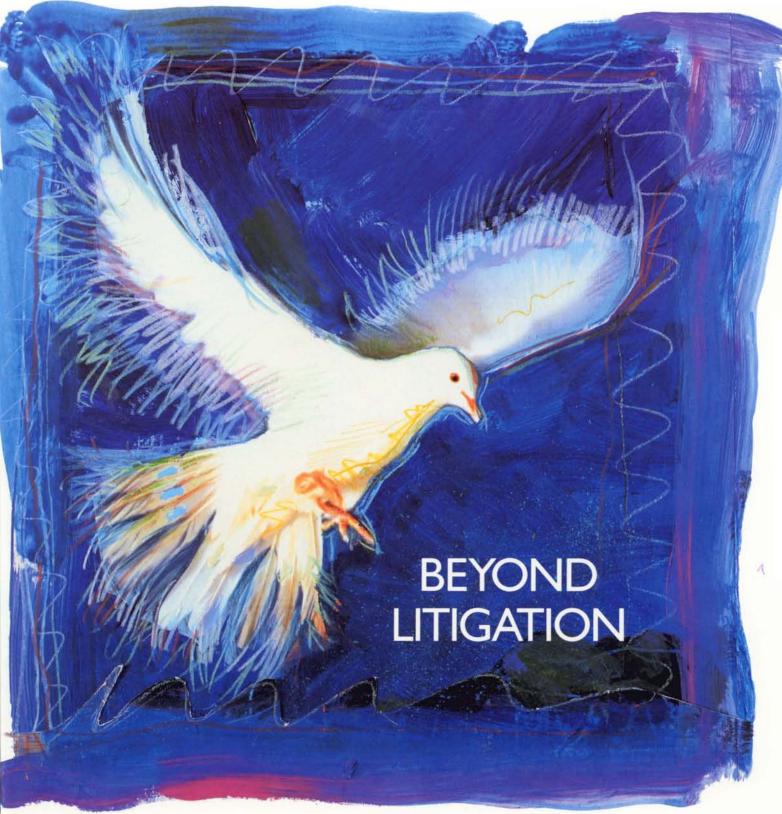
Women in Law Firms
The Constitution and Race
Board of Visitors

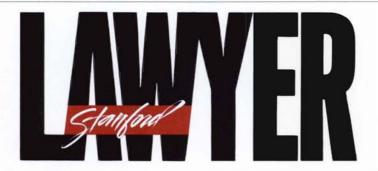






The cover: Art by Barbara Mendelsohn, Stanford Publication Services, using Canon color copy of a Paul Dance photograph (detail) provided by Tony Stone Worldwide.

The medal: The Council for Advancement and Support of Education has awarded a silver medal to *Stanford Lawyer*. The award (given for the Spring and Fall 1988 issues) was won in the 1989 national CASE competition. This is the second time the School magazine has been so recognized.



SPRING/SUMMER 1989

41 (VOL. 23, NO. 2)

FROM THE DEAN

In the Public Interest

"Do well and do good" was the Dean's parting message to graduating students at Commencement 1989.

By Paul Brest

FEATURE ARTICLES

4 Beyond Litigation

There are various ways to resolve conflicts. The IBM-Fujitsu dispute is a fascinating example.

An interview with Robert H. Mnookin

10 Quasi-Free

A noted historian tells how our laws and Constitution discriminated even against blacks who were not slaves.

By John Hope Franklin

14 Endangered Species

Law firms are losing many of their female attorneys.

A woman partner explains why and offers some solutions.

By Louise LaMothe '71

AT ISSUE

18 'Animal Rights' Politics

New regulations could hamper medical progress.

By John Kaplan



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DEPARTMENTS

20 School News

33 Board of Visitors Report

> 50 Class Notes

93 In Memoriam

94 Alumni/ae Gatherings

> Back Cover Coming Events

From the DEAN

HERE'S lots of talk, these days—at Stanford and other law schools, in bar associations, and throughout the legal profession—about lawyering in the "public interest." I'd like to say a few words this afternoon about the ways that you, as lawyers, can serve the public interest.

