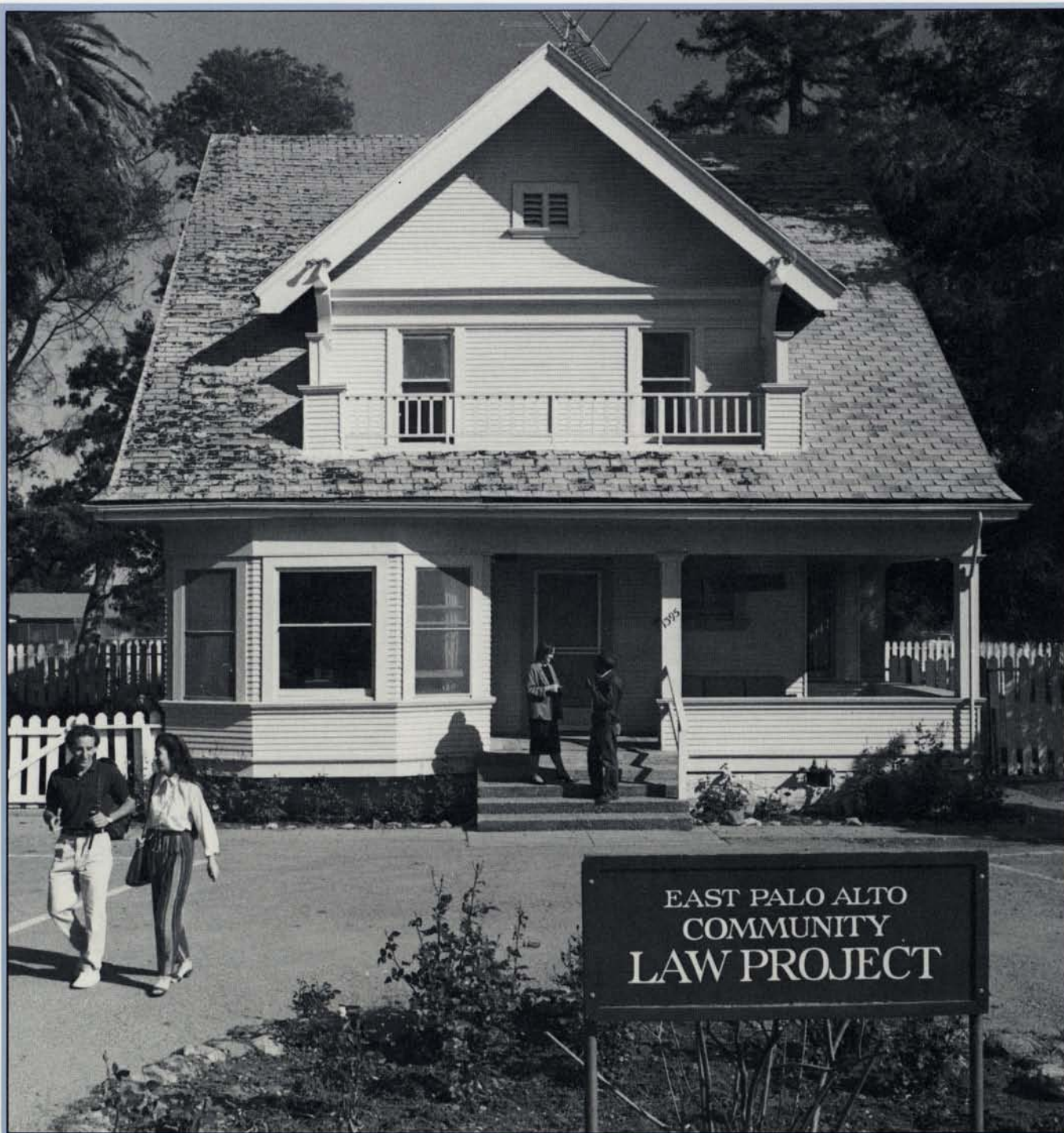


Stanford **LAWYER**

SPRING 1986

VOL. 20, NO. 2



Total Justice / Community Law Project / Children / World Court / Alumni/ae Weekend

WHY IS THIS MAN SMILING?

Because he finally found someone to laugh at one of his jokes?

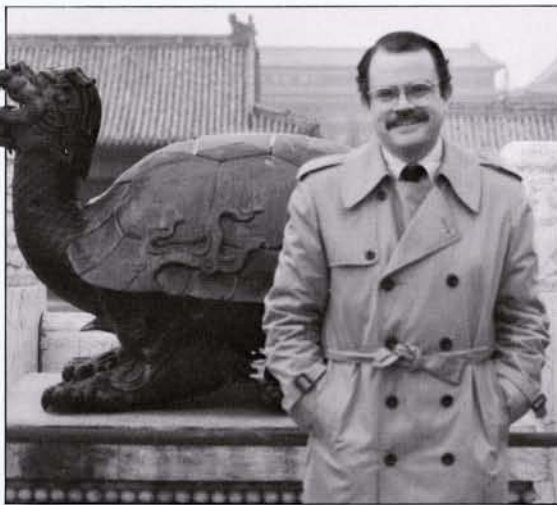
Because he thinks he may at last have found an appropriate mascot for Stanford? (See *Stanford Lawyer*, Vol. 19, No. 1, at 91, for an earlier effort along these lines.)

Neither of the above. Instead, it's because the Law Fund has finally broken the elusive \$1,000,000 barrier! Total gifts were up from \$854,274 in 1984 to \$1,009,548 in 1985. (If you

don't have your calculator handy, that's a rise of 18 percent — in a year when most Stanford funds simply held their ground.) You'll find the details in the Fund annual report published in the next (Fall) issue of the *Lawyer*.

Special thanks are due not only to our new Law Fund Director, Elizabeth Lucchesi (who took over in October and virtually sprinted to the end of the year), her predecessor Kate Godfrey, and the rest of the Law Fund staff — but in equal measure to Law Fund President George Sears, his loyal crew of alumni/ae volunteers, and last, but hardly least, to each of you who donated a portion of your well-got gains to the School.

This may not be a very profound Dean's message, but it's certainly a happy one. I scarcely need add that I hope this upward trend continues.



John Ely

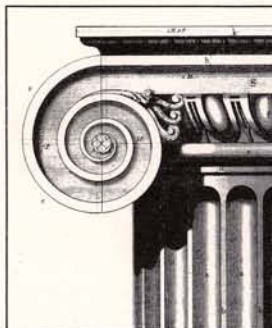
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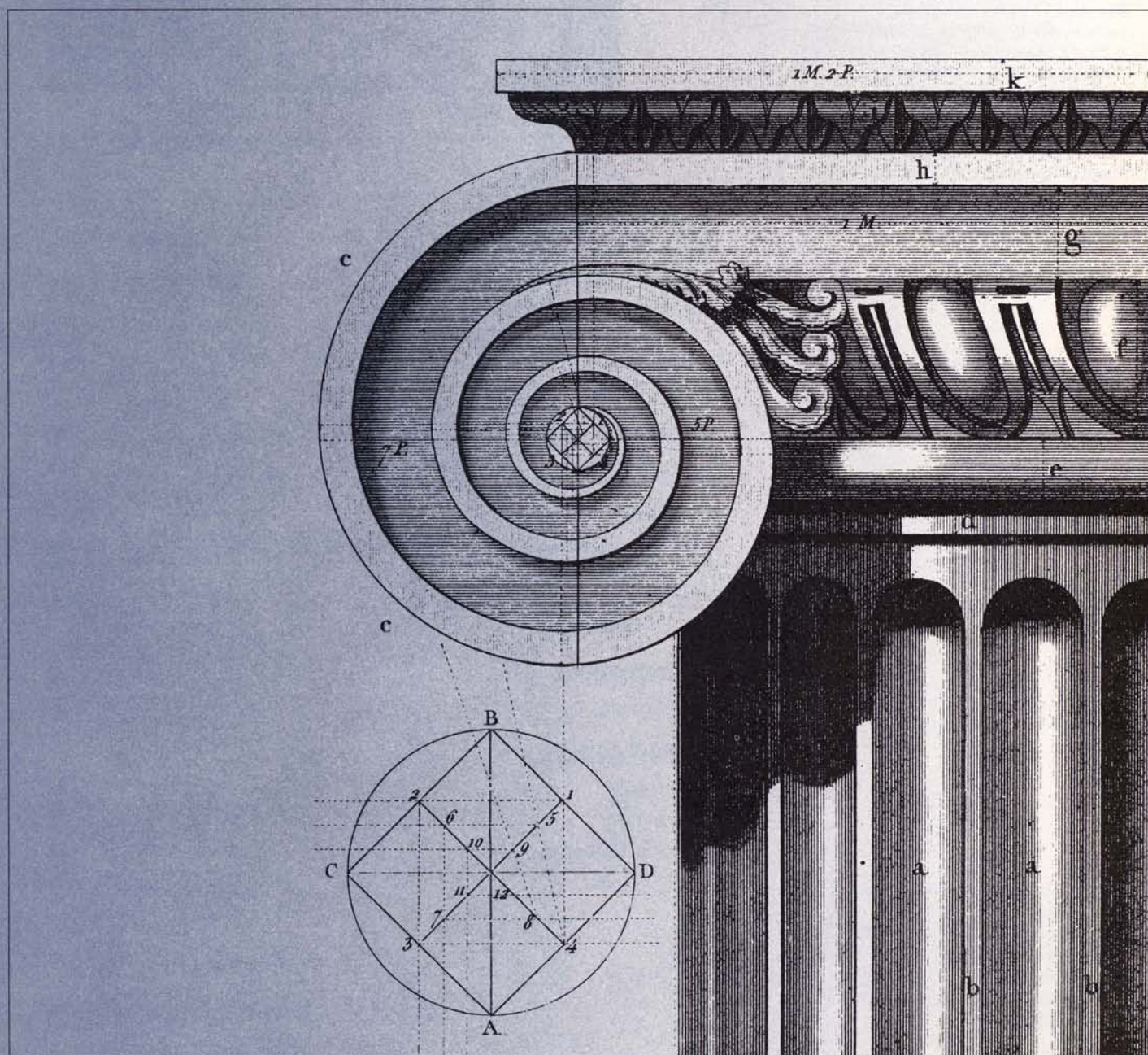
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Cover: The neighborhood law office of the student-initiated East Palo Alto Community Law Project (see pages 8-). In the foreground are students Leon Bloomfield '86 and Teresa Leger-Lucero '87. Executive Director Susan Balliet and client Jones Paige are at rear.

Cover photo by Tim Holt.

"A major revolution in legal culture as well as in the social order."



The Pursuit of **TOTAL JUSTICE**

by Lawrence M. Friedman
Marion Rice Kirkwood
Professor of Law

IN A HORROR MOVIE popular a while back, the world was invaded by some sort of living goo from outer space that relentlessly gobbled up everything in its path. Some critics of the American legal system depict it as a phenomenon very like that cosmic blob — swallowing up billions of dollars and whole social institutions as it grows. There is a serious “litigation explosion,” it is said. Everybody is suing everybody else. The machinery of law is breaking down. We have a “crisis” on our hands. What the crisis consists of, and why it is a crisis, is never made entirely clear; but that a crisis exists — of legitimacy and in the operating system — is a point on which scholars tend to agree, right, left, and center.

This was the import of Harvard president Derek Bok’s much-quoted March 1983 speech. Bok, a lawyer and former law school dean, excoriated not only the entire American legal system (“among the most expensive and least efficient in the world”), but also the legal profession. Too many “able” college graduates were going to law school, he complained, resulting in a “massive diversion of exceptional talent” into pursuits that were, frankly, parasitic. Lawyers and lawsuits produce nothing; instead, they strew the scene with social wreckage: conflict, complexity, and confusion.

Criticisms of this sort are not new in American history, but they do seem to have gained force in recent years. The “litigation explosion,” however, may be largely mythical — if the rate of litigation per 1000 population has gone up since the nineteenth century, nobody has yet shown this to be a fact (though the lack of hard evidence does not seem to dissuade the critics). On the other hand, the so-called “law explosion” is indeed a reality, whether you look at the growth in the number of lawyers, the increasing volume of laws, statutes, and regulations, or at the reach of law and legal activity. As compared to a century ago, no area of life seems completely beyond the *potential* reach of law.

But it is not right to focus too much attention on courts, litigation, and lawyers. These legal actors and institutions merely reflect what is happening in society as a whole. To understand what is happening inside the legal system, one must start from the outside, by looking at great general movements of social forces. America has made the legal system what it is; the legal system has not made America. Of course there is mutual influence, but the main lines of cause run from society to the law, not the other way.

Briefly stated, my central proposition is that social change leads to changes in legal culture, which in turn produce legal change. The key concept here is *legal culture*: the ideas, attitudes, values, and opinions about law held by people in a society. What has happened, in the last century or so, to American legal culture?

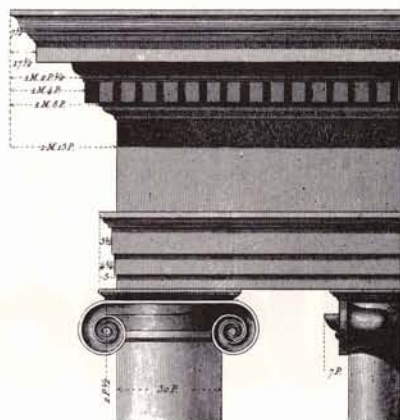
The Birth of Our Modern Legal Culture

Recall, if you will, the “good old days” of the early Republic. People then expected little from the public sector. The generation of George Washington, John Adams, and Thomas Jefferson believed, to be sure, in a just society and was willing to fight for it. The difference lies in the precise conception of justice, and the expectation that flowed from it.

What people expected from government was a degree of physical protection, a certain amount of subsidy for the economy (especially in transport and finance), a criminal justice system, a framework of law, a court system, a post office, defense against foreign enemies, and not much else. They got what they asked for — no more and sometimes less.

People faced enormous uncertainty even as to life itself. Little could then be done about the diseases and other maladies that made early death a common event. In economic affairs as well, catastrophe could strike the unlucky. Unemployment insurance, pensions, and insurance for bank deposits did not exist. Farmers had no buffers against crop failure from drought, frost, or other plagues of nature. The death or disability of a worker could plunge a family into poverty. There was no workers’ compensation, and only a remote chance of collecting money from the employer.

There was, in fact, no general expectation of liability. People did not expect



compensation from anyone – not the employer, and not the state. In a well-known passage in Mark Twain and Dudley Warner's novel, *The Gilded Age*, the authors describe a terrible steamboat disaster. Twenty-two people died, and scores were missing or injured. But on investigation, the "verdict" was the "familiar" one, heard "all the days of our lives – 'NOBODY TO BLAME.'"

Life, in sum, was filled with cosmic unfairness, or, if you will, injustice. The facts of life were reflected in the legal culture. In both, there was no general expectation of justice, no norms that promised justice in every circumstance, and no rules that generally promised compensation. That was reserved for the next world, if anywhere.

New Levels of Expectation

What has happened since the nineteenth century amounts to a major revolution in legal culture as well as in the social order. Technology has remade the world, and in so doing has vastly reduced certain kinds of uncertainty. Developments in medicine, engineering, and economics increased the capacity of human beings to control "natural" forces. People came to feel that it was possible to prevent situations of peril or need – that government inspectors, for example, could make sure canned meat was not rancid or poisonous. This was followed by a concrete demand that the state should exert that control. The government, in response, enacted laws about pure foods and drugs, meat inspection, and the like.

"If there is a breakdown of trust in society, if social cohesion has eroded, this is not to be laid at the lawyers' doors."

Such laws changed the legal landscape and set new forces in motion.

More important, perhaps, they changed the very definition of "legal" in people's minds, changed the level and shape of public expectations, ideas about what was possible, what was natural, what was feasible through law. This in turn encouraged a fresh round of demands. Reduction of uncertainty in one area of life led to demands for reduction of uncertainty in others. The process spiraled in the direction of more law, more state intervention.

This lies at the root of the development of the "social" part of the welfare state, with its disaster relief, workers' compensation, unemployment insurance, pensions, and so forth. The welfare state has in effect become an insurance state in a "no-risk" society. The state has learned how to spread risks through a system of taxation and welfare. The insurance mentality spills over into the private sector as well, including the law of torts.

Whether public or private, these developments, taken together, have radically transformed society – so deeply and fundamentally that people take the changes for granted. As the changes take place, new norms are generated that reflect the altered legal culture. Law responds, unconsciously, to the climate of opinion around it. New doctrines radiate throughout the legal system and crop up in all sorts of odd legal corners.

Consider, for example, the implicit social principle or norm that can be expressed, rather inelegantly, as follows: there shall be no calamity so great, so overwhelming, that it utterly and irrevocably ruins a person's life (unless the person is monstrously evil or criminally at fault). There is, of course, no such explicit legal principle. But this norm or principle lies underneath the skin of the

legal system, surfacing in many branches of law and in many forms and disguises.

The modern law of bankruptcy is only one example. Our society is structured to allow many kinds of second, third, even fourth chances. Juvenile records are sealed, then wiped out when the juvenile turns eighteen. Our educational system is generally reluctant to close the doors of opportunity; people who flunk out of school can usually try again. And there are no be-all and end-all exams, as there are (for example) in France.

