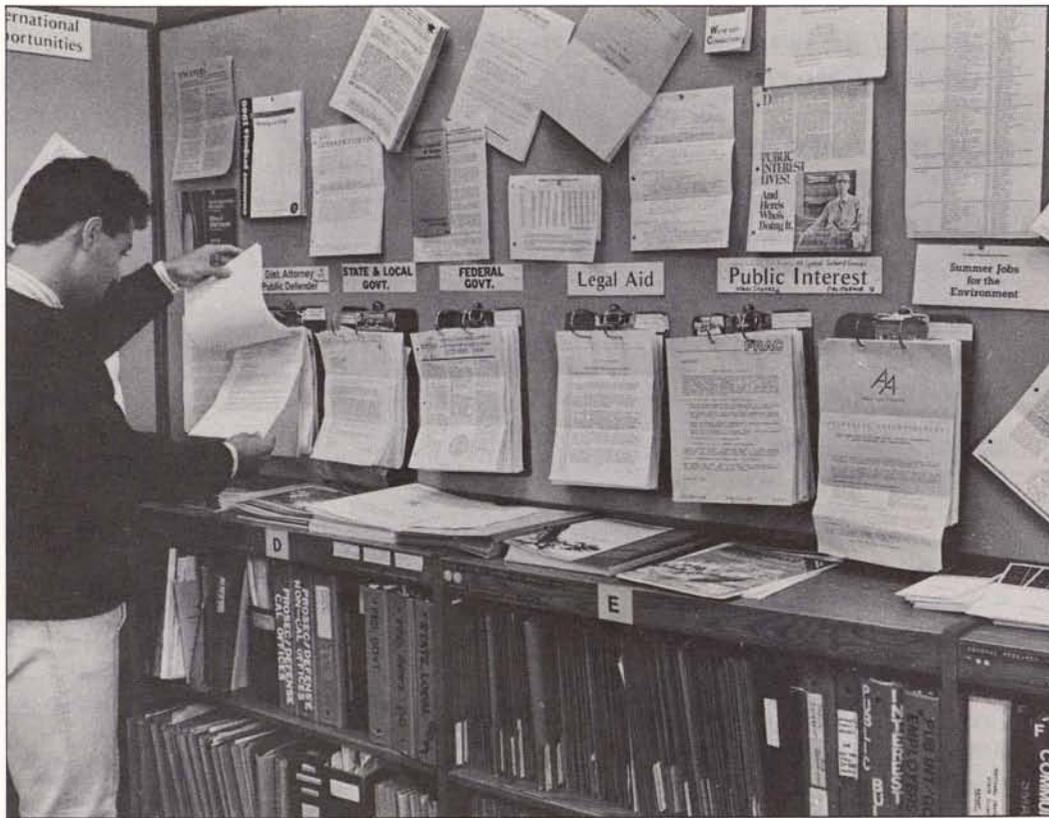
- All this, of course, was on top of our noted *Externship Program*, whereby roughly one-third of our students spend a Term, for academic credit, performing such work.
- In late 1983, much-needed support was pro-

vided when the School's good friends Kenneth and Harle Montgomery donated \$300,000 to endow the summer loan program, thereby making the *Montgomery Summer Public Interest Loan Program* permanent and financially secure.

- Another public interest program was launched in 1985—this one relating more directly to what happens *after* law school—when the Cummins Engine Foundation of Columbus,

The New Moves Summarized

- **Montgomery Summer Public Interest Grant Program.** Originally begun in 1983 to provide low-interest loans, it is now converted to a grant program. This new program builds upon the existing summer grant program of the Stanford Public Interest Law Foundation (SPILF) by matching (up to \$20,000/year, inflation indexed) SPILF's total annual allocations for student summer work.
- **Public Interest Low Income Protection Plan.** Last year's pilot program to lift the education debt burden from graduates accepting public interest positions is now being made permanent. In addition, the income limit for eligibility will be indexed to inflation. The program extends low-interest loans covering payments due on prior undergraduate and graduate educational loans, with forgiveness provisions for recipients who stay in public service.
- **East Palo Alto Community Law Project.** Annual support of \$150,000/year (inflation indexed) is being pledged by the School to help ensure continuation of the East Palo Alto Community Law Project. This amount—which represents nearly half of the Project's \$304,000/year budget—is in addition to the School's other fundraising efforts on the Project's behalf.
- **Director of Public Interest Programs.** Peggy Russell '84 has been appointed as a full-time Special Assistant to the Dean for 1986-87, to direct the School's efforts to collect and disseminate information on opportunities for public interest and public service careers and to provide counseling to students.



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Indiana, donated \$200,000 to initiate a *Public Interest Low Income Protection Plan*, whereby graduates working in low income public interest/public service jobs are able to delay repayment of their educational debts (those incurred during college as well as law school) and ultimately, should they persevere in such a career, to have those debts paid by the Law School. The Foundation's generous contribution was sufficient initially to open this program to members of the Classes of 1986, 1987, and 1988. By shrewd financial management (principally the fact that virtually no one applied) the program was subsequently extended to include the Class of 1989.

■ In order to meet still another problem—created by the fact that public interest organizations often are unable to make offers until the spring, whereas law firms generally have wished to have their offers responded to a good deal earlier—the School has recently imposed a requirement, as a condition of a firm's interviewing here, that any student who wants to wait and try the public interest market shall be permitted to designate one of his or her *law firm offers to be kept open until April 15*.

Obviously all this represents a sustained effort to open up public service/public interest opportunities. Just as

Placement office information, part of "a sustained effort to open up public service/public interest opportunities."
—Dean Ely

obviously, it hasn't worked very well. The number of applicants for the Montgomery Summer Public Interest Loan Program has been dwindling annually since it was initiated, to the extent that we had only eight takers this past summer. More surprisingly, only one graduate of the School has thus far signed up for the Public Interest Low Income Protection Plan. And despite our initiatives it remains true that public interest organizations are reluctant to schedule interviews at Stanford, as it often turns out that so few

of our students sign up that it is necessary to cancel the interviews.

I confess I'm beginning to feel a little like Don Quixote, but I'm not prepared to give up. It remains possible that we still haven't given exposure to alternative careers a chance, that if we did more we might attract more students whose interests lay in that direction and free more of the students already here to pursue such options. I am therefore committing myself before I leave as Dean next June—through a combination of new fundraising initiatives and earmarking of certain undesignated funds which have been raised over the past four years—to come up with the monies needed to underwrite a significant expansion of Stanford Law School's career alternatives program.

■ For the academic year 1986-87, we shall be adding to the Law School staff a full-time *Special Assistant to the Dean and Director of Public Interest Programs*, to lead our efforts to discover and compile a complete list of public service/public interest opportunities for both summer and post-graduation work and to counsel students who indicate some interest in such work. She is Margaret (Peggy) Russell '84, one of the founders of the Palo Alto Community Law Project, who is currently working at Public Advocates

(Continued on next page)

in San Francisco. (See box at right.—Ed.)

■ Because it seems unfair to recruit students without their knowing whether the *Public Interest Low Income Protection Plan* will still be in effect when they graduate, we are, effective immediately, extending it not only to the classes presently enrolled at the School but to all future classes as well. We also intend to "index" the maximum salary limits, to ensure that as inflation raises public interest salaries along with others, eligibility for the program will correspondingly expand. This will take an increment of funds over the original Cummins Foundation gift, but the step seems justified. No one is going to get rich practicing public interest law, but this program guarantees that no one wishing to pursue such a career need be dissuaded from doing so because of educational debts.

■ Obviously, over the past couple of years, the Montgomery Public Interest Loan Program has not been working as well as it should. The reasons for the diminishing student response are entirely understandable. (Harvard Law School, which replicated the Montgomery program virtually provision for provision, has experienced a similar dropoff, though interest in public interest law generally seems somewhat higher there than here.) Large firms are now paying something like \$1000

Russell '84 Heads Public Interest Careers Effort

Peggy Russell—the new Special Assistant to the Dean and Director of Public Interest Programs—is a 1984 graduate of the School, where she was a cofounder of the East Palo Alto Community Law Project and its first student president.

While at Stanford, she was also a research assistant to Professor Simon, vice-president of Women of Stanford Law, and secretary of the Black Law Students Association, as well as doing advocacy work in the areas of mental health, domestic violence, and prisoners' rights.

She then clerked (in 1984-85) for Judge James E. Doyle of the U.S. District Court in Madison, Wisconsin. At the time of Dean Ely's announcement, she was a law fellow with Public Advocates, Inc. of San Francisco.

Russell graduated cum laude in 1979 from Princeton University, where she majored in history, earning a Certificate of Distinction in American Studies.

She is currently on the boards of directors of EPACLP and of the San Francisco chapter of the American Civil Liberties Union of Northern California. In 1985 she was appointed to a three-year term on Stanford Law School's Board of Visitors.

Russell has worked closely with the School, both as a student and alumna, in its efforts over the past four years to inform students of possibilities for public service. She helped organize the first public interest law conference in 1983 and was keynote speaker at the third annual event in 1985.

"There's been a very exciting transformation at the School in the importance given to public interest law," says Russell, who assumes her new position on November 10. "I've enjoyed being a part of it and hope to serve as a catalyst for further efforts."



STEVEN WONG

Peggy Russell

more attractive) and may one day be excused. What are needed, obviously, are *grants*—not overly large grants, as no one whose goal is to get rich is going to be tempted to enter any of these programs—but grants nonetheless, so as to avoid the specter of further loans.