Any lawyer who approaches his or her daily work with proficient skills, sound judgment, and exacting ethical principles is serving the public interest in a real and important sense. I will urge, in a moment, that we should demand more of ourselves and our colleagues. But it is worth recalling the premise of our legal system: that the public interest is served by lawyers performing even the most ordinary tasks competently and conscientiously. You only have to read the daily paper, or listen to the endless stream of lawyer jokes, to realize that we often are thought to fall short of this standard.

I hope that the Law School has helped prepare you to serve the public interest in this fundamental sense, whatever areas of practice you choose to pursue—whether you are doing leveraged buyouts or real estate deals, or defending the criminally accused. While it is up to you to develop much of your practical knowledge, skill and judgment "on the job," I hope that we have provided a strong foundation on

which you can build.

Of course, we have lots more work to do to improve the quality of professional education. My brightest hope for the Law and Business curriculum, the curriculum in Lawyering for Social Change,

and our nascent program in Legal Ethics and the Legal Profession, is that they will greatly increase our graduates' ability to serve the public interest by being good lawyers in every sense of the word "good."

I especially hope that these programs will continue to improve the quality of the counseling that lawyers provide their clients—quality, not only in the technical sense, but in terms of bringing your independent judgment to bear on your clients' concerns. On this subject, I com-

"Pro bono work is a constant source of renewal of the commitments that make the difference between a job and a profession."

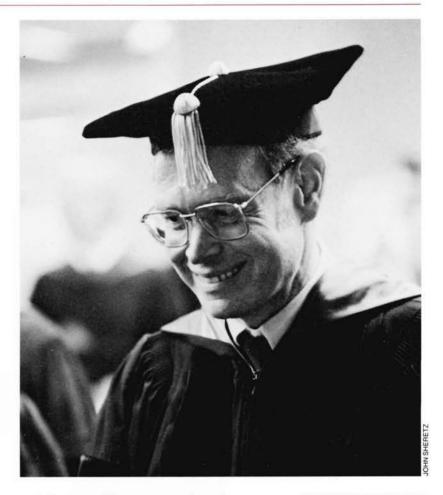
mend to you Robert Gordon's excellent recent article on "The Independence of Lawyers," in which he quotes from a speech by Harold Williams, a former Chairman of the Securities and Exchange Commission.

Mr. Williams observes that lawyers have a professional obligation to consider their clients' interests in the context of the needs of the larger society. And he is concerned about what he calls "a disturbing trend among some corporate lawyers to move in the opposite direction—to see themselves as value-neutral technicians." He continues:

True, ethical dilemmas can be avoided if one's job is viewed as profit-maximizing or as uncritically representing—and not questioning or influencing—the corporate client's interests so long as they are not illegal.... But, indifference to broader considerations would not be professional. Similarly, it would not serve the client well. A counsel does a disservice when, in effect, he limits his advice to whether the law forbids particular acts or to an assessment of the legal exposure, and does not share with the client his view of the possible ramifications of the various alternatives to the short- and long-term interests of the corporation and the private enterprise system.... To correct this tendency, the bar must place greater emphasis on the lawyer's role as an independent professional-particularly, on his responsibility to uphold the integrity of his profession.2

The commercialization of law practice is at an all-time high - and still rising - and the challenge of working for the public interest in the sense I've been talking about has never been greater. But I'd like to turn to a more familiar meaning of "public interest": work on behalf of clients who cannot pay their own way in the private legal market-practice with the poor, and with minority and immigrant groups; lawyering for civil liberties, civil rights, and the environment; criminal defense, or, for that matter, criminal prosecution and other work on behalf of governments.

There are at least two ways of serving the public interest in these ways-in a word, full time or part time.