Another implicit principle is what one might call *tenure*: the legal protection of long-term relationships. We see this in the law of landlord and tenant, where sharp limits are now placed on landlords' rights, especially those of residential landlords. The tenure principle can also be seen in the employment of teachers and other civil servants. In fact, labor law in general has moved toward greater job protection. The same norm may even be seen in the famous *Marvin v. Marvin* "palimony" decision. Society in general, and judges and legislators in particular, have been showing an unmistakable sensitivity to tenure, that is, to long-term relationships – a sensitivity largely missing in nineteenth-century cases.

These many changes, taken together, add up to a radically altered legal culture. There are many changes, and they are complex and interwoven. But they seem to be moving in certain definite directions. Specifically, two new social principles, or superprinciples, have appeared as part of American legal culture. Perhaps these are better thought of as two clusters of expectations.

The first is what we can call a **general expectation of justice** – the citizen's expectation of fair treatment, everywhere and in every circumstance. Justice here is not merely a matter of courtroom procedures. Justice is, or

ought to be, available in all settings: in hospitals and prisons, in schools, on the job, in apartment buildings, on the streets, within the family. It is a pervasive expectation of fairness.

Justice is not only fair treatment by other people and by government; it also means getting a fair shake out of life. Life is certainly "unfair" if a man buys a can of soup and dies of food poisoning. If a person is hurt in a tornado, or hit by a car, or born with some terrible defect, these situations, too, can be described as unfair. People even *call* them unfair, even though they know that nobody is really *responsible*. What matters is "felt injustice" — whether the unfairness comes from the Draft Board, or the appointments committee of an independent university — or even from an "act of God."

The second principle, which is obviously connected to the first, is a **general expectation of recompense**. That is, somebody will pay for any and all calamities that happen to a person, provided only that it is not the victim's "fault," or at least not solely his fault. Who that somebody is — public or private — does not seem to make much difference to people. Recompense is, in part, what people really mean by fairness or justice.

The term "general principle" is used quite loosely; obviously there are many holes and gaps in these "general" expectations, and certainly in the state of the law. Still, one can see a tendency, running in a particular direction and leaving tracks and marks all about the system.

An example of movement (however halting) toward this norm is victim compensation. The state, of course, punishes criminals at public expense, and criminals are in theory bound to make restitution to their victims. But in practice most victims recover nothing from burglars, armed robbers, rapists, and thieves. They bear their losses themselves (often, to be sure, with the help of insurance). In 1965, however, California began to offer compensation to victims of crime. The statute recited a "public interest" in helping crime victims exposed to "serious financial hardship." The amounts that California pays out under the program are small, and few people collect.

But the principle is significant. The idea that the state has a duty to provide for "innocent" victims reflects a new and powerful norm: the norm of total justice.

The Due Process Revolution

One manifestation of the search for total justice is that vast expansion of procedural rights labeled the "due process revolution." Due process is, of course, a fundamental constitutional principle articulated first in the Fifth Amendment, now nearly 200 years old, and extended in the Fourteenth, ratified more than 100 years ago.

Yet even at the turn of this century, the legal culture allowed what was, from a modern standpoint, extraordinary deference to administrative authority. Executive power seemed to provide some sort of sanctuary from due process, a "zone of immunity."

The famous Brownsville, Texas case illustrates this attitude. A shooting took place in 1906 in which one man was killed and a police lieutenant wounded. Community suspicion (fed by virulent racism) centered on a company of black soldiers stationed at Fort Brown, just outside town. Nobody had any idea *which* black soldiers were guilty; none of the soldiers confessed or informed on the others. (In fact, *all* were probably innocent.) But the company was severely punished — every single man was drummed out of the Army — a decision confirmed all the way up to the commander-in-chief, President Theodore Roosevelt. One black soldier, Oscar W. Reid, tried his luck in federal court, but his protest lost at every level. The Supreme Court upheld the executive branch. Whether to discharge somebody from the Army, and with what kind of discharge, was a matter within the President's discretion.

The last generation or so has turned doctrine inside out. One by one, courts and legislatures have stripped institutions of their former immunity. The Army still has vast power over its soldiers, but military justice bears a closer resemblance to civilian justice than in the past. Administrative agencies



Lawrence M. Friedman is author or editor of thirteen books. In 1976, he received the prestigious Triennial Award of the Order of the Coif for two of his works: *The Legal System: A Social Science Perspective* (1975) and *A History of American Law* (1973). The latter, since published in a second edition, also won the SCRIBES award. A third book, *The Roots of Justice* (1981), which Friedman wrote with Robert V. Percival '79, was awarded the Law and Society Association's James Willard Hurst Prize in American Legal History in 1982.

Friedman, a University of Chicago graduate (JD'51, LLM'53), joined the Stanford Law faculty in 1968, and was named to the Marion Rice Kirkwood Professorship in 1976. That same year he was awarded the School's John Bingham Hurlbut Award for Excellence in Teaching. Friedman currently teaches History of American Law, among other courses. He is a member of the American Academy of Arts and Sciences.

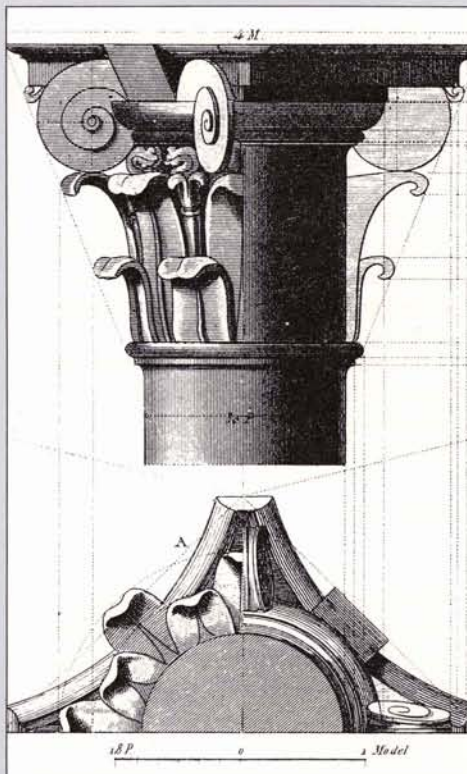
The present article is based on his book, *Total Justice* (Russell Sage Foundation, 1985). — ED.

In Defense of the Legal Profession

No question: the legal profession is very big and getting bigger, and the pace of growth is getting faster and faster. In the spring of 1984, something on the order of 650,000 men and women were practicing law in the United States. That's about 1 for every 350 people in the country. It is certainly no surprise that a lot of people wonder what all these lawyers (especially the new ones) are up to, what work and what mischief they do, and whether the country really needs so many of them.

Critics of the legal profession charge that lawyers create demand, which means that the demand is at least partly artificial. If there are too many lawyers, the argument runs, it is hard for them to make an honest living; hungry lawyers think of legalisms, foment litigation, and make trouble. Almost everybody "knows" a situation where this happened. The literature also mentions "meter-running," that is, ways in which lawyers spend useless time, building up billable hours they can stick (rich) clients with.

There is no reason to be totally skeptical. Nobody ever claimed that all lawyers were honest and selfless—quite the contrary. On the other hand, it is hard to find evidence for any large-scale aggregate effect of lawyer-work (or make-work) on the demand for legal services. Even the evidence of "meter-running" is not easy to assess. Huge corporations are indeed willing to spend a lot of money on legal services, and they know that their kind of lawyer comes with a high price tag. My own inclina-



tion is to accept the general idea that demand here pushes supply.

Even the most obvious sins of lawyers, the dingiest corners of legal practice, are in their own ways responses to social demand. The notorious ambulance chaser of old did not spring up out of nowhere. There was a vast increase in personal injury—particularly street accidents—in the late nineteenth century. The phenomenon is also connected with the rise of the insurance business. The ambulance-chasing lawyer was reacting to ambulance-chasing insurance agents. Every bit as unscrupulous as lawyers, the agents tried to rush to the victim or his family first, hoping to get a signed release of claims before the lawyers arrived.

There may be dozens of crooked lawyers, but patterns of crookedness invite some sort of explanation outside the legal system, or at least outside the profession. Lawyers (and judges) participated in the hypocrisy and perjury of divorce practice before the days of no-fault. But they were trapped between an enormous demand for consensual divorce and a sociolegal system that, for various reasons, preferred a collusive system. When consensual divorce was legitimated, one whole class of shady lawyer passed into history.

Some lawyers no doubt do create business for themselves by stirring up litigation and encouraging conflict. But on the whole, lawyers do not lead; they follow. And the demand for their services comes from outside the legal system. If there is a breakdown of trust in society, if social cohesion has eroded, this is not to be laid at the lawyers' doors. These diseases of the social order, if real, precede the work of the lawyers, and are indeed the immediate source of the demand for their work.

Critics of the legal profession somehow forget supply and demand. The supply of lawyers is treated as if it appeared by magic, or through some weird pathology of the market. The critics ignore the possibility that bright young people flock into law schools when they perceive a demand for their services. And they may be accurate in their assessment. Lawyers, in the aggregate, are neither saints nor devils. Their habits and functions are products of a market and a culture. —L.M.F

are no longer supposed to take major action — action that affects people's lives — without attention to due process. Decisions to drop somebody from Social Security rolls, or to deport an alien, or to zone a neighborhood to keep out business or apartment houses, have to conform to complex doctrines that define fair procedures. And with the new and expanding law of prisoners' rights, even penitentiaries and jails have been affected. In fact, just about every discrete class of people you can think of — students, women, the handicapped, ethnic minorities, the elderly, mental patients — have acquired new procedural rights.

Also, and very significantly, the concept of due process now covers actions by private institutions once more or less immune from legal interference. A due process requirement now blankets hospitals, factories, department stores and universities. Much of the vast field of labor law concerns limits on employers' rights. A boss cannot fire workers merely because they join a union, or complain about work conditions, or because they are handicapped, or black, or over forty, or because he may not like the way they part their hair. Of course, labor law has its own special, complex history, but the movement toward legalization and the spread of due process run strikingly parallel to developments elsewhere in society.

Due process may thus be evolving in the direction of still another superprinciple: no organization or institution of any size should be able to impair somebody's vital interests ("life, liberty . . . property") without granting certain procedural rights. What these rights are is the subject of an enormous body of case law, not easily summed up in a simple formula. They include the right to some sort of notice, the right to argue against what is proposed to be done, and (if the action is wrong or illegal) a fair shake at getting it reversed.

The application of due process requirements in the private as well as public sphere is a logical offshoot of the general expectation of justice. Modern legal culture insists on a single, unified domain

of fairness and legality and demands a single standard of justice. To satisfy this demand, every institution has to fall into line. Suing drunk drivers and insisting on fairness from the Social Security Administration are two sides of the same great polygon, the same great urge for total justice.

An Assessment

Total justice has become a social norm; it is also, more and more, a working principle transforming legal and social institutions. Its fingerprints are all over — in tort law, labor law, the law of landlord and tenant, the expansive world of constitutional law, the due process revolution, the behavior of large institutions, and the regulation (or nonregulation) of aspects of private life.

"Modern legal culture insists on a single, unified domain of fairness and legality and demands a single standard of justice."

The trend toward total justice has been deep and powerful. Many changes in the legal system seem to have the hard metallic ring of an irresistible process. It would be too strong to say they are "determined" or "inevitable," but they do have deep roots, not only in the American past but also in those massive structural changes that have utterly transformed the whole Western world.

Legalization itself is about as unavoidable as a process can be, if by legalization is meant the proliferation of formal rules, regulations, and procedures. This has to be, simply as a matter of scale. Some of this legalization is accounted for by the substitution of public rules for private ones, and by the development of parallel systems of public and private rules. But a vast amount of legalization is an inevitable product of the welfare state and the new legal culture —

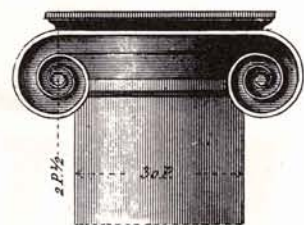
the generalized expectation of justice.

Out of this rich stew of norms comes a vast increase in demands on the legal system, a fearful amount of fresh law, and — perhaps unavoidably — increased demand for the services of individuals trained in the law, i.e., lawyers.

Is the modern climate of higher expectations good or bad for society? It is certainly controversial; and many people are trying to roll parts of it back. Whether or not this *should* happen is another question. I freely confess my personal pleasure over many of the manifestations of total justice. I like the spread of due process; I like the welfare state; I like justice for minorities; I like the broader meaning of equality, the greater reach and depth of individual rights.

If I had to guess, I would probably make this prediction: the new legal culture — the general expectation of justice and its corollaries — may buckle

and bend, but it will not go away. It is not an accident, a technical error, a lawyer's trick. It has survival value, and survival power. It is by now a basic feature of American life, a tribal custom, deeply germane. It has penetrated into the marrow of the people's bones. It is fundamental to modern society, and seems, at least for the foreseeable future, to be here to stay. □





by Steven Dinkelspiel '85 and Peggy Russell '84

Something remarkable has happened at Stanford Law School. A group of students – working with the School's encouragement but without its financial support – has established a law office in the lower-income area across the Bayshore Freeway. Named the East Palo Alto Community Law Project, the office is designed not only to provide much-needed legal services to a neighboring community, but also to expand the legal training and experience available to Stanford law students.

The Project has emerged in the two years since its opening as a major influence in the life of Stanford Law School. Fully a third of the student body is now involved, whether through Law School classes taught in conjunction with the office, *pro se* clinics staffed by student volunteers, community education programs, or Project administration and fund raising. And on November 25, 1985, the Law faculty accepted the favorable report of its EPACLP Evaluation Committee and recommended unanimously that the School help ensure the Project's continuation by providing significant fund-raising assistance.

"The East Palo Alto Community Law Project is good for the citizens of East Palo Alto, good for our students, and good for the School," Dean Ely said recently. "It adds diversity to our student body and to our curriculum. And it

furtheres our efforts to make students aware of the need for and rewards of public interest, *pro bono* work. It's a terrific asset."

Many individuals and organizations participated in the development of the Community Law Project, including Law School administration, faculty, and staff, East Palo Alto community members, and the Project's professional staff. All agree, however, that the Project has from the beginning been essentially student inspired and student driven. The key element has been four years of hard work – mostly extracurricular – by committed students from several Law School classes.

What motivated the student founders to take on this challenge? How did their dream of a community law practice become a reality? And what benefits do participating students derive from the Project?

The Kernel of the Idea

The idea of establishing a Stanford-linked community law office in East Palo Alto grew out of lunch-time conversations in 1981 among a small group of second-year students committed to public service. These friends had come to Stanford with such diverse work backgrounds as agricultural assistance in Western Africa, refugee resettlement in Southeast Asia,

and community organizing in the San Francisco Mission District, and were eager to continue community work during law school and eventually as lawyers.

To these students, Stanford – for all its excellent academics, accessible faculty, and bucolic setting – had little contact with the social and political issues of the "outside world." Although the Law School had developed an excellent classroom clinical teaching program, this was limited to role playing and simulation exercises. The curriculum then had just one course involving real-life clients: Professor Michael Wald's Juvenile Law. The only other way students could gain academic credit and legal experience with "real people" was by leaving campus for a semester-long externship.

"We started talking about what we would like to do and how it could work," recalls one of the original group, Cynthia Robbins '83. "East Palo Alto immediately became the focus of our planning." Located only five miles away from the Stanford campus, East Palo Alto was in 1981 a diverse and dynamic community of 18,000 with a burgeoning political consciousness. Residents, the majority of whom were black, Hispanic, or Asian, were becoming increasingly well-organized and vocal, with efforts coalescing primarily around the drive to incorporate as an independent city.

Socially and economically, however, East Palo Alto and adjacent eastern

The Making of a COMMUNITY LAW PROJECT

Menlo Park (population: 2000) continued to suffer from a host of problems endemic to low-income communities: severe unemployment, an alarming school dropout rate, poor housing conditions combined with skyrocketing rents, and mounting difficulties in getting and retaining government benefits. At the same time, East Palo Alto had in 1981 only two local lawyers, and many residents could not afford to pay the legal fees. Those residents who qualified for federal legal services had to travel several miles away to Redwood City for counsel, where they often found federal cutbacks meant there were no legal aid lawyers to help.

"It just hit us over the head," says Jim Steyer '83. "Here were two seemingly disparate but naturally paired communities. One with 20,000 people but virtually no lawyers or legal services. The other a school with all kinds of legal

expertise but no community-based clinical program." What better way to link the two than with a Stanford-affiliated law office in East Palo Alto? It was a compelling idea. After checking with key East Palo Alto leaders to see whether legal services were indeed needed and wanted (they were), the students decided to try to make the idea a reality.

Selling the Idea to Others

Laying the groundwork proved to be a difficult task. The students had little conception of the organizing involved in starting a law practice. Furthermore, they were not at all sure how to convince the various constituencies about the importance of the effort.

The students first appealed to members of the faculty. A strong core of supporters quickly emerged, including Paul Brest, William Simon, Jack Friedenthal (now Associate Dean for Academic Affairs), Barbara Babcock, Michael Wald, and Miguel Mendez. Impressed by the students' enthusiasm, these professors provided encouragement, advice, and in some cases, academic credit (for an analysis of needs and the development of a plan for setting up a community practice).