The Montgomery Summer Public Interest Loan Program is therefore being converted to the *Montgomery Summer Public Interest Grant Program*. Such a conversion raises another potential problem, though: that neither the Montgomerys nor I want to undercut or compete with the Stanford Public Interest Law Foundation (SPILF), which for some time has been in the business of encouraging students and graduates to "tithe" part of their salaries in order to fund summer grants to students wishing to do public service work. Thus, we have decided instead to *build upon* this admirable student initiative, and the Montgomery Summer Public Interest Grant Program will stand ready to match (up to a \$20,000 ceiling annually, also indexed) the amount that SPILF spends to finance student summer public interest/public service work.

Thanks to the Montgomerys' generosity (plus a possible contribution from other School funds) SPILF will certainly have twice as much to spend on summer student grants as it has had heretofore, and if the hoped-for effect of inducing additional

a week for summer work. Against that background it is easy to see why even a committed student is hesitant to incur still another debt, even

one that carries very low interest (in fact we have lowered the interest rate several times since the program's inception in order to make it

student contributions is achieved, it will have more than that. I am advised that in recent years SPILF has been able to grant most worthy student applications. My hope is that this announcement of matching funds will increase not only the financial contributions to SPILF but also the number of student applications for summer grants.

■ An enormously gratifying development during my Deanship has been the creation, almost entirely by student efforts, of the *East Palo Alto Community Law Project*. The Law School already makes significant contributions to the Project, not only in terms of what regular faculty members are able to contribute through their teaching, but also in terms of fundraising help, not to mention the Immigration Law Clinic headed by Professor Hing, for which the School provides substantial funds. Most of the rest of the Project has been funded by active fundraising on the student organizers' part, and the response of various foundations has been positive. However, many of the foundation grants were quite explicitly "seed money," designed to get the Project through the first couple of years. Massage as I might the Project's hopes in the fundraising area, I simply cannot make them add up to the entirety of the Project's budget, projected for 1987 at \$304,000.

Of course the community of East Palo Alto benefits greatly from the existence of the Project, but so does the Law School: it provides us opportunities for a variety of courses we would not otherwise be able to give, and more generally provides our students (almost half of whom participate in the Project) with a significant component of their total educational experience. Entirely on educational grounds, therefore, I feel justified in committing Law School funds to try to help ensure the survival of this Project. Indeed, I feel it so strongly that I am prepared effective immediately to commit

\$150,000 annually (in 1986 dollars, which will be indexed to keep up with future inflation), part of which can be raised by our annual Law Fund drive but most of which will have to be found elsewhere by the Law School. (We will also stand ready to continue to assist with the Project's efforts to raise money from the local Bar, though whatever is raised in that drive will be on top of the \$150,000.) Of course there are limits to what the Law School can contribute consistent with its other priorities, and thus the student organizers will still have to raise a significant part of the Project's budget. That

necessity, however, should help ensure that the Project will not be kept alive (on School-supported life support systems) should it cease to enjoy the dedicated support of a significant proportion of the student body.

After I finish my term as Dean, it will of course be up to my successors to decide how long to continue this \$150,000 (indexed) annual payment to the Project. Obviously they will ask periodically whether the Project is contributing to the educational experience of the School in the ways that the faculty currently believes it is. I am not, however, simply making a grand gesture, only to saddle those who will follow me with the obligation to go out and raise the extra \$150,000 annually. One way or another this year I will procure and set aside enough money to ensure that if deans in the future think it appropriate, a contribution on the order I have mentioned can be forthcoming from the School for at least the next ten years and, indeed, that at the end of that ten-year period we will be in a position to *endow* an expanded Clinical Legal Education Fund sufficient to generate such payments to the East Palo Alto Project, should that remain the appropriate recipient, or if it is not, to whatever successor seems to fit most closely the educational purposes the Project now serves. □

Pledge of EPACLP Annual Support Wins Praise

A burst of applause greeted Dean Ely's announcement September 17 of substantial annual support to the East Palo Alto Community Law Project.

"Tremendous!" was the response of Chris Ho '87, a student co-chair of the Project. "This clearly reflects the School's commitment to public interest in general and to the Project in particular."

Project Director Susan Balliet was equally enthusiastic. "Dean Ely has outdone himself. An outright payment of \$150,000 per year is much more than we were promised or ever expected. I'm deeply gratified."

The mayor of East Palo Alto, Barbara Mouton, said of the gift: "It's great, and will certainly go a long way towards keeping this vital project going." Mouton, who serves on the EPACLP board of directors, is pleased to have seen it grow "from myth into reality. Through the Project," she observed, "the residents of East Palo Alto have gained access to adequate legal representation and proper advocacy before the bar of justice."

Charles Lawrence Joins Faculty

Charles R. Lawrence III, an expert on constitutional law and equal protection, has been appointed professor of law. A visiting professor here in 1983-84, he has for twelve years been a member of the University of San Francisco Law School faculty, the last six as a full professor.

Lawrence's research on "unconscious racism" have attracted considerable interest. He has written (with Joel Dreyfuss) *The Bakke Case: The Politics of Inequality* (Harcourt Brace Jovanovich, 1979), as well as numerous scholarly articles.

In a forthcoming *Stanford Law Review* piece, he chal-

lenges the U.S. Supreme Court's approach to anti-discrimination law, which traditionally focuses on whether the person or institution accused of discriminating actually intended to do so. "To have to prove discriminatory *purpose* doesn't make sense, because so much of what motivates discrimination takes place below the conscious level," Lawrence explained in a recent interview.

Lawrence proposes an alternative way to analyze challenges of discrimination, by concentrating on the "cultural meaning" of the alleged improper conduct

—an interpretive approach that he says is well developed in fields such as literary analysis.

"We look forward to having Professor Lawrence as a colleague," said Dean Ely, in announcing the appointment. "A creative scholar and effective teacher, he will make a special contribution to Stanford."

Lawrence grew up in New York State, and earned degrees from Haverford College (BA '65) and Yale (JD '69). For two years after law school he taught in and served as principal of the Highland Park Free School in the predominately black Roxbury section of Boston. During this time he also taught as an assistant pro-



Prof. Lawrence

fessor at Harvard Graduate School of Education.

Lawrence moved to San Francisco in 1972 to become a senior attorney with Public Advocates, Inc. He joined

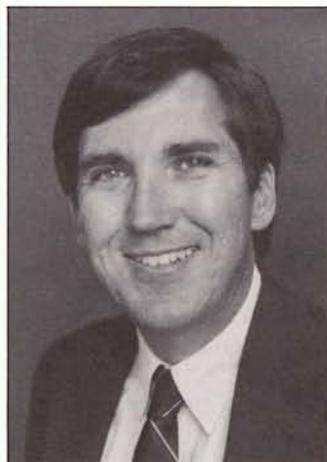
Thompson '76 Returns as Associate Professor

Barton H. (Buzz) Thompson, Jr.—the Nathan Abbott Scholar of the Class of 1976—joined the faculty this summer as an associate professor of law.

A seasoned litigator, he had for the past eight years been with O'Melveny & Myers of Los Angeles, the last three years as a partner.

Thompson clerked at the Supreme Court for Justice Rehnquist in 1977-78 and before that for Judge Joseph T. Sneed of the Ninth Circuit Court of Appeals.

His brilliant Stanford



ED SOUZA

Prof. Thompson

career included a 1972 A.B. with honors and distinction in Economics, election to Phi Beta Kappa, and service as opinion editor of the *Stanford Daily*. He then earned both a J.D. (with the top grades of his class) and an M.B.A. (as one of the top 5

percent of Business School students), while functioning as managing editor of *Stanford Law Review*.

As a litigator, Thompson says he has been primarily involved "in large-dollar suits, with a bias toward cases dealing with energy, water, and other natural resources." He most recently served as counsel for Southern California Edison in a six-month hearing before the California Public Utilities Commission concerning the San Onofre Nuclear Generation Stations. He was also counsel for Continental Insurance Group of Northern America in the huge California asbestos insurance litigation tried recently in San Francisco.

Asked why he has now chosen academia, he says:

"I wanted more time to think and write about a variety of issues that are of interest to me and, I believe, society, but that may not be of current importance to any particular client."

These include the "rapidly rising" number of issues relating to attorney compensation, and Water Law—"a most fascinating and interdisciplinary field," which he first learned from Professor Meyers, later taught at UCLA (1980-83), and will be teaching at Stanford.

His other Stanford courses are The Lawyering Process, and a seminar on Resource Development.

Thompson's wife, Holly, is a college counselor with a Stanford M.A. in education. They have a son, 2, and live on campus. □

the USF law faculty in 1974, and in subsequent years was a visiting professor of law at Harvard (1979-80) and a W.K. Kellogg Foundation National Fellow (1982-85).

Most of Lawrence's scholarly writings deal with issues of discrimination, particularly on the basis of race. There are, he said, "many institutional barriers that on the surface don't seem to be racial but that continue to favor groups that have already gained access."

Lawrence cited as an example the disproportionate weight that many law schools give to scores that applicants get on a single test (the LSAT).

"Well-educated latinos and blacks with equivalent grades from good colleges generally do less well on the LSAT than their white counterparts," he observed. "College grades, however, have been shown to be a more reliable predictor of law school performance. So law schools, by paying undue attention to LSATs rather than grades, are favoring non-minorities and disfavoring latinos and blacks."

Lawrence is currently working with Professor Stephanie Wildman of USF on a book comparing racial with sex discrimination—the subject also of a course they will teach during the 1987 spring term. "Comparison," he explained, "is an instructive way of studying the problems that are unique to each, as well as those that they share."

Lawrence (who is now fulfilling a preexisting commit-

ment to spend the fall term at UCLA) will also teach Constitutional Law. Education and the Law, or educational policy, is another of his teaching areas.

He uses a variety of teaching approaches, including role-playing and discussion. "I like to encourage students to think not just in terms of traditional litigation,

but, more broadly, of how they as lawyers and community leaders can help bring about social change," he says. "I've always felt that one can't afford to be an ivory tower academic, in the sense of being divorced academically and intellectually from activism."