Full-time public interest work can be extraordinarily rewarding—in every sense but one. You won't get rich - certainly not as a legal services lawyer or government attorney, and not even working for one of the prestigious private legal organizations like the Legal Defense Fund or Natural Resources Defense Council. Graduates of my generation (almost a quarter-century ago) had it easier. Our debt burdens were lower, and the gaps between the starting salaries for private and public-interest practices were far smaller.

I greatly admire those of you who are embarking on careers devoted to the public interest on a full-time basis. At the cost of omitting many other names, I want to say how proud I am that three of our graduates-Susan Woolley from the Class of 1988 and David Giles and Cathy Ruckelshaus from your class-will be among the first group of Skadden Public Interest Fellows next year (see page 26). What a grand and fortunate way to begin one's life as a lawyer!

But the legal needs of those who can't afford to pay for legal services are far greater than can possibly be met by full-time public interest and

Paul Brest extolled

public service in a

parting message to

His spoken presen-

tation-delivered

in the midday sun

at Commencement,

June 18 - was necessarily abridged.

Here is the full text.

the Class of 1989.

(Continued on page 30)



BABBARA MENDELSOHN (STANFORD PUBLICATION SERVICES); DICK LURIA (FPG INTERNATIONAL), MARK BURNS (TONY STONE WORLDWIDE), PAUL DANCE (TONY STONE WORLDWIDE)

Beyond LITIGATION

Arbitrators—one a
Stanford professor—
resolved the IBM-Fujitsu
dispute. We asked:
How did you do it?
And what of conflict
resolution generally?

An interview with

ROBERT H. MNOOKIN

Adelbert H. Sweet Professor of Law and Director, Stanford Center on Conflict and Negotiation



HISTORY WAS MADE last November with the announcement of an arbitrated resolution to the seven-year international dispute between computer colossus IBM and its chief Japanese challenger, Fujitsu. In 1987

the companies had given two arbitrators—Robert H. Mnookin and John L. Jones—a virtual carte blanche. The subsequent orders and opinions of the co-arbitrators not only cleared up the intellectual property issues between the firms, but also promoted competition in the global software market for years to come.

This arbitration has several fascinating aspects. For one, more than \$400 million is changing hands. Also intriguing is the creation of a means (the Secured Facility regime) whereby IBM will formally share certain types of information with its rival. The arbitrators showed further ingenuity in dealing with highly technical material, and with legal and cultural differences between nations.

Professor Mnookin, the Stanford coarbitrator, has taught at the Law School since 1981. He became the first holder of the Sweet Professorship in 1987¹ and director of the new Stanford Center on Conflict and Negotiation in 1988² (see page 9).

The following interview by the editor, Constance Hellyer, took place February 23, 1989, in Professor Mnookin's Crown Quad office.



How did you, a Stanford law professor, get involved in this great international dispute?

I had taught, along with Tom Heller and Paul Brest, a seminar on computers and the law. I had also been teaching courses relating to dispute resolution.

A Morrison & Foerster attorney, who indicated he was representing an unnamed client, asked if I would be willing to serve as an arbitrator in a large computer-industry dispute. The client, which turned out to be Fujitsu, ended up nominating me.

I should point out that although I was originally nominated by Fujitsu, and Jack Jones by IBM, we both served as neutral arbitrators from the beginning. In fact, in 1987 each of the two companies reappointed both of us until—believe it or not—the year 2002.

You're an expert in dispute resolution. What about your co-arbitrator, John Jones?

Jack's background is in computers and management. He was one of the inventors of COBOL, which is probably the most widely used programming language for business applications programs. And he had been the executive vice-president of the Norfolk Southern Railroad, in charge of administration, including computers.

So you're a pretty good team.

The fact that we had different but complementary areas of expertise has proved extremely helpful. We've enjoyed working together and have become very close friends.

It must have been quite an adventure.

An extraordinary adventure—very, very exciting.

And, I'll bet, a great challenge. How did you get a handle on all the high-tech material?

That was part of the attraction—I have long been fascinated by computers. But perhaps most gratifying was the opportunity to help design a process for making reasonable determinations about a complicated and evolving technology.

