

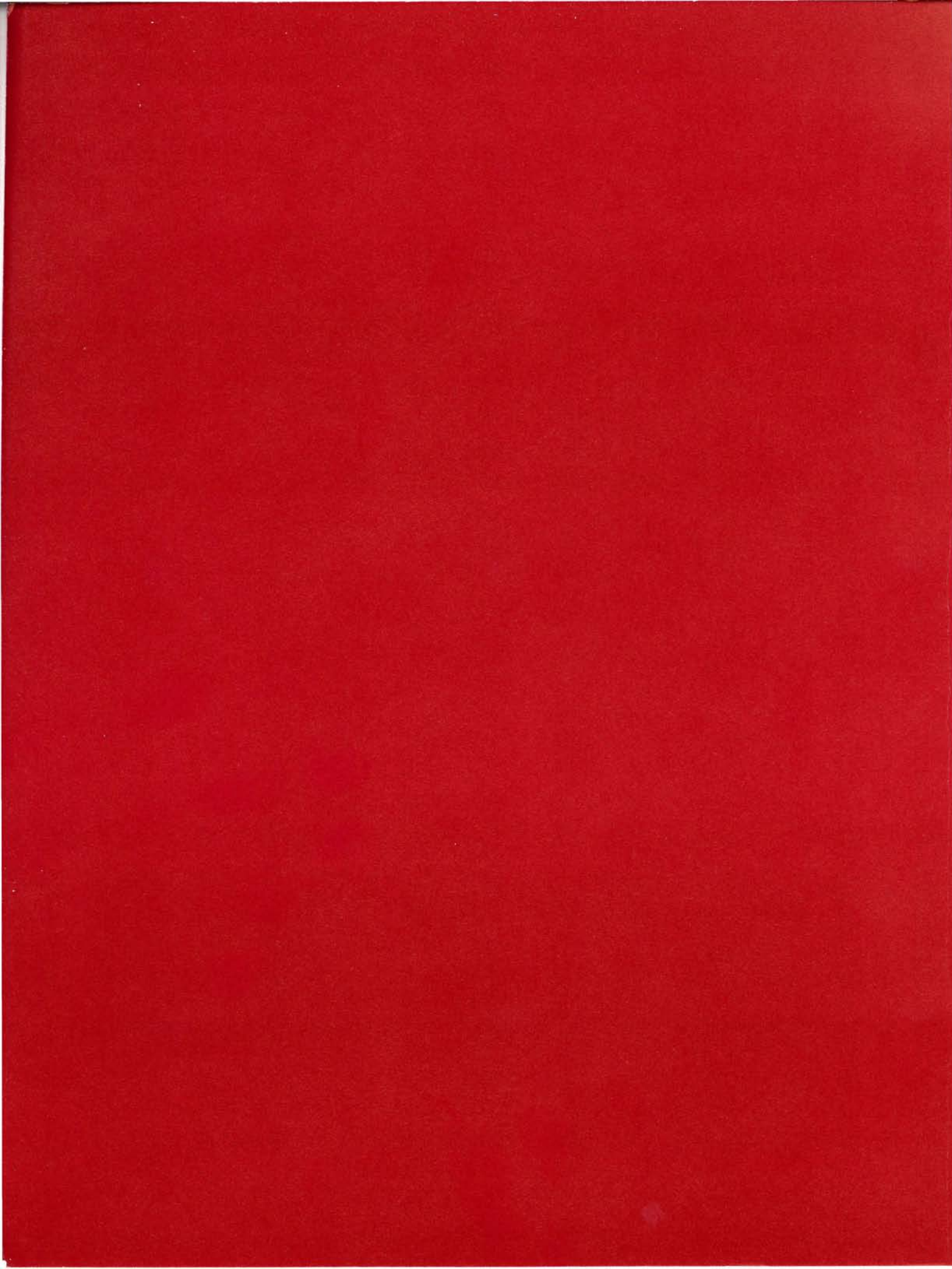
# Stanford **LAWYER**

SPRING 1984

VOL. 18, NO. 2



Defending the Guilty / Antitrust / Peace Moves / Art Trade / Land Use Controls





# Stanford LAWYER

SPRING 1984 VOL. 18, NO. 2

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Cover photo by Leo Holub  
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 page 45.

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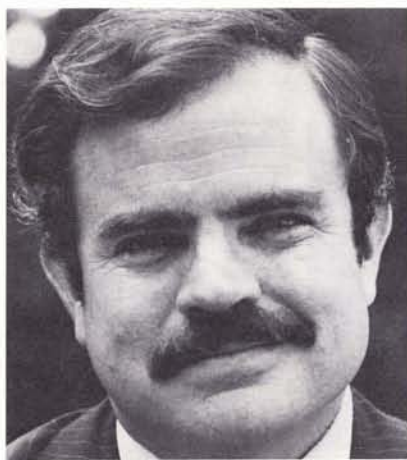
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# From the DEAN



**John Hart Ely**

**A**s you noticed, the current faculty grace this issue's cover (minus a few of us, unfortunately including the Dean. That's me above). Instead of boring you with some brief but repetitive message, I thought it might be fun to share with you—for purposes of comparison and/or nostalgia—some earlier

faculty group photographs. (Carl Spaeth's deanship was as early as we were able to go. The faculty photographs from earlier times that we located were of individuals, and did not picture the faculty as a group.) Needless to say, we would be interested if anybody has or is aware of any such pictures—as, indeed, we are interested in all pictures reflecting the history of the School. □

## 1977 ▼

**Front:** Howard R. Williams, Thomas C. Grey, John Henry Merryman, Barbara A. Babcock, J. Keith Mann.

**Middle:** J. Myron Jacobstein, Wayne G. Barnett, Kenneth E. Scott, David L. Engle.

**Rear:** William F. Baxter, Marc A. Franklin, Byron D. Sher, Charles J. Meyers (Dean), Gordon Kendall Scott, Paul Goldstein, and Paul Brest.



## 1974 ►

**Front row, L to R:** Byron D. Sher, Thomas C. Grey, Michael S. Wald, Richard J. Danzig, Mauro Cappelletti, Robert L. Rabin

**Second row, L to R:** Gerald Gunther, Moffatt Hancock, J. Myron Jacobstein, Barbara A. Babcock, Kenneth E. Scott, Howard R. Williams, William F. Baxter, John Kaplan, William Cohen, Paul Brest, David Rosenhan

**Third row, L to R:** William B. Gould, Victor H. Li, Robert A. Girard, John H. Barton, John Henry Merryman, Jack H. Friedenthal, Thomas Ehrlich (Dean), Richard S. Markovits, Marc A. Franklin, Charles J. Meyers, J. Keith Mann, Lawrence M. Friedman, William D. Warren

## 1967 ►

**Front row, L to R:** Charles J. Meyers, J. Myron Jacobstein, Robert A. Girard, Bayless Manning (Dean), John Henry Merryman, Howard R. Williams, Joseph T. Sneed

**Back row, L to R:** Byron D. Sher, Lawrence M. Friedman, John Kaplan, Jack H. Friedenthal, Douglas R. Ayer, William F. Baxter, Gordon Kendall Scott, John R. McDonough, Moffatt Hancock, Marc A. Franklin, Dale S. Collinson, Wayne G. Barnett

## 1961 ►

**Front row, L to R:** Harry John Rathbun, Marion Rice Kirkwood, Carl Bernhard Spaeth (Dean), James Emmet Brenner, Joseph Walter Bingham

**Second row, L to R:** John Henry Merryman, Moffatt Hancock, John R. McDonough, Gordon Kendall Scott, John Bingham Hurlbut, Lowell Turrentine, Samuel David Thurman, David Freeman (Assistant Dean)

**Third row, L to R:** Edwin M. Zimmerman, John H. DeMouly, Richard A. Wasserstrom, Robert A. Girard, Lawrence Forrest Ebb, Byron D. Sher, Herbert L. Packer, William F. Baxter, Philip H. Wile







# Defending the

by Barbara Allen Babcock  
*Professor of Law*

**H**ow can you defend a person you know is guilty? I have answered that question hundreds of times, but never to my inquirer's satisfaction, and therefore never to my own. In recent years, I have more or less given up—abandoning the high-flown explanations of my youth, and resorting to a rather peevish “Well, it's not for everybody. Criminal defense work takes a peculiar mind-set, heart-set, soul-set.”

While I still believe this, the mind-set, at least, might be more accessible through a better effort at explanation.

My perspective is that of a practitioner as well as an academic. From 1964 to 1972 I was a criminal defense lawyer, first with the firm of Edward Bennett Williams in Washington, D.C., and then as a public defender. I regard those years as immensely satisfying.

However, this experience also gave me ample opportunity to observe the pathology of the system, which I've continued to follow as a teacher of criminal procedure. I've also read many dozens of books by and about criminal defense lawyers, which largely mirror my own experiences.

With this background—and with my present security in a good academic job—I feel able to discuss, without the usual hand wringing or washing, what it is like to defend the guilty.



*Professor Babcock was director of the Washington, D.C. Public Defender Service for four years before joining the Stanford faculty in 1972. She has also been (1977-79) assistant attorney general in charge of the Civil Division of the U.S. Department of Justice.*

*These views were first presented in an endowed lecture April 5, 1983, at the Cleveland-Marshall College of Law, and again, briefly, on October 8, during the Stanford Law Alumni/ae Weekend. A more extensive article, fully footnoted, will soon appear in the Cleveland-Marshall law journal.*





# Guilty





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## What Is the Question?

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Most people do not mean to question defending those accused of computer crime, embezzlement, or tax evasion. Usually the inquirer is asking, How can you defend a robber, a rapist, a murderer?<sup>1</sup>

In its components, the question is first, How *can* you when you know or suspect that if you are successful, he will be free to commit other murders, rapes, and robberies?

Second, how can *you* defend a guilty man? You, with your fancy law degree, your nice clothes, your pleasing manner.

Third, how can you *defend*—i.e. move to suppress the evidence of clear guilt found on his person, break down on cross-examination an honest but confused witness, subject a rape victim to a psychiatric examination, or reveal that an eyewitness to a crime has a history of mental illness?

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## What Are the Answers?

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*The garbage collector's reason.* Yes, it is dirty work, but someone must do it. We cannot have a functioning adversary system without a partisan for both sides. The defense counsel's job is no different and the work no more despicable than that of the lawyer in a civil case, who arranges, argues, and even orients the facts with only the client's interest in mind.

This answer may be elegantly augmented by a civil libertarian discussion of the Sixth Amendment and the ideal of the adversary system as our chosen mode for ascertaining truth.

The civil libertarian also tells us that the criminally accused are the representatives of us all. When their rights are eroded, the camel's nose is under and the tent may collapse on anyone. In protecting the constitutional rights of the accused, we are only protecting ourselves.

*The legalistic or positivist's reason.* Truth cannot be known. Facts are indeterminate, contingent and, in criminal cases, often evanescent. A finding of guilt is not necessarily the truth, but rather a legal conclusion arrived at after the role of the defense lawyer has been fully played.

The sophist would add that it is not the duty of the defense lawyer to act as fact finder. Were she to handle a case according to her own assessment of guilt or innocence, she would be in the role of judge rather than advocate.

Finally, there is a difference between legal and moral guilt: the defense lawyer should not let his apprehension of moral guilt interfere with his analysis of legal guilt. The example usually given is of the person accused of murder who can respond with self defense. The accused may be morally guilty but not legally culpable.

The odds-maker chimes in that it is better that ten guilty people go free than that one innocent be convicted.

*The political activist's reason.* Most people who commit crimes are themselves the victims of horrible injustice. This is true generally because most of those accused of rape, robbery, and murder are oppressed minorities. It is often also true in the immediate case, because the accused has been battered and mistreated in the process of arrest and investigation. Moreover, what will happen to the person accused of serious crime if he is imprisoned is, in many instances, worse than anything he has done. Helping to prevent the imprisonment of the poor, the outcast, and minorities in shameful conditions is good work.

*The social worker's reason.* This is closely akin to the political activist's reason, with some difference in emphasis. Those accused of crime, as the most visible representatives of the disadvantaged underclass in America, will actually be helped by having a defender, no matter what the outcome of their case. Being

treated as a real person in our society (almost by definition, one who has a lawyer is a real person) and accorded the full panoply of rights and measure of concern a lawyer affords can enable a step toward rehabilitation. And because the accused comes from a community, the beneficial effect of giving him his due will spread to his friends and relatives, decreasing their anger and alienation.

To this might be added the humanitarian's reason: the criminally accused are men and women in great need, and it is part of one's duty to fellow creatures to come to their aid.

*The egotist's reason.* Defending criminal cases is more interesting than the routine and repetitive work that most lawyers do, even those engaged in what passes in civil practice for litigation. The heated facts of crimes provide voyeuristic excitement. Actual court appearances, even jury trials, come earlier and more often in one's career than could be expected in any other area of the law.

And winning—ah, winning—has great significance because the cards are stacked for the prosecutor. To win as an underdog, and to win when the victory is clear (there is no appeal from a not-guilty verdict) is sweet.

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## My Own Reason

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My reason for finding criminal defense work rewarding is an amalgam in about equal parts of the social worker's and the egotist's reason.

I once represented a woman—let's call her Geraldine—who was accused under a draconian federal drug law of her third offense for possessing heroin. Under this law (since repealed) the first conviction carried a mandatory sentence of five years with no possibility of probation or parole. The second conviction carried a penalty of ten





years with no probation and no parole. The third conviction carried a sentence of twenty years on the same terms.

She was 42 years old. During the few years of her adult life when not incarcerated by the state, she had been imprisoned in heroin addiction of the most dreadful sort. She was black, poor, and ugly—and there was no apparent defense to the charge. But even for one as bereft as she, the general practice was to mitigate the harshness of the law by allowing a guilty plea to a drug charge under local law, which did not carry the mandatory penalties. In this case, however, the prosecutor refused the usual plea.

Casting about for a defense, I sent her for a mental examination. The doctors at the public hospital reported that she had a mental disease: "inadequate personality." When I inquired about the symptoms of this illness, one said: "Well, she is just the most inadequate person I've ever seen." But there it was—at least a defense—a disease or defect listed in the diagnostic manual of that day.

At the trial I was fairly choking

with rage and righteousness. I tried to paint a picture of the impoverishment and hopelessness of her life, through lay witnesses and the doctors (who were a little on the inadequate side themselves). The prosecutor and I came close to blows. At one point, he told the judge he couldn't continue because I had threatened him (which I had—with referral to the disciplinary committee if he continued what I thought was unfair questioning).

Geraldine observed the seven days of trial with only mild interest, but when after many hours of deliberation the jury returned a verdict of Not Guilty by Reason of Insanity, she burst into tears. Throwing her arms around me, she said: "I'm so happy for you."

Embodied in the Geraldine story, which has many other parts but which is close to true as I've written it, are my answers to the question.

By direct application of my skills, I saved a woman from spending the rest of her adult life in prison. In constructing her defense, I became intimate with a life as different from my own as could be imagined, and I learned from that. In ways that are

not measurable, I think that Geraldine's friends and relatives who testified and talked with me were impressed by the fact that she had a "real" lawyer provided by the system.

But in the last analysis, Geraldine was right. The case became my case, not hers. And what I liked most was the unalloyed pleasure of the sound of "Not Guilty." There are few unalloyed joys in life.

The lawyer's discipline requires, however, that we do more than respond to the immediate question. We should also consider whether, in fact, the right question is being asked.

### Is the Question Right?

The persistence and insistence of the question—How can you defend the guilty?—is based on the image of the defense lawyer using daring courtroom skills and legal technicalities to free a homicidal maniac. Yet this is a fantasy almost never realized.

The vast majority of those accused of crime plead guilty—in some jurisdictions as many as 90 percent of those charged. Nowhere is the guilty plea rate less than 60 percent.

In one rough sense this may appear to be a fair result, since most defendants are guilty of something along the lines of the accusation. Yet many, in some places most, of those who plead guilty do so without their lawyers', or anyone else's, thinking very seriously about possible defenses or extenuating circumstances.

Rather than the popular myth of an adversary system designed to produce individuated findings of guilt while protecting precious rights, we have a bureaucratic guilty-plea mill that grinds all alike. Overburdened defense lawyers without investigation or preparation arrange for the going rates on cases and trade one off against the others.



The appropriate question for many defense lawyers is, then, How can you participate in such a process? or even Why *don't* you defend the guilty?

The realities of a criminal justice system in which few are actually defended seldom surface in print. But *Life* magazine once followed an experienced public defender in his daily rounds in New York City. The defender entered a crowded cell block on the day of trial to discuss a proposed deal with a client he had never seen before. Highlights of the conversation between Erdmann (the lawyer) and Santiago (the client) were recorded:

"If you didn't do anything wrong," Erdmann says, "then there's no point even discussing this. You'll go to trial."

Santiago nods desperately. "I ain't done nothing! I was asleep! I *never* been in trouble before." (This is the first time, since his initial interview with a law student seven months ago, that he has had a chance to tell his story to a lawyer, and he is frantic to get it all out. Erdmann cannot stop the torrent, and now he does not try.) "I been here ten months. I don't see no lawyer or nothing. I ain't had a shower in two months. We locked up 24 hours a day. I got no shave, no hot food. I ain't *never* been like this before. I can't stand it. I'm going to kill myself. I got to get out. I ain't—"

Now Erdmann interrupts, icily calm. "Well, it's very simple. Either you're guilty or you're not. If you're guilty of anything, you can take the plea and they'll give you a year; and, under the circumstances, that's a very good plea, and you ought to take it. If you're *not* guilty, you have to go to trial."

"... I'm innocent. I didn't do nothing. But I got to get out of here. I got to—"

"Well, if you *did* do anything and you are a little guilty, they'll give you time served and you'll walk."

"I'll take the plea. But I didn't do nothing."

"No one's going to let you take the



plea if you aren't guilty."

"But I didn't *do* nothing."

"Then you'll have to stay in and go to trial."

"When will that be?"

"In a couple of months. Maybe longer."

Santiago has a grip on the bars. "You mean if I'm guilty, I get out today?"

"Yes."

"But if I'm innocent, I got to stay in?"

"That's right."<sup>2</sup>

The wrong question is asked and nobody really cares, because most of those accused of crime are poor and often are minorities. A "we/they" mentality allows the shameful discontinuity between a criminal justice system described on paper and reality.

Yet unlike other sores on the body politic that arise from fear and prejudice, the breakdown of the criminal justice system is a tractable problem—once we resolve to solve it. There simply should be more lawyers, both public defenders and the regular litigating bar, doing criminal defense work in the same way and with the same expenditure of resources as other legal work.

If there were a large base of

lawyers willing to represent the accused, the question of how one defends the guilty would be subsumed in the larger one of what lawyers' work is about. And this is where the question belongs.

There is really nothing different about the ethical dilemmas or the amoral stance toward society of the lawyer in a civil case representing a "bad" person—even, or especially, in corporate form—than the lawyer representing someone guilty of a crime.

It is true that the facts of criminal cases are heated and that the stakes are high, but the very same ethical pressures exist in civil cases to win by shading the facts, crossing the line in witness preparation, and destroying or creating evidence.

Perhaps we should shift the focus of lawyers' work from its traditional unmitigated devotion to the client's interest. But until that is done, the defense of the guilty should be regarded in the same way as the representation of the "bad."