Lawrence is married to Carol Munday Lawrence, an

independent filmmaker and television producer-director. Among her credits is a series of PBS documentaries—*Were You There?*—about the black experience in America. The Lawrences have a ninth-grade daughter, Maia, and live in San Francisco. □

Bill Simon Given Tenure

William H. Simon, a member of the faculty since 1981, has been granted tenure and named professor, effective July 1.

"Bill Simon's widely cited articles on the dilemma of lawyers, who must serve their clients but want to serve society as well, have helped make Stanford Law School a center of scholarly study of the profession," Dean Ely said in a report May 13 to the Board of Trustees.

"His work in the area of welfare entitlement and administration have already made an important contribution to a field that governs the lives of millions," continued the Dean. "He has also played an important role in creating and expanding Stanford Law School's lauded clinical education program."

Simon was a key adviser to the student founders of the East Palo Alto Community Law Project, and teaches one of the four law school courses involving

fieldwork at the Project.

An honors graduate of both Princeton (AB '69) and Harvard (JD '74), he spent three years in private practice with the Boston law firm of Foley, Hoag & Eliot (1974-77). He then taught in 1977-78 at Northeastern and Harvard Law Schools, returning



ED SOUZA

Prof. Simon

to Harvard in 1980-81 as a clinical instructor. During the three years from 1979 to 1981, he was staff attorney for the Legal Services Institute in Jamaica Plains, Massachusetts.

Simon is the author of a number of scholarly articles on public assistance to the

poor, the most recent being "Rights and Redistribution in the Welfare System," in the *July Stanford Law Review* (38:1431). His latest publication on professional ethics, "Babbitt v. Brandeis: The Decline of the Professional Ideal," appeared last year in the *Review* (37:565).

Simon considers himself a "critic of the adversary system." He believes that lawyers should "play a more public role rather than one of extreme client loyalty."

He also criticizes the current welfare system, which, he said in an interview, "serves poorly the people it is supposed to help." Recent changes in the system have, he says, "made it more bureaucratic and complex."

One reason for increased regulation is, he explains, that "the social worker has been replaced by less qualified caseworkers. While it is now harder for caseworkers to be punitive, it is also harder for them to exercise discretion or respond to individual differences. What we have is an underfunded bureaucracy that struggles

(Continued on next page)

Ely to Step Down—"Great Time" as Dean

John Hart Ely has formally submitted his resignation, effective August 31, 1986, as Dean of the Law School.

Ely, who will have been Dean for five years, plans (after a year of travel and teaching at New York Law School) to continue at Stanford as a member of the faculty.

"I've had a great time as Dean," he said in a letter to University President Don Kennedy. "But I've reached the point where there is another job—that of teacher and scholar—I'd enjoy even more."

"John Ely was enthusiastically sought, and received, by the Stanford law faculty, and they have made great progress together," said Kennedy. "We're delighted that his great talent as a teacher and legal scholar will still be with us."

Ely's resignation came as no surprise, since he has from the beginning made clear that he regarded the deanship as a five-year undertaking.

A search committee has been named, with Law Professor Marc A. Franklin as chair. The other members are: Provost James Rosse; Law Professors Robert Rabin, Deborah Rhode, Gerald Lopez, Robert Weisberg, and Thomas Campbell; and students Ivan Fong (Stanford Law Review president) and Janet Taber (student body president). □



Dean Ely

SIMON (continued)

under stultifying work loads and that is hostile to both recipients and superiors."

Simon would like to see the system reorganized somewhat as New Deal theorists envisioned but were never able to implement fully—that is, a system administered by qualified social workers and where "welfare benefits are recognized as a right."

Simon is currently teach-

ing courses in Poverty Law and Practice (with clinical work at the East Palo Alto project) and a Poverty Law Seminar. He also teaches the School's introductory course on Business Associations.

He is married to Teresa Nelson, a lawyer and director of the Mental Health Advocacy Project in San Jose. They have an infant son and live in Palo Alto. □

Gilliland Succeeds Dray as Associate Dean

John P. Gilliland has been named Associate Dean for Development and Alumni/ae Relations. His predecessor, Barbara G. Dray '72, is now Associate Director of Planned Giving in the University development office.

"Much as we'll all miss Barbara, I think John is going to make a terrific associate dean," Dean Ely said, in an announcement May 14. "We have a number of pressing development priorities, and I'm sure his enthusiasm and organizational skills are going to serve us well in attending to them."

Gilliland, who did his undergraduate work at Stanford (AB '67), has been a member of the University fund-raising staff for over twelve years, the past six as associate director with specific responsibility for the major gifts effort in San Francisco.

As the Law School's chief development officer, he oversees fund raising and alumni/ae activities, as well as serving as secretary to the Board of Visitors.

Gilliland's interest in the law dates back to his undergraduate days when, as a Political Science major, he took Constitutional Law from Professor Robert Horn. He later had "one of the most stimulating experiences of his life" as foreman of a jury in a murder trial.

He joined the Stanford



John Gilliland

University development staff in 1973 after three years as a project manager for the Sierra Club Foundation, where he worked to retain open space in San Mateo County and developed an environmental education and recreation program.

He has been involved in a wide range of local conservation efforts, including serving as vice-chair of the San Mateo County Supervisors Committee on Recreation in the San Francisco Watershed Land, and as a member of the Skyline Scenic Corridor Committee for Santa Clara County. He was also active in the early stages of what are now the Mid-Peninsula Regional Open Space District, the Filoli Center, and the Santa Cruz Mountain Trail Association.

Gilliland's current extracurricular pastimes include backpacking, Civil War history, and barbershop harmony singing. His quartet, Coast-to-Coast, won the Northern California championship in both 1984 and 1985. □

Law Student Center to be Built next to Crothers

Construction has begun—thanks to a gift from retired Southern California financier Mark Taper—on a recreation and meeting center primarily for law students. The new facility, which will be connected by a walkway to Crothers Hall, will be named the Mark Taper Law Student Center.

“Mr. Taper’s strong desire to improve the quality of life for Stanford Law students is sensitively expressed in this project, and we are very grateful for his generosity,” said Dean Ely. Taper, former CEO of a major California savings and loan association, is the grandfather of Law School graduate Andrew M. Taper '85.

Planning for the Center was done by a committee including law students as well as administrators, with priority given to the needs of Crothers residents and the Law School community.

Approximately 4000 square feet in size, it will include a large fireplace lounge that opens onto a patio, a second and smaller upstairs lounge, a kitchen, and an exercise and fitness area with lockers, restrooms, and showers for men and women.

Mark Taper is known for his generosity to several schools and to the arts, notably the Taper Gymnasium at Harvard, Taper Hall of Economics and Finance in the California

Museum of Science and Industry (Los Angeles), the Taper Gallery at the Los Angeles Museum of Art, Taper Hall of Humanities at the University of California, and the Mark Taper Forum at the Los Angeles Music Center.

His gift for the Mark Taper Law Student Center at Stanford provides not only for construction costs but also an endowment for permanent maintenance of the Center. The Center will be governed by a board consisting of residents of Crothers, law students, a Law School administrator, and a member of the University’s Residential Education staff.

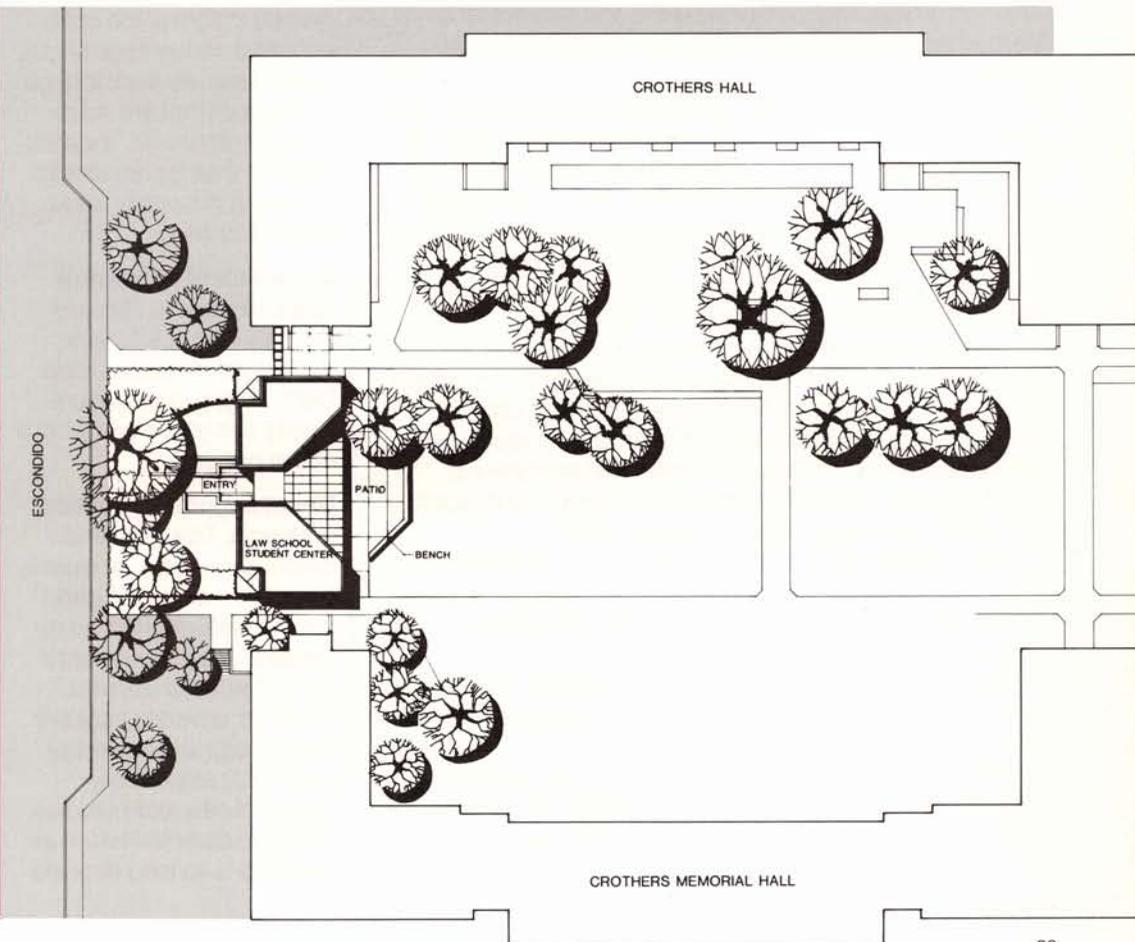
Designed to minimize environmental impact, the building will complete the south side of the quadrangle formed by Crothers Hall and by Crothers Memorial Hall. The central area of the quadrangle will be undisturbed, as will the oak trees growing just outside the quad near Escondido Road. The road itself, now permanently closed to traffic, is becoming a greensward and pedestrian mall.