We did things very differently from the ordinary litigation setting. We hired our own tutor—a Carnegie-Mellon professor of computer science—to give us a four-day seminar. We invited each of the parties to send a lawyer to the tutorial. A videotape was also made, so the parties could see what information we were being fed.

We later had a number of "educational sessions" in which experts from each side were given several hours to make presentations. We'd ask questions, and receive informal instruction. There was no formal cross-examination, but the other side's experts were allowed to ask clarifying questions. They could also correct or supplement what had been said in their own later presentation.

In short, we placed much of our basic technical education outside the traditional adversarial process.

Another big challenge must have been cultural. How did you deal with differences in the laws and practices of the two nations?

The proceedings, of course, were in English, because neither Jack nor I know Japanese, and the arbitration was under the auspices of the American Arbitration Association. We struggled to ensure that Fujitsu wasn't unfairly disadvantaged by that fact. Jack and I made several trips to Japan and held some sessions there. Indeed, we visited half a dozen customers of the two companies to give ourselves a better sense of their perspective.

The case attracted a lot of media attention. What made it so newsworthy?

Three reasons, I think. First, because of the parties involved. Fujitsu is Japan's largest

computer company, and IBM, of course, is the largest computer company in the world. That these two giants were engaged in a major legal battle was significant.

A second reason probably was that the dispute was resolved through arbitration rather than in the courts. This highlights the fact that commercial arbitration has come of age. Some of the media used our resolution to make this broader point.

The third reason is that the dispute concerned the scope of intellectual property protection for an important and comparatively new technology—computer software.

What was the dispute about?

It centered on IBM's claims that Fujitsu had copied IBM mainframe operating system soft-

key task now is to better understand why negotiations fail—what the various reasons are that parties are unable to resolve disputes."

ware. This is the software that manages the internal functions of a computer, such as memory, the disk drives, and various communications functions.

Application programs are written to run on the platform provided by a particular operating system.

Operating systems for a large mainframe can be massive and represent a huge investment for the developer.

Can you be more specific?

Sure. In the 1970s, Fujitsu elected to develop IBM-compatible mainframe computer systems, including compatible operating system software products. At the time of Fujitsu's initial decision, IBM did not claim copyright protection for its operating system software,

which was delivered to customers without copyright notice attached. Since 1978, however, IBM has registered a copyright for new releases of its system software.

In October of 1982, IBM first confronted Fujitsu with allegations that various Fujitsu programs violated IBM's intellectual property rights. In 1983, after months of negotiations, the parties entered into agreements that attempted to resolve their differences. But uncertainties about the scope of copyright protection, and ambiguities and inadequacies in the agreements, soon led to new disputes.

The 1983 agreements required arbitration of unresolved disputes. In late 1985, when IBM filed a demand for arbitration, there were literally scores of disputes involving hundreds of programs.

Did you have to overcome some negative history?

Both sides felt deeply aggrieved about what had happened in the past. But I think that often business people engaged in a conflict come to a point where they very much want to solve the problem. Then it can be extremely helpful if, as was true here, neutral third parties can facilitate that process, and if the lawyers representing the parties can help figure out what the problem is and how to resolve it.

What did you see as the key issues for arbitration?

IBM accused Fujitsu of wrongfully copying its software in violation of copyright laws and the 1983 agreements. On the other hand, Fujitsu accused IBM of failing to live up to provisions in the 1983 agreements for exchanging certain "external" interface information that Fujitsu believed would allow it to maintain compatibility with IBM systems.

Both companies had vital interests at stake: for IBM, the protection of billions of dollars of investment in the development of its operating systems programs; for Fujitsu, the ability to remain in the IBM-compatible operating systems software business.

Their positions seem incompatible. How did you manage to resolve them?

There was no doubt that both companies had

the resources to spend years fighting about individual computer programs. We soon realized, however, that conventional adjudicatory hearings—in which the parties would attempt to resolve their differences, program by program, through a common-law process - would not be an efficient way to get at the core issues.