To inspire more lawyers to enter the lists, let us finally turn to an exemplary life—in the mode of nineteenth century biographies of saints and statesmen, presented for pedagogic effect. In all of the writing by and about criminal defense lawyers,



only one is universally recognized as being exemplary—Clarence Darrow.

Darrow lived from 1857 until 1938. Most of the things that defense lawyers dread happened to him: notably, indictment for obstruction of justice in a case where it was said that he arranged to bribe a potential juror; public obloquy for and misunderstanding of his representation of Leopold and Loeb; a frequent cloud over all of his activities because he represented the despoiled.

He had the characteristic criminal defense lawyer's view of defending the guilty as exemplified in a conversation with a friend who asked him, some years after an acquittal in a famous case, whether the accused had actually done it. Darrow said: "I don't know; I never asked him."<sup>3</sup>

One of his law partners said, "He would defend anyone who was in trouble. Though his motivations were different, he sometimes used the same methods as cheap criminal lawyers."<sup>4</sup>

Yet Darrow comes to us from the pages of the not-so-distant past as a mythic figure. This has not happened solely because of the amazing oratorical talent that was the mark of his practice. The exceedingly kind judgment of history is rather a result of his ability to convey directly to juries and judges the humanist values that compelled him to defend the guilty.

In virtually all of his cases, he spoke much more about the societal conditions that had produced the crime, the defendant as an individual, and the philosophical difficulty of distinguishing right from wrong, particularly for historical purposes, than ever he addressed the facts of the case or the particulars of the defense.

It is interesting that virtually none of Darrow's famous summations would be considered proper in any courtroom today. There is clearly an appeal to the prejudices, passions, and sympathy of the jury that violates codes of professional re-



### Darrow's Response

*Strange as it may seem, I grew to like to defend men and women charged with crime. It soon came to be something more than winning or losing a case. I sought to learn why one man goes one way and another takes an entirely different road. I became vitally interested in the causes of human conduct. This meant more than the quibbling with lawyers and juries, to get or keep money for a client so that I could take part of what I won or saved for him: I was dealing with life, with its hopes and fears, its aspirations and despairs. With me it was going to the foundation of motive and conduct and adjustments for human beings, instead of blindly talking of hatred and vengeance, and that subtle, indefinable quality that men call "justice" and of which nothing really is known.<sup>5</sup>*

Clarence Darrow, 1932

sponsibility, as well as an expression of personal opinion and belief that steps over the line of accepted practice.

Yet the way Clarence Darrow looked at defending—always in a perspective larger than the individual and the facts of the crime—is still with us. We're not allowed to say the things he said so eloquently and explicitly. But the fact finder, be it judge or jury, on a guilty plea or a trial, sees and senses what Darrow said when a defense lawyer truly represents his client.

Among the defense bar today there are hundreds of lesser Darrows, giving partial and implicit expression to what he could more openly state: that the causes of crime are unknown, perhaps unknowable, and that, in the end, we all share a common humanity with the accused. □

### Footnotes

1. In recent years, however, as white-collar crime has increased in both amount and sophistication, liberal critics of the criminal justice system have begun to raise the question in the context of rich and powerful defendants and the way in which their almost unlimited legal resources twist results.
2. Mills, J. "I have nothing to do with Justice," *Life*, March 12, 1971, pp. 55-68.
3. Stone, I., *Clarence Darrow for the Defense* (1941), p. 254.
4. Id. at p. 355.
5. Darrow, C., *The Story of My Life* (1932), pp. 75-6.

### Art Credits

Engravings by William Hogarth (1697-1764). Pp. 1-2: *The Rake's Progress* (Scene VII), "In the Fleet." P. 5: *The Industrious Apprentice*, "Alderman of London: Idle One Brought Before Him & Impeach'd by His Accomplish'd." P. 6: *Cruelty* (Third Stage), "Cruelty in Perfection." Reproduced from heliographs in *The Works of William Hogarth*, James R. Osgood & Co. (Boston, 1876). Our thanks to the Palo Alto Public Library for the loan of this fine volume.

Photograph of Clarence Darrow by Nickolas Muray (1892-1965). From the collection of the International Museum of Photography at George Eastman House, Rochester, N. Y.



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# A Conversation with William Baxter

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*Professor Baxter, the Reagan Administration's first anti-trust chief, rejoined the Stanford faculty on December 16 after three years in Washington.*

*As assistant attorney general in the Justice Department, he led what the New York Times called "a momentous overhaul of antitrust policy"—challenging Supreme Court decisions on vertical price-fixing and other issues; introducing economic analysis into antitrust decision making; ending the 13-year case against International Business Machines Corporation; and forcing the breakup of American Telephone and Telegraph Company.*

*The following interview, which took place shortly after his return, was conducted by Diana Diamond of the Stanford News Service. Ms. Diamond edited California Lawyer from 1981 to 1983.*

*A different perspective on some of the issues discussed by Professor Baxter is given by Professor Thomas Campbell in the article beginning on page 17. With both Baxter and Campbell (former director of the FTC's Bureau of Competition) at the School, Stanford now has on its law faculty two recent veterans of the nation's top antitrust posts.*

**I**t must be a dramatic change to have been involved in Washington, D.C., at what, I must assume, was a very hectic pace, and then come back to Stanford Law School, which certainly has a different flow to it.

Yes, it's an enormous cultural shock.

**You have been here since the '50s, haven't you?**

Oh, I've been here forever. I graduated from Stanford Law School in 1956, but I began my undergraduate work in 1947. You are right, though—I am still floating on an adrenaline cloud. I find myself waking up at four or four-thirty in the morning, saying "There must be some work around here that needs doing."

I have always been involved, though, in an active consulting practice, along with teaching, and I will do that again. That will be my salvation, and I will expend all the adrenaline I need.

**Why did you decide to go to Washington?**

Oh, the particular post that they offered me is sort of the mecca job of my specialty. It's the job that everybody who practices antitrust or regulatory law would like to have. For me, in particular, since for the past twenty years I had been teaching that they had large parts of it all wrong, there was an unusually strong obligation either to put up or shut up. I wanted to see how much of it I could change, and I changed a fair amount of it.







**Some say you made a contribution that will affect antitrust law for at least the next twenty years.**

It's still very controversial.

**Any regrets?**

No major ones. In retrospect you can always see how you could have done this a little better, or "Oh, I should have said this." But all in all, I am reasonably content with the way it played out.

**Why did you resign?**

Tired. And because next year is going to be a highly political year. It's hard enough to do things that are right but politically unpopular the first three years of an administration; it may become impossible the fourth year.

**Did you resign as a favor to Reagan or as a favor to yourself?**

I did it as a favor to myself. I didn't want to be in that political crossfire all year.

**Did you feel that some of the decisions you made—most notably the AT&T decision—would have had some negative impact on the upcoming election?**

Oh, I don't think so. The reorganization is so complicated that only a handful of people really understand it; people who do understand it think it's a very positive step. There's a certain amount of misunderstanding about its causing rate increases, which is totally wrong. But I don't think it will be a significant political factor one way or the other.

**Did you get a different view of Washington than you had from here?**

A little. No major change of viewpoint. More confidence in some points of view; more sharpness.

**Is it easy to accomplish things or did you find it more difficult than you thought to get a program or proposal across?**

It depends whether or not accomplishing something requires the cooperation of the Congress. If accomplishing something does, then it is extremely difficult to get anything done—virtually impossible. If you don't need the cooperation of the Congress, then it can be done.

**Then would you say that Reagan may be having some problems accomplishing his original programs because of the Congress?**

Oh sure. Congress as an institution is a disaster.

**What would you do then? We can't change it unless we change the Constitution.**

Well, that's right. And that's a very serious problem. It never really worked well. It worked tolerably well as long as we had the seniority system and responsible party leadership. But with the current destruction of seniority and total lack of party authority, there are 535 little fiefdoms back there. No one has any idea what anyone else is doing. Everybody looks for his own set of headlines—a very bad situation. And I don't see any obvious solution.

**There are ways the Constitution could be changed.**

We could somehow more closely approximate a parliamentary system. We could have the entire House elected once every four years—the same year as the president. Or we could have the president elected once every six years and get the House in the same six-year cycle, similar to the Senate.

But what has happened is that they have created a subcommittee for every member so that every member has its own little subcommittee and has its own staff. When the hearings go on, more often than not there's only the subcommittee chairman at the hearings, and no one else in Congress really cares.

**What do you plan to do here at Stanford?**

Go back to consulting, teaching, and writing. I've learned a lot about government institutions and a little bit more about antitrust law and regulatory functions. I think I have some new things I want to write about.

**I read that one of the reasons you left is because, you said, that although you had been involved with antitrust law in a most intimate way the last three years, you have lost track as a lawyer.**

Yes. I just didn't have time to read the cases, the economic literature, the finance literature. You consume the human capital with which you go to Washington and have very little opportunity to restock it while there.

**Did you enjoy working in and within the Reagan administration?**

Oh sure. I was quite properly regarded as a specialist. No one called me in to ask me what I thought the budget deficit should be. On the other hand, I was regarded as a specialist who had a lot more knowledge and understanding than most people in the administration on microeconomic and regulatory problems. So I did work with other people on a variety of problems.

**You probably will be most remembered for your decisions on the antitrust suit against IBM and the divestiture of AT&T. Do you regret either decision?**

Oh heavens, no.





**Are you proud of them?**

Sure.

**Which one was harder to arrive at—either analytically or politically?**

Well, IBM was much more difficult to do the right thing from a political standpoint, because it's perfectly obvious that there was going to be enormous criticism.

But I guess what I didn't foresee was that it would touch off a heroic effort to dig up some fanciful conflict of interest or something—that it would acquire the level of personal character assassination as it did at times. It was perfectly obvious that it was going to be intentionally criticized by some. It also was fairly clear in advance that AT&T was not going to be subject to a great deal of criticism, and it wasn't. Indeed, you came off looking like a hero. Here you negotiated the biggest divestiture in history. The litmus-paper loudmouths had a great deal of difficulty criticizing that because it looked like the government had won.

The difficulty with AT&T was the enormous complexity of the problem and acquiring sufficient confidence that you were insisting on the right language in the consent decree. Essentially, are we fracturing this

company along the right lines? Was it going to be commercially viable? Those were the difficulties with AT&T—the analytical difficulties, the comprehension difficulties; a command of an enormous body of complex technical and industrial data was necessary.

IBM involved some of that. A great deal of study went into reaching the conclusion that the government, in effect, after 13 years of wheel-spinning, had not begun to prove violation of Section 2 of the Sherman Act—the anti-monopolization section.

**Now that January 1 has arrived, the effect of the AT&T break-up will be felt more keenly. Rumor is that telephone rates will double, triple, all across the country.**

I think that the reorganization will be totally transparent to 99 percent of the population. About the only difference will be that they will have to make a decision whether they want to buy the instrument they are now leasing; and if they want a different type of instrument, they will have to go to the store and buy it—as they would any other appliance. Apart from those two things, no one is going to notice.

**My understanding is that local rates are probably going to double and that long-distance rates may come down.**

In the first place, if local rates go up—and we can talk about that—it will have nothing to do with the divestiture. The divestiture is not going to make any rates go up, down, or sideways. It has no effect whatsoever.

**Weren't long-distance rates subsidizing local rates?**

Yes, and they can go right on subsidizing local rates. The divestiture doesn't keep them from subsidizing local rates.

The fact is that there were a lot of forces at work that will continue to be at work. Larger and larger portions of the telephone industry will become competitive, and competition drives cross-subsidies out of the system. We may indeed decide—we should indeed decide—to stop subsidizing local service with a tax on long-distance, which is what we were doing, but it has nothing to do with the divestiture as such.

Similarly, local rates will go up because historically the regulators have insisted that those kinds of equipment be treated as having useful lives of 30 years and depreciated very slowly, although that equipment should have been depreciated over a period of 7 to 10 years.

In a regulated context, that has two consequences. First of all, it keeps today's rates lower, because you don't have to pay as much depreciation. But secondly, it makes tomorrow's rate base bigger, because what has not been written off in depreciation goes into tomorrow's rate base.



This is typical political behavior by politicians who have a time frame that never extends beyond the next election. They solve the problem by keeping today's rates low and letting someone else worry about the fact that you are pushing forward in time this enormous bulging rate base. And because the telephone company has to be allowed to earn a reasonable rate of return on this ever-fattening rate base, eventually it has to be amortized.

The FCC, under the new leadership, has recognized this and has required depreciation rates be made somewhat more reasonable. And the consequence of that is that we are going to have to be eating our way into this mountain of unamortized costs that the state regulators have pushed out in front of us. And that, too, will make rates tend to rise, although, again, it has nothing to do with the divestiture.

So, in short, I would say something along the following lines. The costs, as opposed to rates—the *costs* of telephone service will fall, and continue to fall in the years ahead.

The divestiture, by greatly intensifying competition in long-distance services and a number of other services, will tend to cause costs to fall more rapidly than they would have fallen otherwise. Certainly the cost of customer premises equipment will fall very dramatically with competition. We have every reason to expect that switching equipment and other kinds of equipment will fall similarly.

*Rates*, as opposed to costs, are affected by accounting conventions, involving such things as cross-subsidies and depreciation. And for some of these accounting reasons, what has been kept artificially low before is likely to move back to a more economically realistic level.

The primary thing that has been kept artificially low before are local residential rates. So local residential rates will be subject to two influences: they will be subject to the influence of falling real costs, but they also will be subject to the influence of more realistic rate-making. Which of those will dominate is not entirely obvious, although I think that even on an inflation-corrected basis, local rates will probably rise for a few years while we go through these corrective processes, and then, after four, five or six years, they will probably begin falling in real terms as the cost decreases become the dominant factor.

How much will that increase the rates? They are not going to double or quadruple or any of the silly things that have been said. They might increase as little as 25 or 30 percent. They might increase as much as 50 or 60 percent. Those are the realistic numbers.

**You have said the AT&T divestiture favors consumers, but in a sense it's the business consumer, not the residential consumer that is favored.**

No. It doesn't do people any good to have their businesses pay their phone bills for them. The phone system works less efficiently because of these crazy pricing features being forced into it. And you pay your real phone bill every time you buy a loaf of bread or a blouse at the store. It simply forces up the costs of the businesses that sell you the things that you buy.

**I have mixed reactions as a consumer. We had a system that in some ways was working very nicely. I could call almost any place in the country, or even the world, in seconds. My telephone usually works, the service is good. We have taken something that is very operative and reasonably cheap and changed it. And for the next four to five years there is that unknown out there.**

That's right. Every change can be greeted with apprehension.

**Will it ultimately be better for me—the residential customer?**

Oh, sure. On average, I haven't the slightest doubt about it.

Everyone's phone costs are going to fall. And, on average, rates will follow costs. The problem is buried in the "on average" statement, because some people will benefit more than others. And because of these accounting distortions that we have had in the past, there will have to be, or there will undoubtedly be, a correction period.

On the other hand, we can go right on making these mistakes if we are determined to do so. Divestiture doesn't make it impossible. Indeed, when I designed the divestiture decree, I carefully built into the decree a mechanism that permitted the regulators to go on making all the old mistakes, if they wanted to make the old mistakes. They have to make them somewhat more out in the open now, but the means for perpetuating those mistakes were carefully built into the consent decree.

What has happened is that the regulators have taken advantage of the fact of the consent decree, a big political maneuver. They have thrown up their hands and said, this strange, mystical force way off in Washington, D.C., over which we have no control, is going to make us correct these mistakes. So they are sort of using it as a screen, a political excuse, behind which to hide while they change some of these things.

Now, that doesn't particularly bother me. I am delighted to see them changing these things around, because there were economic errors, and it would be better off if they changed. I don't much care if they are pointing to the divestiture as the cause of these things. But no one with the slightest comprehension of what the system is about should be deceived.



**Turning to another area, you took a fairly strong position that manufacturers can forbid their distributors to have any price competition. How do you feel about that?**

The position I have taken is that manufacturers should be able to reach agreement with their distributors as to how those products should be distributed.

**The U.S. Supreme Court holds a totally different view.**

It did in 1962, which I guess was the last time they spoke about it. So maybe we will find out. I just argued a case before the U.S. Supreme Court that may cause them to address themselves to that issue again.

It is perfectly clear a manufacturer cannot go to a retail store and say, "Here is my product, I insist that you buy it. And I insist that you market it the way I want you to market it." The manufacturer can proceed only by seeking out retailers or wholesalers, depending upon the configuration of the distribution system, and reaching agreement with them—offering them a satisfactory price for the merchandise and entering into essentially a consensual relationship.

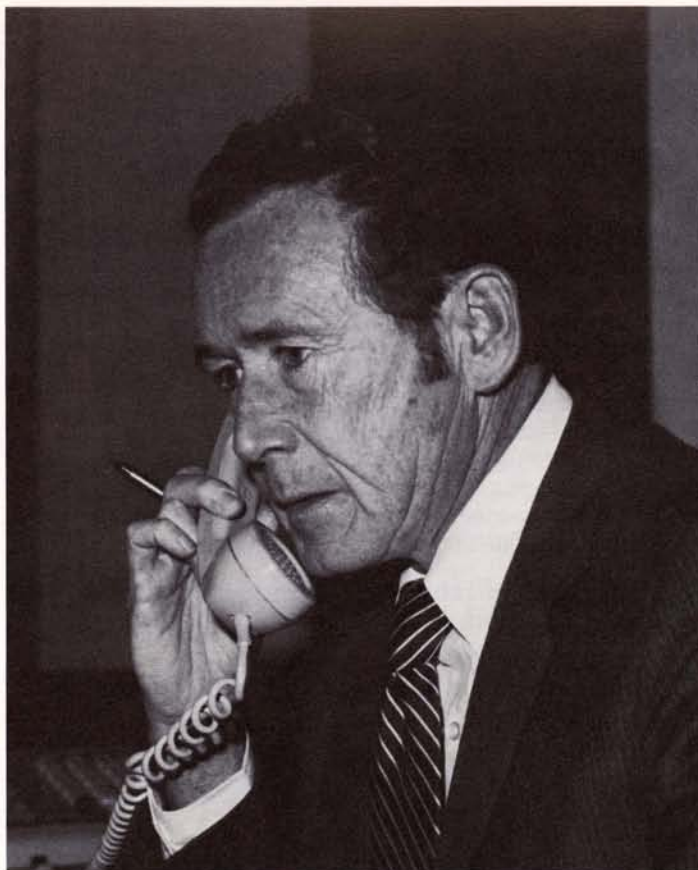
But the retailer's situation is quite different. At the present time, the retailer can tell the manufacturer, whether the manufacturer likes it or not, that he is going to distribute goods the way he wants to. And there's no particular reason to think that that's a sensible way to run a world; indeed, it's fairly clear, I think, that with respect to some kinds of products at least, unless the manufacturer can control the characteristics of his distribution system, that the product can't successfully be developed and marketed. This is especially true with respect to technically complex consumer goods, usually relatively new products.

**Like Apple Computer?**

Like Apple Computer. Photographic equipment. Or digital turntables.

No one is going to spend two-thousand dollars on a digital turntable unless there is someone at the store who can explain exactly why it works the way it works, why it is superior to other turntables. And that requires a retailer to invest a lot of money in inventory to keep all this expensive stuff around—and that he have technically trained salespeople there on the floor who will be standing around on one foot or the other most of the day, but who will be there to answer questions when people come in.