The Center, which is modern in style, will consist of a two-story wood frame structure, embracing two pentagonal volumes with a stucco facade, linked together by a glass enclosure. The architect is Jan Stypula of

Spencer Associates, an architectural and planning firm based in Palo Alto. Stypula describes it as “a free-form sculpture” that will “sit like a jewel” amid the older buildings of Crothers courtyard and “provide a vista through to Encina Commons.”

Members of Spencer Associates have designed a number of noteworthy Stanford buildings, including Tresidder Memorial Union, the Earth Sciences Building, Space Engineering, Sloan Mathematics Center, and the restoration and redesign of Jordan Hall and Margaret Jacks Hall of the original University Quad. □

SPENCER ASSOCIATES



Law and Tech Meeting

"How Government Policy Affects Private R&D" was the subject of a day-long symposium organized last spring by the student-run Stanford Law and Technology Association.

For the meeting—one of the first ever on the subject—SLATA brought together twenty speakers

representing a variety of interested parties, including elected and appointed government officials from the U.S. and other nations (Japan and Brazil), law firm and in-house attorneys for computer and biotechnology companies (IBM, Apple, and Genentech), scholars from universities and think tanks, and the head of the American Association for the Advancement of Science's Office of Public Sector Programs.

Bequests Fund Professorship, Student Aid, Books

A generous bequest from the estate of Miss Elaine Sweet (AB '19) of San Diego will provide the endowment for a named professorship and financial aid fund at the Law School.

A second bequest, from Lilian Fletcher Nichols (AB '28), has been designated for a new library book fund, and will also add to the School's facilities fund and to the discretionary fund used by the Dean for areas of most urgent need.

The new professorship will be named in memory of Miss Sweet's father, the late attorney Adelbert H. Sweet, while the scholarship fund honors her mother and aunt, Amy Whatmore Sweet and Marion Smith Whatmore.

The Sweet bequest is also being used for construction of the University's Academic Resources Center, to be named Sweet Hall in memory of Miss Sweet's parents. Other recipients are the School of Education and, in years past, the Department of History (her major field at Stanford).

Miss Sweet, a long-time San Diego resident and Stanford University benefactor, died in January 1985.

Mrs. Nichols was a member of the University Board of Trustees for thirteen years and a prominent figure in Bay Area civic affairs. The book fund created through her bequest will bear her name.

She and her husband, Jesse E. Nichols (AB '28), a lawyer and former partner in Nichols, Williams, Morgan & Digardi of Oakland, both died in 1985.

Mrs. Nichols first became interested in the Law School through her first husband, the late Lawrence S. Fletcher (AB '28, JD '30), who is remembered in the naming of the School's largest classroom (290). □

IBM Vice-President Kenneth W. Dam, former U.S. Deputy Secretary of State, was the keynote speaker. Voicing the central concern of the conferees, he said: "Today the U.S. creates 50 percent of the world's technology, down from 75 percent a decade ago; it will soon be one third." Many other countries, he pointed out, have educational and intellectual attainments equivalent to ours. America's major advantage is "its vigorous, risk-taking private sector."

All present seemed to agree that Federal policies powerfully affect the ability of the private sector to engage in innovative R&D and that these policies should be revised in light of the competitive disadvantage of U.S. businesses vis-a-vis foreign enterprises that are subsidized or otherwise "incentivized" by their governments.

Among the policy areas discussed were:

Government support of basic research. This was strongly endorsed by the conferees. "There is," said Dam, "a gap in what a university can afford and what a nation needs."

Direct support of applied research. This Dam and others opposed—at least in principle—citing the abortive synfuels effort as an example of the government's being "out of its element." However, several speakers favored significant exceptions for 1) exploratory stages of new technologies, when the potential return to investors is so long delayed



"We are being 'out-competed'."—Assemblyman Robert Naylor (above), at a conference organized by Kent Walker '87 (right, center) and other students of the Stanford Law and Technology Society.

that private investors are unlikely to participate; or 2) technologies with major external benefits not likely to be captured or rewarded by simple market forces.

Tax incentives for research and development. Several conferees thought this the most appropriate and constructive policy, with one of the most effective incentives being the federal R&D Tax Credit, which provides a 25 percent credit on increases in R&D spending.

Antitrust laws and enforcement. The conferees were in favor of permitting joint ventures when they might enhance national competitiveness. Such private enterprise group activities would, it was thought, allow companies to combine talent and funding while



PHOTOS BY TOM SEARS '88

developing particularly challenging technologies—a potential strategy for countering foreign governments' direct subsidies to their own high technology companies.

Patent and copyright protection. Piracy, counterfeiting and similar acts are estimated to account for some 750,000 lost American jobs and up to \$2 billion in lost revenues. The reason for protecting intellectual property, it was pointed out, is not so much to benefit those who have already made inventions as to encourage others to invest in future research and development.

Protection of secrets. The Freedom of Information Act (FOIA) creates a tension between the need for free access to information and

American industry's desire to protect the results of its investments. Trade secrets of businesses dealing with the federal government may be disclosed before the owner realizes it and can try to convince the agency otherwise.

Licensing restrictions. The reluctance of the government on licensing is, said some, based on a misconception that licenses are anti-competitive. They may instead be seen as inherently pro-competitive and desirable, because they motivate firms to develop and "get their technology out" to those who can use it more efficiently.

Tort liability. The expansion of strict liability and other liability rules is, according to more than one panelist, im-

posing on U.S. firms a cost of doing business that other countries have avoided and that will directly affect our ability to compete—even to save lives. One conferee reported having to advise a company not to market a carbon monoxide sensor because it was not totally foolproof. Some hope was expressed that measures to limit liability on the AIDS vaccine might open the way for a relaxation of liability on other research products.

Government oversight and regulation. Under current law, U.S. drug manufacturers are prohibited from selling abroad any drug not yet approved for marketing in the U.S., even if that drug has been fully tested and approved in accordance with the regulations of the

proposed country of sale. Because the FDA approval process is as much as two years slower than that of countries such as Britain and Germany, U.S. firms are put at a clear disadvantage.

Regulation of a different kind can also hamper regulated utilities (e.g., telecommunications firms), which are restricted as to the amount of profit that can be applied to research and development rather than passed on to customers. Technologically challenging projects are also deterred or abandoned when their costs are more likely to be born by stockholders than incorporated into the cost of marketable products.

Credit for organizing this wide-ranging conference goes to Symposium Director Kent Walker ('87) and a host of SLATA volunteers, headed by Co-presidents Ivan Fong and Stacey Sovereign (both also '87) and including Michael Sears ('88) as publicity director. Cosponsors, with SLATA, were Stanford Law School, the Center for Economic Policy Research (Koret Foundation), and Stanford's Program in Values, Technology, Science and Society (VTSS).

Interested readers may obtain a transcript of the proceedings by sending \$10 to: Stanford Law and Technology Association, Stanford Law School, Stanford, CA 94305-8610 (Attn: Symposium). □

First Amendment Discussed at National Federalist Symposium

Contrasting views on several issues with First Amendment implications were argued at a national Federalist Society symposium March 7-9 hosted by students of the Society's Stanford chapter.

Participants included so many eminent jurists that Dean Ely was moved in his opening remarks to say:

"I doubt as many future Supreme Court justices have gathered at Stanford Law School since the Class of '52 graduated." (One speaker—Judge Antonin Scalia—has, in fact, since been named to the Court.)

Among the 550 attendees were members of the Reagan Administration, noted

constitutional law scholars, and more than 300 students from throughout the country.

Nobelist Milton Friedman, a senior fellow at the Hoover Institution, delivered the keynote address. "Free markets

make free men," he said, asserting that state intervention in markets ultimately creates economic inhibitions to free speech. Friedman concluded by suggesting a new amendment to the



Among the noted panelists were (l-r, above) Prof. Paul Bator of the University of Chicago, then-Judge (now Supreme Court Justice) Antonin Scalia, Floyd Abrams of Cahill, Gordon & Reindel, and (below) Dean Ely, Judge Robert Bork of the D.C. Court of Appeals, and Prof. Geoffrey Stone of Chicago.



PHOTOS BY MATT BATEMAN

Canadians Hold "Stanford Lectures"

In a historic first, Canada's most eminent jurists, members of the bar, and legal academics held their biennial meeting in the United States, at Stanford Law School, rather than in England.

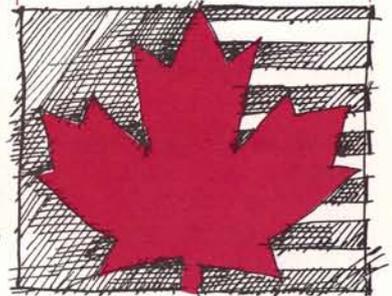
Titled "The Stanford Lectures," the meeting took place July 27 to August 2 under the joint aegis of the School and the Canadian Institute for Advanced Legal Studies. William Cohen, the School's C. Wendell and Edith Carlsmith Professor, served as coordinator for Stanford.