The task, as we saw it, was to provide ground rules for the future. Two fundamental questions emerged: First, to what extent could Fujitsu use information from future IBM programs to develop and maintain compatible operating system software, and for what price? And second—given Fujitsu's past use of copyrighted IBM programming material—to what extent could Fujitsu use compatible programs it had already developed as a base for its own future software development?

What did you ultimately decide?

There were two key elements to our resolution. The principal one involves the creation of a Secured Facility regime. This regime both protects IBM's intellectual property and gives Fujitsu the right to extract and use carefully specified interface information from IBM programs released during the next eight years. There are elaborate safeguards to ensure that Fujitsu uses only this specified IBM information in its software development. And, Fujitsu is required to compensate IBM fully and adequately for this access. Under our Order, Fujitsu will pay IBM between \$26 million and \$51 million for access to programs released in 1989. Payments for each of the subsequent years will be determined later.

The second element involves a "paid-up" license. We created the license so that Fujitsu can freely use, with immunity, its own existing software as a base for future development. Our Order issued on November 29, 1989 required Fujitsu to pay IBM \$396 million for this paid-up license.

Are both sides reasonably content?

When our Order was announced in November, each company made a public statement expressing its satisfaction. I have every reason to believe that they both meant it.

(Continued on page 43)

STANFORD CENTER ON CONFLICT AND NEGOTIATION

Purpose:

To investigate barriers to negotiated resolution of conflict and, where possible, design innovative means to overcome them.

Leadership:

Principal Investigators:

Robert H. Mnookin (law), Director Kenneth J. Arrow (economics and operations research)

research)
Lee Ross (social psychology)
Amos Tversky (cognitive psychology)
Robert B. Wilson (economics and game theory)
Daniel R. Abbasi, MA '88, Associate Director

Activities:

Research and Theory-building: Interdisciplinary dialogue and collaborative investigations, involving both faculty and graduate students, are in progress.

Coursework: Principal investigators teach an ongoing "Interdisciplinary Seminar on Decision, Conflict and Risk." Related Law School courses include Mnookin's "Negotiation" and (with Gary Friedman) "Mediation and ADR."

Graduate student programs: The first 12 SCCN Fellows, including 3 law students, were appointed in January 1989. SCCN Research Grants went in 1988/89 to 11 graduate students, 3 from the Law School.

Student awards: The annual Richard S. Goldsmith Award for work on dispute resolution was introduced in 1988.

Working papers: Eight papers were issued in December 1988, with more planned.

Conferences: The first Affiliates Workshop was held April 27, 1989, with presentations by the PIs, a panel dialogue with former Secretary of State George Shultz, and hands-on negotiation exercises.

Financial supporters:

Initial funding: The William and Flora Hewlett Foundation made the founding grant, which was augmented by Stanford's Schools of Law, Business, and Humanities and Sciences.

National Affiliates Committee: Co-chairs George W. Coombe, Jr. (Bank of America) and David L. Sandborg (Dewey, Ballantine, Bushby, Palmer & Wood) are providing energetic leadership. The following law firms and corporations have so far become members:

Apple Computer, Inc. • Bank of America • The Bechtel Group, Inc. • Blase, Valentine & Klein • Chevron Corporation • Ford Land Company • David Gold, Inc. • Deveboise & Plimpton • Dewey, Ballantine, Bushby, Palmer & Wood • Heller, Ehrman, White & McAuliffe • Irell & Manella • Munger, Tolles & Olsen • O'Melveny & Myers • Pentagram Corporation • Pepper, Hamilton & Scheetz • Thelen, Marrin, Johnson & Bridges • Unocal Corporation

For further information: Mr. Abbasi, at (415) 723-2574



SCCN principal investigators (left to right) Wilson, Arrow, Tversky, Ross, and Mnookin

QUASI-FREE



For most of our country's history, basic citizenship rights were denied not only to slaves, but also to blacks who were legally free.