But if people can go into the store, take advantage of the display inventory, cross-examine the technically trained salespeople for an hour-and-a-half, and then, when they finally understand what this equipment can do for them, walk out, say, "Thank you very much, and I am going to get it from the discount store"—why, you cannot sustain the distribution system under those circumstances.



You never find a discount store wanting to market a brand-new product. They are only interested in a product after someone else has built a reputation around it.

**What's wrong with that?**

No one will invest in building a reputation for a product if the product is going to be rendered unprofitable the day they complete the process. So the incentive to develop and attempt to market complex new products of that kind will be greatly weakened under those circumstances.

**Well, I can see that argument in some ways. It protects Apple or whoever is manufacturing a product. But it disallows the consumer to somehow enjoy the competition that occurs between distributors.**

No. The consumer enjoys the competition between Apple and IBM, between Apple and DEC, between Apple and Control Data, Apple and Adam—there's all the competition in the world out there. The only competition that is eliminated is the competition between two different retailers selling Apple. And even there it is not eliminated unless the manufacturer wants to eliminate it.

And why would the manufacturer want to eliminate competition between two different retailers? By and large, he would like his product sold by his retailers at the lowest possible cost. The manufacturer has every incentive in the world to do business with discounters. The notion that discounters would somehow be cut off



en masse is, again, a very simple, childish piece of political nonsense.

There is only one circumstance in which a manufacturer wants to suppress price competition between his dealers. That is where one of the dealers is providing the kind of sales and service that he thinks is essential to the success of his product, and where the other is rendering that activity unprofitable for the first dealer by not incurring the expenses of providing the services and by charging the low prices that go along with not providing those services. Now he is destabilizing the system, and that the manufacturer wants to stop.

**Some have said that you singularly favor business; others label you "too soft on business." Are these accurate?**

They don't mean anything. How do I know what they are talking about?

**Well, I presume they mean what the consumer groups call a "let-the-consumer-be-damned" attitude.**

There are a lot of things where there is not a world market. Local motion picture exhibition: a theater in New York City is not in competition with, say, the New Varsity Theater in Palo Alto. So the geographic scope of markets varies enormously depending upon the product or service you are talking about.

**Why is the perception so different?**

Because people don't understand what they are talking about.

**Give me an example where people are wrong.**

The consumer groups—the Consumer Federation of America, for example—came out with a big blast about resale price maintenance that was obviously written by someone who had never taken Econ 101, and it was just absolute political gibberish.

**If you have been accused of being too soft on business, you also have been complimented on having the U.S. assume an international global approach to the marketplace. Is that accurate?**

Well, not terribly accurate.

In some products there is a world market. Certainly in specialty steel, computer software, robotics and unrefined petroleum. And where there is a world market, of course you have to recognize that there's a world market.

There are a lot of things where there is not a world market. Local motion picture exhibition: a theater at New York City is not in competition with, say, the New Varsity Theater in Palo Alto. So the geographic scope of markets varies enormously depending upon the product or service you are talking about.

**Where do automobiles fit into your market classification?**

Well, there would be a world market in automobiles if the government hadn't screwed the market up by pounding on the Japanese. For example, we got the Japanese to restrict their shipments of automobiles to the United States, so that, as an economic matter, the Japanese are no longer in the market. Notwithstanding, they still have a 20 percent market share.

I realize that's a statement you will find puzzling. But the critical question one is asking when one asks if they are really in the market is whether they can expand their supply in response to the price increase. And since the number of Japanese automobiles is fixed, the Japanese cannot expand their supply of automobiles in response to a price increase, and therefore they exercise no disciplinary influence whatsoever on the price of American automobiles. We have taken them completely out of the marketplace.

Similarly in carbon steel, we have taken most of the European suppliers completely out of the marketplace. And there are other respects in which we and many other countries have closed their markets.

So the question as to whether something is a local market or a national or international market is simply a question of fact that varies from case to case.

Now, I said that loud and long—perhaps in ways that some people understood for the first time in their lives. On the other hand, there was nothing radical about that proposition. Anyone who is semiliterate in economics would have made that statement fifty years ago. Some gave me much too much credit on that particular point.

**Perhaps it was saying the right thing at the right time in the right place.**

Okay, maybe all those things.

There is one more thing I would like to say. Although I am pleased with the disposition of the two big cases, I don't regard those cases as the most important thing I was able to accomplish, to the extent I was able to accomplish anything.

But probably the most important and the most long-lasting thing is that I think that I really got most of the 400 lawyers in the Antitrust Division to realize in a much more focused and articulate way that the only disciplined context for thinking about or talking about the public interest is in terms of consumer welfare and economic analysis.

They didn't all agree with the answers that I got when I employed those devices, but that's okay. That's not nearly as important as the fact that, by and large, I convinced them that those are the tools to be used in the final analysis.

And if I am right in thinking that I brought about that kind of mental process change, well, that is going to be around for a long time to come. □



# Antitrust In the '80s:

## *The Zealots vs. the Wackos*

by Thomas J. Campbell  
*Associate Professor of Law*

**T**he Reagan administration's approach to antitrust enforcement has stirred up a controversy over the ends and means of trust-busting.

Some of the issues involved were raised in the brief opposing certiorari of *Monsanto v. Sprayright*, a resale price maintenance case set for argument this December before the U.S. Supreme Court. The plaintiff won at trial, and on appeal. All was going well for the plaintiff, even after a petition for certiorari was filed, until the Justice Department filed a brief urging certiorari be granted and the case reversed.

The respondent argued that the government's brief was a treatise on what the law should be, and bore no relation to what the law was, or to what the facts of this case were. If the "zealots" in the antitrust division are intent on changing the law, the brief continued, they should bring their theories to the Congress, and stay out of cases such as this.

These respondents were relying, of course, on 72 years of Supreme Court decision law dealing with vertical price agreements. Assistant Attorney General William Baxter, who heads the Antitrust Division and holds a chair at Stanford Law School,\* has a description for the Supreme Court decisions upon which the *Sprayrite* attorneys so diligently rely: "esoteric, baseless, simply made up, wacko." Hence, the subtitle of this article, "The Zealots vs. the Wackos."



*Professor Campbell was—as Director of the Federal Trade Commission's Bureau of Competition from 1981 to 1983—one of the nation's chief enforcers of antitrust laws. Educated in both law (JD '76, Harvard) and economics (PhD '80, Chicago), he joined the Stanford Law faculty in the fall of 1983. Camp-*

*bell's principal teaching areas are antitrust, economic analysis of legal issues, and international law.*

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*The following article is adapted from his address September 13, 1983 at the School's annual alumni luncheon during the California State Bar meeting.*



I hope that my topic will have interest beyond antitrust, for I believe the antitrust area is an example of two trends with more general application in this administration: the use of economic doctrine in the face of sometimes noneconomic statutes; and the heavy reliance on the rule of prosecutorial discretion contrary to congressional direction.

I do not necessarily find these approaches wrong. Nor are they unique to this administration. The Department of Justice has not enforced the Robinson-Patman Act for many years, relying on economic grounds. And as for pronouncements about the antitrust laws, Justice Oliver Wendell Holmes opined that the entire Sherman Act was a "humbug born of economic ignorance and incompetence." That, I believe, is the nineteenth century translation of "wacko."

Turning to the first point—economics—this administration's antitrust enforcement approach has been a conscious, painstaking effort to establish one overriding principle as the goal of antitrust: economic efficiency. This term translates roughly to producing the amount of products that consumers demand as closely as possible to the priority in which they are demanded, and at the

least cost.

That sounds like a worthy goal. What is missing? Explicit concern for who pays for the product—the consumer. Explicit concern for who makes the product—the nation of shopkeepers, worthy competitors, the noble small businessmen, those whom Justice Peckham called "small dealers and worthy men." And explicit concern about who accumulates the wealth—a diverse group of consumers, or a wealthy, bloated, octopus-like trust? It is fruitless to try to claim that these interests play no part in the genesis of the antitrust laws. Quite the contrary—the pages of legislative history and early case law virtually drip with unctuous solicitude for these goals.

The great Senator Sherman himself spoke in these words of the evil of trusts: "among them all, none is more threatening than the inequality of condition, of wealth, and opportunity . . ." He observed that "[some] combinations [might be able to] reduce prices by better methods of production." But this was a Faustian bargain to be rejected, since "[the] saving of cost goes to the pockets of the producers."

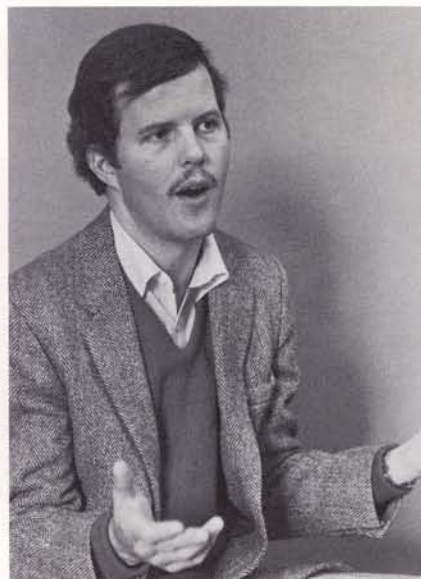
Another member of Congress speaking on the Sherman Act rose in agreement:

*Even if the price of oil is reduced to one cent a barrel, it would not right the wrong done to the people by the trusts which have destroyed legitimate competition and driven honest men from legitimate businesses.*

And Judge Learned Hand authored what many consider the conclusive word on this subject, in the Alcoa case, with language that was subsequently embraced by the Supreme Court itself:

*Congress . . . did not condone "good trusts" and condemn "bad" ones: it forbade all. Moreover, in so doing it was not necessarily actuated by economic motives alone. It is possible, because of its indirect social or moral effect, to prefer a system of small producers, each dependent for his success upon his own skill and character, to one in which the great mass of those engaged must accept the direction of a few.*

But the current administration does not favor these noneconomic goals. We have new merger guidelines, allowing higher levels of industry concentration. Before, a small producer could sue to prevent even so small a concentration as seven percent of the market. We have reduced enforcement actions against





vertical price-setting through resale price maintenance. As the administration's critics would describe it: a big, powerful, overreaching conglomerate is allowed to tell ma and pa drugstores on the corner exactly how much they must charge for toothpaste, and consumers must pay that price. A dominant firm twice or ten times the size of a small company trying to enter the market, and with cost advantages over a smaller firm — can drop its price so low that the new player can't earn a profit and has to drop out, after which the dominant firm can lift its price again.

Thurman Arnold, the antitrust chief in the Franklin Roosevelt administration, used to say that bringing an antitrust case was much like a Plains Indian hunting buffalo—all you had to do was shoot an arrow into the herd and you'd be sure to hit something. These days, critics would say the Indians are spending all their time contemplating their arrows, asking whether it is efficient to use them, since, if you wait long enough, a buffalo is likely to drop dead of its own accord.

What defense can be made for this enforcement approach? First is to look at some other types of antitrust enforcement that are going on, specifically in the horizontal area: agree-

ments among competitors. When I was director of the Bureau of Competition at the Federal Trade Commission, I authorized complaints against the second and third largest mergers in history — Mobil's attempted acquisition of Marathon, and Gulf's attempted acquisition of Cities Service. Both mergers were stopped.

Bill Baxter has put 127 businessmen in jail, and has collected over \$47 million in fines for bid-rigging on highway construction, a record unparalleled in Antitrust Division history. He has stretched the Sherman Act §2 past the breaking point, to charge the president of American Airlines with conspiracy to attempt to agree to fix prices, even though the other party to the potential conspiracy was far from agreeing; he was calmly tape-recording the whole conversation!

And the FTC chairman, far from rolling over in the face of the most powerful professional trade association in the United States because it bears the prestigious name American Medical Association, pressed the antitrust suit and brought the national organization and many locals under FTC order. So aggressive did he become in his endeavors that the American Bar Association was moved to endorse a resolution at its

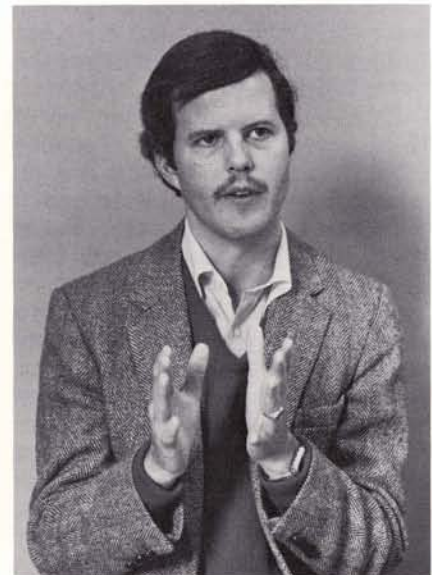
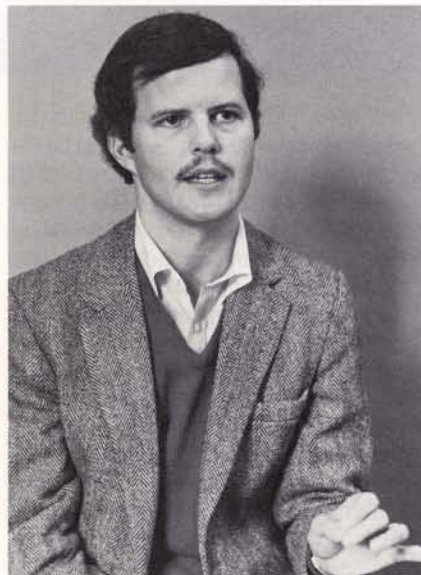
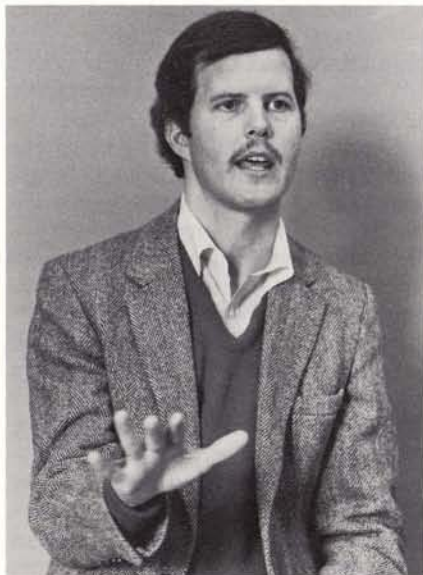
1983 annual meeting in Atlanta urging an exemption from the FTC Act for *all* professionals. One delegate likened the FTC to an 800-pound gorilla with bad breath.

And I personally testified before Congress, in opposition to a bill to allow United States shipping lines to agree among themselves on prices and routes, because such agreements would result in higher prices for every consumer item that had to be shipped.

The first response is this: economics cuts both ways. Once you have decided to make it your goal, and disregard the other suggested goals of antitrust, a whole vista of enforcement actions opens up.

Most obvious as targets are those people, whether professional men and women or local government agencies, who see their higher calling as justification for some "rationalization of the market."

The Supreme Court had an answer for such assertions, in the National Society of Professional Engineers and the City of Boulder cases: no noble purpose that reduces economic efficiency is adequate to excuse an antitrust violation. And this administration has pushed that principle without stinting—so much so that your phones may no longer work, but





you have the comfort of knowing, as you sit there listening to static on a long-distance call, that you are not paying to subsidize some ten-cent local call from a pay phone!

There is another answer as well. It requires the realization that the other goals of antitrust—protecting small businesses, lowering prices to consumers, allowing room for the little guy in every market—are not free of cost, although the lore is to the contrary. In the Northern Pacific case, the Supreme Court held:

*The Sherman Act . . . rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality, and the greatest material progress, while at the same time providing an environment conducive to the preservation of our political and social institutions.*

But these worthy goals are simply not all achievable at the same time. Many mergers will lower average costs in an industry, but necessarily leave less room for the small producer. Agreeing to guarantee a retail price for your own product is often the only way to obtain a spot in a prestigious retail store, yet it does leave less freedom for the discounters. Allowing a larger firm with lower costs to undercut a new entrant's price will deter such entry, but to allow the entry would increase the overall cost levels of that industry.

As an enforcement matter, where there was no plausible economic efficiency reason to hesitate or even where the record was uncertain, I would not fail to bring a case. But in the face of higher costs, I would hesitate. This was for two reasons.

First is that the United States, in a competitive world economy, simply cannot afford to increase its costs. Many goals that might have been affordable when the United States was the dominant producer of almost all manufactured goods are luxuries to pursue in today's environment. Chief Justice White noted in the very first Standard Oil case that the anti-



**"The law is meant to be enforced—unless it would do more harm than good to do so."**

trust laws, which were written in the broadest possible terms, would be informed by and would change with economic circumstances. To accept less efficient means of production is suicide for American industry in the circumstances of these times.

My second response meets the "other" social goals argument head on. Assume for a moment that siding with the efficient course in an antitrust context means allowing a large, entrenched company to receive more money than it otherwise would, and a smaller company to receive less. But if the advantage were given to the smaller company, the cost of produc-

tion would rise. Who pays for that higher cost of production? The large, dominant firm? Only in part. The consumers of the product? Only in part. The real victims are producers and purchasers of *other* goods, perhaps totally unrelated, who cannot obtain the resources to produce those other goods, or have to pay a higher price to obtain them because more resources are being consumed in the first industry than are necessary to produce those goods.

So exactly whom are we helping and whom are we hurting? We are helping a less efficient producer; and we are hurting hundreds of other producers and consumers in industries we cannot begin to trace. And even if we hurt the dominant firm a little—call it the Octopus Corporation—the days are long past when a robber baron would be deprived of his greedily acquired loot. Rather, the shareholders of the dominant firm will be hurt. I, for one, have no way of estimating whether those shareholders are more or less worthy than the shareholders of the smaller firm—or the consumers themselves. All three groups are likely to include pension funds, insurance companies, and well-meaning universities which, deprived of lucrative investment opportunities, will have to ask more from their alumni/ae.

There still remains, at least to me, something that is unsettling. And this introduces my last main point. To review: the antitrust laws have many purposes—that must be granted. We should try to vindicate those purposes. But it is appropriate when the goals are at cross-purposes to champion economic efficiency—that which will lower costs because such a course eventually redounds to the entire economy's benefit.

Still, what do you do when the law says to ignore efficiency? Sure, there's plenty of room for elbowing around. The Sherman Act requires proof that trade has been restrained; the Clayton Act requires proof that competition has been injured. These prerequisites can be used to defend an economic choice most of the time.



But this is not always so. The Robinson-Patman Act is one such example. It was passed explicitly to help small business by requiring manufacturers to charge the same price to all similarly situated retailers. It also outlaws any discrepancy in the amount of money for promotions or advertising paid by manufacturers to retailers. The ban is absolute. No finding of economic harm or benefit is required.

Frequently, however, price and promotional discrepancies of this kind are very desirable. Consider one example: a tacit cartel among producers to charge the same price, a cartel that can be broken down by quiet price concessions in the form of advertising allowances from a manufacturer to some distributors. Yet the Robinson-Patman Act makes those illegal. It essentially promotes the cartel's operation and inhibits the cartel's demise. It's the policeman guarding the door while the poker game goes on inside.

What should a law enforcement agency do? Enforcing the law in this context is a transfer of money that the Congress has legislated, presumably knowing its costs. Why should that surprise us? After all, every year the tax laws collect money, and the appropriation bills distribute it. Congress has simply found one more way to tax and spend. We can point this out. We can measure its costs to the economy. We can complain. But we cannot ignore the law.