Among themselves, however, faculty members expressed doubt about the student group's ability to involve the larger

student body or to carry through with such an ambitious plan. Several professors remembered the closure in the sixties of a county legal aid branch office with which the School had been involved. "I was worried about undertaking a major project without knowing what the funding sources would be," recalls Friedenthal. "I didn't want anything to be started that couldn't be finished." Another reason for caution was that the School was in 1981-82 between deans.

In the Spring of 1982 the students decided to forge ahead on their own. Naming themselves as directors, they incorporated the "East Palo Alto Community Law Project" as a nonprofit agency. Two of their number sped to Sacramento on the last filing day with papers prepared by the book. When these didn't quite match the Secretary of State's requirements, the students made hasty changes on a typewriter borrowed from the Secretary's secretary. "It took a while for the adrenalin to settle," recalls Stephane Atencio '83. "But we got what we wanted — legal standing for a project that had previously existed only in our minds and hearts."

The students were also working that spring with faculty advisers on developing an academic focus for the proposed Project. "The possibility of truly integrating the theory side with the practice side was exciting, and something that had not really been done elsewhere," says



A going concern: Staff attorney Francisco Lobaco meets with a client.

Classroom-clinic interaction: Students studying Immigration Law with Visiting Associate Professor Bill Hing also work in the Project's Immigration Clinic.



COMMUNITY LAW PROJECT

Brest (now the School's Kenneth and Harle Montgomery Professor of Clinical Legal Education). Sample syllabi were developed for a variety of courses that could be taught in conjunction with the practice. Some Project organizers also planned to continue developmental work on the Project as part a new Poverty Law course being developed for Autumn 1982 by Professors Brest and Simon.

In the fall of 1982 — armed with the fruits of their research and with the backing of key professors — the student advocates descended on the office of John Ely, the new Dean of the Law School. They were delighted to find Ely (a former attorney with San Diego Defenders, Inc.) both interested and supportive. Although he did not feel able during the first weeks of his tenure to endorse the idea of affiliating the Law School with an as yet unformed community law office, the Dean did tell the students that he personally found the idea to be a good one. He decided to issue a challenge: if the students could raise enough funds to operate an East Palo Alto law office for two years, and if the faculty then felt that the Project offered important opportunities for academic and professional training, the School would formally associate itself. With this affiliation would come a commitment from the School to mount a fund-raising drive.

Working with the Community

Having gained the conditional support of the Law School administration, the founding students then faced their most important and difficult challenge: garnering the trust and support of the com-

munity of East Palo Alto. The founders turned for advice to a wide range of residents — ministers, educators, community organizers, business leaders, and politicians — and were met with encouragement tempered with a strong dose of caution. The people of East Palo Alto had been disappointed in the past by well-meaning but only sporadically committed volunteers, particularly students from outside of East Palo Alto with little understanding of the community. The individual residents contacted were excited about the prospect of a community law office opening in their midst, but they had no desire to provide a socioeconomic "laboratory" for altruistic law students or a finishing school for budding litigators. East Palo Alto residents wanted cooperation, respect, assistance, and above all, honesty.

This sentiment was perhaps best expressed by Omowale Satterwhite, director of the East Palo Alto Institute for Community Development, who said: "Don't promise to do things you can't do, and be sure to follow through on what you promise." This advice was often hard to follow for the students, who desperately wanted to win acceptance for the Project. Tempting as it was to try to be all things to all people, the students had to learn to acknowledge the need for a broad range of services while admitting that they could not provide all such services themselves. Spreading the office too thin would be a sure path to failure.

The students wanted very much to involve the community in the development of the Project. They recognized that legal representation, while vitally important, was only one way of addressing the myriad problems faced by East Palo Alto residents. Most of the com-

munity's "legal" problems — for instance, landlord-tenant relations and consumer fraud — could also be lessened if residents were better informed about their rights and responsibilities. Moreover, community education and participation would contribute to the goal of self-sufficiency, which was so important to East Palo Alto as a newly emerging, independent city.

But truly "entering" the community proved to be a considerably greater challenge than merely crossing the freeway. None of the students had lived in East Palo Alto or spent enough time there to have a true feel for the life of the community. Their other obligations — such as coursework, finals, and job hunting — also made it difficult to develop working relationships with East Palo Alto residents. The students hoped to overcome these problems through an ambitious community outreach program, but they did not really know what forms this outreach should take.

Perhaps the most striking illustration of the chasm between the students' conceptions of effective "community outreach" and the reality of community



Opening ceremonies: A "great day" for Jim Steyer '83, Peggy Russell '84, Michelle Mercer '86, Steven Dinkelspiel '85, and other co-founders and participants.

response was the Project's first public education program, organized in the fall of 1983. By this time the founding students had graduated, and a "second generation" of students (including the authors) was responsible for pushing forward the original vision for the Project. For months we had been hearing that consumer fraud was a major problem in East Palo Alto. Although the Project law office was not yet open, we thought we could offer as our first tangible community service a public seminar on Consumer Protection. We threw ourselves into it — recruiting knowledgeable speakers, mailing out hundreds of flyers, and tacking up posters around the city.

The big night arrived. Fifteen students and three speakers sat expectantly in the main meeting room at the City Council building. One — just one — East Palo Alto resident showed up; she had happened to be in the building that night and noticed a sign announcing the meeting.

Embarrassed and confused by this fiasco, we adjourned to a nearby pizza parlor. The discussion that followed was probably the lowest point in the Project's history. "We seriously considered throwing in the towel," says Michael Calabrese '84. "We wondered whether we, as law students, had the necessary knowledge, patience, and commitment." In the end, however, the students decided the idea of a community law office was still viable. We just needed "to make an extra push in the next few months."

Discussions with community advisers shed light on our mistakes. We quickly learned that the mere availability of free advice was not enough to draw a crowd in East Palo Alto. Residents were understandably cautious about embracing a new service, even when offered with the

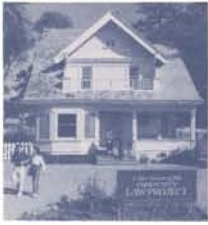
best of intentions. Only by working with existing community organizations (like local senior citizens or tenants groups) could we hope to attract an audience for our educational programs. Recognizing the need to build credibility over time was an important step in our education about how to share the resources of Stanford with its neighbors.

Establishing the Law Office

Despite the failure of our first public event, there was much in the fall of 1983 to encourage us. The response we were getting from local funding sources was truly remarkable (in one case even exceeding the amount we requested).

EAST PALO ALTO PROJECT AT A GLANCE

- Date opened: March 15, 1984
- Date endorsed by Stanford Law School faculty: November 25, 1985
- Number of Law School 1985/86 courses connected with the Project: 4 (Poverty Law, Immigration Law and Policy, Teaching Self-Help and Lay Lawyering, Juvenile Law)
- Number of students taking these courses: 56
- Additional students involved with Project (*pro se* clinics, steering committee, fund raising, community outreach, etc.): 114
- Population of East Palo Alto/eastern Menlo Park service area: 20,000
- Ethnic makeup (in percentages): black, 61; white, 20; Hispanic, 14; Asian/Pacific islander, 5
- Population receiving some form of government assistance: 40 percent
- Families below poverty line: 15 percent
- Distance to nearest legal aid office: 6 miles, or 2 bus trips
- Lawyers in community other than those with new project: 1
- Lawyers at new project: 6 (4 EPACLP staff members, plus 2 affiliated with the Immigration Legal Resources Center)
- Legal services offered: government benefits, landlord-tenant law, Immigration Clinic, Youth Justice Program, Domestic Violence Clinic (temporary restraining orders), Small Claims Clinic, Divorce Clinic, plus other areas handled by volunteer attorneys
- Individual clients served in year ending December 1985: 705
- Clients served since Project opened: 2000
- Successful cases affecting groups of clients: 3
- Cases handled free of charge: 95 percent
- Start-up funds raised through student efforts: \$593,775
- Annual budget (1985/86): \$256,000



COMMUNITY LAW PROJECT

The San Francisco Foundation had in spring 1983 awarded a two-year, unrestricted grant of \$125,000. Peninsula Community Foundation had followed that summer with a two-year pledge of \$50,000, and in the fall we were notified of a gift of the same amount from The James Irvine Foundation. Bolstered by this kind of institutional support, we were able to garner generous gifts from individuals as well. Thus, as of the fall of 1983, the many months of fund raising by the founders and the subsequent generation of students had born fruit with over \$275,000 in gifts and pledges.

Another source of encouragement was the Project's Board of Directors, expanded the previous spring to include not only founding students but also Professors Babcock and Friedenthal, East Palo Alto Mayor Barbara Mouton, Harry Bremond of the Palo Alto law firm of Wilson, Sonsini, Goodrich & Rosati, Henry Organ of the Stanford University development office, and Judges Thelton Henderson and LaDoris Cordell '74. Both Henderson and Cordell had practiced in East Palo Alto (Henderson as director of the legal aid office there in the mid-seventies) and served as dean of students at the Law School.

The Project was, however, clearly at a crossroads. The funds so far raised, while impressive, would not cover much more than a single year's operations (then budgeted at \$225,000) — far less than the full term of the Dean's "trial period." But further delay would only serve to undermine the Project's credibility with both the community and funding sources. For two-and-a-half years, law students had been trumpeting the arrival of free legal services in East Palo Alto. The time had come to open the office.

In early 1984, then, the two decision-making bodies for the EPACLP — the Board and the Student Steering Committee — made the boldest and probably wisest decision of the Project's early years: hiring an executive director, Susan Jackson Balliet. The move was bold because it committed the Project to begin offering services despite the lack of firm, long-range funding. And it was wise because Balliet (a 1966 Stanford graduate with a J.D. from the University of San Francisco) has proven ideal for the job. For many years an attorney with the San Mateo County Legal Aid Society, she is able to provide guidance in litigation for both individual clients and class actions. And her familiarity with East Palo Alto meant the Project could begin working with the community as soon as it opened its doors.

Before that could happen, however, the students had to rent and equip suitable office space. In January, the perfect building became available: an old farmhouse converted to a home for seminary students. Located on Bay Road in the heart of East Palo Alto, it had already been divided into a series of small rooms ideal for offices. One of the students raced down from San Francisco with a personal check to secure the building. The next few weeks were spent painting, cleaning, and scrounging equipment (including typewriters loaned by the Law School and furniture donated by Wells Fargo Bank). A second lawyer was hired, as well as support staff. The East Palo

Alto Community Law Project was, at long last, a physical reality.

The Project in Action

The EPACLP law office formally opened for business on March 15, 1984. The ribbon-cutting ceremony, to which the community was invited, was also the occasion for a reunion of the first generation founders, all now graduated. "We walked through the halls, knocking on walls and looking into offices," recalls John Prieskel '83. "We could hardly believe there was a real building there, where people would practice! And a new wave of students coming along to keep it going. It was a great day."

Community response was overwhelming. Balliet and the second staff lawyer (Francisco Lobaco) were swamped with calls about everything from adoption to zoning problems. A third attorney (Fania Davis) soon joined the staff. And as the months passed, a semblance of sanity developed. Community residents learned what the office's main areas of service were — initially landlord/tenant problems (many related to a new rent control ordinance) and public benefits (welfare and Social Security entitlements), and later, in response to community need, immigration (including deportation defense and visas) and youth justice (juvenile court cases, school expulsions, and other issues affecting younger residents).

Additional services have been developed to "leverage" the Project's chief resource: the large number of eager and talented student volunteers. A domestic violence clinic was opened where students, after some training, could

Peggy Russell '84 and Steven Dinkelspiel '85 are both members of the EPACLP Board of Directors and former co-chairs (in different years) of its Student Steering Committee. Peggy is currently a law fellow at Public Advocates, a public interest law firm in San Francisco. Steven is a law clerk for Judge Thelton Henderson of the U.S. District Court, Northern California. Both regard their work on the Project as "the high point of our Law School experience."

advise victims of their legal situation and help them prepare requests for temporary restraining orders. Students have also been staffing an evening small-claims clinic. A third student staffed clinic was started this year to help residents arrange uncontested divorces.

An exciting new opportunity for students has just been introduced in the form of a volunteer attorney program. Several local law firms have agreed to take on legal problems beyond the scope of the present Project. The firms will rotate responsibility for an evening clinic, where attorney-student teams will work together on intake and pursue selected cases to their conclusion.

In the two years since opening, the East Palo Alto Community Law Project has directly served over 2000 clients with problems ranging from a dog bite to Social Security Administration delays in making court-ordered payments. Many other residents have been reached by community education programs on such topics as immigration, Aid to Families with Dependent Children, and California's coming "workfare" requirements.

Community education has in fact been strongly emphasized by students and Project staff. "We are trying to teach clients in all our programs," says Teresa Leger-Lucero '87, "partly because we know that we can't possibly meet all the legal needs of this community, but also so that residents will be better able to understand the legal system and deal with problems before they become serious."

Another hallmark of the Project is the close and growing links between coursework and clinical practice. Students enrolled in the Poverty Law course taught by Brest and Simon have been helping clients to solve housing problems and to

negotiate the bureaucratic and statutory maze of government benefits programs. The Immigration Clinic opened in the fall of 1985 is staffed primarily by students in Visiting Associate Professor Bill Ong Hing's Immigration Law course. And this spring, Michael Wald's Juvenile Law students began providing legal representation to minors, while students in Gerald Lopez's Self-Help and Lay Lawyering course are working on ways of teaching local residents "how to represent themselves and others, if not in the courtroom, then in the daily hassles that make up so much of life" (such as consumer problems and welfare eligibility).

The Project is also distinctive, possibly unique, in the degree of student involvement. Not only do students provide the broad range of legal services and community education mentioned above. They also participate heavily in Project planning and administration, through the Student Steering Committee, membership on the EPACLP Board of Directors, and numerous committees concerned with particular clinics or programs. Other students were involved in the research leading to the successful settlement in April of a suit against a local landlord charging allegedly illegal rents to 300 tenants. Finally, Project organizers have

been largely responsible for raising from outside private sources virtually all of the start-up funds needed to establish the Project and keep it running for its first two years.

What Do Students Gain?

The enthusiasm with which students have greeted this public interest enterprise has surprised even the founders. In its first full year of operation (1984-85) over 100 students — 20 percent of the student body — became involved on some level. The number this year has already reached 170 — or 33 percent.

One reason the Project has attracted so many students is that it provides a rich variety of experiences. For many students, the office is their only opportunity to work with clients. "It's why I went to law school — to help real people with real problems," says Eric Cohen '86. Students interview clients and discover their most effective methods for eliciting and imparting information. They learn investigative techniques, engage in creative analysis of clients' problems, and write briefs for use in administrative hearings. Some students may also find that this range of experience helps them

(Continued on page 75)



Student enthusiasm: Emily Lichtenstein '88, Deborah Forman '87, and Jonathan Freedman '87 confer in the Project library.



Child Advocacy

A Look at Test-Case Litigation

◆ To Danielle and Eric Gandy, "Ma" meant their foster mother, Madeleine Smith, with whom they had lived for three-and-a-half years. Now the supervising agency wanted to remove them, claiming that Mrs. Smith's severe arthritis prevented her from giving adequate care. Devastated, Mrs. Smith went to a lawyer. Her complaint led to a class-action suit, filed by the Children's Rights Project of the New York Civil Liberties Union, challenging the power of New York officials to remove a child, against the wishes of foster parents, from a foster home where the child has lived for more than a year, without first permitting the foster parents a hearing. *Smith v. OFFER*, 431 U.S. 816 (1977).

◆ A sixteen-year-old girl visited a Boston abortion clinic in fear that if her father knew she was pregnant, he would beat her and kill her boyfriend. The clinic's founder, Bill Baird, explained that, under a new state law, an unmarried minor could have a legal abortion only if she first obtained the consent of both parents or had her parents' refusal overridden by a state court judge. Baird said that he might be able to change the law if the girl helped by telling her story in court. No one would ever learn her name, he promised, and moreover, she would receive a free abortion. The girl agreed. In the resulting suit, plaintiffs sought to strike down as unconstitutional the offending state statute. *Bellotti v. Baird*, 443 U.S. 622 (1979).

◆ Terry Lee Halderman's mother was appalled by the quality of care her daughter was receiving at Pennhurst, a Pennsylvania state residence for the retarded. Terry's jaw, a finger, and several teeth had been broken, and she was constantly bruised and cut. Her behavior had deteriorated so that she now repeatedly banged her head against the wall. When a sympathetic staff member suggested that a lawsuit might force the state to improve conditions, Mrs. Halderman went to a lawyer. This grew into a test case in which advocates sought to close the institution altogether and disperse its residents to small-scale, community-based facilities. *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1 (1981).

by Robert H. Mnookin, *Professor of Law*

Five cases undertaken, at least in part, on behalf of children. Each a dispute with a government entity. Each handled by reform-minded lawyers. Each brought as a class action in a federal court.

The Supreme Court, in the seminal children's case *In re Gault*, declared that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." And since the Court's landmark desegregation decision in *Brown v. Board of Education*, advocates have increasingly used test-case litigation not simply to enforce the rights of individual children but also to change policy.

Is such litigation a sensible way to promote the welfare of children? I and several law scholars from around the country (see biographical note) addressed this question by studying the course and outcome of each of the five cases. Although I don't have space here to describe these studies, I would like to discuss three underlying issues involved in test-case litigation on behalf of children.