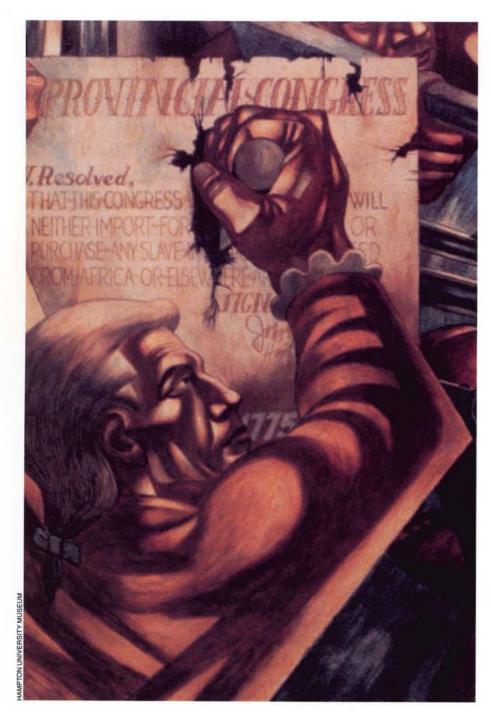
about the Constitution of the United States, and how it originally recognized and protected the institution of slavery. Less talked about, however, is the way the law—before as well as after the Civil War—upheld distinctions based on race in addition to and apart from slavery.

The evidence for this lies in the antebellum treatment of "free Negroes,"

by John Hope Franklin Herman Phleger Visiting Professor, 1989







"That the rights articulated in the Constitution and its amendments should apply to all Americans...was a nearly revolutionary thought."

that is, blacks who were not in slavery. The sad truth is that legal equality with their white counterparts did not exist. And by the outbreak of the Civil War, the status of free black persons, never more than problematical, had deteriorated to the point where they were pariahs of the land, virtually helpless, and with no substantial bases for relief or redress of grievances under the Constitution.

Thus, when general emancipation finally came in 1865 with the end of the Civil War and the ratification of the Thirteenth Amendment, there were precedents in abundance for setting public policy towards the freedmen. These precedents were not those set by the legal treatment of white men any more than those of slavery. The precedents were instead established by two centuries of officially sanctioned discrimination and degradation of free black Americans.

It is this relatively little-known aspect of our legal history that is the focus of this article. In discussing the legal and constitutional status of race, I shall resist the temptation to discuss slavery, except where it was a clear factor in how the several branches of the government viewed race.

Colonial Roots

Racism was, of course, a powerful factor in the establishment of slavery and crucial to the maintenance of that institution. The stage was set as early as 1640 (just thirty-three years after the first settlers arrived in Jamestown)as this Virginia case shows. Three indentured servants, one black and two white, ran away and were apprehended. (Remember that, although obligated to serve for a period of time, all three were legally free persons.) The magistrate punished the white servants by adding one year to their indenture. The black servant, however, was sentenced to a lifetime of service.

The remainder of the colonial period would witness a marked distinction between whites who were free and blacks who were free. When George Washington was building his revolutionary army, he preferred not to use blacks, slave or free. Only the sobering

experience of facing more British military power than anticipated caused him to reverse his earlier decision and take blacks into the forces fighting for independence.

Meanwhile, Massachusetts imposed taxes on property-owning free blacks, although it barred them from voting. Paul and John Cuffe, two black businessmen, refused to pay their taxes because they could not vote. They were promptly slapped into jail. Ironically, Massachusetts is the state where the cry, "Taxation without representation is tyranny," was first raised.

Thus, in the eighteenth century the sense of racial inequality was as pervasive as slavery itself and was often used to justify keeping blacks in bondage. A student at the Harvard commencement in 1773 argued in a speech that slavery did not violate the law of nature. Blacks, he insisted, were inferior to whites, and for the good of all should be kept in subordination. And since the typical African was, in his view, "part idiot, part madman, and part child," consent was not required before exercising authority over him. "Why," the student asked, "should anyone interfere with a stable and beneficent social order, just to pursue some mystical primeval equality?" This question was raised less than two years before the Battle of Bunker Hill.