This issue has received some prominence recently in the area of resale price maintenance or vertical price setting. In my view, there are many instances where retail price setting by a manufacturer has good economic justification, and to prevent the practice would harm the economy. But there are also many instances where, as far as one can tell, resale price maintenance is not economically helpful. The evidence just isn't there in every case that guaranteeing a resale price will ensure a market niche, or make certain the amount of salesmanship by the retailer that the manufacturer con-

siders necessary. In these cases, we simply cannot prove that the practice persists for economic reasons.

The Administration's spokesmen would, I believe, rely on a presumption that if a practice is being followed and is not demonstrably anticompetitive, it must be for an efficient reason. The presumption I would defend is that the law is meant to be enforced—unless it would do more harm than good to do so. But those who hold the first view would say that such prosecution is unnecessary. If the practice were inefficient, sooner or later the market would weed it out. The firm would suffer against its more efficient rivals and would drop the practice or perish.

It is for this reason that it takes zero Chicago school economists to change a light bulb. The bulb will change itself.

More deeply, the problem with relying on the presumption which, I believe, is true in the long run, is that the law compels a different presumption. This particular law does not contemplate a longer run; it seeks a transfer of wealth now, not an efficiency nirvana eventually.

In failing to respect this aspect of antitrust law, the apologists for non-intervention are making a serious long-run mistake of their own. The laws are made by Congress and interpreted by the courts. To fail to enforce any of those laws as a general policy is to stymie the governmental system. No one would disagree that scarce enforcement resources should be spent where they can do the most good. No one would quarrel with a prosecutor's discretion not to charge an offense when such a charge would do more harm than good *in any given case*.

But that is not what is being said here. In relying on the general presumption of economic efficiency, the noninterventionists are directly contesting the congressional determination that, whether efficient or not in general, certain conduct is not to be permitted.

This policy, I believe, is wrong as a matter of the separation of powers

doctrine. But, perhaps more tellingly to the audience I need to convince, it is not efficient. The likely response of the Congress to such continued behavior is to draft much more specific statutes, making concrete particular practices it wants prosecuted, eliminating prosecutor's discretion as much as possible, and requiring the expenditure of scarce resources to investigations of such behavior and not other kinds of behavior.

This has already come to pass. This spring, for the first time, the FTC budget has a line item for prosecutions of resale price maintenance violations. Whether the Congress could go one step further and compel actual expenditure for prosecutions is a constitutional issue I must leave to my teacher of constitutional law, Dean Ely. I would have great reservations about any such attempt, though some claim could be made to compel the Federal Trade Commission, if not the Justice Department, to do just this, since the FTC sits outside of the executive branch.

And on the part of the courts, I fear the likely response to this attitude will be a general lowering of tolerance for the fundamentally correct economic contributions that this approach otherwise has to offer.

So you have the zealots versus the wackos. Over the last ninety years, Stanford Law School has produced some of each. This Administration has given unparalleled opportunity for both schools to be heard from—some voices resounding from within, others crying in the wilderness. To some degree both are being heard on the Farm.

Whether ultimately proven right or wrong, it does not surprise me that Stanford people are in the thick of this development. The intellectual vortex has moved away from the Stanford of the East and the Stanford of the Midwest and has returned to where it belongs, to Stanford—your alma mater and my new home. □

\*Professor Baxter, who has since returned to Stanford, discusses his antitrust policies in the preceding interview (pp. 10-16).—Ed.



## Toward An Effective Peace Movement

by John H. Barton  
Professor of Law

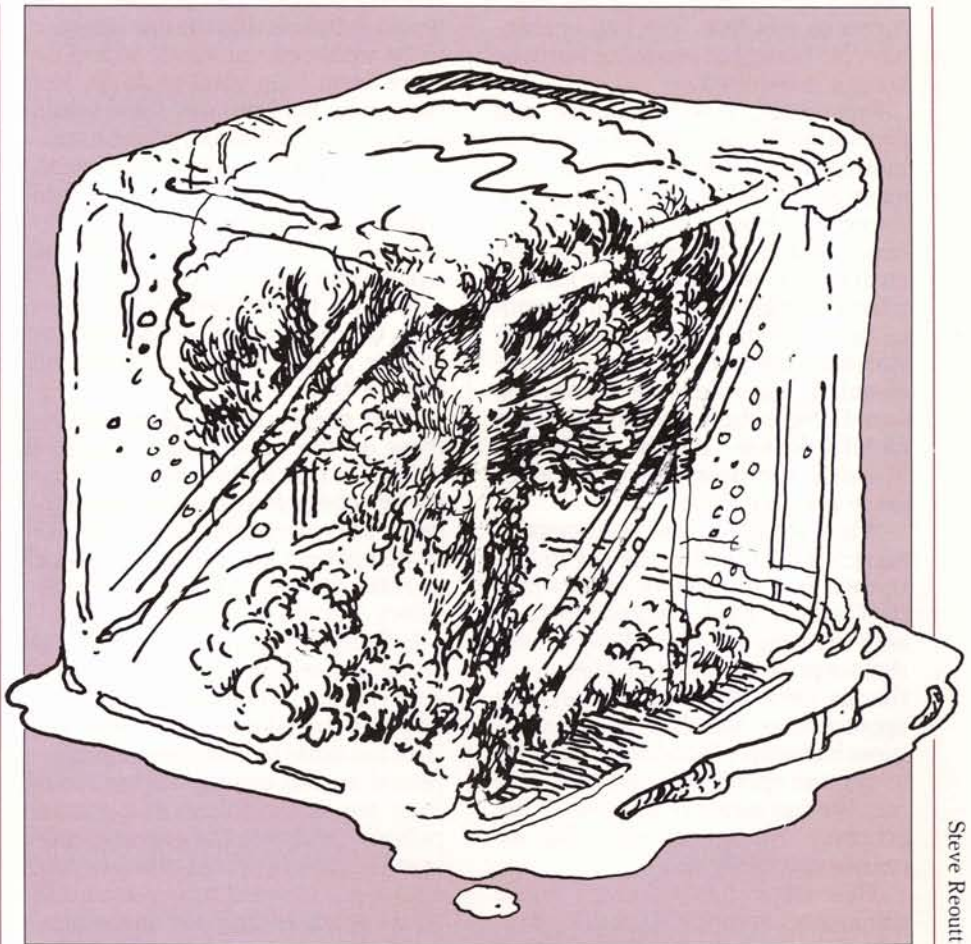
In 1964, Supreme Court Justice Douglas wrote:

*... time is shorter than people think; the areas of friction that can easily trigger the nuclear holocaust are spreading; military solutions are now the only impossible solutions. Across the world, men have somehow got the message of ON THE BEACH by Neville Shute and FAIL-SAFE by Burdick and Wheeler. Men are filled with fear of what the bomb can do and are becoming more aware of the need for a Rule of Law that will take the place of the Armed Forces.\**

Except that the books and movies have changed, Douglas might have been writing today. The fear and awareness of which he was speaking helped achieve several arms control agreements in the 1960s and contributed to SALT in the early 1970s. Yet, that force was politically spent by the mid 1970s, and those earlier arms control agreements have brought only a limited benefit.

Is today's interest in nuclear weapons control likely to be more successful?

The political thrusts of the two times differ in two important ways. First, today's movement is much more broadly supported than was that of the 1960s, which was in large part one of intellectuals and scientists arguing that arms control strictly served the national interest. When the executive responded to this argument, it faced a reluctant Congress and only rarely expected to gain much public support.



Steve Reout

Today's movement is different. It is perhaps in large part a reaction to specific Western deployments and to specific United States administration statements and may fade as these issues disappear. Nevertheless, it is stronger in Congress and the public than in the executive, and it reaches well beyond the diplomats and scientists traditionally interested in defense issues.

The new movement, however, brings a much less well elaborated

international strategy. Its centerpiece—the nuclear freeze—is almost uniformly regarded by arms controllers as a poor idea, save to the extent that it might open the way to later reductions. In contrast to the discussions of the 1960s, the military aspects of security and the politics of international organization are nearly forgotten.

This is partly because those in the 1960s failed to educate the public about security issues, and thought



they could succeed by dealing only with their allies in the government. It is partly a result of American emphasis on technological solutions over political solutions. Primarily, however, it reflects the fact that the new movement is much more a desperate protest and a reaction to the horror of nuclear war.

The current movement does have a sophisticated *domestic* strategy: political action to achieve congressional resolutions, encourage presidential action, and elect a sympathetic president and Congress.

But this sophistication may be wasted. Without political leadership for a more precise and workable agreement concept, efforts to negotiate a freeze are likely to lead back to a package similar to the SALT II package that failed before Congress.

More important, history suggests grave doubt whether a first agreement would bring the predicted momentum for reductions. In 1972, SALT I called for a SALT II in five years, but SALT II has not yet come. The sequence of weaker and weaker naval treaties during the 1920s and '30s similarly argues that second agreements are much harder to reach than their predecessors.

In short, the current antinuclear movement may have little effect unless there evolves a workable global strategy within which its arms control goals can be placed. I would suggest three central postulates for that strategy.

*First*, the strategy should pay much more attention to the developing world than to the Soviet Union. East-West stress focuses attention on strategic arms control—and also makes that arms control difficult to negotiate. In contrast, there are now many opportunities for making peace in the developing world, an area which is the scene of war and whose conflicts are the most likely source of nuclear war.

We should now be seeking arrangements that might help provide peace in Central America, that

might reduce our incentives and Europe's incentives to export arms, or that might forestall future conflicts over the flow of refugees from rapidly growing developing nations to slowly growing developed nations.

Some of these arrangements may require international agreement; others may be achievable through legislation in the tradition of the War Powers Act or the Nuclear Non-Proliferation Act. We may have to wait to deal with the Soviet Union; there is no value in paralysis in the meantime.

*Second*, the strategy must focus on the reform of international organization. Arms control has seemed popular and feasible; international organization unpopular and infeasible. Yet, serious analysis has always coupled the two. The statement by Justice Douglas quoted above was taken from a preface to a collection of actual disarmament proposals, the most important of which—that of Grenville Clark and Louis Sohn—sought major reform of international organization as part of disarmament. Woodrow Wilson made the same point in working for peaceful settlement procedures and for the League of Nations.

We must move on with this task, both to prepare for actual arms control and to respond to today's tensions. We may not yet be able to reform the United Nations, nor can new international organization yet help in our relations with the USSR.

Nevertheless, we can improve organizations dealing with economic and monetary questions, with dispute settlement, and with regional security in the rest of the world. Moreover, we can build new organizations—particularly those, like the directly elected European Parliament, that give individual citizens an opportunity to participate and give political parties a chance to transcend national boundaries.

*Third*, in building these organizations, it is essential to seek political allies from a broad front. The 1960s antinuclear movement sought to

be technical and nonpolitical, and therefore lacked staying power.

The 1980s movement, when it expands its constituency at all, tends to look to traditional liberal issues such as nuclear power and the environment. On a global level—and perhaps within the United States as well—these are middle-class issues, unlikely to generate the sustained political thrust needed to build international order.

It is rather movements built first around economics and political freedom that will create the international organization later able to control weapons. The alliances needed are not just among traditional liberal nonprofits; they are also with international business and with national labor groups and even, as with the Socialist and Christian Democratic parties in Europe, political parties in different nations.

We will have many disagreements about these economic and political issues—but that is a reason for alliances that reach such issues, and for organizations that bring us together as disagreeing and thinking individuals. The most important role for international organization is to give us a way to face and discuss, to resolve, or to live with those disagreements without war—and that is what we will have to do to make deep arms control possible.

We can begin with our disputes in the free world over the magnitudes of economic deficits, the behavior of multinational corporations, or the treatment of linguistic minorities.

If we succeed at all, we will attract Soviet participation long before we have to seek it. □

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\*Foreword, *Current Disarmament Proposals as of March 1, 1964*, p. xix (World Law Fund, 1964).

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*Professor Barton, a member of the Stanford Law Class of 1968, joined the faculty in 1969. His publications include The Politics of Peace: An Evaluation of Arms Control (Stanford University Press, 1981).*



## Trading in Art: Cultural Nationalism vs. Internationalism

by John Henry Merryman  
*Nelson Bowman Sweitzer*  
and Marie B. Sweitzer  
*Professor of Law*

**A** work of art is a piece of the culture. Paintings and sculpture, like music and literature, define us to ourselves, give us cultural identity, enrich our lives and extend our experience. They develop the other half of our brain, the half that can easily wither in the rationalist atmosphere of law school and law office.

Paintings and sculpture are fragile in a way that does not affect works of music or literature. If the original manuscript of Schubert's Quintet in C were destroyed, the work would live on. Editions, copies, "reproductions" of the Quintet would survive in music libraries throughout the world and would, for most purposes, be perfectly satisfactory substitutes. Loss of the manuscript would be a tragedy, but a minor tragedy.

But if a great painting or sculpture is destroyed—even one that has been widely reproduced—the tragedy is of a different order. The work of art is somehow embodied in the object. Rightly or wrongly, we want to look at the real thing. Just as fakes and forgeries falsify the culture, so reproductions seem inadequate to represent it.

Without that kind of insistence on the real thing, so that even the best reproduction is a poor second best, the *raison d'être* of art museums would disappear. Authentic pieces of the culture are what museums want to preserve and display and collectors to collect. This peculiarity of works of visual art, which applies to ethnographic and archaeological objects as well, has important practical consequences.

Most nations (Switzerland and the United States are major exceptions) have enacted laws limiting the export of cultural objects. Nations attempt to keep such objects from leaving their boundaries for a variety of reasons. Some of their restrictions seem completely reasonable and deserve international support.

An example is Mexico's intention to retain the Aztec Calendar Stone in the collection of the National Museum of Archeology in Mexico City. It is a unique monument of an indigenous culture; the government of Mexico owns it; it is adequately housed and protected; and it is publicly displayed.

Other examples of retention are, however, completely unpersuasive—for example, the insistence of Mexico and other Latin American nations on hoarding and prohibiting the export of multiple examples of pre-Columbian sculpture and ceramics that may never be displayed, studied or documented at home, but would be welcomed in foreign museums and collections. Or the notion that a privately owned painting

by Matisse, a French artist, should not be exported from Italy.

It is undeniably within the power of nations to enact and attempt to enforce such laws, no matter how unreasonable they seem. However, it is not only foolish, but actually destructive, for any nation with a large stock of undocumented, unhoused, unprotected, often undiscovered antiquities to prohibit their export. If there is an international market for these objects, such restrictions guarantee that:

- excavation and export will be carried on covertly, callously, and anonymously, with no resulting documentation, with irretrievable loss of archaeological and ethnographic information, and with irreparable damage to sites and objects;
- the income from trade in such objects will go to the wrong people;
- any opportunity to pursue a rational policy for systematically representing the national culture in foreign museums and collections is foregone;
- national scholars, museum personnel, police, and customs officials will be frustrated, demoralized and corrupted; and
- the most valuable works will be the most likely to leave the country.

In short, nationalistic measures purporting to retain and protect cultural property may in practice contribute to their loss and destruction. Blind cultural nationalism is a self-defeating policy.

A more cosmopolitan attitude, expressed in the Hague Convention of 1954, is that "cultural property be-





longing to any people whatsoever is the cultural heritage of all mankind." These words in a major piece of international legislation have extraordinary importance.

They say that archaeological and ethnographic objects in Peru and paintings in Italian churches have significance not only for Peruvians and Italians, but also for people of other nations. Mankind as a whole has a legitimate interest in seeing and studying these objects; in their proper protection, restoration and display; and in the existence of a licit market and appropriate opportunities for loans and exchanges among museums.

The United States has traditionally favored free trade in cultural objects; they could enter (and leave) without restriction and were free of duty. Beginning in 1971, however, this policy has been eroded, until

today we are the most generous—with the possible exception of Canada—of all the art-importing nations in enforcing trade restrictions imposed by nations of origin.

In some respects, indeed, we have gone too far, as in a dubiously grounded 1982 Customs Directive<sup>1</sup> restricting the importation of cultural objects from South and Central America.

The Directive represents what some call a "blank check" approach: anything another nation decides it doesn't want leaving the country automatically becomes subject to seizure, expropriation, and return by our customs agents. No independent judgment is made about whether the objects are adequately protected, studied, or displayed in the nation of origin, or whether they are indeed vital to its own representation of its national culture. Thus

the Directive obstructs responsible international trade and promotes the destructive black-market conditions described above.

A more positive development was the enactment by Congress, also in 1982, of legislation implementing United States adherence to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property.

The new Cultural Property Law<sup>2</sup> provides for the establishment by the President of a Cultural Property Advisory Board. When a foreign nation complains of a threat to its cultural heritage and asks that the United States act, the Board weighs the various interests involved, determines whether this is the kind of case in which we should (in concert with other art-importing nations) intervene, and makes its recommendation to the President.

The Cultural Property Law, unlike the Customs Directive, makes it possible for the United States to deal fairly with the concerns both of nations of origin and of our own museum, archaeological, anthropological, collector and dealer interests, on a case-by-case basis. In the long run, this approach offers our best prospect for the effective preservation, study, and enjoyment of unique and fragile objects that form an irreplaceable part of the "cultural heritage of all mankind." □

## Footnotes

1. Seizure and Detention of Pre-Columbian Artifacts, Manual Supp. No. 3280-01, U.S. Customs Service (Oct. 5, 1982).
2. Pub. L. No. 97-446 (1982).

*Professor Merryman developed these thoughts at greater length, amply footnoted, in the introduction to a special issue, devoted to international art law, of the New York University Journal of International Law and Politics (15:4, Summer 1983).*



## Growth Controls: Fueling the Peninsula House Price Explosion

by Robert C. Ellickson  
*Professor of Law*

**T**he cost of housing in the area surrounding Stanford has, in the past ten years, risen to an extraordinary level. House prices on the Mid-Peninsula are the highest in the Bay Area, which has itself become the most expensive metropolitan housing market in the United States. Young families suffer most from the high prices. Yet institutions such as Stanford, which depend upon infusions of new talent, also feel the pain.

The Mid-Peninsula's house-price explosion has coincided with the imposition of stringent legal restrictions on housing development in the Stanford area. The civic leaders who have imposed these growth controls typically deny the existence of any link between their actions and the housing crunch. They generally attribute the house-price boom entirely to the blossoming of Silicon Valley and to a physical shortage of developable sites on the Mid-Peninsula.

Local political leaders should not be permitted to disclaim so casually their own role in what has hap-

pened. There is now persuasive evidence that the Mid-Peninsula's astronomic housing prices stem in significant part from the antigrowth policies for which the Bay Area is noted.

I base this statement on the results of a study that a dozen Stanford Law students and I have published in the Stanford Environmental Law Society's latest annual volume.\* The student contributions include analyses of the land-use policies of specific Mid-Peninsula municipalities such as Palo Alto, Mountain View, Atherton, and Los Altos Hills. In the course of preparing an introduction to the student essays, I gathered data on trends in the Mid-Peninsula's population and housing prices, and researched what is known about the economic consequences of growth controls.

I found that, as recently as 1972, Mid-Peninsula house prices were only about 10 percent above the national average. By 1982, however, they were at least twice the national average. Within the short span of a decade, the Mid-Peninsula emerged from the pack to become the second most expensive submetropolitan housing market in the United States, trailing only West Los Angeles.