"The legal lines between Canada and the United States are deep and strong," said conference chair Nathan T. Nemetz, Chief Justice of British Columbia. "We share a powerful attachment to the fundamentals: law, an independent judiciary, equality, and an open and public process. It is fitting that we should meet here in the United States and at one of its finest law schools."

The program, which was endorsed by the chief justices of both countries,

focused on the young Canadian Charter (constitution) and issues that have arisen under the older U.S. Constitution that might be relevant.

Stanford participants included Dean Ely, who spoke "On Protecting Fundamental Interests and Powerless Minorities under the U.S. and Canadian Constitutions," and Cohen, whose topic



was "Judicial Review of Social and Economic Legislation Under the Equal Protection Clause."

The significance of the two-country conference was symbolized by the presence of the Canadian ambassador to the U.S., Alan Gotlieb, Canadian Chief Justice Brian Dickson, and a host of other luminaries from both sides of the border. □

Constitution: "Congress shall make no laws forbidding voluntary acts between consenting adults."

The panels that followed were marked by lively debate on whether and how much Government should interfere with election processes and financing, religious expression, pornography, libel, advertising, broadcast and telecommunications, political activity by civil servants, or exclusionary practices.

Although a range of philosophical viewpoints was represented, the chief intellectual purpose of the symposium was, according to its director, Brian J. Brille ('87), to provide "a systematic presentation of libertarian, classical liberal, and conservative philosophies not ordinarily available in contemporary American law schools."

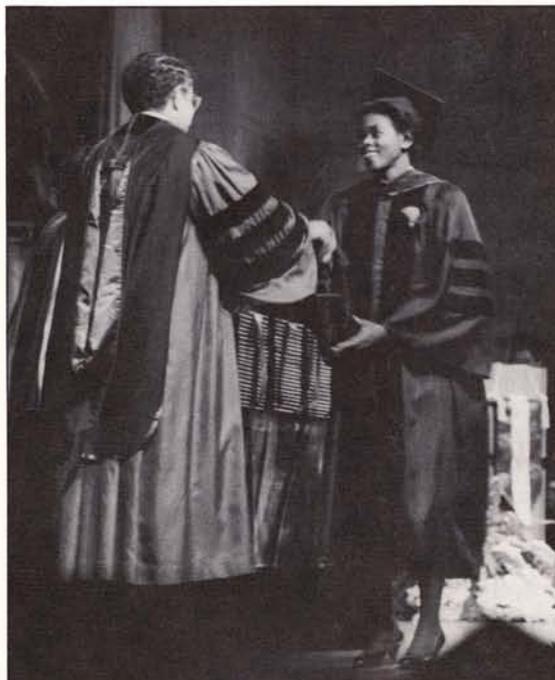
The proceedings of the Symposium—the fifth and largest sponsored by the national Federalist Society—are scheduled for publication later this year in the *Harvard Journal of Law and Public Policy*. Audiocassette and videotape records of the entire proceedings are also available. For information, contact: B. Brille, President, Stanford Federalist Society, Stanford Law School, Stanford, CA 94305-8610; (415) 723-1551. □

O Happy Day! — Commencement 1986

The sun was shining and breezes blowing as the Law Class of 1986 assembled June 15 for the School's ninety-third annual Commencement.

A record 900 relatives and friends turned out for the glad occasion, which took place in Kresge Auditorium following the University's Commencement exercises.

After welcoming the standing-room-only crowd,



PHOTOS BY JOHN SHERETZ

Dean Ely announced the top academic achievers in the class: Jonathan D. Schwartz, Nathan Abbott Scholar for the highest overall grade point average, and John R. Wilson, winner of the Urban A. Sontheimer prize for the second highest average. Wilson's academic performance had also earned him the Second-Year Honor. The First-Year honor was held by Edward C.

DuMont, who also received the Frank Baker Belcher Award for the best academic work in Evidence.

Eighteen class members were elected to the Order of the Coif. In addition to Schwartz, Wilson, and DuMont, they are: Jay L. Alexander, Allain C. Andry IV, Barbara M. Anscher, Susan Bernhardt, Cheryl D. Davey, Susan A. Dunn, Paul H. Goldstein,



Congratulations were in order for Hurlbut Award winner Barbara Babcock (above) and 178 degree recipients, including Denise Hanna (top) and Nicholas Politan and Zaitun Poonja (left).

John A. Lewis, Frank A. McGuire, Frances A. Rauer, Deborah L. Schrier-Rape, Steven T. Strong, David E.

(Continued on next page)

Dennard '86 Honored by NAACP

Giji Michelle Dennard, a June graduate of the School, is the first Stanford recipient of a Constance Baker Motley Law Award from the Earl Warren Legal Training Program. The \$1,200 prize is given annually by the NAACP's Legal Defense and Educational Fund, Inc., to recognize the nation's outstanding black female law student.

While in law school, Dennard was a member of the *Law Review* and president of the Black Law Students Association. She was nominated for the award by Margo Smith, Assistant Dean for Student Affairs, who cited "her plain com-



Giji Dennard

mon sense coupled with a strong intellectual capacity."

A native of St. Petersburg, Florida, Dennard received her undergraduate degree

in journalism from Howard University in 1983. She plans to use her education to "serve the 'invisible' man in our society—against whom discrimination has been perpetuated through our legal institutions."

The Earl Warren Legal Training Program seeks to encourage black students to enter the legal profession by providing financial assistance. (Dennard received a Warren Program scholarship in her first year of law school.) The award is given in honor of Constance Baker Motley, a federal judge for the Southern District of New York, the first woman borough president of Manhattan, and a 20-year Legal Defense Fund staff member. □

Art with Punch

"In a university devoted to excellence, the visual environment should have the same quality as the intellectual environment." So said John Henry Merryman, the School's Nelson Bowman Sweitzer and Marie B. Sweitzer Professor, in an interview following his September 1 shift to emeritus status.

That the Law School is today an aesthetically exciting place to visit and work is in no small part due to Merryman, an expert in art and the law. He chaired the School building committee that choose and monitored the work of the architect and interior designer for Crown

COMMENCEMENT (continued)

Teitelbaum, John F. Walsh III, and John S. Whitelaw.

John Lewis also was the first recipient of the Steven M. Block Civil Liberties Award, given for distinguished written work on issues relating to personal freedom. The award, which honors the late Steve Block '76, was established in 1985 by his classmates and friends.

A new honor, graduation "with distinction," was granted to fifty-one graduates (almost one-third of the class).

Other graduates recognized for achievements during law school included Geoffrey R. Kors and Jeffrey

S. Zimman, recipients of Faerie Mallory Engle Prizes as finalists in the School's client counseling competition.

Zimman was also honored by the University with an Award for Service. Conferred by Stanford's Dean of Student Affairs, the award recognizes his efforts in creating and directing the University's AIDS Education Project, a group whose activities include information programs, support services for the gay community, and a campus AIDS benefit last May.

The R. Hunter Summers Trial Practice Award, presented by officers of Serjeants-at-Law for out-

standing student performances in trials conducted during the year, went to Lance H. Anderson, Steven M. Bauer, Martin R. Boles, W. Hardy Callcott, Kenneth J. Diamond, Peter J. Eckerstrom, Alejandro V. Hernandez, Don A. Hernandez, David B. Sadwick, John F. Walsh III, Steven H. Winterbauer, and Jonathan J. Wroblewski.

The final honor of the day, the John Bingham Hurlbut Award for excellence in teaching, was presented by Class President Leslie S. Farhangi to faculty member Barbara A. Babcock. Babcock, who is the Ernest W. McFarland Professor of Law, has been similarly honored by the Class of 1981.

In her keynote address,

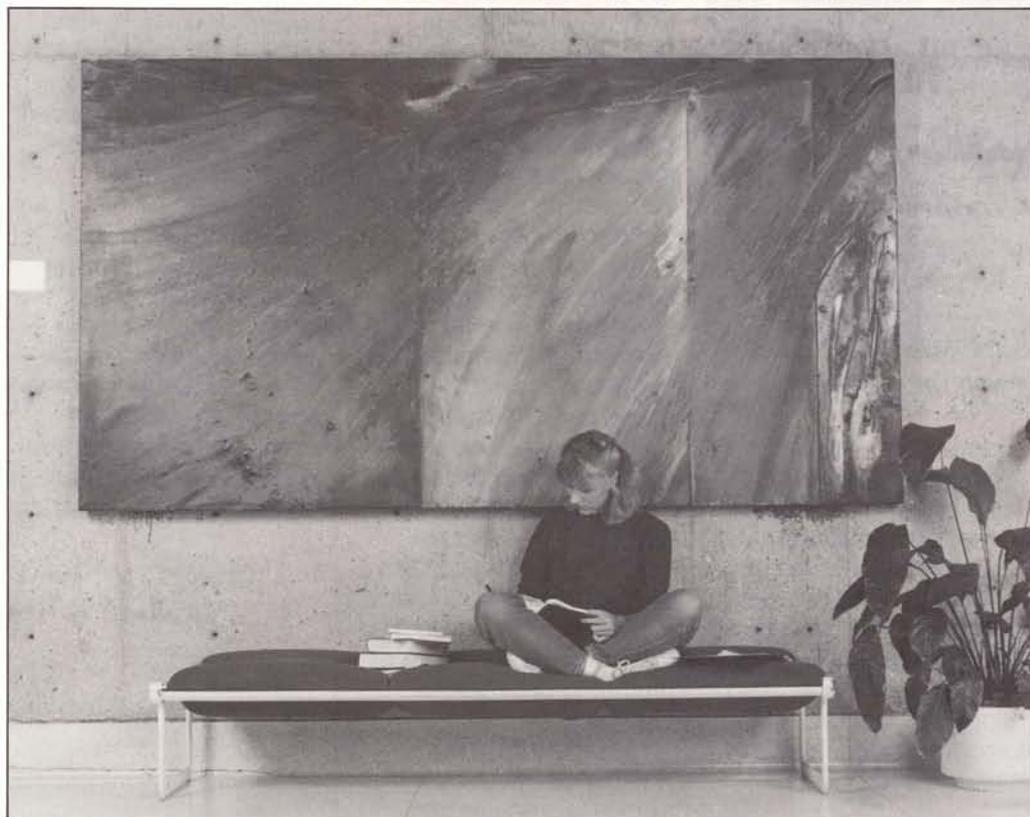
Babcock recounted three "tales" representing different experiences (disillusionment, frustration, and fulfillment) in the legal profession. She concluded by charging graduates to "write your own story—a collective one of your class and of Stanford—but your own story."