The first is what I believe to be the root problem facing anyone concerned with children's policy: How does one *know* what policies best serve the interests of children? The second concerns the legitimate role of courts: How much policymaking power should be exercised by judges, insulated as they are from electoral politics or other direct popular control? The third is a paradox, and it concerns the proper role of the child advocate: children, as disenfranchised and vulnerable citizens, need advocates; and yet, particularly when the client is a child, how can the advocate be held genuinely accountable to the child-client's interests?

These questions, being essentially unresolvable, make a definitive assessment of test-case litigation on behalf of children impossible. Our five studies do, however, permit me to make — in the fifth section of this article — some

◆ To one Connecticut welfare mother, the choice looked like, "Heads you win, tails I lose." If she did not help welfare officials locate her child's father, so that support payments could be collected from him, she could be sent to jail for contempt of court. But if she identified the man, she feared he would retaliate, certainly against her and perhaps against the child. Besides, she felt it was none of the government's business. She went to the local Legal Aid office, whose lawyers then sued to stop welfare officials from forcing unwed mothers to help establish the paternity of their illegitimate children. *Roe v. Norton*, 422 U.S. 39 (1975).

◆ Betty Jean Crome, along with a number of other black students, had been arrested following racial disturbances at her junior high school in Columbus, Ohio. As a consequence, she and the others had been suspended from school for five days. To her parents, this looked like blatant racist harassment. The NAACP introduced them to a lawyer, leading ultimately to a Supreme Court decision that a public school could not suspend a student without providing some sort of hearing. *Goss v. Lopez*, 419 U.S. 565 (1975).

observations on the strengths and weaknesses of such litigation for achieving reform.

The Enigma of Children's Interests

Those involved in debates over children's policy generally agree that the "best interest" of children should guide decisionmaking. But what in fact *are* their best interests? And how does one know what policies will best serve that end? Two fundamental problems typically arise. The first, the *prediction problem*, is that it is often exceedingly difficult to predict the consequences of alternative children's policies. The second, the *value problem*, arises from the difficulty of selecting the criteria that should be used in evaluating alternative consequences.

Prediction and value problems are not unique to children's policies, but they are especially acute in this context because children often cannot speak for their own interests. Very young children may be entirely unable to articulate their preferences. And though older children may have much to say, their inexperience and immaturity often cause adults to doubt children's capacity to decide what is in their interests.

Unfortunately, adults cannot with any certainty make such determinations either. Even the most attentive and well-informed parent is hard put to predict which disciplinary regime or educational environment will have the best effect on a specific child. The actual outcomes might well differ even among siblings. And psychologists and other experts may plausibly disagree with each other on, say, which of two homes is likely to be most beneficial for a given child, or whether a stint in juvenile hall would straighten out a particular law breaker.

The fact is that current knowledge about human behavior provides no basis for

the individualized prediction required by the "best interest" standard. None of the numerous competing theories of human behavior is considered widely capable of generating reliable predictions about the psychological and behavioral consequences of alternative decisions for a particular child.

Even if one could make reliable predictions, the second problem would remain: What set of values should a judge use to determine a child's "best interest"? The decisionmaker must be able to tell what counts as good from what counts as bad — a question that may be no less ultimate than the purposes and values of life itself. Should one be concerned mainly with the child's happiness, or with spiritual and religious training? Or should the primary goal be the child's long-term economic productivity? Are stability and security more desirable than intellectual stimulation? Such questions could be elaborated endlessly.

Rational choice, already difficult when focused on a single child or family, becomes even more complicated in policymaking. First, policy decisions affect many children, and children vary enormously. A policy that may benefit some children may, because of individual

or circumstantial differences, hurt others.

Second, solutions become much more intricate as more individuals and organizations are involved in implementing them. In a custody dispute, the judge is concerned primarily with the future behavior of the mother and the father. Things may be very different if the decision must be implemented through a large bureaucracy, such as a school district or a welfare department.

Third, in most policy contexts the judge must take into account more than the interests of the child. Whether admitted or not, the interests of others — including bureaucracies — may be at stake and have a legitimate claim to consideration.

Prediction and value problems do not necessarily pervade every aspect of the adjudication of children's issues. In some "easy" cases, it is reasonably clear that the interests of children require some immediate policy change. When young people are at substantial risk of immediate harm, there may be little need to formulate long-term predictions about alternatives.

Nonetheless, I believe that easy cases are the exception, not the rule. In more typical circumstances, value and prediction problems make the "best interest" of children essentially indeterminate and speculative — a fact that has profound implications for children's policy and for those seeking to bring about reform.

The Legitimate Role of Courts

How much power should judges exercise on behalf of children?

The question of the proper role of courts in our governance is, of course, central to constitutional theory. While the discussion is characteristically couched in terms far broader than children's policy, examining the basic question in the children's context is revealing.

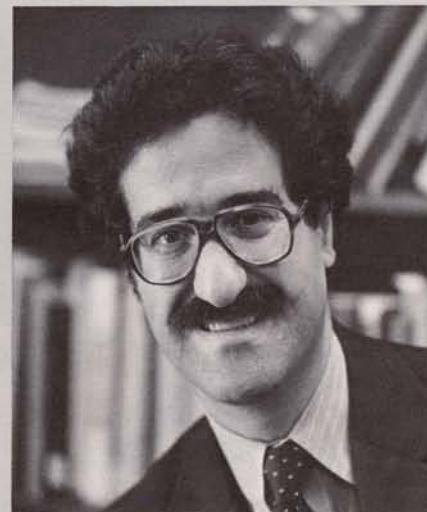
One general justification for judicial activism was proposed some forty years ago by Supreme Court Justice Harlan

Stone in a somewhat cryptic footnote to the otherwise undistinguished case of *United States v. Caroline Products Co.* Courts, the Justice argued, should direct their most searching scrutiny toward (1) legislation that "restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation," and (2) legislation by majorities that affects "discrete and insular" minorities, especially under circumstances where prejudice against a minority may be a "special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities."

Justice Stone's suggestion has since been cultivated into a full-blown theory by John Hart Ely. In his 1980 book, *Democracy and Distrust*, Ely argues that the scope of judicial review in constitutional litigation can be circumscribed to ensure that public policymaking remains

"Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." — U.S. Supreme Court

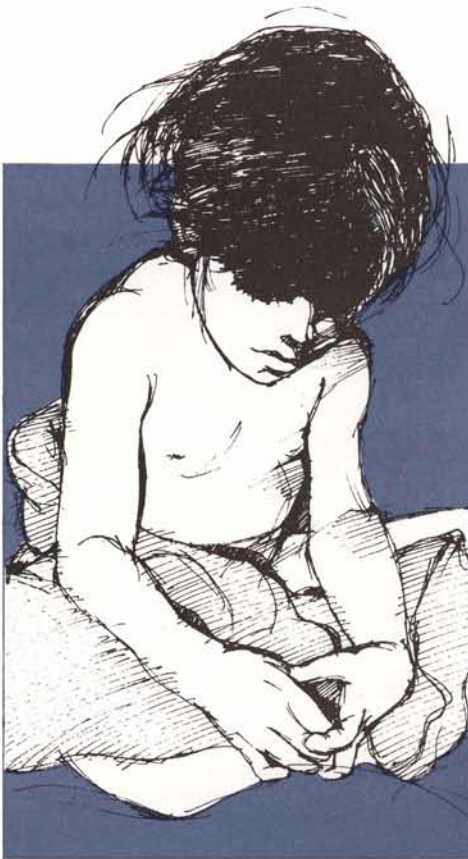
the responsibility of officials accountable to the electorate. "The tricky task," according to Ely, "has been and remains that of devising a way or ways of protecting minorities from majority tyranny that is not a flagrant contradiction of the principle of majority rule." Ely advocates a "participation-oriented, representation-reinforcing approach to judicial review." However, he cautions, "judicial review under the Constitution's open-ended provisions . . . should deal only with questions of participation, and not with the substantive merit of the political choice under attack." He suggests that, consistent with democratic theory, a court should intervene when the political system is systematically malfunctioning;



Robert H. Mnookin is widely recognized for his work in family law. *The American Psychological Association* in 1983 gave him their Award for Distinguished Contributions to Child Advocacy. And in February 1986 he and Prof. Michael S. Wald were honored by the National Center for Youth Law.

Mnookin joined the Stanford Law faculty in 1981 after nine years at Boalt Hall. His publications include *Child, Family and State* (Little, Brown, 1978) and *Sharing Among the Human Capitalists* (Stanford Law and Economics Program, 1984, with Ronald J. Gilson) — the basis of a Fall 1984 Stanford Lawyer article, "Dividing the Pie."

The present article is drawn from Mnookin's latest book, *In the Interest of Children: Advocacy, Law Reform, and Public Policy* (W.H. Freeman, 1985), which includes studies by Mnookin, Wald, David L. Chambers (Michigan), Robert A. Burt (Yale), Stephen D. Sugarman (UC-Berkeley), Franklin E. Zimring (also Berkeley), and Rayman L. Solomon (American Bar Foundation). The Stanford Legal Research Fund — made possible by the Estate of Ira S. Lillick and by gifts from Roderick M. and Carla A. Hills and others — provided partial funding for the project.



it is the court's responsibility to ensure that the democratic process works.

Are children an appropriate group for special protection under this process-oriented theory of judicial activism? Certainly they lack political power. Children cannot vote, may not serve in the legislature, have little money of their own, and control no organizations. In terms of formal participation rights, minors may in fact be at an even greater disadvantage than were blacks—the paradigm of a “discrete and insular minority.”

The cases for intervention on behalf of blacks, however, included more than formal participation rights; blacks also labored under widespread white prejudice that rendered futile their efforts to exercise what few rights they did possess. Is there similar prejudice against children? I think not. Every legislator was once a child; most legislators have children of their own. Though they may not understand the plight of a child on welfare or the problems of a broken home, there is no reason to believe that legislators are prejudiced against children as a class.

The participation issue is, by contrast, a real one. Children are represented in the political process only indirectly, and there is often reason to question the adequacy of this surrogate representation. Parents, though the obvious potential spokesmen for children, are surprisingly inactive outside the educational sphere. There are, of course, some groups of handicapped children whose parents are active in the legislative arena, but the benefits so gained apply to only a narrow segment of children. By and large, parents do not appear to feel that their own children are sufficiently affected by broad policies to warrant the effort of political participation.

There are, to be sure, a number of politically powerful constituencies—including women's groups, teachers' unions, and organizations of other professionals—that sometimes have interests in common with children. These groups, however, tend to address children's interests only when those interests lend support to the ends of the group. Indeed, there may be times when the livelihood of members of the group depends upon policies or practices of questionable benefit to children—times, in fact, when the interests of the group and of children collide. The employees of Pennhurst hospital, for example, had a vested interest in preventing its closure. What weight should be given to their claim that children would be best served by keeping the institution open?

This picture of children's representation in the political process is, at best, mixed. Because of the multitude of potential and part-time spokesmen for children, it is hard to argue that children are *always* inadequately represented in the political arena. But it is equally difficult to conclude that the political process adequately considers children's interests, given their inability to participate directly in that process.

It is tempting to suggest that absence of direct representation should qualify children as a “discrete and insular minority” meriting active judicial intervention under the Stone-Ely theory. And yet the theory does not quite fit. Unless one is

prepared to presume that indirect representation is by definition inadequate, one must decide *when* this indirect representation actually translates into inadequate representation deserving special judicial solicitude. Because children do not appear to be subject to the prejudice that plagued the religious and racial groups singled out for attention in Justice Stone's footnote, the courts will have difficulty determining whether the political system has actually malfunctioned, without examining the substantive merits of the particular political choice under attack. And yet this sort of substantive review is inconsistent with a process-oriented theory of judicial review.

Taking account of children thus poses a sharp dilemma. As non-voters, they and their interests may carry little legislative weight. Therefore, courts might appropriately favor them in undertaking judicial review. But only—and here's the rub—if children's interests were clear, *and* one could determine when those interests were not otherwise adequately represented in the political process.

The Paradox of Child Advocacy

The third issue concerns the proper role of the child advocate. Advocacy on behalf of children is inherently different and in some ways more problematic than advocacy for the adult client. Children need and deserve legal representation. And yet at the same time there are structural differences in the advocate-client relationship that can be seen as weakening the accountability of the lawyer to the child client. How, given this weakened accountability, can one ensure that the children's advocate is responsive to their interests, and is not simply pressing his or her own vision, unconstrained by the actual clients?

Ordinarily we expect parents to speak for their children's interests and, when necessary, give advocates their marching orders. In test-case litigation, however, looking to parents does not necessarily resolve the dilemma. For one thing, *Bellotti* and *Pennhurst* reveal that the

interests of parents and their children may sometimes conflict, at least from the perspective of the child advocates. Should parents have a say in whether their pregnant daughter receives an abortion? Or whether a mentally handicapped child remains in a large institution or is instead released to a neighborhood facility? Moreover, even where there was no indication of a parent-child conflict, the cases we studied belie any notion that the individual parents (much less their children) control the litigation. Instead it appears lawyers ordinarily play the commanding role in developing the case, deciding whether to file suit, and determining the scope of the litigation.

“Value and prediction problems make the ‘best interest’ of children essentially indeterminate and speculative — a fact that has profound implications for children’s policy and for those seeking to bring about reform.”

Diminished accountability to the client is, of course, a potential problem with all test-case litigation. The lawyer in a class action has a responsibility to a broader group of persons than the individually named client. And because the individual client does not ordinarily foot the bill, the client has little leverage over the attorney’s actions, including any impulse to make a bigger deal out of something than the client may want.

These problems are, I think, exacerbated in litigation on behalf of children. Child clients, unlike adult clients, are not considered competent to define their

own interests. Nor do they have the power to hire and fire their own lawyers, nor to instruct the lawyer about the goals of any litigation. And though a number of organizations claim to speak on behalf of children, children themselves do not of course exercise any substantial control over the organizations or, through them, their advocates. Nor do the classes or groups of children involved in test-case litigation control their lawyers. A further complicating factor is that, for the most part, the children being represented in such class actions are from the poorer and relatively powerless levels of society.

In short, test-case litigation on behalf of children lacks the ordinary mechanisms for client control — a situation of both uncertainty and special responsibility for the child advocate.

We were, however, encouraged to find that the individual children whose cases were utilized in the class actions we studied seem to have been well represented, despite their lack of formal or fiscal power over their advocates. The lawyers involved did not sacrifice their individual clients to the “cause.” Indeed, in four of the five cases, the immediate problems of the named plaintiffs were resolved early in the litigation.

In *Bellotti*, for example, Mary Moe quickly secured an abortion. In *Smith v. OFFER*, although the Supreme Court refused to decide that Mrs. Smith’s constitutional rights were violated, the Gandy children were never taken from her care, and she was eventually able to adopt them. In *Goss*, the named plaintiffs had returned to school long before the lawsuit was over. And in *Roe v. Norton*, the welfare mothers who began the lawsuit neither disclosed the identity of the father nor went to jail for contempt. Only in *Pennhurst* did the individual client’s problem have to wait on what proved to be a protracted legal struggle over the fate of the hospital in which she lived.

Litigation in Action

What did our case studies indicate about test-case litigation on behalf of children? Several observations can be made.

- Litigation is not always a deliberative, methodical, rational way of arriving at a decision. In adjudication, as in legislative activity, accidents of timing and personal idiosyncrasies can make a difference. Moreover, it appears that judges are no more eager than legislators to confront complexity on either the moral or the factual level. The litigation process can be slow and tedious, requiring substantial staying power on the part of advocates. The Connecticut welfare controversy dragged on for nearly a decade. *Smith* (lasting three years) and *Goss* (at almost four) were only comparatively speedy. In short, test-case litigation is not necessarily quick or cheap.

- Bringing a dispute to court is not a neutral act and will substantially affect the discourse. The content and the structure of the moral, political, and policy discourse are profoundly different in court from what they might have been in another forum. The need to describe the problem in legal terms can affect the way a policy issue is addressed. For example (as the *Goss* study shows), bringing foster care into court as a constitutional dispute meant that the issue was defined as whether a foster parent’s relationship with her children was a “liberty interest” or a “property interest” — terms that, from a policymaker’s perspective, are utterly irrelevant.

Litigation may also amplify the voices of certain actors or interest groups and mute those of others. In *Bellotti*, moving the controversy to a judicial arena substantially diminished the power of pro-life advocates and augmented the power of pro-choice forces. *Bellotti* also demonstrates how judicial precedents can shape and limit the scope of debate. The preexistence of the Supreme Court’s *Roe v. Wade* decision foreclosed discussion of whether abortion was morally tolerable. Consequently, the parent-intervenors, whose opposition to abortion arose from deep moral convictions, were forced to oppose the statute on the different and narrower ground that it infringed parental rights.

(Continued on page 74)

Grads Congregate, Cogitate, and Celebrate

ALUMNI/AE WEEKEND – that special mix of reunions, education, football, and partying – drew over 500 law graduates and their spouses to campus October 11–12, 1985.

Headlining the weekend's activities was the presentation of the School's 1985 Award of Merit to Warren Christopher '49, former U.S. Deputy Secretary of State and now president of the Stanford University Board of Trustees.

The weekend began Friday evening with reunions for the Classes of 1940, 1950, 1955, 1960, 1965, 1970, 1975, and 1980. Celebrating their fifteenth reunion, the Class of 1970 gathered again on Saturday for a tailgate picnic before the Stanford-UCLA football game.