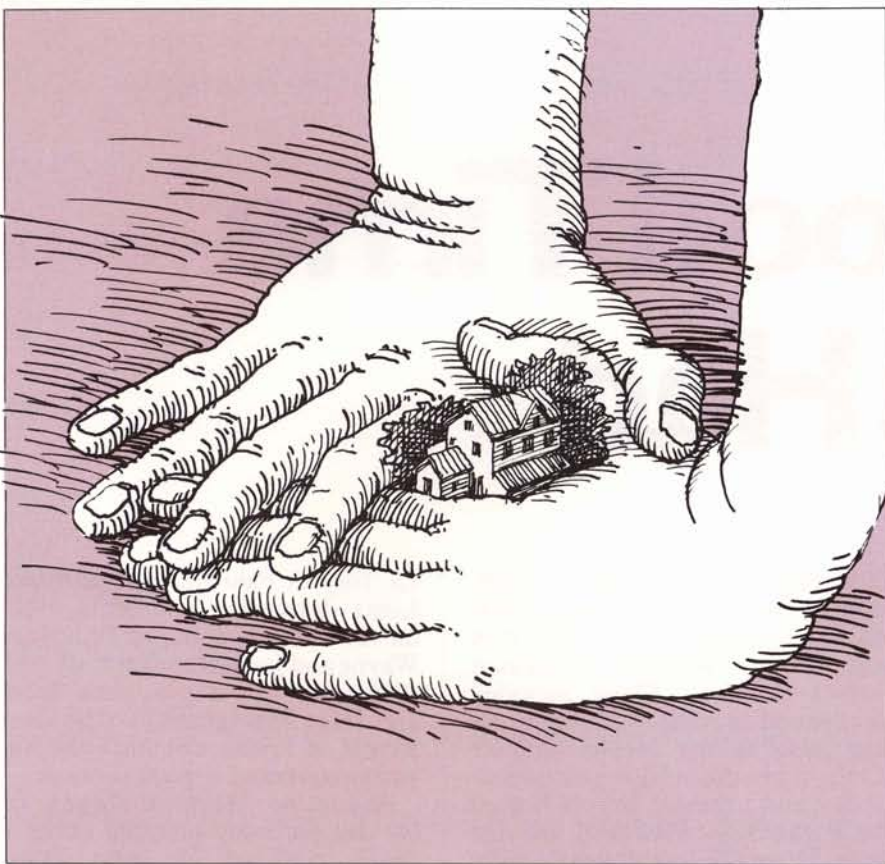
During this same time span, however, the population of the study

area remained flat, and actually fell in the city of Palo Alto. (The Bay Area as a whole was the slowest growing region in California during the 1970s; its rate of population growth was only equal to the national average, a far cry from the Bay Area's historic pattern of having double the nation's growth rate.) This slowing of development activity during a period when house prices soared is an economic curiosity, and strong evidence of the existence of some impediment to the supply of new housing.

Was the impediment a shortage of physical space? Not really. The perception of many Mid-Peninsula residents that their area is "fully developed" reflects more their environmental preferences than insuperable physical and economic realities. The hills above Berkeley and Beverly Hills have been developed as sites for single-family houses, an option that could be physically duplicated in the Palo Alto foothills as well. And experience in Foster City and other bayfront areas shows that the Palo Alto baylands could be economically developed for housing of all types. As any visitor to the region immediately observes, the Mid-Peninsula is in fact rather generously supplied with open space.

Moreover, sites that have already been developed are *not* inherently unavailable for future development.





Low-density housing can be cleared to make way for higher-density housing. Urban areas are constantly being reshaped through an evolutionary process. Despite sharply increased housing prices, this sort of redevelopment activity has slowed on the Mid-Peninsula—evidence of the impact of recent legal constraints on development.

No one disputes that legal restrictions on the production of housing became much more severe during the period when housing prices shot upward. Both state and local government did their part. During the Environmental Decade of the 1970s, California enacted many statutory requirements—for example, the one calling for the preparation of “adequate” environmental impact reports—that have made it easy for opponents to use litigation to slow or stop proposed real estate ventures.

Mid-Peninsula cities have also helped tighten the housing tourniquet. For example, Palo Alto’s land-use plan of the 1960s authorized development of the city’s large foothill area at moderate residential densities. Since 1972, however, Palo Alto has required in the entire foothills area at least 10 acres per new dwelling unit—*seventy times* the land area per house typical of developed Palo Alto neighborhoods. As another example, San Mateo County, which controls development in unincorporated areas within its boundaries, now allows on average only 1 new unit per 12 acres in its foothills and mountains, and the county planning commission has tentatively approved a new plan reducing the average permitted density to less than 1 unit per 25 acres.

Both economic theory and a fistful of empirical studies have manifested that growth controls, when

applied in the teeth of strong demand for housing, are the key constraints that send residential real estate prices through the roof. To mention one study, Michael Elliott of the MIT Department of Urban Studies and Planning found that house prices in California have jumped most sharply in areas, such as the Mid-Peninsula, where cities and the surrounding counties have both controlled growth.

That growth controls may raise housing prices hardly constitutes an unassailable policy argument against the imposition of these controls. Cost-benefit analysis might show that a growth control that inflated prices was nevertheless worthwhile because of its incremental environmental benefits. Moreover, cost-benefit analysis is itself not an uncontroversial technique for making policy decisions.

Nevertheless, the evidence that links growth controls with high housing prices indicates that the achievement of environmental goals may have costly consequences for housing consumers and institutions, such as Stanford, that must compete for talent in a national market. Opinion leaders who continue to deny even the possibility of a linkage between growth controls and expensive housing run the risk of discrediting themselves in the debate over land use policy. □

*\*Land Use and Housing on the San Francisco Peninsula* (available for \$10 from the Stanford Environmental Law Society). Professor Ellickson presents his findings in more detail in the preface to that volume.

*Professor Ellickson’s interest in housing issues dates back to the Johnson Administration, when he served on the staff of the President’s Committee on Urban Housing. He joined the Stanford faculty in 1981 after eleven years at the University of Southern California, and teaches land use planning, property, and torts.*



## *Alumni/ae Weekend 1983*

# A Good Time Was Had

**M**embers of current reunion classes turned out in force October 7 and 8 for Alumni/ae Weekend 1983 and related events.

The Class of 1938 set what may be a School record for participation at a 45th reunion. More than half its members, along with their spouses, attended a special dinner Friday the 7th at the Menlo Country Club in Woodside. The success of the evening owed much to the efforts of Reunion Chairman Aylett Cotton.

Members of the Class of 1958, now 25 years out of school, threw themselves into a round of activities planned by Reunion Chairman James Danaher. These included dinner and dancing on Friday evening (also at the Menlo Country Club), a pre-game barbecue on Saturday, and a Sunday brunch hosted by Richard G. Mansfield and his wife, Elinor (Weiss) Mansfield ('62).

Other celebrants that evening were the Classes of 1948 (dinner at

La Tour in Palo Alto), 1963 (Chez Louis—formerly L'Omelette), 1968 (at the campus home of Professor Wayne and Jacqueline Barnett), and 1978 (also on campus, chez Toby and Dave Montgomery). The new format of Friday evening reunions was pronounced a great success.

Alumni/ae Weekend began in earnest Saturday morning (after a sunlit breakfast for Inner Quad members on the Irvine Gallery balcony) with talks by Professors Jack

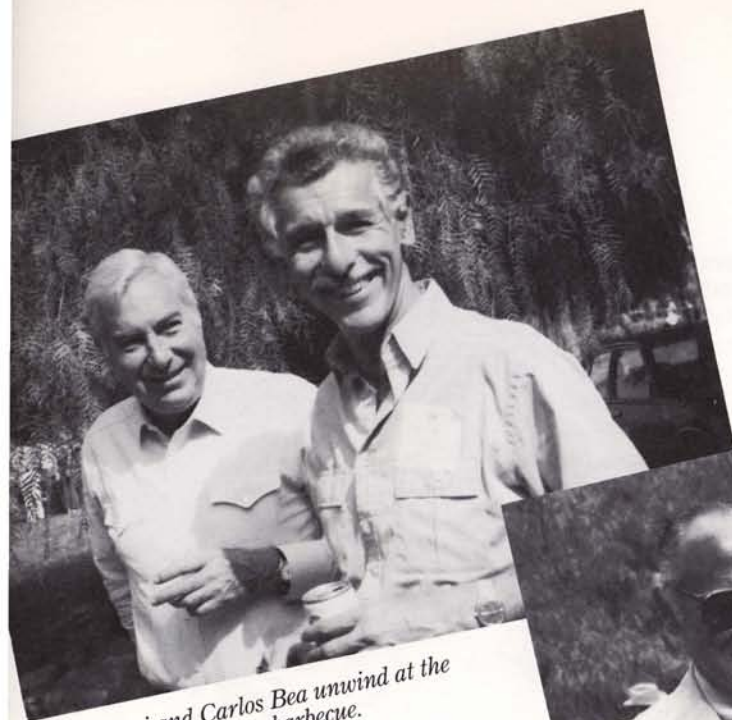


*Leon Carley and Lucien Shaw, with spouses Lucille and Bea, get reacquainted at the Class of 1933 reunion.*



*1958 graduates Peter Katsufakis and Constantine George visit on Friday evening.*

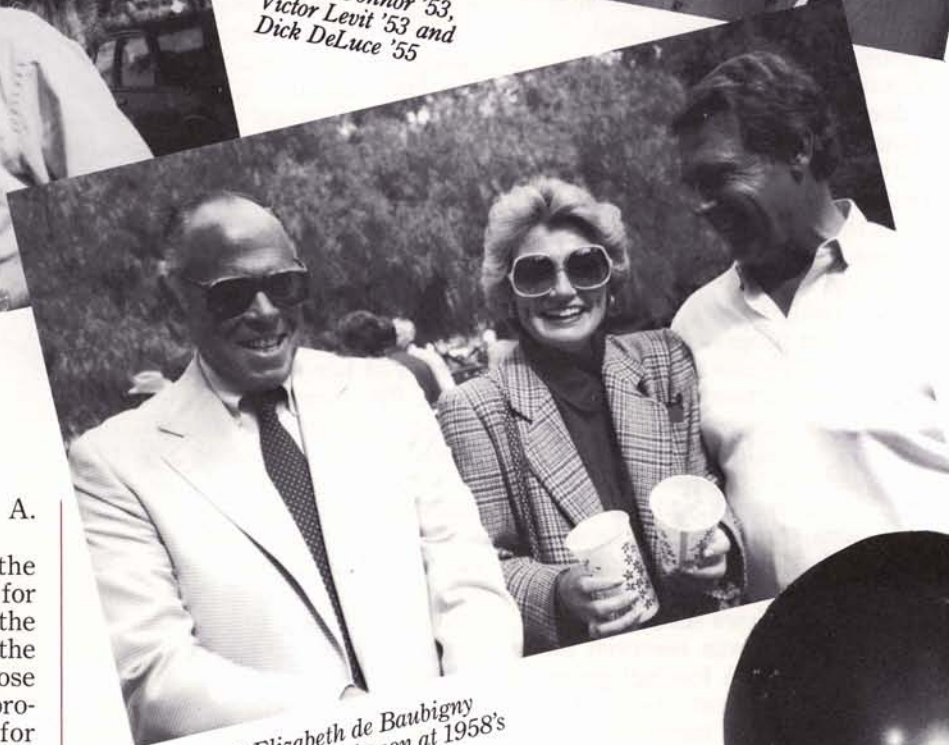




*Don Petroni and Carlos Bea unwind at the Class of 1958 pre-game barbecue.*



*John O'Connor '53, Victor Levit '53 and Dick DeLuce '55*



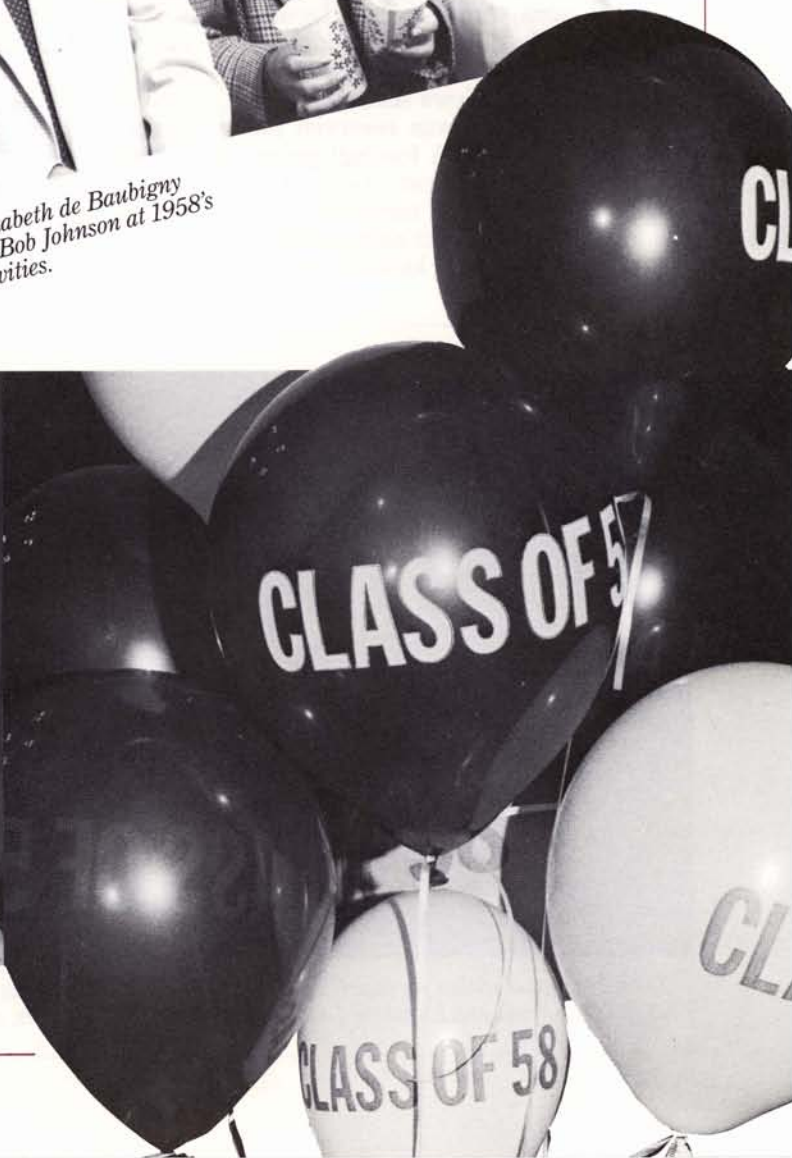
*Andre and Elizabeth de Baubigny were joined by Bob Johnson at 1958's pre-game festivities.*

H. Friedenthal and Barbara A. Babcock.

Friedenthal, chairman of the School's Admissions Committee for the past four years, noted that "the quality of the student body is the cornerstone of the School." Those involved with the admissions process are, he said, looking for students who are "not only bright but broad-gauged." The School's policy on minority candidates is "to recruit vigorously but not to signifi-



*Rob Faisant and Peter Hoss enjoy a Class of 1958 reunion gathering.*





cantly adjust our standards." The proof of the pudding, he noted, is that minority admittees do very well. "This is," he concluded, "a program that works."

Babcock spoke eloquently about the dilemmas and rewards of defending the guilty—the subject of her article beginning on page 4.

Dean John Hart Ely then reviewed the state of the School. This has been, he reported, "an unusually strong and lively year," including marked strengthening of the Law and Business program in both personnel and curricular terms; the permanent establishment of a student loan fund for summer public interest work (through a gift from Law School benefactors Kenneth and Harle Montgomery); and the addition of strong new staff and faculty and the filling of several endowed chairs. (For various developments, see the School News section.)

The afternoon was reserved for the Stanford-UCLA football game. Though the contest itself was marred by unlucky turnovers, the sun still shown, the (in)famous Band played better than it looked, and the

cardinal-clad fans cheered on.

Alumni/ae Weekend 1983 ended (except for the indefatigable Class of 1958) with a Saturday evening banquet at the Faculty Club. Here the Half Century Club met. And three of the "threes"—the Classes of 1933, 1943, and 1953—were reunited.

A warm farewell was given during the banquet to Victoria (Vicky) Diaz ('75), who was leaving after two years as assistant dean for development and alumni/ae affairs. Presenting her with several mementos of her years at the School, Dean Ely expressed the School's official appreciation and his own sense that he was losing a particularly trusted advisor who had done much to help him into the deanship.

The rest of the evening was given over to dancing and the stuff of which reunions are made—reminiscing, catching up, exchanging phone numbers, and heartfelt vows to meet soon again.

Alumni/ae Weekend 1984, with special reunions for the "fours" and "nines," will take place November 2 and 3. □



*George and Barbie Denny were among the many dancers at the Friday night 1958 class reunion.*



*Dean Ely's good wishes for departing Assistant Dean Victoria Diaz ('75) were warmly seconded by her coworkers Kate Godfrey of the Law Fund and Elizabeth Lucchesi of Alumni/ae Relations, during the all-alumni/ae banquet Saturday evening.*



## Endowed Chairs for Cohen, Gould, Scholes

Two members of the faculty—William Cohen and William B. Gould IV—have been named to endowed Law School chairs. Their appointments became official February 14 at the University Board of Trustees meeting.

Three months earlier a third professor—Myron S. Scholes, who holds a joint appointment with the Graduate School of Business—became the Frank E. Buck Professor of Finance at the GSB. Scholes continues his concurrent appointment as professor of law.

Professor Cohen is now the C. Wendell and Edith M. Carlsmith Professor of Law. The chair, which was established in 1977, is named after its donors. Mr. Carlsmith, a 1928 graduate of the School, was senior partner in Carlsmith, Carlsmith, Wichman & Case of Hawaii.

He and his wife, the former Edith A. Mattson (AB '28) both graduated from Stanford, as did over 25 other members of the Carlsmith family. Those in the field of law include Merrill L. Carlsmith (AB '28, JD '30), Donn Wendell Carlsmith (AB '50) and Carl Duane Carlsmith (AB '58).

Cohen is the second holder of the Carlsmith chair, following Thomas Ehrlich, former dean of the School.

Professor Gould has been named to the Charles

A. Beardsley Professorship in Law, first held by Charles J. Meyers, who followed Ehrlich as dean.

The Beardsley chair was established in 1965 through a bequest to Stanford by Mr. Beardsley, who earned both his AB ('06) and JD ('08) degrees at the University.

Beardsley was a distinguished Oakland attorney and founding partner of Fitzgerald, Abbott & Beardsley. A great believer in the value of practical experience, he taught part time at the Law School for nine years. His will provided for law scholarships as well as for the chair that bears his name.

The Buck chair, which Professor Scholes now holds, was previously held by noted GSB professor George L. Bach.

Scholes, 42, came to Stanford last year as the University's first business/law appointment. A leading finance theorist, he earned both PhD and MBA degrees from the University of Chicago. His background, which includes an endowed professorship in finance at Chicago, was described in a recent issue of *Stanford Lawyer* (Winter 1982/83, p. 26).

Brief biographies of the new holders of the Carlsmith and Beardsley chairs—both seasoned members of the Stanford Law faculty—follow.

### William Cohen

Cohen, the C. Wendell and Edith M. Carlsmith Professor of Law, is an authority on constitutional law.

*Constitutional Law Cases and Materials*—a text he coauthored with Edward L. Barrett, Jr.—is used in some 50 law schools throughout the country.