In a succinct parting message to the Class, Dean Ely made a plea for enlightened selfishness. "Be true to yourself and start doing it now," he urged, closing with a quote from John Updike: "The world is full of people who don't know what hit 'em. Their lives are over before they wake up." □

Quad, and has since variously solicited, loaned, or donated much of the artwork that adorns its walls and spaces.

Two paintings are shown here. Others works—also termed “challenging”—are by such modern masters as Alexander Calder, Robert Motherwell, Jasper Johns, Tom Holland, Sam Francis, and Ron Davis. “Art of this quality is not like visual Muzak,” said Merryman. “It has some punch.” □

Prof. Merryman is seen at right with D. Ashbaugh’s monumental *To Russia* (1980). The untitled Laddie John Dill painting (also 1980) below contributes to the ambiance enjoyed by such Crown Quad habitués as Mary Szews ’88.



PHOTOS BY TIM HOLT

Students Argue Guns and Money in Kirkwood Finals

The 1985-86 Moot Court Board assembled an eminent three-judge panel May 2 to hear final arguments in the Marion Rice Kirkwood Moot Court competition. Sitting as the high court were Judge Richard A. Posner of the U.S. Court of Appeals for the Seventh Circuit, Judge William A. Norris '54 of the U.S. Court of Appeals for the Ninth Circuit, and Judge Cruz Reynoso of the Supreme Court of California.

The case developed for this year's competition involved two issues: first, whether government agents must obtain a warrant in order to conduct a search for information relating to foreign intelligence (e.g., weapon smuggling to Iran); and second, whether the government may seek forfeiture of tainted funds with which a criminal defendant seeks to pay his attorney.

The students—Steven C. Silverman and Heidi K. Hubbard (both '86) for the government, and Nancy J. Spencer and Stacey L. Sovereign (both '87) for the defendant—responded effectively to vigorous questioning, with even a touch of humor, and brought the capacity crowd to its feet at the program's conclusion.

“Having heard well over 2,000 arguments between us, we have a substantial base of experience,” said

(Continued on next page)

Law Faculty Serve in University-wide Posts

Several Law School professors have taken on important responsibilities in the University community.

Thomas Heller assumed the directorship of Stanford's Overseas Studies Program

in September 1985. A member of the faculty since 1979, he has lived and worked in Mexico, Colombia, and Brazil.

The OSP program he now directs operates in 13 countries and is believed to be

the largest of its kind at any major private university. More than a third of Stanford undergraduates participate.

Keith Mann has been asked by Provost James Rosse to analyze and seek ways to expedite University faculty grievance procedures. As Consultant to the Provost on Faculty Affairs, Mann will work with Rosse and Assistant Provost Noel Kolak on reviewing the Statement of Faculty Discipline, with an eye to clarifying faculty members' rights in the event of an investigation into potential misconduct.

Mann's qualifications for this sensitive task include nearly 24 years as the Law School's Associate Dean for Academic Affairs (including two stints as Acting Dean) and long experience in labor-management relations and negotiations.

Deborah Rhode became director of the Institute for Research on Women and Gender (formerly known as Center for Research on Women), on September 1. She plans, during her three-year term, to strengthen the Institute's research programs and financial support. "American society still confronts significant obstacles to full equality between the sexes," she said recently. "Institutes such as Stanford's can play a critical role in identifying the roots of that inequality and the most promising strategies for change."

Herself a trailblazer, Rhode was one of the first women to graduate from

Yale College and to serve as a Yale University trustee. She is the second woman to be granted tenure at Stanford Law School (in 1985). A scholar in the fields of both legal ethics and equal rights, she will continue to teach half time while directing the institute.

Jack H. Friedenthal was elected chair on Sept. 1 of the University Advisory Board, on which he also served last year. The Board is a seven-member group that reviews every faculty appointment, reappointment, and promotion at Stanford.

Friedenthal, the School's George E. Osborne Professor, has since February 1985 been Associate Dean for Academic Affairs. He continues also to serve as the University's faculty representative to the NCAA and Pac-10, as well as president of the Stanford Bookstore board of directors.

Michael Wald has since 1984 been director of the Stanford Center for the Study of Youth Development. His signal contributions in the field of children and the law merited an award earlier this year from the National Center for Youth Law. □

KIRKWOOD FINALS (continued)



Moot Court judges (l-r, back) Reynoso, Posner, and Norris '54 and finalists (front) Hubbard, Silverman, Sovereign, and Spencer.

Judge Posner before handing down the decision. "We were all struck by the high quality of the briefs and arguments."

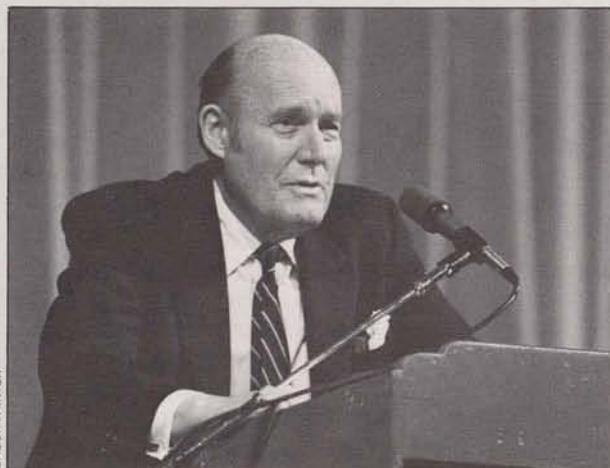
"If all lawyers performed this well in our courts, we wouldn't have to worry about whether clients could afford to choose their own counsel!" observed Judge Reynoso.

"It's a sheer pleasure to be here," added a smiling

Judge Norris. "All performed to the highest standards of our profession."

Top honors ultimately went to Spencer and Sovereign for best brief and best oral arguments, with Spencer as the single best oralist. "It's going to feel strange," said a happy Spencer, "to wake up tomorrow and not have this case to think about." □

Katzenbach Delivers Phleger Lecture



CHUCK PAINTER

Visiting Prof. Katzenbach

Former Attorney General Nicholas deB. Katzenbach spent the spring term at the School and on April 18 presented the 1986 Herman Phleger Lecture. His talk, which coincided with the annual meeting of the Board of Visitors, was titled "The Impact of Television on the Political Process."

Then a top IBM executive—Senior Vice-president, Law and External Relations, as well as a director and member of the IBM management board—he has since joined the New Jersey law firm of Riker Danzig Scherer Hyland & Perretti.

Katzenbach came to national attention in the 1960s as a front-line member of the Kennedy Justice Department in the conflict over racial segregation. During the Johnson Administration he was Attorney General (1965-66) and Under Secretary of State (1966-69), leaving in 1969 to join IBM. Also a scholar, he was editor-in-chief of the *Yale Law Journal* (1946-47), a Rhodes Scholar (1949-50), a professor at both Yale (1952-56) and Chicago (1956-60), and coauthor (with Morton Kaplan) of *The Political Foundations of International Law* (1961). At Stanford he held the title of Herman Phleger Visiting Professor and taught a course in Intellectual Property.

In his Phleger lecture, Katzenbach explored some of the implications of the fact that "television has all but totally replaced the political party as the principal conduit between our national government and our citizens," and suggested one possible constitutional change: lengthening the congressional term of office from two to four years, with elections to coincide with the presidential election. □

Faculty Notes

Barbara A. Babcock spoke April 11 at a large English Department conference on biography and autobiography. Her topic—an outgrowth of continuing work on pioneer public defender Clara Foltz—was "Reconstructing the Person: Research Problems in Biography."

Thomas J. Campbell gave a case demonstration of an oral argument at the "Joint Agreements in Health Care" session of the ABA's Antitrust Section annual meeting, April 9, in Washington, D.C. On May 21 he testified before the Senate Judiciary Committee on merger law. "The Supreme Court's 1986 Term" was his topic on June 24, as dinner speaker for the Los Angeles County Bar Association. He provided another high court update on August 13 in New York City, at the ABA annual convention. Campbell has also lectured for the Practising Law Institute, giving presentations on joint ventures July 10 in San Francisco, and July 24 in Chicago.

Robert C. Ellickson went to Los Angeles in April for the annual conference of the American Planning Association, where he participated in a panel discussion of programs to require developers to contribute funds for low-income housing. He also saw his study, "Of Coase and Cattle: Dispute Resolution Among Neighbors in Shasta County," published

in the February 1986 *Stanford Law Review* (38:623).