The Saturday morning program opened with a brief "State of the School" report by Associate Dean Jack Friedenthal (standing in for Dean Ely, who was then in China – see p. 35). Friedenthal, a former chair of the Admissions Committee, next joined current chair Thomas C. Heller in leading the participatory "Admissions 'Game'" that Board of Visitors members had played with such interest at last May's meeting.

The program resumed (after a sunny break in Cooley Courtyard) with a discussion by Professors Paul Brest and Gerald Lopez of the School's expanding activities in the clinical area. "Rather than a separate 'clinical program,'" Brest noted, "what we have here is an increasing number of professors who are interested in using clinical methods as a way of teaching."

The group then adjourned for lunch, served *al fresco* in Crocker Garden, before heading over to the stadium for the game.

The Award of Merit ceremony was the centerpiece of Saturday evening's all-alumni/ae banquet at the Faculty Club. Shirley M. Hufstедler '49, Christopher's classmate and a cofounder of the *Stanford Law Review*, presented the gold medal before a capacity crowd. First given in 1984, the Award honors a Law School graduate who has distinguished himself or herself in public service.

"I am greatly pleased to receive this award," said Christopher, "and I am especially honored to join the select company of Bill Rehnquist [the 1984

recipient]." He then, in a brief address, spoke eloquently about both the School and the legal profession (see pp. 22–23).

For the many graduates wishing to linger in the Weekend's afterglow, there followed live music, dancing, and unlimited reminiscing.

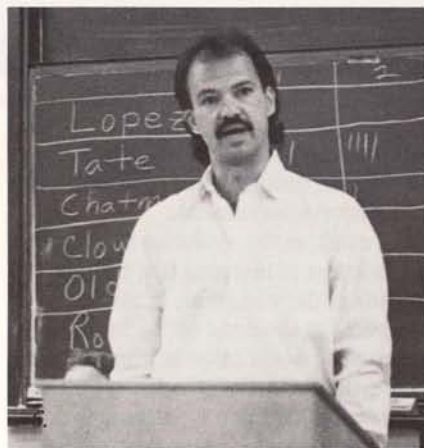
The 1986 Stanford Law Alumni/ae Weekend is scheduled for October 24–25, coinciding with the Stanford-USC football game. Reunions for the Half-Century Club (alumni/ae from classes graduating fifty or more years ago) and classes graduating in years ending in –1 and –6 are being planned. □



WEEKEND '85



PHOTOS BY PAUL WOOD, JOHN SHERETZ AND JO ANN COUPAL



1. Shirley and Jack Jorgenson, with Gussie and Elton Martin, at the 35th-year reunion of the Class of 1950.

2. Associate Dean Jack Friedenthal and Clifford Duke, Jr. '50.

3. Professor Tom Heller and Terry Adlhock '70.

4. One of several mock committees during the "Admissions 'Game'."

5. Jacquelyn Garman Beehan, Karen Cook, Paula and Jim Crown, and John Hackmann, at the Class of 1980 Reunion.

6. Professor Jerry Lopez, describing the East Palo Alto Community Law Project.



Warren Christopher Addresses Law Alumni/ae

The School: *Not the biggest, but the best*

“...when President Tresidder recruited Carl Spaeth as Dean in 1946, the Law School sought a new orbit. It has climbed to the front rank as a national law school, a national law school with an international reputation.

In thinking about the period since 1946, one is tempted to review the important progress made under each of the Deans — Carl Spaeth, Bayless Manning, Tom Ehrlich, Charlie Meyers, and now John Ely. We have indeed been fortunate in a succession of splendid Deans. Each of them has moved the School significantly forward. In the interest of time, however, let me summarize what Stanford Law School stands for today, what makes it not the biggest, but the best.

First, it stands for an extraordinary faculty — young, creative, and productive — person for person the best in the nation. That is not just my chauvinistic assessment. It is the view widely held by judges, professors, and lawyers. It is confirmed by attempts, largely unsuccessful I am glad to say, to lure Stanford professors to other leading law schools.

The Stanford faculty is not just excellent. It is also diverse, and diverse without being divisive. Since it is hard



Christopher '49, with Award presenter Shirley Hufstедler '49

to make progress when the bullets are flying, the mutual respect at Stanford is a major achievement.

Second, in the evolution in the techniques of teaching law, Stanford stands in the vanguard, in many respects at the head of the list. The shorthand description is “clinical education,” but the broader reality at Stanford is that much teaching is done in conjunction with representing live clients, and even more significantly, much teaching is done in simulated situations involving not only litigation, but negotiation and arbitration as well.

Third, Stanford stands for frontier leadership in the relationships between law, economics, and business. Stanford is building a faculty in these areas second to none. Commencing with courses in economics and finance theory in the first year, Stanford is developing a sequence of business courses which produces students ready to participate in this complex and vital area of American society.

Stanford also has made important strides in affording alternative career opportunities to graduates. Most graduates will enter private practice, but Stanford stands almost alone in helping to present practical alternatives in the public sector, in helping students to keep their options open. The Montgomery Loan Program enables students to get a taste of public service employment during their summers, and a second program funded by Cummins Engineering is designed to help those who go into public interest or public service jobs to handle their educational loans.

Finally, Stanford stands for students who are going to be leaders. The astronomical GPAs and LSATs are only the beginning of the story. The Stanford tradition of excellence and energy, creativity and, yes, a certain creative casualness, will continue to produce more than its quota of the nation's leaders. The best law school produces the best products.

"I accept this award not on the grounds that my own public endeavors have been extraordinary, but in the belief that they are only representative, and modestly so, of our profession."

The Law: *Not only a job, but a calling*

It is fashionable these days to emphasize that the practice of law is a business, and a very big business at that. But it is useful, on occasions like this, to remind ourselves that our business is also a profession. We labor not just to make our fortune. We are the vital participants of a system of laws, the essential players in the drama called rights and responsibilities.

Lawyers serve a public interest by representing private clients with fairness and fidelity, with vigor and thoroughness. (Daniel Webster was only exaggerating a little when he observed that 'if he would be a great lawyer, he must first consent to become a great drudge.') The lawyer who solves problems, resolves disputes, and speeds the flow of goods and services is practicing a profession and serving the public interest. This is a corollary of John Gardner's broader theorem that you do a considerable service to society if you perform excellently whatever task is yours. On the other hand, the lawyer whose business it is to obstruct and obfuscate, to filibuster and fib, is undermining the profession, not enhancing it.

We have a transcendent obligation to the law – to respect it, to improve it,

always to operate within it. But the duty of a lawyer goes further still. The privilege of practicing law warrants continuous repayment to the social order which confers it.

This precept is drawn from the most ancient definitions of the professions. Those learned in the law – and religion, philosophy, and later medicine – had a status apart from ordinary citizenship. They were assets of the whole society, and had an obligation to serve – even without pay, if need be.

Today's democratic society cannot easily digest those old notions of special status. But the reasons, the obligations of service, are still as real as ever. The opportunity to live by advising clients, representing causes, and arguing cases could not exist without a society dedicated to the rule of law. So when we work to serve and strengthen that society, we also elevate our own profession.

One kind of service is in the public sector. Government needs the unique skills that are instilled by legal training and honed by experience at the bar.

We honor those who devote their full time to service to the public, but we should give equal honor to those who serve good causes in tandem with their private practice. The volunteer efforts of lawyers in every conceivable aspect of community life – schools, charities, courts – may far outstrip the contributions of those who are employed full time.

The fashionable view these days is that many successful young men and women have turned inward – that they are selfish and self-indulgent. I concede that there may be an ebb and flow in the tide of commitment but do not believe it is true that the flame of idealism has burned out at Stanford Law, and I hope it is not true anywhere among young lawyers. Our progress as a society depends upon a different truth.

The nation's founding principles, after all, were largely the work of lawyers, and most were volunteers. The greatest social advances we have achieved – especially in civil rights and civil liberties – have depended heavily on lawyers, working as volunteers in the public interest.

So I accept this award not on the grounds that my own public endeavors have been extraordinary, but in the belief that they are only representative, and modestly so, of our profession. And I salute Stanford for continuing to regard the law as not only a job, but a calling; not only an opportunity but a responsibility.

I close with a few words from John Gardner: 'Freedom and obligation, liberty and duty – that's the deal. May we never forget it. May we never deceive ourselves. The obligations you accept may be different from mine, but it isn't in the grand design that we can have freedom without obligation. Not for long.'

”

Child Abuse and Neglect: The High Cost of Confidentiality

by Robert Weisberg '79
Associate Professor of Law

EVERY YEAR in the United States, several thousand children are killed or permanently incapacitated by their parents, and as many as 100,000 more suffer serious injuries or sexual abuse. In numbers that are probably far greater but more difficult to measure, parents harm their children through neglect, by leaving them unattended and exposed to injury, or by failing to send them to school or provide needed medical care. For these reasons, the state has the power to intervene by asserting legal jurisdiction over children threatened by parental harm, and, where necessary, by placing children in foster care or terminating their parents' custodial rights.

In deciding whether and how to intervene, child protection agencies and juvenile courts need broad access to information about the parents—information that often lies with medical or mental health professionals, school officials, or other providers of social services. Of course in cases where a professional has *direct* evidence of abuse or neglect (such as bruises or starvation), the agency or court is virtually guaranteed the information. Every state has some form of mandatory reporting law which requires, under criminal sanction, that physicians and others whose professions involve them with children immediately report any such evidence.

But in many cases, a professional without direct evidence of abuse or

neglect may nevertheless have information that would be useful to an agency or court that is already investigating a charge of abuse or neglect, or that is trying to decide the right disposition for a child already proven a victim. A therapist or other professional counselor may know, for example, about a parent's drug or alcohol addiction, his general pattern of violent behavior, or about his ability to respond to treatment. But such indirect information is not and cannot sensibly be covered by the mandatory reporting laws, with their criminal sanctions.

The inapplicability of reporting laws is not, however, the sole or even main problem in obtaining relevant but indirect information. Nor are the private or customary codes of professional conduct concerning confidentiality that are sometimes cited. Professionals are in fact constrained by a complex conglomeration of statutes that actually *forbid* them to reveal certain information, however pertinent, if received in confidence from a client.

These confidentiality laws fall into two broad categories. Every state has the relatively familiar evidence privileges, such as the physician-patient and psychotherapist-patient privileges, which generally bar professionals from testifying in court proceedings as to any confidential communications they receive from their patients or clients. But most states, as well as the federal system, also have less well-known but equally important nondisclosure statutes, which commonly apply to psychiatric hospitals or clinics, drug or alcohol abuse programs, and school and social welfare systems. These statutes

prohibit anyone connected with the program or institution (including professionals also covered by evidence privilege laws) from revealing any confidential information gained from the client as part of the institutional service.

Confidentiality laws do, of course, normally contain exceptions recognizing that certain social interests in disclosure take precedence over the client's interest in privacy. Indeed, a few legislatures explicitly abrogate their confidentiality laws for information potentially relevant to a child abuse or neglect investigation. But most exceptions in confidentiality laws address the issue of abuse and neglect, if at all, only vaguely or obliquely, removing the confidentiality bar where the client is "dangerous to others," or in the interest of the client himself, or under court order, or "in the interests of justice."

What we have, then, is an ill-coordinated mess of laws that are beyond the knowledge or comprehension of most professionals, and that leave even the most conscientious professional in confusion about whether she is required, permitted, or forbidden to breach her client's privacy in an abuse or neglect case. Professionals covered by both privilege and nondisclosure laws may even find that these laws make conflicting demands, or have different exceptions, or apply differently depending on whether or not the case is in court. The result is an ironic pairing of problems: professionals have no idea of what to do; or they can legally justify doing almost anything they otherwise prefer to do. The result may be moral agony for the professional and arbitrarily uneven patterns of disclosure in child protection

systems. And most surely, agencies and courts get far less relevant information than they need.

The problem obviously demands rules on disclosure that are not only clearer, but that also better respect the state's need for information in protecting children as against the assumed, but often ill-examined, privacy needs of parent-clients.

The conventional arguments for confidentiality take two forms. First is an instrumental argument: We all have an interest in seeing that parents who need psychological, medical, or welfare services seek and obtain those services, and they will not do so unless they receive a legal guarantee of confidentiality. Empirical research concerning the psychotherapist-patient privilege demonstrates, however, that the presence or absence of a confidentiality law has virtually no

effect on peoples' willingness to participate in psychotherapy. We are left to tinker with some very speculative cost-benefit analysis about whether the social gain in otherwise unavailable information that might protect some children from death or harm (or might disprove false charges of abuse and neglect against innocent parents) outweighs the social cost in unnecessarily deterring from treatment or other services parents who would never hurt their children (or even those potentially destructive parents who would be restrained from hurting their children if they obtained treatment).

A second claim for confidentiality laws is that individual parents have a categorical right of privacy to be protected from the pain and embarrassment that breaches of intimate communication might cause. But even if we accept this noninstrumental argument, it seems more than outweighed by the powerful evidence that parents often kill and maim their children, and by strong indications that professionals often have crucial, if indirect, evidence relevant to these charges. Besides, parents can be protected from indiscriminate public disclosure by agencies and judges.

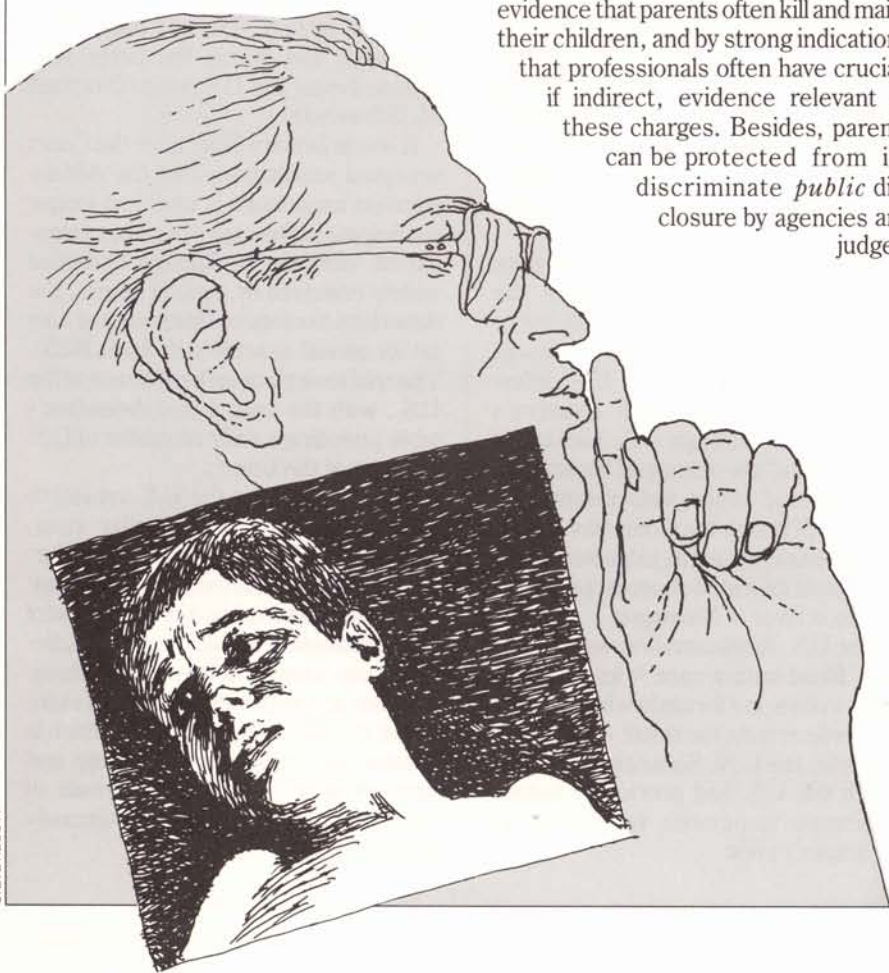
But to say we need rules that are both clearer and more favorable to disclosure does not tell us how to make them. Two superficially attractive solutions turn out to be unsatisfactory. One would be simply to extend the mandatory reporting laws to govern "indirect evidence" bearing on abuse or neglect charges. However, since indirect evidence is by definition evidence that does not itself indicate that a parent has abused or neglected his child, an expanded mandatory law would leave professionals in confusion about what to report. Some costly and damaging overreporting by hyper-conscientious professionals would be likely.

A second solution would be to expand the discretionary side, by repealing all confidentiality laws to the extent that they inhibit professionals from providing information that might bear on an abuse or neglect investigation. But this approach would likely compound the current problem of professionals' floundering in moral, if not legal, uncertainty, and would leave judgments about the need for disclosure to people who may know little about the child protection system in general, and even less about the state's need for information in a specific case. Moreover, it would disable the professional from telling a worried client exactly what the law of confidentiality says.

The third and best solution would be a rule that *requires* professionals to disclose information to a child protection agency or court, *but only when* the agency or court requests information that it reasonably believes might aid in resolving an abuse or neglect case. (Legislators could avoid possible constitutional questions concerning compelled self-

(Continued on page 74)

Robert Weisberg '79, a former Stanford Law Review president, joined the faculty in 1981. His research includes a joint investigation with Prof. Michael Wald of the relationship of confidentiality laws and child abuse and neglect laws.