Cohen has also published two other constitutional law case books: *Comparative Constitutional Law Cases and Materials* (with Mauro Cappelletti, 1979), and *Constitutional Law: Civil Liberty and Individual Rights* (with John Kaplan, 1975).

In addition, he teaches and writes in the fields of torts and federal jurisdiction.

"Professor Cohen is a dedicated and demanding teacher, and his courses challenge the brightest students," said Dean Ely, who reported Cohen's appointment to the trustees.

Cohen, in a recent interview, said that his chief goal in teaching "is not to train people to think as I do, but rather to think for themselves."

"I'd like them to be skeptical and develop their own ideas—to make up their own minds about tough questions."

Cohen, 50, clerked for Supreme Court Justice William O. Douglas in 1956-57, after earning both his BA (1953) and law degrees (1956) from the University of California, Los Angeles (UCLA).



Professor Cohen



Professor Gould



Professor Scholes

While in law school, he was editor-in-chief of the *UCLA Law Review* and



earned election to the Order of the Coif.

Cohen joined the University of Minnesota law faculty in 1957, leaving in 1959 for UCLA, where he taught for eleven years before his appointment in 1970 as a Stanford Law professor. He was invited to Arizona State University in 1981 as Charles J. Merriam Distinguished Visiting Professor.

At Stanford, Cohen was chairman of the Law School's Admissions Committee in 1978 and 1979. Cohen is currently working on the seventh edition of *Constitutional Law Cases*, as well as an article on the role of Justice Douglas in the Rosenberg atomic spy case.

He is married to the former Nancy Mahoney (JD '75), an attorney with Syn- tex. They have one child, Margaret, 5, and live in Palo Alto.

## William B. Gould IV

Gould, the new Charles A. Beardsley Professor in Law, is an expert on labor law, with a strong interest in employment discrimination issues.

"Bill Gould is among the most prolific and renowned members of our faculty," Dean Ely said in his report to the Trustees.

The American Bar Association last year awarded Gould a certificate of merit for his book, *A Primer on American Labor Law* (1982).

He has also written *Black Workers in White Unions: Job Discrimination in the United States* (1977)

and a book now in press on Japanese labor law and practice, as well as numerous papers and articles.

"Japan is interesting because its system is fundamentally different from ours, but the law is very similar," he said in a recent interview. "They have in effect reshaped U.S. labor law to fit their own society and values."

Gould is also deeply interested in the Republic of South Africa, where black workers are struggling to win union rights and recognition.

"I've tried to be not only a scholar and writer, but also a proponent of change," he says, noting that his speeches are widely reported in the South African press.

A forceful courtroom advocate, Gould often represents individuals in job bias suits against employers.

In a landmark 1981 case against Detroit Edison, he won the largest per capita judgement that had ever been awarded for damages to members of a class suffering discrimination.

Gould was also lead counsel in the 1977 *U.S. v. Trucking Employers, Inc.* case, the first successful challenge of a government-negotiated agreement involving employment discrimination.

"The reason I went into law was a concern with injustice," he explains. "For me the law and moral principles are very closely connected."

## Students Open East Palo Law Clinic

After more than two years of planning and fund raising, the student-run East Palo Alto Community Law Project (EPACLP) has established a legal services clinic in the largely low-income and minority city of East Palo Alto.

Opening ceremonies for the clinic, which is located in a house at 1395 Bay Road, took place April 13. Susan Jackson Balliet, formerly a directing attorney at the Legal Aid Society of San Mateo County, has been hired as executive director.

The EPACLP became active in the community last year through an outreach program for the public on legal rights and resources. Two sessions—on consumer law and landlord-tenant issues—have already been pre-

Gould has served as an impartial arbitrator of disputes between labor and management for the past 20 years and is a member of the National Academy of Arbitrators.

He recently served as co-chairman of a California State Bar ad hoc committee on wrongful dismissals. In the committee report, released in February, he argues that arbitration should be available to both non-union and union employees who lose their jobs.

Gould, 47, grew up in Boston and Long Branch, New Jersey, earned his bachelor's degree in 1958 at the University of Rhode Island, and his law degree at Cornell in 1961.

He was with the United Automobile Workers, AFL-CIO, as assistant general counsel in 1961-62, and was admitted to the Michigan bar in 1962.

He then studied for a year at the London School of Economics.

From 1963 to 1965 he served as an attorney with the National Labor Relations Board in Washington, D.C., and from 1965 to 1968 was in private law practice in New York City.

Gould joined the faculty of Wayne State University law school in 1968, where he became involved in the Detroit Edison case.

He served as a visiting professor at Harvard in 1971-72 before joining the Stanford Law faculty in the fall of 1972.

Gould has since been a visiting scholar at Cambridge University in England (1975) and at the University of Tokyo (1975 and 1978), the second time as a Guggenheim fellow. And in 1982-83 he was a fellow at the East-West Center in Honolulu.

He and his wife, the former Hilda Fitter, live on the Stanford campus. They have two sons in college and a third at Palo Alto High School. □



sented, and others are planned.

The project was begun by a group of law students who "wanted to get Stanford involved in the local community," says Peggy Russell, a third-year student who is 1983-84 EPACLP president. East Palo Alto, she points out, "has suffered from a chronic lack of legal representation."

A second motive has been "to provide Stanford law



*Law Clinic founders (clockwise from left) John Preiskel '83, Steven Dinkelspiel ('85), Jim Steyer '83, Michael Calabrese ('84), Stephane Atencio '83, Peggy Russell ('84), and Cynthia Robbins '83.*

students with more practical legal education—especially in services for the poor."

Student volunteers, headed by Steven Dinkelspiel (Class of 1985), have raised over \$250,000 to cover the clinic's expenses during the first two years of operation. Donors include the San Francisco Foundation, Irvine Foundation, Peninsula Community Foundation, Hearst Foundation, Stanford Public Interest Law Foundation, and many private individuals.

All in all some 50 Stanford law students are actively involved in the project.

The management and financing of EPACLP, which is organized as a nonprofit corporation, are independent of Stanford Law School, though individuals associated with the School are prominent in its leadership.

The Hon. LaDoris H. Cordell ('74), former dean of student affairs, is chairman of the board of directors. Professors Jack Friedenthal and Barbara Babcock are also members of the board, as are the Hon. Thelton Henderson, SLS student Peggy Russell, and three 1983 gradu-

ates who helped get the project going—James P. Steyer, Cynthia Robbins, and John Preiskel.

Other faculty members involved with the project are Paul Brest, William Simon, Eric Wright, Nancy Millich, Miguel Mendez, Samuel Gross, Thomas Heller, Michael Wald, and Robert Mnookin.

Although academic credit will not be offered for work in the clinic per se, seminars that will permit students to integrate their clinical experiences with academic work will be offered on a regular basis. □

## Dray '72 Heads Development Program

Barbara Glidden Dray returned to the School November 14 to assume the newly created post of Associate Dean for Development and Alumni/ae Relations.

Dray, who was assistant dean for four years (1977-81), has close ties to the School and is well known to its graduates and friends.

For the past two years, she has been with the Palo Alto law firm of Cooley, Godward, Castro, Huddleson & Tatum, specializing in venture capital financing.

"Barbara Dray has served Stanford Law School with distinction, and we are delighted she has agreed to return in the broader capacity of associate dean," Dean Ely said in announcing her appointment.

Dray is responsible for all of the Law School's development and alumni/ae activities, including principal and major gift fund raising. She also serves as



*Associate Dean Barbara Dray*

secretary to the Board of Visitors.

Her responsibilities include those previously held by Victoria Sainz Diaz, who resigned last fall after two years as assistant dean.

"I can't tell you how delighted I am to be back at the Law School, doing work I love with people I admire and enjoy," Dray said recently. "I learned while I was away how much it matters to me to work for an in-



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stitution in whose mission I believe."

Dean Dray is focusing on student financial aid—"the School's most pressing financial priority"—and continues to work on projects like the Law and Business Program. "I am particularly eager," she added, "to get started on some of John Ely's initiatives and hopeful that my experience in the last three years will be helpful as we put together our Law and Technology Program."

Dray welcomes the opportunity to work again with the Law School's alumni/ae and friends, "whose abiding respect and affection

for the School," she says, "makes my work so rewarding. 'It's just terrific to be back.'"

Dray, 40, earned her AB at Stanford with distinction in 1965, in history. She then joined IBM in San Jose as a personnel data systems coordinator.

She returned to the University in 1966 to become assistant to the dean of students and activities adviser, a position she held until 1969, when she was admitted to the Law School.

Here she served as president of the Stanford Legal Aid Society, won an Hilmer Oehlmann, Jr.

Award for excellence in research and writing, and contributed to *Air Pollution in the San Francisco Bay Area*, a study published in 1971 by Ecology Center Press.

Dray was admitted in 1972 to the bar of Washington State, where she was for five years associated with the Seattle law firm of Davis, Wright, Todd, Riese & Jones, specializing in antitrust litigation. While in Seattle, Dray served as state chairman for the Stanford Law Fund and treasurer for the Stanford Law Society's state organization.

She became the

School's assistant dean for development and alumni/ae relations in 1977, and during her four years in that post served on the California Committee of Selection for the Rhodes Scholarships, the Stanford University Committee on Public Events, and the Stanford University Search Committee for a Vice-President and Provost.

In 1981 she was admitted to the California State Bar and to practice before the U.S. District Court for the Northern District of California.

Dray, a resident of Los Altos, has two children: Elizabeth, 11, and Adam, 9. □

## Public Service Loan Program is Endowed

The student loan program for summer public service work is now fully and permanently funded, thanks to a \$300,000 gift to endowment by Kenneth F. and Harle Montgomery of Northbrook, Illinois.

The new funding will permit up to 20 law students per year to meet their summer living expenses and part of their pending tuition while working in relatively low-paying public interest or government internships.

"We think that there is in our student body a good deal of untapped interest in serving the public good, which currently is underrealized because of today's financial pressures," Dean Ely says.

"Lots of students are heavily in debt and can't afford to do public-interest law work during a summer," he points out. "The purpose of the program is to lend them enough money to get through."

Eleven students participated in the program in 1983, its first and pilot year, taking summer jobs with such organizations as Public Advocates, Inc., the Mexican American Legal Defense and Educational Fund, Alaska Legal Services Corporation, National Center for Immigrants' Rights, Office of the Public Defender in San Francisco, and United States Attorneys' offices in Northern California, Boston, and New York.

Participating students will not be required to begin repayment on the loans until six months after graduation,



Dean Ely (left) celebrated the establishment of the public service loan program with donors Kenneth F. (right) and Harle Montgomery.

and for the first two years they need pay only interest.

Any graduates who are then working full time in a public service position and earning less than \$27,000 per year (adjusted for inflation) will be forgiven the loan prin-



cial payments during the years of such employment.

Carole Cooke, a second-year student who received a loan last year, says of her summer with the U.S. Attorney's office in Mount Shasta: "It was terrific to get courtroom experience, for I had wanted to know if I had any litigation skills. It felt good—going to work for the federal government permanently is now something I would really consider."

Another second-year student—Kirby Heller, who worked for Public Advocates last summer—observed that the School's new loan program benefits more than just those immediately involved: "Because some students participated last year, many others became more exposed to public interest law, and that will be better for Stanford Law School."

The Montgomery Loans will be administered by a committee chaired by Assistant Dean Margo Smith and including two students.

Mr. and Mrs. Montgomery have been generous benefactors of the School. In 1980 they endowed the first clinical legal education chair in the country—The Kenneth and Harle Montgomery Professorship of Clinical Legal Education, now held by Professor Paul Brest.

Mr. Montgomery is a two-term (1979-81 and 1981-84) member of the Board of Visitors.

A 1928 graduate of Harvard Law School, he has been awarded honorary degrees from Dartmouth College, Columbia College in Chicago, and Miles College in Birmingham, Alabama.

Montgomery is a partner of the Chicago firm of Wilson & McIlvaine and a trustee of Presbyterian-St. Luke's Hospital in Chicago and of the Chicago Fine Arts Foundation.

Mrs. Montgomery is a member of the Stanford Class of 1938. Her many cultural and civic activities include serving as a director of the Chicago Council on Foreign Relations and as a trustee of the Scripps Clinic and Research Hospital in La Jolla.

## Students Stage Shakespeare Play



Portia (Palacio, left) urges an unrelenting Shylock (Gordon, right) to show mercy, as the Duke (McBride, center) looks on.

For a few days last winter, Classroom 190 was transformed into a theatre for a production of *The Merchant of Venice*.

It was an event for the Law School and by the Law School in every imaginable way. The play's dominant theme—the nature of justice—couldn't have been more relevant. And because the actors were fellow students, faculty, and staff, a wonderful rapport existed between audience and performers.

The cast included Cristina Palacio (Portia), Professor Robert Gordon (Shylock), Chip Pitts (Bassanio), John Ott (Antonio), Associate Dean Thomas McBride (Duke of Venice), and Gary Cole (Gratiano).

Credit for direction goes to Marc Fajer, a second-year student whose other productions at the School include Brecht's *In Search of Justice* (in March 1983) and Lanford Wilson's *Hot-I Baltimore* (February 1984).

## Silverberg '55 Names Book Fund after Father

Charles D. Silverberg has endowed a book fund in memory of his father, Herbert T. Silverberg (1904-1962). The new fund will help the Law Library maintain and expand its collection of works in entertain-

ment and communications law—an interest shared by both father and son.

The late Mr. Silverberg was a noted Los Angeles attorney who served as counsel for numerous independent motion picture producers and authored many articles relating to the entertainment field.

His firm, which Charles joined on return from active



military duty in Korea, was the predecessor of Silverberg, Rosen, Leon & Behr,

where Charles founded and now oversees the Entertainment Law Department.

Charles Silverberg, who earned both his AB ('53) and JD ('55) degrees at Stanford, has for many years been a generous supporter of the Law Library and School. A member of the Board of Visitors since 1981, he is currently



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its vice-chairman and will become chairman this fall. He has also been serving, in calendar 1982 and 1983, as chairman of the Law Fund Westside (Los Angeles) Inner Quad group. Books purchased

through the new "Herbert T. Silverberg Entertainment/Communications Law Memorial Book Fund" will bear a special bookplate designed by Charles' niece Cathy Tetef (AB '80). □

## School Holds Conference on Law Firm Trends

Twenty-two noted lawyers and academics from across the country gathered at the School Febru-

ary 24-25 to consider the nature and future of the law firm.

The conference—titled

"The Law Firm as a Social Institution"—was, Dean Ely said, "an early coming-together on a set of topics that undoubtedly will be much discussed and studied in coming years."

Stanford Law Professors Lawrence Friedman, Deborah Rhode, William Simon, and Robert Mnookin were the prime organizers of the conference, which Robert Gordon introduced and chaired.

Speakers and commentators included partners in leading law firms, in-house counsel, and professors of sociology, political science, economics, and philosophy. Together they provided a comprehensive look at the values and economics of large corporate law firms.

The first panel focused on social values and client relationships in such firms, as analyzed in a paper by Robert Nelson of the American Bar Foundation. Professors Simon of Stanford Law School and Stewart Macaulay, of the University of Wisconsin Law School, served as discussants.

Commentators on the next paper—"Ethical Perspectives on Legal Prac-

tice" by Professor Rhode of Stanford—included Paul Saunders of the law firm of Cravath, Swaine & Moore and Murray Schwartz of the UCLA law school.

John Heinz, of the American Bar Foundation, and Edward Laumann, a University of Chicago sociologist, then presented a paper on Washington, D.C. law firms. Comments followed by two Washington law firm members—Michael Boudin, of Covington & Burling, and Richard Danzig, of Latham Watkins & Hills.

UC-Berkeley Professors Robert Kagan, of the Political Science Department, and Robert Rosen, Sociology, offered sociological perspectives on corporate law firms for the next panel, which included as commentators Magali Larson, of the Sociology Department of Temple University, and Professor Robert Post of UC-Berkeley's Boalt Hall.

The often troublesome issue of how partners divide law firm income was explored in a paper by Stanford Law Professors Ronald Gilson and Robert Mnookin, in the first panel of the second day. Peter Pashigian, of the Graduate School of Business at the University of Chicago, and Steven Kelman, of the Kennedy School of Government at Harvard, were discussants.

In the final panel, Professor Abram Chayes, of Harvard Law School, and



*Practicing lawyers and academics discussed the future of "The Law Firm as a Social Institution."*





Antonia Chayes, of the firm of Csaplar & Bok in Boston, considered the growing trend among corporations of employing in-house counsel rather than outside firms. Philip Lochner, associate general counsel with Time Inc., and James Freund of Skadden, Arps, Slate, Meagher & Flom, offered comments.

Professor Gordon, in summary remarks, likened the current state of knowledge about law firm trends to "an old map, where the coastlines are clearly indicated but where there exist in the interior large blank areas marked 'Here There Be Tigers.'"

So what is the future of the large corporate law firm as we know it today? The participants cordially differed.

The bearish included Prof. Chayes, who noted that morale among the increasing numbers of in-house counsel seems high compared to that among law firm members.

Freund was more bullish. The pie of legal work is not, he said, finite. And the mood, at least among members of his firm, is "go, go, go."

Financing for the conference was provided from the Kirkwood-Kuhn Dean's Fund. The resulting papers will be published in a forthcoming issue of the *Stanford Law Review*. □

## Kudos to Four Alums

Four Law School alumni have been honored by Stanford Associates for outstanding service to the University.

Myrl R. Scott (JD'55) and R. Chandler Myers (AB'54, JD'58) both received awards on January 27, at an Associates regional dinner in Los Angeles.

A third recipient—Kendyl K. Monroe (AB'58, LLB'60) was given his award April 27, at a reception in New York.

David S. Jacobson (AB'30, LLB'34), the fourth honoree, was presented with a special citation "for lifelong services," at the annual Gold Spike banquet last Sept. 23.

### Myrl Scott '55

Scott, whose record of Stanford service goes back to 1969, is a partner in Sheppard, Mullin, Richter & Hampton of Los Angeles, where he specializes in corporate, real estate, securities, and tax law.

He served as president of the Law Fund in 1982 and 1983, following two years as national chairman of the School's Inner Quad program and six years (1969-72 and 1977-80) on the Law School's Board of Visitors.

Scott is currently vice-chairman of the Law Fund and a member of the University's Annual Fund Council.

He is also a long-time



Scott, Law Fund president 1982-83

Friend of the Law Library and a past president of both the Southern California Law Society and the Stanford Club of Los Angeles County.

Scott was praised, in his Associates award citation, as a volunteer with high standards and objectivity, "whose caring, concern and conscientiousness have benefitted Stanford University and especially the Law School . . ."

### Chandler Myers '58

Myers, a senior partner in the Los Angeles firm of



Myers, Southern California leader

Myers & D'Angelo, was cited for "unusual depth and breadth of involvement as a volunteer for the Law School and special gifts programs."

He has been active in University fund raising since the mid-60s. A past class agent, he joined the special gifts program as a volunteer in 1973 and served as regional vice-chairman for Los Angeles in 1977. He was recently named area chairman for Southern California.

Myers is a past president of the Stanford Law Society of Southern California and served on the Board of Visitors from 1970 to 1973.

### Kendyl Monroe '60

Monroe is a partner in Sullivan & Cromwell of New York City. His specialties are corporate, finance, and tax law.



Monroe, New York Inner Quad chairman

An active Stanford volunteer since 1963, he has for almost a decade served as Law Inner Quad regional chairman for New York.