Marc A. Franklin has been speaking widely on problems and alternatives in the law of libel. In Philadelphia last October he delivered a paper—"New York Times vs. Sullivan Was Right"—at a conference cosponsored by the Philadelphia Bar Association and the University of Pennsylvania Law School in commemoration of the 250th anniversary of the landmark Zenger trial. The 100th birthday of the Minneapolis Library was the occasion for another presentation that month, on "Libel Law and Its Future." While in Minneapolis, Franklin also gave a faculty seminar at the University of Minnesota Law School. In November he appeared at a UC-Berkeley conference, entitled Protection of Reputation in a Democratic Society, to speak on "A Declaratory Judgment Alternative to Current Libel Law." In March he gave the keynote speech—"The Libel Picture Today, and How We Got Here"—at a national libel symposium in New York sponsored by the joint ABA/ANPA (American Newspaper Publishers Association) task force. In April he presented the Coen Lecture at the University of Colorado Law School, on the topic, "Letters to the Editor: Toward an Open Forum." And in June, he gave a paper, "Proposals for Libel Law Reform," at a Columbia University conference in New York City. The conference—

(Continued on next page)

FACULTY NOTES (continued)

entitled *The Cost of Libel: Economic and Policy Implications* — was cosponsored by Columbia's Gannett Center for Media Studies and by the Center for Telecommunications and Information Studies of the Graduate School of Business. Professor Franklin is currently serving as chairman of the search committee for a new Dean (see page 38).

Paul Goldstein testified on the Report of the Office of Technology Assessment, *Intellectual Property Rights in an Age of Electronics and Information*, before a joint session of the U.S. Senate Subcommittee on Copyrights, Patents and Trademarks, and of the House of Representatives Subcommittee on Courts, Civil Liberties, and the Administration of Justice. He also delivered two papers on related issues: "Infringement of Copyright in Computer Programs," at Carnegie-Mellon during a Software Engineering Institute conference on *The Future of Software Protection*; and "The Technology of Copyright," to the Los Angeles Copyright Society.

Robert W. Gordon delivered the Susman, Godfrey & McGowan Centennial Litigation Lecture at the University of Texas Law School, in April, on "Virtue, Commerce and Lawyers." In Chicago in May, he gave one of the two leading papers at an American Bar Foundation conference on the history

of corporation law and corporation lawyers. And in June, in London, Ontario, he served on the faculty of the Western Ontario Summer Seminar in Legal History for Canadian law teachers.

William B. Gould IV lectured in Honolulu last March on "Wrongful Discharge Law" at a conference with the title, *Labor Law Issues Facing Japanese Companies Doing Business in the U.S. and U.S. Companies Doing "Japanese-Style" Business in the U.S.: The New Labor Relations in the U.S.* His next appearance, where he spoke on the future of labor law, was at a UAW conference for local union officials, in Black Lake, Michigan. The Stanford Club in Kansas City heard him in April on collective bargaining and professional sports. Later, at the University of Wisconsin Law School in Madison, he gave a university-wide lecture, "The Future of Wrongful Discharge Litigation and Legislation." In May he spoke on preemption and labor law at the Los Angeles County Bar's Southern California Labor Law Symposium. That month he was also awarded the LL.D. by the University of Rhode Island. He has in addition recently written op-ed pieces on baseball, discrimination, and affirmative action, for the *Boston Globe*, *San Francisco Examiner* and *Chronicle*, and *New York Times*.

Henry T. Greely has been involved in a capital case begun on a *pro bono* basis during his Tuttle & Taylor days. The subject of four opinions from the Montana Supreme Court, *Coleman v. Risley* recently reached the federal level with an appeal, argued by Greely on May 7, before a Ninth Circuit panel in Portland. Tim Ford '74 was a co-counsel. The decision, remarks Greely, "might be announced anytime in the next few years."

Thomas C. Grey spent the last week in June at Northwestern, teaching in the International Summer Institute for Semiotic and Structural Studies, a four-week course for young scholars that brings together teachers in the disciplines of Law, History, Literature, and Semiotics (the study of sign systems, including language). Grey's subject was constitutional interpretation.

Samuel R. Gross testified on pending federal death penalty legislation, before the House Judiciary Committee's Subcommittee on Criminal Justice, May 7 in Washington, D.C. In Chicago May 30-June 1 for the annual Law and Society meeting, he participated in a panel on racial discrimination in capital punishment, chaired a second panel on expert evidence, and gave a special presentation on *Lockhart v. McCree* (the subject of his At Issue piece on pp. 11—).

John Kaplan gave the Philip Hart Lecture at Georgetown University Law School in April. His topic: "Does the Criminal Law Have Much to Do with Crime?" He was also the luncheon speaker at a recent Boston University symposium, with a talk entitled "On Evidence and Theories of Probability." And at Nova University in Fort Lauderdale he discussed the issue, "Can We Expect a Breakthrough in the War on Drugs?" (His answer—"No.") Professor Kaplan has in addition been named to the National Research Council's Committee on Use of Laboratory Animals in Biomedical and Behavioral Research.

Thomas F. McBride has been appointed by Gov. Deukmejian to the California Council on Mental Health. The Council advises and assists the state legislature and the Director of Mental Health in developing health plans and priorities, reviewing mental health services, and promoting coordination of community mental health resources. Members include health professionals and public and consumer representatives, of which Associate Dean McBride is one.

Miguel A. Mendez is spending the Fall term as visiting professor at the University of Vermont. He and former Assistant Dean **Victoria Sainz Diaz '75** (who is also visiting at Vermont) were married June 2 in Stanford's Memorial Church.

John Henry Merryman was recently appointed chair of the Visual Arts Division of the ABA's Forum Committee on Entertainment and Sports Law. He has also been named to the Legal Advisory Board of the International Foundation for Art Research (IFAR) in New York City. Though now emeritus, he continues to teach (Art and the Law), be published ("Thinking About the Elgin Marbles," *Michigan Law Review* 83:8), and make public appearances (the Art Department's "Great Debates" of last winter). The latter, which featured Merryman and Art Professor **Albert Elsen**, dealt with the proposed removal from Federal Plaza in New York City of Richard Serra's "Tilted Arc" and whether the Elgin Marbles, now housed in the British Museum, should be returned to Greece. Merryman's artistic legacy to the School is the subject of a piece on pages 44-45.

A. Mitchell Polinsky has returned from a sabbatical year at the Hoover Institution, where he was a National Fellow. He gave a number of lectures during the spring on liability and litigation costs—in Washington, D.C. at the Federal Trade Commission and the Department of Justice, and in Chicago at the University of Chicago Law School's Law and Economics Seminar.

Robert L. Rabin delivered papers at two recent conferences. The first—on Environmental Liability and the Tort System—took place in

April under the sponsorship of the Houston Law Center. At the second, sponsored in May by the Canadian Institute for Advanced Research, he spoke on "Deterrence and the Tort System." Rabin has also written articles appearing in current issues of *Stanford Law Review* and *Journal of Legal Studies*.

Deborah L. Rhode became Director of Stanford's Institute for Research on Women and Gender, on September 1 (see page 46). Last spring she delivered the Banker-Lecturer in Professional Responsibility at the University of Montana Law School. A paper based on her recent AALS address on solicitation has recently been published in the *Journal of Legal Education*. Two other articles have appeared in edited collections: "Feminist Perspectives on Legal Ideology," in Oakley and Mitchell, eds, *What is Feminism*; and "Justice, Gender and the Justices," in Crites and Hepperle, eds, *Women, the Courts, and Equality*.

Michael S. Wald was an invited speaker at the annual C. Henry Kempe Center Conference on Child Abuse, May 19-23, in Keystone, Colorado. In August he was in Sidney, Australia, to serve as a keynote speaker at the Fifth International Conference on Child Abuse and Neglect. While Down Under, he gave invited talks in Brisbane, Hobart, and Townsville. This summer he also had an article,

"Prevention of Child Abuse—What Do We Know?" published in *Family Law Quarterly*. And last March

he conducted a training session in Monterey for all California juvenile court judges. □



White House Fellowships

the fellowship program

The White House Fellowship program is beginning its twenty-second year and is designed to provide gifted and highly motivated Americans firsthand experience in the process of personal involvement in the leadership of their society.

who is eligible

U.S. citizens are eligible to apply during the early and formative years of their careers. There are no basic educational requirements and no special career or professional categories. Employees of the Federal Government are not eligible, with the exception of career military personnel of the Armed Services. The commission seeks candidates of demonstrated excellence in their professional roles as well as significant breadth of interests and community involvement.

what fellows do

During their one year assignments in Washington, Fellows serve as special assistants to Cabinet secretaries, or senior members of the White House staff. Additionally, Fellows participate in an extensive education program including seminars with top government officials, leading scholars, journalists and private sector leaders.

how to apply

Application forms and additional information can be obtained from: President's Commission on White House Fellowships, 712 Jackson Place N.W., Washington, D.C. 20503, (202) 395-4522. Applications are accepted from June 1 to December 15.

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Alumni/ae

GATHERINGS

At the California State Bar luncheon: Speaker Paul Goldstein, Lillick Professor of Law (above); alumni Bob Clifford '51, Sam Barnes '49 and Lew Fenton '50 (l-r, center); Victor Beauzay '51, Dean Ely and Judge Robert Hinrichs '65 (l-r, below).



EAST COAST graduates recently welcomed Dean Ely at receptions in **Washington, D.C.** (Sept. 23), **Boston** (Sept. 25), and **New York City** (Sept. 29). The Dean discussed developments at the School, fielded questions, and greeted old and new acquaintances in each of the three cities. John Gilliland, the newly appointed Associate Dean for Development (see p. 38), was also on hand. Thanks go to Neil Golden '73 in D.C., Ellen Corenswet '75 in Boston, and Heidi Duerbeck '72 in New York for helping arrange the events, and certainly to Joe Scudder (AB '27) for picking up the check in New York.