STEVE REOULT

Taking a Walk: The U.S. and the World Court

by Judith C. Appelbaum '77

UNTIL NOW, the United States has stood for the rule of law among nations. We have both preached and practiced the principle that disputes between countries should be resolved peacefully, according to international law, and not by armed conflict.

Republicans and Democrats, liberals and conservatives, have united behind this principle, and behind the institution through which it is implemented: the International Court of Justice, or World Court. President Calvin Coolidge, in his 1925 inaugural address, called for the "establishment of a tribunal for the administration of evenhanded justice between nation and nation." He said: "The weight of our enormous influence must be cast upon the side of a reign not of force, but of law and trial, not by battle, but by reason."

The U.S. formally committed itself to this principle in 1946, when President Truman declared that the U.S. voluntarily accepted the "compulsory jurisdiction" of the World Court. During the last forty years the United States has in fact called upon the Court many times to adjudicate our grievances against other nations, most recently in our dispute with Iran over the taking of American hostages (1979), and with Canada over a maritime boundary in the Gulf of Maine (1984).

The current Administration, however, has thrown this tradition out the window. It announced, on October 9, 1985, that it had decided to nullify the 1946 declaration. Henceforth the U.S. would accept

World Court jurisdiction only in cases where the U.S. explicitly agreed to do so — in short, when it suits us. As a result, our country can no longer claim to be the standard-bearer of international law, a model for other civilized nations of the world to emulate.

Why this about-face? It happened because the Administration expected defeat in a case before the World Court: *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. This is the case, filed by Nicaragua in April 1984, in which the United States is charged with violating the most central precepts of international law — including Article 2 (4) of the United Nations Charter, which prohibits the use of force by one state against the territorial integrity or political independence of another.

I do not, as one of the attorneys involved, intend to discuss here the merits of Nicaragua's case. Suffice it to say that Nicaragua was able to present considerable evidence of U.S. interference with that small country's sovereignty — through U.S. backing of the "contras," the mining of Nicaraguan harbors, and other well-documented actions. (Though the Court has not, as of this writing, issued its judgement in the case, most informed observers expect it to rule in favor of Nicaragua.)

The U.S. Administration was, therefore, faced with a case it knew it was likely to lose, in a forum in which it could not predetermine the result — unlike, for example, the U.N. Security Council, in which the U.S. had previously vetoed otherwise unanimous resolutions in Nicaragua's favor.

Initially the State Department did appear before the Court to present its objections to the Court's jurisdiction over the parties, on technical grounds, and to the "admissibility" of the dispute — that is, the competence of the Court to adjudicate the legality of an armed conflict. But the Court, after consideration of lengthy briefs and arguments on these points, voted 15–1 that it had jurisdiction, and 16–0 that it was competent to decide the merits of the case. These lopsided majorities included judges from such U.S. allies as Britain, France, Italy, West Germany, and Japan; the latter vote included even the U.S. judge (Stephen M. Schwebel).

It was in January 1985, after the Court accepted jurisdiction, that the Administration announced it would no longer participate in the case — a rather transparent exercise in damage limitation widely criticized by, among others, the American Society of International Law (at its annual assembly in April 1985). The trial took place in the absence of the U.S., with the unoccupied defendant's table providing a daily reminder of U.S. defiance of the Court.

Even worse than the U.S. refusal to participate in this particular case, however, was the gratuitous and far-reaching boycott announced in October, which amounts to a blanket withdrawal of U.S. submission to the Court's jurisdiction in *any* contentious case. The Administration accompanied this with a number of rationalizations, none of which is capable of withstanding scrutiny and most of which are simply revivals of arguments already rejected unanimously by the Court.



STEVE REOUTT

For example, the Administration has said the Nicaragua case should not be before the Court because it is "political." Obviously there is a political dimension to the controversy between Nicaragua and the United States, but that is true of any dispute between two nations. So long as the case presents legal questions for adjudication, it is fully in keeping with the role the Court was created to play. In fact, that is exactly the position the U.S. itself took in the case we brought against Iran in 1979 over the seizure of our diplomatic personnel. Ironically, Iran's lawyers then used the same arguments about the "political" nature of the case and the inappropriateness of the Court as a forum that the U.S. has since made in the Nicaragua case. The Court properly rejected these arguments in both instances.

The Administration has also attempted to excuse its withdrawal from the Court by charging that the Court is being used

as a "propaganda weapon" by Nicaragua. But Nicaragua could only achieve a propaganda victory if the U.S. is found guilty of violating international law. If the Court were instead to uphold the position of the United States that Nicaragua is the aggressor, the propaganda effects would be reversed: our country would be the public relations beneficiary of the suit and Nicaragua would be disgraced. There is nothing inappropriate in this. A nation that is guilty of violating international law can be said to merit the opprobrium of an adverse World Court judgment; indeed, since the Court has no real enforcement power, the moral weight of its judgments may be its most potent means of securing compliance with its decisions.

Still another rationalization for U.S. withdrawal from the Court was that the Court has become politicized and biased — a criticism similar to one sometimes made of certain other U.N. bodies, such

as the General Assembly and UNESCO. There is, however, no evidence of bias against us on the World Court. In fact, we fared very well in the other two recent Court cases in which we were involved. The Court's opinion that Iran should immediately release the hostages seized in our embassy was unanimous, with even the judges from Syria, Poland, and the Soviet Union concurring. And in the Gulf of Maine case with Canada, the larger part of the disputed territory was allocated to the U.S. Given this record, one must ask whether, when a case is brought that we feel sure to lose, the fault lies in the Court or in ourselves.

Our government's decision to walk away from the Court represents a serious break with our traditional commitment to the rule of law and to international adjudication of disputes among nations. Commitment of principle is not, however, the only thing at stake. Prior presidents have been not only moral men, but realists as well. They recognize that the advancement of the rule of law and wider use of the World Court to resolve conflicts can serve our self-interest. If the United States hopes to invoke the rule of law in its own behalf in the future — for example, to challenge the actions of state-supported terrorists — we must be willing to hold our own conduct accountable to the relevant international rules and norms. If we insist on a system of international adjudication that guarantees we will win every case, no one will participate and we will have no system at all — only chaos. That is why the U.S. departure from its historic role as the preeminent supporter of international law is not only unseemly; it is also short-sighted and dangerous. □

Ms. Appelbaum is a partner in Reichler & Appelbaum, the Washington, D.C. law firm that serves as counsel to the Government of Nicaragua with regard to the International Court of Justice and other matters.

Babcock Becomes First McFarland Professor

Professor Barbara Allen Babcock has been appointed to the Law School's new Ernest W. McFarland chair. She is the first woman to hold an endowed professorship at the School and was before that the first woman appointed to the permanent faculty.

Babcock joined the Stanford Law faculty in 1972 after six years (1966-72) first as staff attorney and then as director of the Public Defender Service of Washington, D.C. She was previously (1964-66) an associate with the law firm of Edward Bennett Williams.

In 1977 President Carter named her assistant attorney general for the Civil Division of the U.S. Department of Justice, where (on leave from Stanford) she served until 1979.

"Barbara Babcock has a national reputation as a lawyer-scholar," wrote Dean Ely in a September 10 report to the Stanford University Board of Trustees. "She is also an outstanding teacher."

In 1981, Babcock received the School's John Bingham Hurlbut Award for Excellence in Teaching. And in 1982 the University of San Diego awarded her an honorary J.D. degree.

Babcock teaches an advanced course in criminal procedure, as well as introductory courses in both civil and criminal procedure.

A pioneer in establishing sex discrimination law as a field of legal study, Babcock is coauthor of a classic text in the field, *Sex Discrimination and the Law: Causes and Remedies* (1975). She has also published another law text (with Paul Carrington) titled *Civil Procedure: Cases and Comments on the Process of Adjudication* (1977).

Babcock grew up in Washington, D.C., did her undergraduate work at the University of Pennsylvania (B.A., 1960), and studied law at Yale (LL.B., 1963). She then served as law clerk to Judge Henry W. Edgerton of the U.S. Court of Appeals in Washington, D.C., before beginning her law career with the Williams firm.

"I've done a lot of different things in the law and liked them all," she said in a recent interview. She would like her students to know that "you can lead a really good and integrated life as a lawyer. I sincerely believe," she con-



Barbara Babcock

tinued, "that the law is an important and noble profession, and I hope to get that across."

Babcock is currently working on a biography of the founder of the public defender movement in America, Clara Shortridge Foltz (1849-1934). Foltz was also the first woman to be a member of the bar in California.

Babcock lives on the campus with her husband, fellow Stanford Law Professor Thomas C. Grey. She has frequently served on, and in 1982-83 chaired, the School's Appointments Committee. And in 1985 she chaired the University's Student Conduct Legislative Committee.

The professorship to which she has been named was endowed by Ernest W. McFarland '22 shortly before his death in 1984. McFarland (whose remarkable career was described in our Fall 1984 issue) was, among other things, majority leader of the U.S. Senate (1951-52); governor of Arizona (1955-59); and the chief justice of the Arizona State Supreme Court (1968-71).

"I'm really happy to have the McFarland chair," Babcock said, "because he devoted his life to public service—an ideal I admire." □

Goldstein Named to Lillick Chair

Professor Paul Goldstein has been appointed to the Stella W. and Ira S. Lillick Professorship in Law. Goldstein has been a full

professor since joining the Stanford Law faculty in 1975, and was a visiting associate professor in 1972-73.

"Paul Goldstein's publications and his work for the federal government and for international treaty organizations have established him as one of the nation's leading academic lawyers in the field of copyright law," wrote Dean Ely in a September 10 report to the University Board of Trustees.

A text by Goldstein—*Copyright, Patent, Trademark and Related State Doctrines* (2d ed., 1981)—has been widely adopted in law schools across the country and is regarded as a landmark in the general field of intellectual property law.

Goldstein is particularly interested in copyright issues raised by new technologies, including both new



Paul Goldstein

forms of copyright subject matter—such as computer software—and new methods for reproducing and using copyrighted works—such as home videotaping and photocopying.

He is currently chairman of an advisory panel for a national study, "Intellectual Property Rights in an Age of Electronics and Information," for the Office of Technology Assessment of the U.S. Congress. The study is expected to help Congress adapt intellectual property laws to the realities of the electronics age.

The problem, Goldstein explained in a recent interview, is, "How do you preserve incentives for the production of information that is easy to copy and transmit covertly? Unless you give producers adequate protection, they won't invest the right amount in the right kind of literature, music, and art."

Also an expert in real property, Goldstein has written two important texts in the field—*Real Estate Transactions* (2d ed., 1985) and *Real Property* (1984)—and often teaches the introductory course in property law.

Goldstein, a native of Scarsdale, New York, earned a B.A. in 1964 from Brandeis and an LL.B. in 1967 from Columbia, where he was a law review editor. That same year, he was appointed to the law faculty of the State University of New York at Buffalo, rising to full professor in 1973, two years before joining the Stanford faculty.

He is highly regarded as a teacher and has twice (1978 and 1983) won the School's John Bingham Hurlbut Award for Excellence in Teaching. When asked what he most wants his students to learn, he replied: "How to develop and exercise judg-

ment in difficult situations."

The Lillick professorship that Goldstein now holds honors Ira S. Lillick, an 1897 graduate of the Law School, and his wife, Stella W. Lillick. Mr. Lillick was a founder and for many years senior partner of the firm now known as

Lillick, McHose & Charles.

Goldstein and his wife—a member of the Santa Clara University art faculty—have a three-year-old child and live on the Stanford campus. □

Ellickson Appointed to Paradise Chair

Robert C. Ellickson was named last summer to the Robert E. Paradise Professorship in Natural Resources Law. He joined the Stanford Law faculty in 1981 as a professor after eleven years with the University of Southern California Law Center and experience in both government and the building industry.

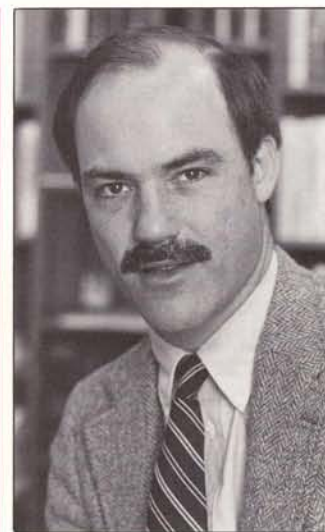
Originally from Washington, D.C., where he attended public schools, Ellickson graduated with high honors from Oberlin in 1963, received his law degree (LL.B.) in 1966 from Yale, and then studied city planning for a year at the Massachusetts Institute of Technology.

Returning to Washington, he worked for two years

(1967-68) with the President's Committee on Urban Housing (Kaiser Committee), writing about one-half of the resulting report, *A Decent Home*. He gained industry experience during two years as assistant to the executive vice-president of Levitt & Sons, then the largest homebuilding firm in America.

Ellickson began his teaching career in 1970 at USC, where he was given tenure in 1975. He has held visiting professorships at the University of Chicago (1974-75), Stanford (1977), and Yale (1984-85). In 1977 the University of Miami's Law and Economics Center awarded him its Annual Prize for Distinguished Scholarship.

Ellickson's publications



Robert Ellickson

include a text (co-authored with A. Dan Tarlock '65), *Cases and Materials on Land-Use Controls* (Little, Brown & Co., 1981). He has also in a number of journal articles applied economic analysis to such land and property rights issues as homeowners associations, nuisance law, and land development controls.

"Bob Ellickson is one of the preeminent scholars of land-use law in the United States," Dean Ely told the University Trustees in a September 10 report on the appointment. "He has also proven to be an uncom-

(Continued on next page)

Notice to Class of '85 Graduates

If you are employed in government or other public interest jobs (excluding judicial clerkships), earn less than \$30,000 a year, and have educational loans to pay off, you may be eligible for financial assistance under the Law School's Public Interest Low Income Protection Plan. For information, write or call the Financial Aid Office, Stanford Law School, Stanford, CA 94305, at (415) 723-9247. □

Law School 'Jury' Ends Open-and-Shut Season

"The Jury"—a team of twelve (of course) law students—secured the University intramural touch-football championship on November 24 before some fifty ecstatic fans. The 6-0 victory sealed

a perfect season for our relentless ruggers, who denied cert to nine successive opponents on their way to an undefeated record and a cumulative score of 209-0. The Law School twelve—

ELLICKSON (continued)

monly effective and popular teacher."

Ellickson, who in 1977 received the USC Associates Award for Excellence in Teaching, frequently teaches first-year Torts and Property courses, as well as the second-third year Land Use Law course.

He was involved in, and wrote the preface for, the Stanford Environmental Law Society study, *Land Use and Housing on the San Francisco Peninsula* (1983). He is also interested in the natural resources law subjects of public lands, water resources policy, and land taxation, and has taught Real Estate Transactions, and Oil and Gas Law.

In the current issue of the *Stanford Law Review*, Ellickson reports some results of a study of how neighboring landowners resolve their disputes. An advocate of empirical research, he personally interviewed 73 residents of Shasta County, California, to find out how they dealt with trespass by livestock.

"Landowners are often

more influenced by their notions about how good neighbors should act, than by what the law is," he reported in a recent interview. "Lawyers tend to think that law is always the most important instrument of social control, but it's clear from my and others' field-work that this is not true. Major domains of human activity are beyond the reach of law.

"I'm trying to blend economics, sociology, and game theory to say something systematic about the reach of law—where it can have influence and where it can't."

An ardent Scrabble player, Ellickson competed in the 1985 North American Open. He lives, with his wife and two children, in Palo Alto.

The Robert E. Paradise Professorship in Natural Resources Law was established in 1982 through a gift by Paradise and his wife, lone, of Arcadia, California. Howard R. Williams, now retired, was its first holder. □

all members of the Class of 1986—first won their slots through merit in the halcyon days of first year, finding Contracts a picnic compared with the rigorous demands of coach (and wide receiver) Eric Deller. Early victories begat a large following of fellow students, who awaited the weekly games with an anticipation usually reserved for Supreme Court tax decisions. More often than not, it was the cool head and flaming arm of quarterback Jeff Quicksilver that struck down the final appeals of rivals. But until now the ultimate prize had eluded the team;

the first year they fell one game short of the championship, and last year, racked by interview absences, fell early in the playoffs.

All the more sweet, then, was this year's triumphant finale—a fitting peroration to seasons of camaraderie and a defensive achievement consonant with the best tradition of Stanford lawyers. Asked to account for The Jury's success, Coach Deller invoked the familiar victory toast: "Here's to the right stuff—to those who have it, and those who only dream of it."

—Keith Hansen '86 □

Football champs (l-r front) Paul Ferdinands, Mike Zeller, Steve Sherwyn, Brian Condon, and (back) Jeff Quicksilver, Allain Andry, Eric Deller, Gary Shumway, Brent Bullock, Vinnie Altamura, and Jeff Schneider.



Lucchesi Named to Law Fund Post, Huch to Alumni/ae Relations

Elizabeth Lucchesi has been appointed Director of the Law Fund. Already well known to graduates of the School, Lucchesi has for the past five years been Director of Alumni/ae Relations. The

Law Fund post, which she assumed in October 1985, was previously held by Kate Godfrey, who has moved to the University's Development Office as director of its personal solicitation

and special gifts programs.