He is also a past mem-



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ber of the Board of Visitors (1975-78) and of its Executive Committee (1976-78).

Monroe is being honored not only for leadership in fund-raising efforts but also (the Associates citation reads) "for being a voice of Stanford University and its Law School in the East . . . and for interest and hospitality extended to Stanford faculty, staff and students that knows no geographical boundaries."

## David Jacobson '34

Jacobson's special citation was, like Jacobson himself, "one of a kind." A member



Jacobson, former secretary to the University

of the Stanford staff for 32 years, he retired in 1969 as secretary to the University.

His entire Stanford career, with the exception of four years as executive assistant to President Donald B. Tresidder, has been devoted to fund raising on behalf of the University.

Jacobson deserved recognition, according to his citation, for numerous contributions, including "his finely tuned lawyerly tal-

ents . . . his mastery of intricate laws and legislative bills, strange IRS rulings, and peculiar court decisions affecting the future of the University and the work of Stanford Associates . . . and for his critical role in the formation and early execution of the programs on which Stanford University's fund-raising efforts depend today." □

## Students Sponsor Name Speakers

A parade of nationally known speakers visited the School this fall and winter under the sponsorship of the student-run Stanford Law Forum.

"We're interested in people with something to say about the law that we might not otherwise hear," says Forum President Gary Cole, a second-year student.

Recent speakers include FBI Director William Webster, Judge J. Skelly

## School Enters Computer Age

With a muted chorus of clicks, beeps, and whirs, the Law School has gone electronic.

Faculty and staff alike are peering at screens alight with iridescent green letters, capturing keystrokes, monitoring megabytes, and excitedly ex-

changing, in a patois of hacker English, tips on how to use (and not use) the new technology.

It all began quietly in 1977, with the introduction in the Law Library of computer-based book cataloging, along with an interlibrary loan system. Com-

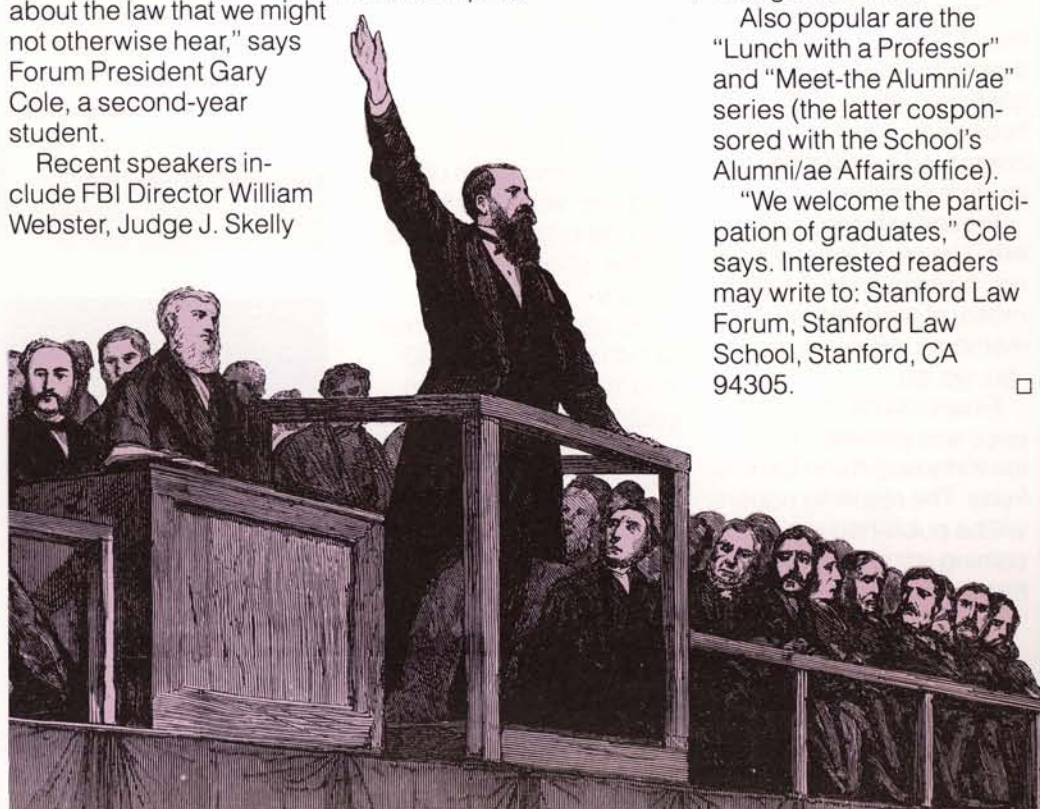
Wright of the U.S. Court of Appeals in Washington, D.C., former presidential candidate John Anderson, consumer advocate Ralph Nader, biologist and environmental crusader Barry Commoner, New York attorney Roy Cohn (of Army-McCarthy hearing fame), and private investigator Harold Lipset.

Most Forum speakers come during the lunch hour, give a short talk, and then open the floor for extended questioning by students.

The Forum has in addition been organizing panels on topics of interest to law students, such as the management and marketing of law firms.

Also popular are the "Lunch with a Professor" and "Meet-the Alumni/ae" series (the latter cosponsored with the School's Alumni/ae Affairs office).

"We welcome the participation of graduates," Cole says. Interested readers may write to: Stanford Law Forum, Stanford Law School, Stanford, CA 94305. □





puter terminals also appeared in a few administrative offices with heavy records-keeping and/or accounting functions. And a handful of pioneering faculty members singly purchased assorted electronic hard- and software for their own work.

But despite these early and piecemeal advances, the School was still a long way from realizing the potential of computers for text preparation, instruction, and research and analysis.

The recent leap forward dates from the fall of 1982 when, at the request of Dean Ely, an intensive, function-by-function study of word- and data-processing needs throughout the School was launched by Associate Dean Thomas F. McBride and Systems Manager Joan Galle.

The study not only defined needs and opportunities for improved efficiency, but also laid out a plan, now more than half implemented, for a coordinated, schoolwide program of computer acquisition, training, and utilization.

(Interested readers can obtain the study report, *Plan for Computerized Support Systems for Stanford Law School*, by writing Joan Galle, Systems Manager, Stanford Law School, Stanford, CA 94305.)

As of January 1984, nearly 50 mini-computers (chiefly personal computers) and terminals (linked

to data sources and/or the University main-frame computer) were strategically placed around the School. Some 25 are used by faculty, 11 by faculty secretaries, 3 by students involved in publications, and 2, in the Law Library, provide access to the LEXIS data base. The balance are used to speed staff work in such administrative offices as admissions, financial aid, registrar, development, finance, and placement.

Within the next few months, Law School researchers will also begin tapping the "Westlaw" legal research data base. In addition, up to 24 personal computers (PCs) are planned to complete the needs of faculty members and secretaries.

Another and important priority is computer access for general student use—tentatively in the form of 6 PCs in dedicated Library space. As Dean McBride notes, familiarity with modern text-editing and data-processing techniques is fast becoming "an unavoidable aspect of a 'complete' legal education."

For many Law School computer users, there's no going back.

These include professors like Roberta Romano, whose empirical research would be virtually impossible without the data organizing abilities of modern electronic brains.

"It would have been extremely expensive to un-

dertake empirical projects a few years ago," says Romano. "But the dramatic reduction in the cost of computers and their influx in the Law School has

a second mini-computer, for use at home.

"I've broken the habit of writing my first drafts on yellow legal pads. Now I do them on the computer it-



*Professor Roberta Romano, computer buff*

changed all that. As a consequence, it's far more feasible to test theories about the legal system."

Computers also play a central role in Professor Robert Mnookin's innovative seminar, Advanced Financial Planning. "Prior experience with computers is *not*," he says, "a prerequisite." But by the time students finish, they will have learned (on IBM PCs with Lotus 1-2-3 programs) how to make complex projections and analyze alternative plans for clients.

The appeal of the computer for most Law School professors is, however, in word processing. "It's made a dramatic change in my scholastic output," says Professor Thomas Heller, who just purchased

self. The ideas come more freely when I don't have to put them down in finished form or structure.

"It's easy to reorganize, move things around, rewrite, and evaluate. So I do more drafts. But in the end it takes less time and is, I think, actually better."

The rapid and coordinated "computerization of the School" has, Dean McBride observes, "put Stanford well in the vanguard of law schools" both in its existing computer systems and in planning for the future. "This is important," he says, "not only for internal efficiency but also to prepare our graduates for the world into which we are sending them." □



## Student Offers Cure for Chronic Prolivity

Carol Dumond '83, during her tenure as editor of the SLS student newspaper, exposed an insidious syndrome not unknown in legal circles: "erudition addiction." Here, for the delectation of our readers, are excerpts from her article. Dumond is now with the San Francisco architectural firm of Warnecke & Associates.

When I first came to Stanford, I was impressed by the stockpiles of verbal ammunition possessed by my fellow law students. It was a little frightening to be surrounded by so many people who knew as many words as I did. Even more awesome was the fact that these people actually used all those words, in real sentences, every day of their lives—and most of the time correctly, too.

The level of vocabulary displayed in class during the first few weeks seemed to indicate that none of my fellow students knew any words (except "the") derived from Anglo-Saxon roots. Franco-Latinate filled the air, punctuated here and there with a little Greek or German.

I assumed that all this stuffy usage was the natural result of each speaker's wish to impress professors and classmates, and that it would soon wear off. To an extent, I was right. By October most of us were back to speaking English



on a regular basis.

Some poor souls, however, couldn't stop. They went right on using words of five syllables in class. A few didn't even unwind in casual conversation. They're still at it—tossing off words like "parameters," "suppuration," and "quasi-Albigensianism," as if nursed on tea brewed from the crushed leaves of *Webster's Third*.

These pitiful wretches suffer from one of the most insidious mental impediments known to man: erudition addiction (EA).

The worst feature of this dread disease is the lack of awareness by its victims. The impairment itself prevents them from noticing.

Further, since law firms have always stood up bravely for the rights of the erudition-addicted (backing this commitment by disproportionate hiring

and promoting of EA victims), sufferers rarely discover the problem before the age of 65 or 70.

But wait! There is hope. I have devised, as a public service, a brief quiz [see box] to help EA victims to identify themselves.

The road to recovery is difficult but not impassable. The following brief course in modern (post-Cosell) English may smooth the way.

■ PHENOMENON and CRITERION have been lost. They have been replaced by PHENOMENA and CRITERIA; the plurals are now PHENOMENAS and CRITERIAS.

■ The same thing has happened to MEDIUM in the sense of mode of transmission; the singular is now MEDIA and the plural MEDIAS, as, formerly, "in medias res."

■ HOPEFULLY, although it sometimes retains its old meaning, is now also used to mean "I/we hope that," as in "Hopefully, the boys will be home for Christmas." This usage has been resisted by hardliners, but it does seem to fill a gap.

■ AMONG is another casualty. Now the word used to express an interchange among more than two entities is BETWEEN. Practice the following sentence until it doesn't sound weird anymore: "Between the five, I like this one best."

■ Note that BETWEEN continues to be used where two entities are concerned, sometimes with excessive zeal, as in "There was a chair between each table." Similarly, things no longer fall into cracks—they fall "between the cracks." Really.

■ FEWER is rarely used,



and only when the sentence does not also contain the word LESS. The change is considered to be due to anti-Catholicism on Madison Avenue, resulting in a whole generation of copywriters who didn't have nuns in grade school.

■ LIGHT is still with us in all its meanings but one. When referring to a food or beverage that has been made in such a way that its calorie content is lower than usual, the word to use is LITE. Thus, you will hear of things like "lite cheese," "lite beer," "lite chocolate fudge pudding," and "Mouton Rothschild '32 Lite."

■ The objective case (ME, HER, HIM and THEM) after prepositions has all but disappeared, largely due to the fear of objectives bred into children who are unable to figure out why adults get upset at the expression "Him and me went out." These children grew up believing that objective case pronouns were always wrong (they didn't have nuns either). They are now unable to say, "Between him and me, we worked it out." Instead, they say, "Between he and I, we worked it out," or "It worked out well for she and I."

■ We have also lost AFFECT, which has been replaced by IMPACT ON. For instance, if you see a train headed down the tracks toward your stalled car, you might well wonder, "How will the impact impact on my life expectancy?"

■ Computers are impacting on English. These days we ACCESS INFO instead of finding things out; we INTERFACE instead of putting things together; we are, or are not, HARDWARE COMPATIBLE, instead of fitting (or not) in our surroundings. You must come to terms with this situation, whether you like it or not. Press "Return" when you are ready to go on.

■ Most people are not RELUCTANT to accept the new usages in English. This is because people aren't reluctant to do anything anymore; instead, they are RETICENT. The old meaning of reticent is gone, but we really don't need it now that people have stopped being reticent altogether.

Although this list is by no means exhaustive, it should at least get you used to some of the new usages making the rounds these days.

You are likely to run into many new-fangled expressions unprepared; in that case, DO NOT allow your teeth to grind. That is the quickest way to go into erudition shock.

The best thing to do when ambushed by a Springing Neologism (as EA therapists call them) is to yawn immediately, steer into the skid, and let it carry you with it. This method has been proven effective in 98 percent of cases.

Just remember that you can't fight the entire mass of men leading lines of

quiet desecration.

And, finally, keep in mind the words of the immortal Clarence Darrow: "Sure,

you could talk perfect English—but who would you talk it at?" □

## THE QUIZ

### Are You Erudition-Addicted?

*Instructions:* Give yourself 3 points for each "yes" answer, 2 for each "maybe/sometimes" and 1 for each "no."

- 1) Do you really know what parameters means?
- 2) When others are having fun, do you derive gratification instead?
- 3) Could your casual, everyday speech be transcribed and put into a book on transcendental metaphysics without anybody noticing a difference in style?
- 4) Are you physically unable to speak three consecutive sentences made up entirely of one-syllable words?
- 5) Do you understand what the Coneheads say without having to think about it? (Add 4 points if you don't know who the Coneheads are.)
- 6) Do you often put "not un-" in front of your adjectives?
- 7) Do you find yourself experiencing alienation from the labyrinthine and inordinately intercalated complexities of the superstructure of enterprise regulation, while those around you are just bored with corporations law?
- 8) Do you think this quiz is jejune?

### Diagnosis

If you score 18 or higher, the statistical probability of your ability to evade permanent affliction is negligible. No contemporaneous alleviation of your condition is within the framework of operable feasibility; ergo your obfuscatory compulsion is a situation to which you must enure yourself.

If you scored from 12 to 18 you are definitely erudition-impaired and should, before your current advanced disorder metamorphoses into an irrevocably fixed disability, immediately proceed to an examination and contemplation of the adjacent article.

If you scored 6 to 12, you're marginal, but probably heading for EA at a fairly fast clip. You'd better take steps right away if you want to avoid getting hooked for keeps.

A score of less than 6 is joke.



## Students Learn of Public Interest Opportunities

"Awesome" was the way one student described the School's November 5 conference on public interest law alternatives.

"Motivating," said another.

The conference—a Law School first—was designed "to inform students of the many exciting and challenging opportunities available in the public interest field," said Lecturer Nancy Millich, a prime organizer of the day-long event.

Panels were presented on environmental litigation, criminal litigation, client-oriented public interest law, impact litigation, and public interest law in small and large firms.

The impetus for the conference came at least in part from a group of concerned students, 19 of whom took part in the planning committee. Millich and Placement Director Gloria Pyszka were the responsible staff members. Dean Ely, whose interest in broadening the perspective of students is well known, gave welcoming remarks.

The panel on client-oriented law, which Professor William H. Simon moderated, featured Sheila Brogna, senior attorney with Legal Services for Children (San Francisco), Lynda Burton, attorney with the San Mateo County Legal Aid Society, Mike Gilfix, director of Senior Adults Legal Assistance (Palo Alto), and Teresa Nelson, director of Mental Health Advocacy (of San Jose).

Opportunities for public service by law firm attorneys were described by Michael Rubin of Altshuler & Berzon (San Francisco), Jean McCown of Blase, Valentine & Klein (Palo Alto), Charles N. Frieberg of Heller, Ehrman, et al. (San Francisco), and Jack Londen of Morrison & Foerster (also San Francisco). Eva Jefferson Paterson, assistant director of the San Francisco Lawyer's Committee, served as panel moderator.

The environmental litigation panelists included Allene Zanger, a California state deputy attorney general in the Office of the Attorney General's Natural Resources Section (San Francisco); and Alletta d'A. Belin of Shute, Mihaly & Weinberger (San Francisco). Bruce Tichinin, an attorney with Tichinin & Mitchell (Morgan Hill), served as moderator.

Professor Miguel A. Mendez of Stanford moderated the panel on criminal litigation. He was joined by Sharon A. Meadows, assistant federal public defender in the Office of the Federal Public Defender, San Francisco; Joseph B. Thibodeaux, deputy district attorney in the Office of the Santa Clara County District Attorney; Rosemary Morrison,

deputy public defender in the Office of the Santa Clara County Public Defender; and Leida B. Schoggen, assistant U.S. attorney in the Office of the United States Attorney, San Jose.

The final panel, on impact litigation, was moderated by Professor Eric W. Wright of Santa Clara Law School. Speaking were Alan L. Schlosser, staff counsel with the American Civil Liberties Union (San Francisco); Fredric D. Woocher, staff attorney with the Center for Law in the Public Interest (Los Angeles); Norma Cantu, director of education litigation for the Mexican American Legal Defense and Educational Fund (San Francisco); and Professor Edward Steinman of Santa Clara Law School.

Students were encouraged to meet with individual speakers by appointment and/or informally during the breaks and post-conference wine and cheese reception.

More than 100 students, including 26 from other law schools in the area, attended.

Support for the conference was provided by the Dean's office, Placement, and the student-run Stanford Law Association. □

## Firm Honors Kadison '48 with New Law School Fund

Stuart Kadison ('48) received an unusual gift for his sixtieth birthday—a Law School fund named in his honor. The new "Stuart L. Kadison Student Loan Fund" was endowed by his fellow partners in the Los Angeles firm of Kadison, Pfaelzer, Woodard, Quinn & Rossi.

Kadison learned of the gift during a firm celebration November 18, where he was presented with a framed memento from the School.

"There is nothing that my partners and the Law School could have done to give me greater pleasure," Kadison said later, "unless you had all ignored the occasion and gone on to be-



A birthday surprise for Stuart Kadison (with wife Carita)

lieve, as I was trying to believe, that 60 was a milestone to be reached in the distant future." □



## Faculty Notes

Professor **William F. Baxter** resigned his post with the national Administration and returned to Stanford in mid-December. Reflections on his years in Washington as President Reagan's antitrust chief appear in the interview beginning on p. 10.

Professor Baxter and Professor **Thomas Campbell**, another former Reagan Administration official, both participated in two recent panels: "Antitrust in the Eighties," the principal program of an event sponsored by The Conference Board, New York City; and "Joint Ventures in Antitrust," sponsored by the Institute for Corporate Counsel, Los Angeles.

Professor Campbell went on to serve as program chairman of the Antitrust Section at the American Bar Association's annual meeting, March 21-22, in Washington, D.C., where he also moderated a panel on antitrust and reindustrialization.

Professor **Mauro Cappelletti** was elected president of the International Society of Procedural Law during the Society's seventh congress, in Wurzburg, Germany. While there, he and Stanford Law alumnus Bryant Garth ('75), now an Indiana University professor, presented a report on "The Protection of Collective and Diffuse Interests in Civil Litigation."