On July 16, the **Stanford Law Society of Washington, D.C.**, entertained a different kind of West Coast ambassador—11 different California wines, which were compared with six French vintages (all chardonnays) at a wine tasting planned by Neil Golden (again) and Bob Carmody '62. Word has it that the California varietals more than held their own. Some seventy alums and summer associates turned out for the occasion, which took place on Covington & Burling's roof terrace overlooking Pennsylvania Avenue.

Earlier in the year, on May 19, the D.C. group also sponsored (with the local Stanford Business School Alumni Association) a reception featuring a talk by U.S. Trade Representative Clayton Yeutter. The Hart Senate Office Building

PHOTOS BY MARCO ZECCHIN



VAL FLESCH

Bay Area graduates and students at the August 14 San Francisco reception included Jennifer Drobac and Karen Klein (both in the Class of 1987) and Margaret Caldwell '85.

was the place and the indefatigable Neil Golden on-site coordinator.

Another opportunity for Eastern alums to mingle was provided August 11 by the Stanford reception at the **ABA Annual Meeting**, held this year in New York City. More than 85 graduates showed up at the Hilton for the event, which included a briefing by Professor Bill Baxter on news of the School.

The School's traditional **California State Bar** luncheon gathering, which took place Sept. 15 at the Monterey Sheraton, drew a crowd of fifty graduates. Dean Ely was present to provide an update on the School and to introduce Prof. Paul Goldstein, who discussed the fast-shifting area of intellectual property rights law. Also there were Associate Dean Gilliland, Law Fund Director Elizabeth Lucchesi, and Alumni/ae Relations Director Susan Huch.

Other West Coast events of the past few months include a special reception given at the School on May 14 to tell members of local law firms about the **East Palo Alto Community Law Project**. Dean Ely and Peggy Russell '84 (one of the Project's founders) traced

the School's involvement with the fledgling law clinic. And Visiting Professor Bill Hing and EPACLP Executive Director Susan Balliet described the ways in which students participate in the Project's many programs and services.

The **San Francisco Law Society** got summer under way with a June 18 luncheon at the Hyatt Regency. As guest speaker, Professor Thomas Heller considered the "Changing Face of Stanford Education."

The San Franciscans gathered again on August 14 for a reception cohosted with **Stanford Women Lawyers**. The event, held for the Class of '86 and current Stanford law students, took place in the Golden Gate Room (breathtaking view) at the Bank of America World Headquarters Building. More than fifty graduates were there to visit with each other and hear Associate Dean Jack Friedenthal talk about the School. Frederick Caspersen '71 and Don Querio '72 deserve mention for their assistance.

Stanford Women Lawyers had earlier, on April 22, held a reception at the School in honor of women members of the Law faculty. Over forty graduates and faculty

sampled wine and cheese at the late afternoon gathering, which was followed by an alumnae panel discussion for law students on career alternatives.

On July 11, up Puget Sound way, Colleen and George Willoughby '58 once again opened their Bellevue home to the **Washington Law Society** for their annual barbeque. Newly elected President Margaret Niles '83 welcomed summer clerks as well as alumni/ae. In addition to the hosts, Rob Thomas '78 gets sincere thanks for his picnic planning skills.

The **Southern California Law Society** got in the swing August 16 with a "Hollywood Bowl Night," featuring André Previn and the Los Angeles Symphony Orchestra performing Beethoven's Ninth. More than 50 graduates and guests found their way to the Stanford flag marking the pre-concert tailgate. To Chris McNevin '83, who made all the arrangements, a hearty Encore!

Last but hardly least is the Sept. 26 meeting of Oregon alums during the **Oregon State Bar Convention**, held this year in Vancouver, British Columbia. The group elected Mary Ann Frantz '78 as president; Jerry North '75, vice-president; and John Barlow '81, secretary. Joining them as special guest was Susan Huch, who described current activities of the Alumni/ae Relations office. Credit for the event's success goes to the society's outgoing president, John Hassen '65. □

LETTERS

To the Editor:

In your Spring 1986 issue appears an article entitled "Taking a Walk: The U.S. and the World Court," by Judith C. Appelbaum, Class of '77. Ms. Appelbaum is identified as a partner in the law firm that serves as counsel to the Government of Nicaragua which filed the action against the United States, which at once gives her credence and yet could establish a bias.

The article's critical appraisal of the high-level U.S. Administration action in the matter in an international forum, I believe requires a reply or rebuttal thereto by someone equally informed, for publication by you, and I do hope it will be possible, in all fairness, to do so. As I recall it, the "media" reports that came to my attention in this regard only briefly discussed the Administration's reasons.

Your magazine is, in my opinion, a very worthy effort, and a welcome reminder of my academic years.

William C. Stein '31
Beverly Hills, California

We welcome debate and are thus pleased to publish on pp. 14ff. an opposing view of the U.S./World Court issue, as seen by former State Department attorney-advisor Michael J. Danaher '80—ED.

WORLD COURT

(Continued from page 15)

declaration accepting the Court's compulsory jurisdiction—a declaration that, however, contained a reservation excluding disputes “concerning activities connected with national defense.” France maintained that the Court lacked jurisdiction. The French nuclear tests were as unpopular then as U.S. Central American policy is now, and the Court's decision, then as now, reflected the prevailing politics. In order to grant “provisional measures” (the World Court equivalent of a preliminary injunction), the Court implicitly reached the remarkable conclusion that French nuclear tests might not be connected with France's “national defense.” Shortly thereafter France terminated its declaration accepting the Court's compulsory jurisdiction.

In short, highly politicized disputes may not receive the impartial, judicial consideration that declarant states expected when they accepted the Court's compulsory jurisdiction.

One final point of theory: even a state that is willing to accept Court jurisdiction over most disputes may find a particular dispute unsuited for litigation. One of many possible reasons is the lack of international agreement on the applicable legal rules. Many areas of international law are not settled, often because of ideological differences. In such instances, the development of the law is affected by state practice, by bilateral and multilateral treaties, and by decisions of international tribunals. For example, in cases such as the *Gulf of Maine* case brought by the U.S. and Canada, the Court's judgments have helped shape the law of maritime boundary delimitation. Often, however, the U.S. may not wish to allow the Court the opportunity to influence the development of controversial areas of the law.

Again, the *Nicaragua* case provides a good example. As the Court interpreted the law, even if Nicaragua is arming, supplying and supporting rebel forces that commit terrorist and subversive acts in El Salvador (a conclusion the Court did not accept), El Salvador has no right to engage in “collective self-defense”

against Nicaragua. In other words, the U.S. may not use force against Nicaragua to defend El Salvador from Nicaraguan subversion.⁵

This holding adopts a legal theory advocated by some third world states but rejected by the U.S., the United Nations and most authorities on international law. It is a dangerous theory. One dissent called it “a prescription for the overthrow of weaker governments by predatory governments while denying potential victims what in some cases may be their only hope of survival.”⁶ After reading the Court's Judgment, the U.S. may well conclude that the desired development of international law might be retarded if the present Court decided more cases involving the legal right of states to respond to terrorism and cross-border support for insurgencies.

And the future?

The U.S. will continue to consent to the Court's jurisdiction by special agreement and by treaty, when appropriate. Some disputes will carry too much political freight for the Court to bear. Some disputes will involve unsettled areas of the law not suited for the Court's consideration. Some cases, such as the U.S.-Italian expropriation dispute, may be submitted to five-judge “chambers” of the Court, where the selection of judges may mitigate political and other concerns. (The chamber procedure is not available under compulsory jurisdiction.) As always, most disputes will be handled by diplomatic means.

The U.S. will, I hope, approach the Court without illusions, recognizing both its important role in the international legal system and its limitations. U.S. policymakers must be guided by a realistic assessment of the Court, not by romantic myths about the marble Peace Palace in The Hague. □

Michael J. Danaher practices business and international law with the San Francisco firm of Howard, Rice, Nemerovski, Canady, Robertson & Falk. He was formerly an attorney-adviser in the Department of State's Office of Legal Adviser.

Footnotes

¹ Appelbaum, “Taking a Walk: The U.S.

and the World Court,” *Stanford Lawyer*, Spring 1986.

² See, for example: Reisman, “Has the International Court Exceeded Its Jurisdiction?,” 80 *Am. J. Int'l. L.* 128 (1986); and Franck, “Icy Day at the ICJ,” 79 *Am. J. Int'l. L.* 379 (1985).

³ The Judgment and separate opinions are reprinted in 24 *International Legal Materials* 38 (1985).

⁴ Jerzi Sztucki, Professor of Law at the University of Uppsala, wrote that, “The circumstances surrounding the Court's decision [denying El Salvador's motion to intervene] might reinforce the suspicion—noticeable in other aspects of the Nicaragua case—of politicization of judicial proceedings and anti-Western bias.” Sztucki, “Intervention Under Article 63 of the ICJ Statute in the Phase of Preliminary Proceedings: The ‘Salvadoran Incident’,” 79 *Am. J. Int'l. L.* 1005, 10036 (1985).

⁵ *Case Concerning Military and Paramilitary Activities In and Against Nicaragua, Judgment*, para. 195.

⁶ *Id.*, *Separate Opin.* (Schwebel), para. 177.

IN MEMORIAM

(Continued from page 77)

and chaired the Thirty-fifth Reunion—where he again enthusiastically led the old yells. Craig also found time to serve as a host at Phoenix receptions honoring visiting Deans and was a charter member of the Board of Visitors (1958–63).

“Twenty years ago, when we were on the Board of Visitors, Wally Craig foresaw the problem of legal ethics,” remembers Nate Finch '34 of Palo Alto. “His concern led to strengthening the ethics coursework at the Law School.”

Dean Ely paid tribute to Judge Craig in a July 3, 1986, letter to his widow: “He was a distinguished member of the legal profession who will long be remembered for his dedication to public service. We at the Law School take great pride that he was so closely associated with Stanford.”

—Richard E. Ryan '34

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