Succeeding Lucchesi as Alumni/ae Relations Director is a newcomer to the School, Susan M. Huch, a graduate of the City College of New York with several years experience in sales (for the McKesson Corporation and 3M Company). Huch has been active locally as a director of the Resource Center for Women—where she ran their executive recruitment subsidiary and continues to do fundraising—and of TheatreWorks, a local, semiprofessional theater company.



JO ANN COUPAL

Susan Huch and Elizabeth Lucchesi

Lucchesi, a graduate of Randolph-Macon Woman's College, has spent most of

her working life at Stanford, including five years with the Business School as assis-

tant director for alumni programs. She has also served for eight years as a volunteer freshman advisor. Lucchesi is active in the Association of American Law Schools, as a member of the executive committee of the Section on Institutional Advancement, and in the Junior League of Palo Alto, as a member of the board of directors.

"We're entering an exciting period with the centennial campaign for Stanford," she says. "I'm glad to be a part of that effort, and I know that Stanford Law alumni will rise to the challenge." □

Reisch '88 Earns University Service Award

First-year law student Scott Reisch is one of seven students honored by the University this January with its Award for Service. Conferred by Stanford's Dean of Student Affairs, the award recognizes students who make exceptional contributions to the University and the local community.

Reisch, who received his A.B. from Stanford last June, was cited for his work while an undergraduate in "rescuing" and reorganizing Stanford-in-Government (SIG), and for his willingness to continue working with the group in 1985-86—"thereby disproving the belief that no first-year law student can see beyond the rim of a torts textbook."

SIG helps students obtain internships in government and public-interest organizations, and runs an on-campus speakers bureau on public policy issues.

Reisch, who is still active as an adviser, began working with SIG in its campus program, participated in two summer internships (both with the Veterans Administration in Washington, D.C.), and served as SIG chairman in 1984-85. □



OLIVIA M. PETERSON

Scott Reisch

Jacobstein Looks Ahead as Library Passes 300,000-Volume Mark

Sometime during the month of May 1985, the School's Robert Crown Law Library added its three hundred thousandth volume. Though still relatively small compared to library holdings at other major law schools, this figure represents a higher than average growth rate—191 percent since 1960.

This dramatic increase in our holdings parallels the growth during the same twenty-five years of our faculty (from 22 to 40), student body (from 454 to 536), and number of second- and third-year course offerings (from 52 to 74). The Law Library has, of course, played a vital role in making possible the intellectual variety and depth these developments represent.

The last decade has also seen the introduction here of

the more useful of the new materials and systems not included in traditional "volume" (books and journals) counts, such as those employing microfiche and computer technologies.

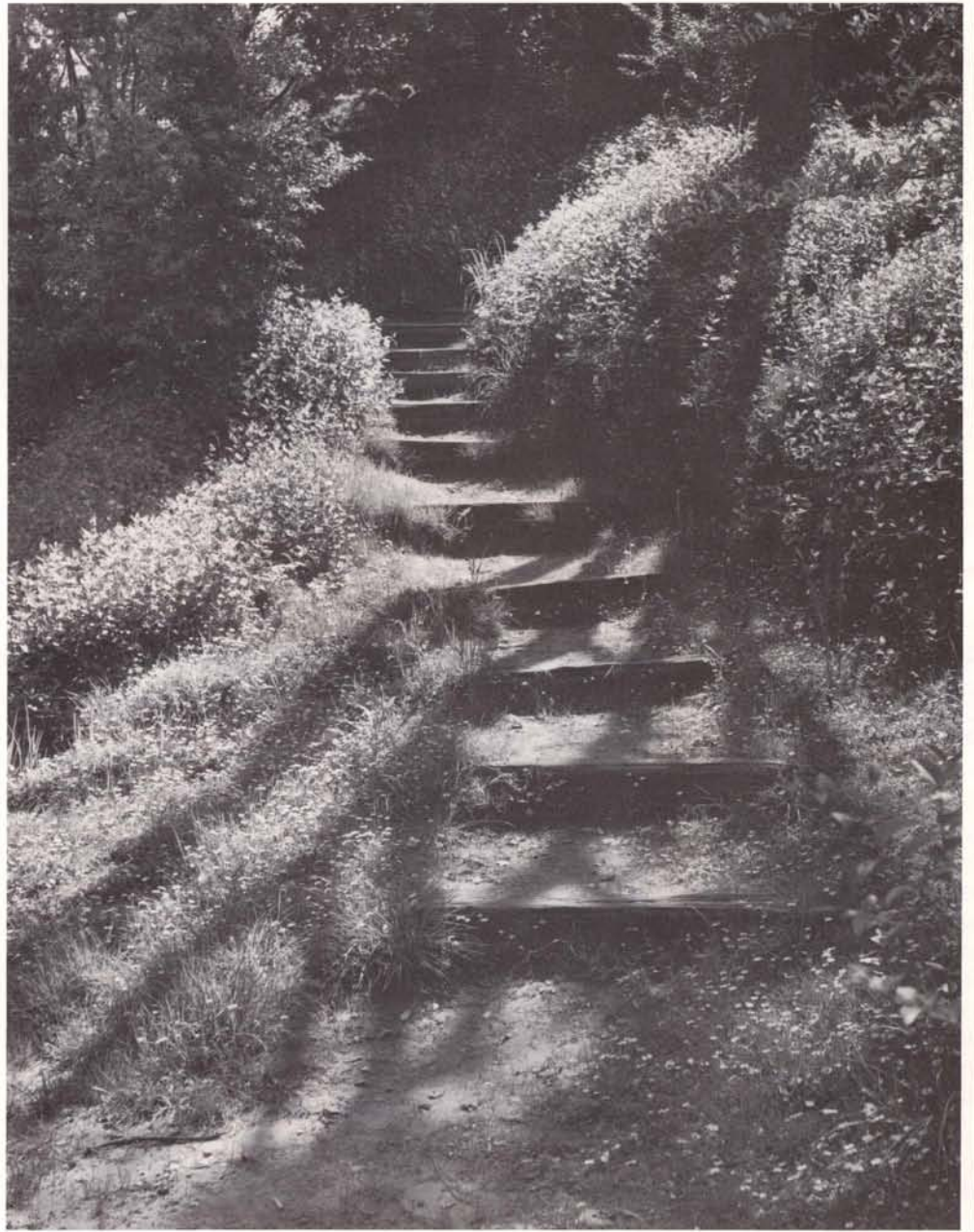
At this juncture in our history, I find myself, as Law Librarian, looking to the future. Will the Library continue to grow at the same impressive rate? What will be the effect of new technologies on the future of libraries? Will the book and the journal, as we now know them, disappear?

Some commentators are already predicting that the electronics revolution will make present methods of providing legal information to lawyers and legal scholars obsolete. Certainly the availability of computerized

(Continued on page 34)

In Camera

Law may be an overwhelmingly left-brain activity. But pleasing evidence of right-brain sensitivity can be seen in common rooms and offices all round the School. We are particularly struck by the number of evocative photographs taken by faculty members. Herewith some examples.

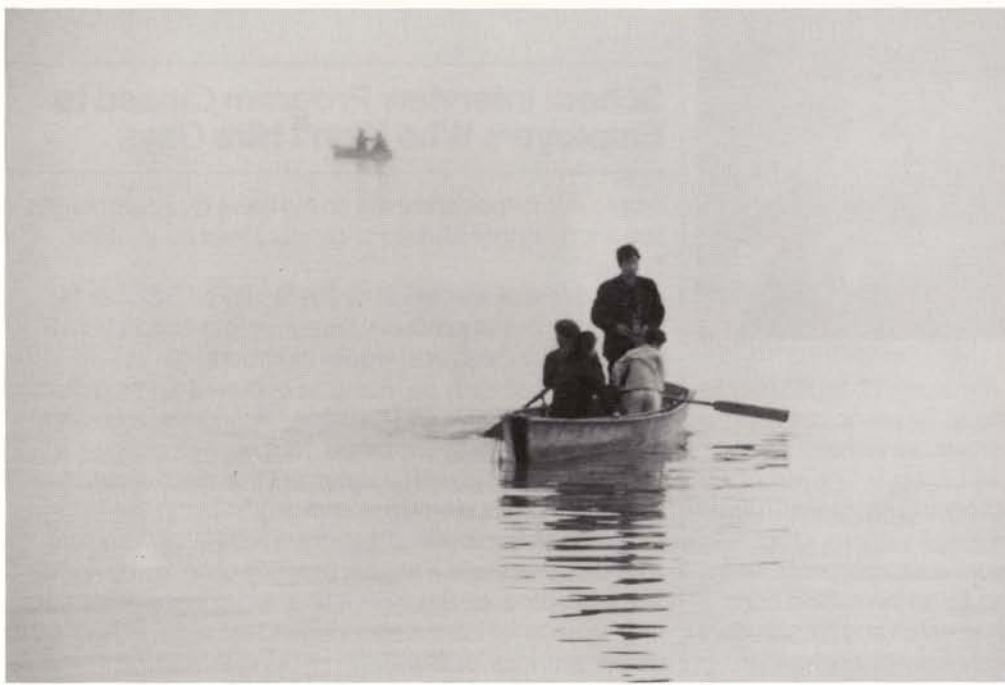


Moffatt Hancock,
Marion Rice Kirkwood Professor Emeritus
Steps, Frost Amphitheater

One of three black-and-white photographs given to the School by Professor Hancock with the request that they be hung "where students can see and enjoy them." On permanent display in the antechamber of the Crown Library building lobby. Four other Stanford scenes by Prof. Hancock already graced the Library's Vrooman Room. "I want students who come here to realize that they are on one of the most beautiful campuses in the country, so that they will take time to explore it," he explains.

Professor Deborah Rhode
Hyde Park (The Serpentine),
London

Hung in her Crown Quad office.
Professor Rhode develops her
own black-and-white photos. "If I
had more free time," she says, "I'd
undoubtedly squander it in the
darkroom."



Dean Ely
Kun Ming Lake, Beijing

Taken during his recent trip to
China. One of seven color photos
on temporary display in the lobby
case, Crown Library building.
"It's supposed to conjure up
Whistler—in one of his oriental/
impressionist moments," says
Ely. "But the mist may not quite
work in black and white. Let's just
say it conjures up boating."

LIBRARY (continued)

bibliographic systems and data bases is already changing traditional methods of doing legal research. And newly available are laser disks with tremendous storage capacity. (In fact, it is estimated that one disk may be able to contain the equivalent of all the *California Reports* and *California Appellate Reports*, or perhaps even the entire Second Series of the *National Reporter System*.)

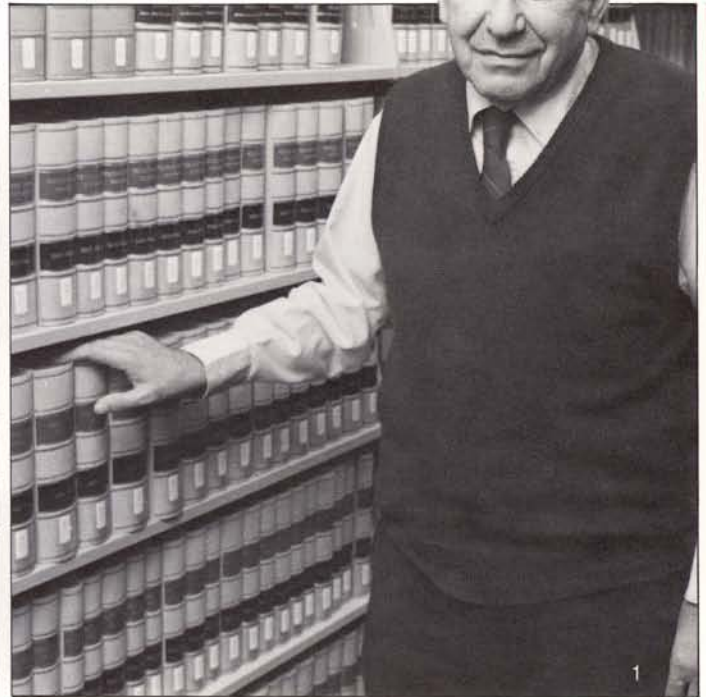
If anything is certain, however, it is that prediction is hazardous. Some of you may remember, for example, forecasts that television would entirely replace the radio, or that by 1980 private ownership of helicopters would be commonplace!

Predictions have also been made about how microfilm would replace bound books and journals, but this has certainly not occurred. And all the new and exciting developments in methods of storing information have not, as far as I can see, made a dent in the need for what some refer to as "hard copy." Indeed, the number of books published and of new journals started continues to increase at what is (at least in budgetary terms) an alarming rate.

Those of us who are fond of the printed word may be assured that we are not about to be deprived of the pleasure of holding a bound book in our hands—though we may have located it with the help of a computerized catalogue!



Whatever changes may lie ahead, however, one thing is certain: our Robert Crown Law Library will have the continuing obligation—and privilege—of providing information resources for a faculty on the cutting edge of research and for a student body actively engaged in writing and research on a wide array of legal topics.
— J. Myron Jacobstein, Professor and Law Librarian □



Librarian Jacobstein (1) sees future for traditional materials (2, with Patty Moncada '86) as well as technologically new systems (3, Tom Sears '88 and senior reference librarian Iris Wildman).

PHOTOS BY TIM HOLT

School Interview Program Closed to Employers Who Won't Hire Gays

Employers that discriminate on the basis of sexual orientation are no longer allowed to conduct interviews at the School.

The decision was made by the faculty on October 14, 1985, at a meeting called in response to requests from a number of students and faculty members.

"We were already on record as opposed to hiring discrimination against gays and lesbians," Associate Dean Jack Friedenthal recently explained. "But our new policy is a more direct and powerful statement that discrimination based on sexual orientation is wrong."

The chief employers affected are federal government agencies that make a regular practice of not hiring homosexual applicants. Students interested in these employers may arrange for interviews independent of the School's career services facilities.

The Gay and Lesbian Law Students Association seeks to promote networking on employment and other issues. The Association asks alumni/ae sharing its orientation to write: GLLSA, Room 45, Crown Quad, Stanford, CA 94305. □

Faculty Notes

Barbara Babcock, now Ernest McFarland Professor (see page 28), spoke on the criminal justice system, at a San Diego Law Library lecture in October. In March she addressed the newly established Women Lawyers' Foundation in Hawaii on the subject of women in power—"an occasion of particular interest," she explains, "because the invitation was initiated by former students, now successful practitioners, whom I taught while visiting in 1976 at the University of Hawaii." Babcock is also active on the boards of the East Palo Alto Community Law Project and the National Institute of Trial Advocacy.

Thomas Campbell has spoken recently on a number of topics. Antitrust in marketing and distribution practices was the subject of a February 6 lecture for the Practising Law Institute in San Francisco. He gave a speech on multi-employer bargaining at the San Francisco Labor and Employment Law Conference, February 21, in Yosemite. And on February 28, for the Stanford Alumni Association of Palo Alto, he discussed "International Law in a World of Terrorism."

Mauro Cappelletti was elected February 10 as a corresponding member of the Institut de France, the centuries-old institution that includes the Academie Francaise (primarily for liter-

ature) and the Academie des Sciences Morales and Politiques (to which Cappelletti now belongs). Currently on leave from Stanford to chair the Law Department of the European University Institute in Florence, he is working towards completion of the international research project he codirects, "Integration Through Law: Europe and the American Federal Experience." Four volumes have so far been published, with another three expected in 1986. The project's purpose: "To analyze the role of law in the processes of cultural, economic, and political integration of peoples and nations."

Robert C. Ellickson, the newly named Robert Paradise Professor of Natural Resources Law (see page 29), was a speaker at an Urban Land Institute conference on growth management October 21 in Washington, D.C. On October 30, he gave a paper, "The Inadequacies of Law and Economics and Other Theories of Social Control," at a law faculty workshop at the University of Toronto. And in mid-November he presented a comment, entitled "Adverse Possession and Perpetuities Law," at a conference, Time and the Common Law, administered by the Emory University Law and Economics Center.

John Ely was one of nine American law school deans who spent two weeks during October in China as guests of the Chinese Ministry of

Justice and Chinese State Education Commission. The deans traveled to Shanghai, Nanjing, Xian, and Beijing, where they visited the law departments of several universities and institutes of law and politics, met with professors, students and trade officials, and toured various facilities, including a penitentiary.

Jack H. Friedenthal, the School's associate dean for academic affairs, has been elected to Stanford University's Advisory Board—a seven-person body that reviews all University appointments and promotions. He and his Harvard coauthor Arthur Miller also recently completed a third edition of their text, *Sum and Substance of Civil Procedure*. Dean Friedenthal spoke to alumni/ae in Phoenix in November and in Los Angeles in February. And in March he presented the annual Tulane Law Review banquet speech.

Lawrence Friedman has recently had three books published: the second edition of *A History of American Law* (which originally appeared in 1973); *Your Time Will Come: The Law of Age Discrimination and Mandatory Retirement* (issued as part of the Russell Sage Foundation "Social Research Perspectives" series); and *Total Justice* (in the Foundation's 75th Anniversary Series). An article based on *Total Justice* begins on page 2.

Robert Gordon spent a week at Princeton University

in October as a Mellen Fellow in Law. He has also recently given talks on "Virtue, Commerce, and Lawyers" at a Columbia Law School legal theory workshop and at a Johns Hopkins University seminar in legal history.