Professor Cappelletti, who is currently teaching at the European University Institute in Florence, Italy, also recently traveled to: Belgrade, for the first World Congress of Constitutional Law; Paris, to preside over the annual conference of the International Association of Legal Science; and Stockholm, Cambridge, Rome, and Santander, Spain, to deliver lectures.

Professor **Robert C. Ellickson** has published two articles—"Cities and Homeowners Associations" and "A Reply to Michelman and Frug"—in the *University of Pennsylvania Law Review* (130: 1519, 1602). On June 7 he appeared in Boston at the AALS conference on teaching torts to debate "The Place of Economic Theory in the First Year Torts Course" with Jeffrey O'Connell of the University of Virginia law school. An editorial by Professor Ellickson on the economic consequences of growth controls appears on page 26.

Dean **John Ely** is the author of "Professor Dworkin's External/Personal Preference Distinction" in the *Duke Law Journal* (1983:959). In October he addressed the National Association of Women Judges and in December, with Professor **Mark Kelman**, participated in a conference on "Economic Liberties and the Constitution" at the University of San Diego.

## Guess Who?



Santa—a/k/a Crim Law Professor John Kaplan—was checking his book and checking it twice, finding out who's been naughty and nice, before presiding for the 15th year over the annual Law School holiday party. □

Professor **Marc A. Franklin** delivered the invited Marshall P. Madison Lecture at the University of San Francisco, October 25, on the subject "Good Names and Bad Law: A Critique of Legal Protection of Reputation." Earlier that month he was a featured speaker at "The Pen and the Gavel," a conference sponsored by the Arizona Bar Foundation with a number of media and journalists' organizations.

On February 9, as part of

the Enrichment Series of the University of Oklahoma law school, Professor Franklin delivered a lecture on "The Current State of Libel Law in the United States." The next day, he addressed the midwinter convention of the Oklahoma Press Association on the subject, "A Hard Look at Contemporary Libel Law."

A third edition of Franklin's torts case book, this one co-edited with Professor **Robert L. Rabin**—



# School NEWS

*Tort Law and Alternatives* (Foundation Press)—was published last spring. Franklin was also quoted at length in a recent *New York Times* article (December 18) on libel law as it applies to business situations.

Professor **Paul Goldstein** has published two new articles on copyright law: "Derivative Rights and Derivative Works in Copyright" (*Journal of the Copyright Society*, 30:209-52) and "Adaptation Rights and Moral Rights in the United Kingdom, the United States and the Federal Republic of Germany" (*International Review of Industrial Property and Copyright Law*, 14:43-59). He also moderated an all-day program in September, The Public Lending Right, sponsored by the Center for the Book and held at the Library of Congress. And in January, at the 1984 AALS national meeting, he both presented a paper ("Intellectual Property Protection for Industrial Designs") and moderated a Property Section program (titled "The Revolution in Landlord Tenant Law: Has It Really Made a Difference?").

Professor **William B. Gould IV**—newly named to the Charles A. Beardsley Professorship in Law (see pages 31-32)—has received a certificate of merit from the American Bar Association for his book, *A Primer on American Labor Law* (MIT Press, 1982).

Gould chaired a colloquium in October on Job Security and Worker Involvement, at the Center for the Study of Democratic Institutions, in Santa Barbara. In November he delivered a paper on "Union Involvement in Management Decision Making" for another colloquium, held by the Eason-Weinmann Center for Comparative Law of Tulane law school. And in December he delivered a paper on Black trade unions in South Africa, at the African Studies Association annual meeting in Boston.

A study by **Samuel R. Gross**, acting associate professor of law, has been much cited this winter in courtrooms and the media. Gross and psychology graduate student Robert Mauro showed, in an analysis of recent FBI data, that murderers with white victims are much more likely to be sentenced to death than murderers with black victims—indicating, Gross says, that the death penalty, as currently imposed in the United States "does not meet the Supreme Court's requirement, set out in the 1972 case of *Furman v. Georgia*, that the penalty not be invoked arbitrarily." Gross expects these findings to be most relevant in capital appeals where the victim is white.

Professor **Gerald Gunther** delivered the Jerome W. Sidel Memorial Lecture, sponsored by the Washington University Law

School and the American Jewish Congress, October 16 in St. Louis. His lecture topic, "The Constitutional Convention Controversy," was also the subject of his keynote address at a conference in Los Angeles and of interviews on a number of radio stations around the country.

Professor Gunther also participated in a recent panel on writing judicial biography, at the annual meeting, in Baltimore, of the American Society for Legal History. He has in addition spoken to Stanford alumni/ae groups in San Francisco and Los Angeles on evaluating the Burger Court.

Gunther recently served on a review panel of the National Endowment for the Humanities, examining grant applications pertaining to the 1987 Bicentennial of the U.S. Constitution. He is also a member of two University committees—the Provost Search Committee chaired by President Kennedy, and the Administrative Panel on the Stanford University Press.

Professor Emeritus **J.E. Moffatt Hancock** has just had a collection of his essays published under the title *Studies in Modern Choice of Law: Torts, Insurance and Land Titles* (Hein, 1984). The Chief Justice of Canada, Bora Laskin (since deceased) contributed the foreword, while Harvard Professor Emeritus David Farquhar Cavers wrote the introduc-

tion. Professor Hancock's classic *Torts and the Conflict of Law* (Michigan, 1942) was reprinted, also by Hein, in 1982.

Professor **John Kaplan** discussed capital punishment issues in two recent invited lectures. His topic for the Robert R. Ray Lecture at Southern Methodist University, in February, was "Can Capital Punishment Be Efficient?" And in March, as Dunwoody Lecturer at the University of Florida, he spoke on "Administering the Death Penalty."

Professor **John Henry Merryman** presided over a lively panel on "Art in Public Places," October 20 in New York City. The artist Christo described his "Gateways" proposal for Central Park. Gordon Davis, the city park commissioner who had denied permission for the project, then explained his position. "There was a vigorous audience response to both presentations," Merryman reports, "but no blood was spilled."

He and **Albert E. Elsen**, cooperating professor of art and the law, were the keynote speakers at a symposium on The Moral Right of the Artist, November 22 in Jerusalem. Merryman spoke on the same topic the next day, for the University of Tel Aviv law faculty. November 24—Thanksgiving Day—found him at the Hebrew University of Jerusalem, where he presented a talk on "Law in



Radically Different Cultures" and enjoyed a turkey luncheon in his honor.

Professor Merryman's views on international art trade restrictions appear on page 24.

Professor **Robert H.**

**Mnookin** was honored by the American Psychological Association at its 1983 annual meeting, where he was first recipient of the Distinguished Contribution to Child Advocacy Award, given by the Association's Division of Child, Youth, and Family Services.

Mnookin, the citation read, "has substantially advanced our understanding of the enormously complex relationships among child, family, and state. . . . His articles on foster care, indeterminacy in child-custody adjudication, and bargaining in divorce are not only classics in family law; they are gems of interdisciplinary scholarship. . . . His work has stimulated serious academic attention to problems of family law; perhaps equally importantly, it has stimulated careful analyses with caution appropriate to the state of our knowledge." During the APA meeting, which took place in Anaheim in August, Mnookin gave an address on abortion policy concerning adolescents, drawing on material from his forthcoming book, *In the Interests of Children: Advocacy, Law Reform and Public Policy*.

**Joseph A. Pechman**, visiting professor of business,

economics and law, is editor of *Setting National Priorities: The 1984 Budget* (Brookings Institution, 1983) and author of its "Introduction and Summary" and a chapter on "The Budget and the Economy." Professor Pechman has also recently completed the fourth edition of his book, *Federal Tax Policy*, which was published by Brookings in December.

Professor **A. Mitchell**

**Polinsky** moderated a panel in October at a Hoover Institution conference on policy options for catastrophic losses. In November he gave a lecture on the economics of contract law to Bank of America staff lawyers, in Los Angeles.

A book by Professor Polinsky—*An Introduction to Law and Economics*—was published in April 1983 by Little, Brown. His other recent publications include "Risk Sharing Through Breach of Contract Remedies," in the June 1983 issue of the *Journal of Legal Studies*, and "Products Liability, Consumer Misperceptions, and Market Power" (coauthored with William Rogerson) in the Autumn 1983 *Bell Journal of Economics*.

**Robert L. Rabin** became, as of March 1984, first holder of the A. Calder Mackay Professorship in Law. (A biographical article will appear in the next issue.) Professor Rabin gave a legal theory workshop in November at Yale Law

School, where he took a historical look at the growth of the administrative state. That same month he chaired a panel at a Columbia University Law School meeting on administrative law and the political economy. The third edition of the torts casebook Rabin has edited with Professor Franklin (see above) was published last spring.

Professor **Roberta**

**Romano** is the author of two recent publications. The first, "On the Benefits of Loss Recoupment: A Response" (written with Mark Campisano), appeared in *Tax Notes*, October 17, 1983. The second, *Metapolitics and Corporate Law Reform*, is Working Paper No. 13 (September 1983) in the School's Law and Economics Program series and will appear in Volume 36 of the *Stanford Law Review*.

Professor **Myron S.**

**Scholes** has been named to the Frank E. Buck Professorship of Finance at the Graduate School of Business. His joint appointment continues with the Law School.

Professor **Kenneth E.**

**Scott** has been appointed to the board of directors for Bell National Corporation, a holding company with Bell Savings & Loan of San Mateo as its major subsidiary. Scott, a member of the Stanford Law Class of 1956, is an authority on banking law and the fast-changing field of financial services. □

## CREDITS

Photographs: cover, Leo Holub; p. 2 (Ely), Jane Reed; 2-3 (faculty groups), Stanford Law School; 4, Stanford News and Publications; 9, Nickolas Muray (from the collection of the International Museum of Photography at George Eastman House, Rochester, N.Y.); 18-21, Ed Souza; 28-30, John Sheretz, Paul Wood, and Victor B. Levit; 31 (faculty) and 33 (Dray), Stanford News and Publications; 33 (students), Lisa Hudson; 34, Sheldon of Los Altos; 35, Michele Foyer; 36, Foyer and Hudson; 37 (Scott), Sheretz, (Myers), Ray Huff; 38 (Jacobson), Stanford News and Publications; 39, 43, Emily Brandenfels; 42, Richard S. Cohen; 47, Berton Crandall; 53, Sirlin Studios; 66, Marvin Carlson; 67, Lester Sloane; and 86-87 (San Francisco events), Val Flesch, (Anaheim), Buchner & Young.

Artwork: pp. 4-8, Hogarth (information on p. 9); 17, Barbara Mendelsohn; 22-27, Steve Reoutt; 38, Gustav Dore, "Moody and Sankey at the Agricultural Hall, Islington" (detail), Graphic, 1975; and 40, Phiz (illustration for Bleak House by Charles Dickens).



# Alumni/ae GATHERINGS

**A**lumni/ae on both coasts have enjoyed many events together in the past few months.

**Stanford Law Societies of the Midpeninsula** held a reception on July 26 at the Stanford Faculty Club, where Dean John Hart Ely discussed recent developments at the School.

The Dean was also present at an **Inner Quad** reception September 15 at the Atherton home of Jill and John Freidenrich ('63).

**Stanford Women Lawyers** gave a reception September 7 in San Francisco, at the St. Francis Yacht Club, where Dean Ely and other guests honored Professor Barbara Babcock for her outstanding contributions to legal education and women's rights. The event also celebrated the establishment of a Stanford Women Lawyers Scholarship Fund.

The **San Francisco Law Society** sponsored two luncheons at the Commercial Club. The first, held on October 28, featured Professor John Kaplan as guest speaker. At the next, on February 10, Professor Gerald Gunther discussed "A 1984 Perspective on the Supreme Court: Olympic Guardians? Orwellian Visions Realized?"

San Francisco was also the setting for the annual meeting of the **American Association of Law Schools**, where a reception was held January 6 for graduates who have joined faculties here and elsewhere. This event, which took place at the Hyatt on Union Square, was hosted by Dean Ely and attended by several members of the Stanford Law faculty.

On October 13, during the annual **California State Bar** meeting in Anaheim, an alumni/ae luncheon was given at the local Marriot Hotel. Dean Ely participated, as did Professor Thomas J. Campbell, who gave a speech entitled, "Stanford Comes to Washington: the Reagan Administration Antitrust Policy" (genesis of the article on pp. 17-21).



Dean Wayne Alley '57 (left) of the University of Oklahoma law school, and his wife Marie, talk with Professor and Mrs. J. Myron Jacobstein at Stanford's AALS reception in January.

Up north, at the Seattle CITYCLUB, the **Washington State Law Society** organized a dinner October 26 with the Dean.

Dean Ely was also a guest two days later, in Portland, Oregon, where the **Portland Law Society** sponsored a luncheon at the Portfolio Restaurant.

An East Coast reception for alumni/ae was held August 1 in Atlanta, during the **American Bar Association** annual meeting. Robert A. Keller III ('58) hosted the event, at the Atlanta Hilton, and Professor Kaplan spoke.

Lastly, the **Washington D.C. Law Society** gave a reception October 11 at the Capitol Hill Club, with Dean Ely as guest speaker.

We encourage you to mark your calendar for Stanford Law alumni/ae events scheduled this summer

and fall (see inside back cover). You may be sure of a warm welcome from the School and your fellow alumni/ae.

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Dean Ely wants those of you who have heard him wax eloquent at various gatherings—about the unique strength of the School's faculty in terms of its ability to combine diversity of opinion with mutual trust—to know that his opinion has been corroborated by at least one objective source. In an article about Harvard Law School in the March 26 issue of *The New Yorker*, Calvin Trillin writes:

*It's obvious that disagreements about appointments or grading exist in just about any law school. Why are they so intense at Harvard? One reason is sheer size. . . . It is about the only pro-*





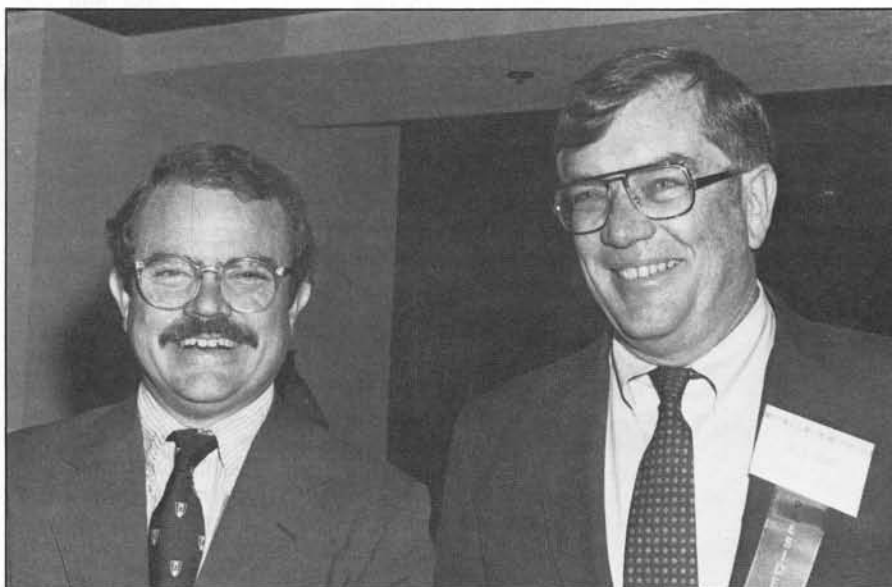
SWL honoree Barbara Babcock (center) and Alumni/ae Relations Director Elizabeth Lucchesi (right) welcome a potential future SWL member—Maura Dumond, daughter of Carol '83 (left).



Stanford Women Lawyers cochairs Christine Curtis '71 (center) and Pat Cutler '71 (right) join Assistant Dean Margo Smith '75 (left), at the September 7 SWL reception in San Francisco.

minent law school where people involved in Critical Legal Studies have acquired a large enough base to be effective in faculty politics. . . . At Yale, most of the young left-wing faculty members who developed the ideas that later became known as Critical Legal Studies were not given tenure . . . and the faculty is now strongly influenced by a school of legal thinking known as Law and Economics. . . . Stanford is sometimes spoken of as the one other major law school that has on its faculty the full array of political and legal positions, but Stanford is apparently much more peaceful. Harvard professors who are asked to speculate on what causes the difference in atmosphere are likely to say "The weather, maybe," or "Personalities."

Dean Ely wishes to make it clear that he does *not* know Mr. Trillin. □



Dale Hanst '60 (right) takes time from his duties as California State Bar chairman to lunch with Dean Ely and SLS alumni/ae during the Bar's annual meeting.



# Letters

To the Editor:

Your latest issue brings news of two disturbing developments, both of which unfortunately reflect an apparent retreat to the past. The first, and by far the most disturbing, is the decline in minority representation in classes entering the Law School. I am confident that an analysis by minority group representatives would disclose that while financial aid is important, the reasons for the decline are more complex than solely the financial aid issues cited in your article. Willingness to provide financial aid is only one indicator of institutional receptiveness and commitment.

The other unfortunate development is the abandonment of the 3K (pass/fail) system. The 3K system allowed students to go to law school for purposes other than participating in the same grade race they just completed at the college level. If the school is so uncertain of its admission criteria that it is unable to trust the judgment of the men and women it admits to make the choice between the grade system and the pass/fail system, the school ought to re-examine its admission criteria rather than eliminate students' rights to make choices.

The elevation of the median grade from 2.75 to 3.2 at the same time the 3K system is eliminated is illustrative of the silliness that accompanies the grading game. The justification for the raise is equally comical. The

reported justification is that other law schools have a higher median GPA. Aside from the institutional insecurity evidenced by this justification, the change does not make any sense from the point of view of people who serve on hiring committees, which I assume is the target audience. Having been involved in the hiring process, I can tell you that those who are interested in academic performance in law school tend to rely on class rank rather than grades as a comparative index.

I sincerely hope that Stanford's peak into the 20th century has not ended.

Thank you for this opportunity to share my thoughts.

Owen D. Blank  
AB '70, JD (3K) '73

Reply:

*We at the School were also distressed with the decline in minority enrollment, which is why Deans Ely and Smith so stressed the point and why it was underscored in the report of the Board of Visitors meeting. Fortunately, the tide seems to have turned; whereas the Class of 1985 had 19 minority group members, the Class of 1986 has 31.*

*The grading system was altered not in order to please law firm hiring committees, but rather to improve the quality of the education received by Stanford law students. The School has no plans either to reexamine its admissions criteria or to begin assigning class ranks to students.*

\* \* \*

*We thank Mr. Blank for permitting us to print his letter, and encourage other readers to follow suit. Please address letters to: Editor, Stanford Lawyer, Stanford Law School, Stanford, CA 94305. (Space constraints may limit the number and length of letters published, but all will be read with great interest.)—Ed.*



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# Coming EVENTS

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**August 6**

**American Bar Association,**  
in Chicago. Stanford alumni/ae  
reception.

**September 25**

**California State Bar,**  
in Monterey. Stanford alumni/ae  
luncheon.

**November 2-3**

**Stanford Law Alumni/ae  
Weekend and Reunion,**  
at Stanford. School program,  
Stanford-USC football game, Law  
alumni/ae dinner dance, and special  
reunions for the Half-Century Club  
and classes graduating in years  
ending in 4 and 9.

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*For information, call Elizabeth  
Lucchesi, Director of Alumni/ae  
Relations  
(415) 497-2730.*

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