William B. Gould IV is the author of two new books: *Strikes, Disputes, Procedures and Arbitration: Essays on Labor Law* (Greenwood Press, 1985); and *Labor Relations in Professional Sports* (with Robert Berry, for Auburn House, 1986). While a visiting fellow at the Australian National University in Canberra, he presented lectures there and at the University of New South Wales in Sydney, Monash in Melbourne, and the University of Adelaide. Traveling to London, he addressed the ABA Labor and Employment Law Section, on comparative aspects of American and British labor law. Back at Stanford, he helped organize and gave a paper at a Law School conference, The National Labor Relations Act after Fifty Years—the subject also of an NLRB conference that he later addressed in San Francisco. In other appearances he gave a paper, "The Burger Court and Labor Law," at a Hofstra Law School Conference on the Burger Court; and presided over a conference on the future of U.S. labor unions, at the Center for Democratic Institutions in Santa Barbara.

(Continued on next page)

FACULTY NOTES (continued)

Thomas Grey presented his recent *Stanford Law Review* paper, "The Constitution as Scripture," at a Harvard Law faculty seminar in November. In January he delivered a paper in San Diego, on *Takings* (a new and controversial book on constitutional law by Richard Epstein). And in March Grey gave a talk on AIDS and the Constitution at a Los Angeles conference on legal aspects of the disease.

Samuel Gross argued before the U.S. Supreme Court January 13 in the case of *Lockhart v. McCree*, which concerns death-qualified juries and whether they are biased in their determinations of guilt or innocence. He explored another kind of bias in a recent article—"Race and Death: The Judicial Evaluation of Evidence of Discrimination in Capital Sentencing"—which was published in a Death Penalty Symposium issue of the *U.C. Davis Law Review*.

Thomas Heller participated in the Stanford University faculty committee that developed the plan (approved in November by the University provost) for a new Institute of International Studies at Stanford; he is currently serving on the committee to bring the IIS into being.

John Kaplan was tapped by University President Kennedy to investigate alleged police brutality in October

against Stanford students arrested in an anti-apartheid demonstration. Kaplan's conclusion: police actions were in some instances "wrong and unjustifiable," but not sufficiently so as to warrant charges against the officers involved. In another vein, Kaplan has had published, with **Robert Weisberg**, a new book, *Criminal Law: Cases and Materials* (Little, Brown, 1985).

A. Mitchell Polinsky is currently on sabbatical at the Hoover Institution as a National Policy Fellow. He participated in an August conference at the Keystone

Center in Colorado, on reforming U.S. products liability law. And in November he was at Airlie House in Virginia as a commentator at a conference on private anti-trust litigation, sponsored by Georgetown University Law Center.

Deborah L. Rhode delivered a paper at a conference on the First Amendment last October at Northwestern Law School. Rhode was also a featured speaker (on the subject of solicitation) at the plenary session in January of the Association of American Law Schools.

Robert Rabin is serving as Reporter to the ABA Action Commission to Improve the

Tort Liability System. The Commission's goal is to recommend a set of tort reform initiatives by November.

Michael Wald and **Robert Mnookin** were both honored February 12 by the National Center for Youth Law and the Youth Law Center in San Francisco. Wald has for many years done *pro bono* work with the Centers as a staff attorney, board member, and adviser. His recent study with David L. Chambers of *Smith v. OFFER*, a foster parents' rights case that went to the Supreme Court, appears in the book that provided the basis of the Mnookin article beginning on page 14. □

ED SOUZA

Stanford Law Review, Vols. 38 and 39



Alumni/ae GATHERINGS

IN SEVEN CITIES across the nation, attendance was up and interest keen as alumni/ae got together to strike up new friendships, affirm old ones, and learn more about the Law School of their choice.

"Aloha" was the byword at a March 27 reception of **Hawaii alumni/ae** marking Dean Ely's first trip to the 50th State. Sponsored by Charles Wichman '52, the event was held at Honolulu's Pacific Club, where the Dean provided the 35-plus in attendance with an update on the School.

The **Law Society of Southern California** has had a busy year, with gatherings on November 7 and February 7. Dean Ely, guest of honor at the November event, reported on the School's achievements since his last visit with the Los Angeles chapter. Elizabeth Lucchesi, the School's new Law Fund Director (see page 30), was also on hand to greet alumni/ae. Hats off to Hugh McMullen '71 for organizing the event at the Times-Mirror Building in downtown LA.

The February event was a luncheon honoring new admittees (mostly members of the Class of '85) to the California Bar. The recently restored Mayfair Hotel was chosen for the well-attended get-together by planners Pamela Ridley '79 and Frank Melton '80. As guest speaker, Associate Dean Jack Friedenthal discussed the future of the student athlete concept.

On November 15, Friedenthal flew to Arizona, where he was guest of honor at a **Law Society of Phoenix** cocktail reception. The 30 alumni/ae present heard Friedenthal discuss developments at the School and his involvement (as the University's representative) with the Pac-10 Conference and the National Collegiate Athletic Association.

Back in the Bay Area, the **San Francisco Law Society** had an enthusiastic turnout of 80 alumni/ae for an October 24 luncheon at the Hyatt Regency. Negotiation and mediation experts Guy Blase '58 and John Griffiths '60 shared their insights on alternative dispute resolution.

There was equally strong interest in the San Francisco chapter's January 24 luncheon/debate on State Supreme Court Chief Justice Rose Bird's upcoming election. Professor Michael Wald and Berkeley Law Professor Stephen Barnett represented opposing sides on the issue. Also held at the Hyatt Regency, the event gave



local alumni/ae a chance to meet Susan M. Huch, the School's new alumni/ae relations director (see page 30).

Two time zones away, on October 7, the recently reorganized **Stanford Law Society of Chicago** held a cocktail buffet with Professor Tom Campbell as the guest speaker. Campbell, a former Chicagoan, was introduced by Alvin Katz '77, the Society's new president. Over 25 alumni/ae attended the get-together, held at the East Bank Club.

Further east, on November 20, some 25 **Boston alumni/ae** got up a little earlier to have breakfast with Professor Tom Jackson, on leave while spending the autumn term at Harvard Law School. Ellen Corenswet '75 earns a mention for arranging the meeting at her law firm of Hale & Dorr.

The **Stanford Law Society of**

Washington, D.C., co-sponsored two recent events with the Washington-Baltimore Chapter of the Stanford Business School Alumni Association. On November 7, there was a wine and cheese reception with Edwin Colodny, President of US Air, at the law firm of Steptoe & Johnson. Colodny discussed how his airline remained profitable while others went bankrupt. And on January 31, recently appointed SEC Commissioner Joseph A. Grundfest '78 (see page 62), presented a talk to 30 alumni/ae gathered for a buffet lunch, at the law firm of Hogan & Hartson. Neil Golden '73 lent his organizational touch to both events.

Please mark your calendars for Stanford Law Alumni/ae events scheduled this summer and fall (see back cover). You may be certain of a warm welcome from the School and fellow alumni/ae. □

STANFORD LAW SOCIETIES

Arizona

Graeme E. Hancock '80
Fennemore, Craig, von Ammon,
Udall & Powers
First Interstate Bank Plaza
100 W. Washington Street
Phoenix, AZ 85003
(602) 257-5448

Chicago

Alvin Katz '77
Neal, Gerber, Kanter & Eisenberg
Three First National Plaza
208 S. La Salle Street
Chicago, IL 60604
(312) 269-1739

Denver

Brian T. Dolan '65
Davis, Graham & Stubbs
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Denver, CO 80202
(303) 892-9400

Mid-Peninsula

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Oregon

John R. Hassen '65
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& Brian
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(503) 779-8550

John L. Barlow '81
Fenner, Barnhisel, Willis & Barlow
123 N.W. 7th Street
Corvallis, OR 97330
(503) 757-0575

Mary Ann W. Frantz '78
Miller, Nash, Weiner, Hager
& Carlsen
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Portland, OR 97204
(503) 224-5858

Philadelphia

Bruce A. Rosenfield '76
Schnader, Harrison, Segal & Lewis
Suite 3600
1600 Market Street
Philadelphia, PA 19103
(215) 751-2080

San Diego

Theodore W. Graham '63
Luce, Forward, Hamilton & Scripps
Suite 1700
Bank of California Plaza
110 West A Street
San Diego, CA 92101
(619) 236-1414

San Francisco

R. Frederick Caspersen '71
Farella, Braun & Martell
Suite 3000
235 Montgomery Street
San Francisco, CA 94104
(415) 954-4427

Donald J. Querio '72
Severson, Werson, Berke
& Melchior
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26th Floor
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(415) 398-3344

Southern California

Pamela M. Ridley '79
Nossaman, Guthner, Knox & Elliott
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445 S. Figueroa Street
Los Angeles, CA 90017
(213) 612-7841

Frank E. Melton '80
Tuttle & Taylor, Inc.
355 S. Grand Avenue
Los Angeles, CA 90071
(213) 683-0600

Washington

Jackie R. Brown '75
Brown Mathews
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Seattle, WA 98104
(206) 621-7557

Washington, D.C.

Cornelius J. (Neil) Golden, Jr. '73
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1101 Vermont Avenue, N.W.
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(202) 289-3000

Stanford Women Lawyers

Christine Curtis '71
Department of Industrial Relations
525 Golden Gate Avenue
Room 614
San Francisco, CA 94102
(415) 557-2746

Patricia Cutler '71
Spiegler Cutler Liao & Kagay
Three Embarcadero Center
San Francisco, CA 94111
(415) 956-5959

Child Advocacy

(Continued from page 19)

● Test-case litigation, though distinctive in many ways, is still very much a part of the political process. Sugarman's study of *Roe v. Norton*, for example, reveals an enormously complex process in which federal courts, state legislatures, the Congress, and the federal bureaucracy all acted and reacted to each other. Moreover, merely filing a lawsuit sometimes pushes government agencies into adopting new practices to improve the state's chances in court. Before a court ever adjudicated the plaintiffs' claims, officials in both *Goss* and *Smith* implemented new procedural safeguards for students and for foster parents.

● The federal courts often attempt to cut a compromise in situations where the parties were unable to do so themselves. Particularly in *Goss*, *Smith*, and *Bellotti*, there were no clear winners. In *Bellotti*, for example, the plaintiffs successfully persuaded the Supreme Court that the 1974 Massachusetts statute requiring pregnant minors to seek parental consent for abortion was unconstitutional. Justice Powell indicated, however, that a statute that instead gives a pregnant minor a choice of either asking her parents or going to court would pass constitutional muster. Thus the Court rejected the claims of those who thought that pregnant minors should have the same abortion rights as adult women, while at the same time rejecting the claim that parents should always have a right to be involved. Neither side got all it wanted.

● Substantive disputes about policy may to a remarkable extent be transmuted into due process claims. For example, *Goss* did not define the circumstances that justified a school suspension; instead, the Supreme Court defined the minimum procedures that school officials had to follow in suspending a student. And the eventual result of the Connecticut welfare dispute was a process under which state welfare workers would determine, case by case, whether a particular

mother had good cause *not* to identify the father of her illegitimate child. In each instance, the result was not a substantive policy applicable to all cases but a requirement that the decision process allow an individualized determination of an appropriate outcome for a particular child or family.

One might almost conclude that lawyers and courts tend to prescribe due process no matter what the problem. But I think that here there is a deeper reason as well, having to do with the enigmatic nature of the interests of children. By requiring individualized determinations rather than making general rules, one can aspire to doing the right thing for each individual child.

Prescribing due process may also serve a useful political function for the courts, by allowing them to decide without deciding. A court can trumpet broad principles of procedural fairness while delegating the actual decisionmaking process to a lower level.

There are, however, dangers in this approach. For one, it may give enormous discretion to officials responsible for making the individual determinations. The actual outcomes will often be less visible, and it can become extremely difficult for advocates to monitor the process. In addition, symbolic adjudication, like symbolic legislation, may merely dampen a political dispute while leaving the underlying policy problem unresolved.

Conclusion

Our study was launched with a seemingly straightforward question: Is test-case litigation a sensible way to make policy on behalf of children? For reasons that should now be clear, a definitive answer cannot be given without resolving questions that appear insoluble.

I feel like the small-town mayor who, when asked which of his town's two restaurants had better food, replied, "The one you don't go to." As we have seen, test-case litigation has many disadvantages – but compared to what? I am confident that a detailed study of

legislative policymaking on behalf of children would reveal many disadvantages as well. Perhaps one virtue of the American political system is that there is more than one forum for those who wish to defend or change policies.

In sum, our five studies showed that going to court will often make a difference, although not necessarily the difference the advocate had in mind. We were also interested to see that, at least in our five cases, the federal courts were very modest in what they were willing to do – a picture that is certainly inconsistent with charges that we have an "imperial" judiciary. The hopes of legal child advocates, who believe courts can achieve broad reforms, and the fears of conservatives, who see judicial activism as pernicious, seem equally inflated. □

Confidentiality

(Continued from page 25)

incrimination by limiting use of the confidential information to noncriminal proceedings.) Though no party in this situation is ideally objective or informed in resolving the conflict between the parent's need for privacy and the state's need for relevant information, at the early stage of investigation the child protection agency is best suited. If and when the case gets to court, the judge herself will be best suited to reassess the need to breach confidentiality. And once in court, any additional harm the parent may suffer from controlled disclosure of information already in the hands of the agency is likely to be small.

This solution would grant broader and clearer powers to child welfare agencies and courts to obtain information. But regardless of what statutory balance is struck between parental privacy and child protection, legislatures must give this complex problem more attention that it has so far received. Few legislatures seem, in fact, to have formed any policy at all – a situation that not only places professionals in a quandary but also most certainly allows preventable harm to children. □

Community Law Project

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identify which aspects of legal practice most appeal to them in developing long-term career priorities.

Students also derive much satisfaction from their participation. To do something practical like helping a client get his money back from a dishonest auto mechanic, or protecting a battered woman, can be terrifically rewarding and add meaning to a legal education. "I've been going to school for a lot of years," says Christopher Ho '87. "With the Project I am finally beginning to see what I have learned in School becoming useful."

For student organizers, there are unusual opportunities for learning and practicing leadership skills. Students working with the Executive Director are helping to run a functioning law office, including budgetary planning and managing the office's cash flow — experiences some attorneys may not have until they make partner or open their own offices. Students working with funding sources engage in oral and written advocacy not unlike that needed in the courtroom. The several students each year who serve on the Board of Directors grapple with personnel issues and operational crises while developing long-range programs. Student committee chairs and coordinators have also had to learn to organize the large numbers of students who want to participate.

Involvement in the Project also allows students to reflect on the limits and possibilities of the law. "You soon realize that legal problems are a tiny fraction of the problems that poor clients face," says Mary McComb '87. Many students have said that recognition of what the legal system can and can't do has been an important part of their Stanford education.

Gains to the Law School

We believe that the creation of the East Palo Alto Community Law Project is of great benefit to the Law School above and

beyond its value to individual students. It has proved to be an excellent way of combatting the disengagement that many students feel after the first year. While Stanford has developed its curriculum in several ways to address this problem, the birth of the Project has provided an engaging and valuable learning environment. The ability of students to shift from first-year case analysis to client representation, policy analysis, and intensive written advocacy has added a new dimension to Stanford legal education.

The Law Project also provides new academic opportunities for faculty and students alike. It immediately expanded the clinical scope of courses in Juvenile Law and Poverty Law. The addition to the curriculum of a course in Immigration Law and Policy was made possible by its linkage with the Project-based Immigration Clinic, which is supported by an outside grant. The Project also provides an excellent venue for community education efforts developing out of the innovative Teaching Self-Help and Lay Lawyering course. Several other areas for possible coordination were noted by the faculty EPACLP Evaluation Committee, e.g., consumer law, family law, criminal law, and areas of small business law. "Whether and how these might develop depends, of course, on faculty interests and the resources and judgment of EPACLP," the Committee wrote. "Nonetheless, the potential for ongoing affiliated activities seems great."

Moreover, the existence of the EPACLP adds a new facet to the Law School's reputation, which should help in recruiting. For some years, Stanford has been perceived as more "isolated" than most other major law schools. The School's past lack of connection to surrounding communities has probably hurt its ability to attract some excellent faculty and students who value this element of a legal education. The Project changes this significantly. Stanford Law School now has a student body that is vitally "involved" in the community.

The Community Law Project also supports the School's efforts — such as the Montgomery Public Interest Loan Program and the Low Income Protection

Plan — to instill a sense of professional responsibility in its graduates. "The Project has created a community of people that are in some way interested in community service," says Michelle Mercer '86. "Students are more likely to consider public interest law or at least *pro bono* work than they would have otherwise."

Participating students cannot help but gain a heightened appreciation of the way the legal system affects minorities and the disenfranchised. "This type of work tends to sensitize students," observes Judge Cordell, who chairs the EPACLP board of directors. "It will make them better lawyers — and better human beings."

The unanimous support expressed by the faculty last fall shows that the School recognizes the contribution the Community Law Project is making to the quality of educational life at Stanford. With this vote came a commitment from the School to launch an ambitious effort to help raise funds for the Project and a commitment from individual faculty members to develop additional academic courses using the EPACLP as a base.

Thus, in a very short span of time, the student dream of a community law office has become not only a reality but also an integral and valued part of the Stanford Law School experience. If sufficient funds can be raised to continue the Project, both the community and the School will benefit for years to come. □



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