Fourteen years later, during the fateful year of Constitution-making, a group of free Negroes who worshipped at the predominantly white St. George's Methodist Church in Philadelphia met with the following treatment. Arriving one morning for the service, they were told by the sexton that they were expected to sit in the gallery. The black communicants dutifully climbed upstairs and took their seats in the front row, kneeling for the prayer which, by this time, had already begun. Thereupon one of the trustees seized a black worshipper, pulled him from his knees, and informed him that he and his fellow blacks were to sit in the rear, not front, of the gallery.

When the prayer was over, the blacks left as a body, and, as Richard Allen, reported, "They were no more plagued with us in the church." Allen went on to found the African Methodist Epis-

copal Church, the largest black denomination in all Methodism, built sadly enough on the arrogance and presumption of superiority exhibited by the white Christians of St. George's Church in the City of Brotherly Love.

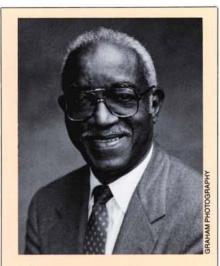
Founding Principles

The white delegates who came to Philadelphia in 1787 to write the Constitution brought with them not only a century and a half of experience with slavery, but also a similar period of discrimination against blacks who were not slaves. If the Framers gave no attention to the blacks who were free, it was not because they believed that there should be no distinction among free peoples; rather it was because of their preoccupation with slavery at a time when continued discrimination against free blacks was assumed. And the delegates did their work well, extending the slave trade for at least twenty years, counting a slave as threefifths of a person, and providing for the capture and return of fugitive slaves to their masters.

That was the situation when the first Congress under the new Constitution met in 1789. One of the questions to be settled was who was worthy of citizenship in this new nation, which aspired to become the model for all future democracies. The question was answered without much debate. Only white aliens, the law of 1790 specified, could become naturalized citizens of the United States. The message was clear: Any free black person imprudent enough to migrate to the United States could not hope ever to become a citizen.

In that first Congress, which did so much to set precedents and patterns for the future, there were no less than twenty men who had participated in the Constitutional Convention. Not one raised any objection to barring free blacks from becoming naturalized citizens. Founding Fathers such as Elbridge Gerry of Massachusetts, Roger Sherman of Connecticut, Hugh Williamson of North Carolina, and James Madison of Virginia (the "Father" of the Constitution) all

(Continued on page 46)



John Hope Franklin is a renowned historian and member of the Duke University faculty, where he is Professor of Legal History in the law school, as well as the university's distinguished James B. Duke Professor Emeritus.

Holder of a Ph.D. in history from Harvard, Franklin was department chair at Brooklyn College and then the University of Chicago, before moving in 1982 to Duke. He has been elected to the American Academy of Arts and Sciences and served as president of the American Historical Association and the united chapters of Phi Beta Kappa.

Franklin is the author of many books, the most famous being From Slavery to Freedom: A History of Negro Americans (1947, 6th ed., 1987). He currently serves on the advisory board for the Martin Luther King, Ir., Papers Project and is co-chair of the Committee on Policy for Racial Justice of the Joint Center for Political Studies.

This article is adapted from the 1989 Herman Phleger Lecture, "Race and the Constitution in the Nineteenth Century," which Professor Franklin delivered on March 3 (see page 22). The original, full-length text will be published in a book Franklin is editing for the Smithsonian Institution.





by Louise A. LaMothe '71 Partner, Irell & Manella

HE ENTRANCE of large numbers of women into the legal profession presents a challenge to the ways in which law is now practiced—indeed, to the very culture of the profession. How are law firms meeting that challenge? The answer, so far, is: Not very well.¹

This concerns me professionally, as a law firm partner, and personally—particularly since I have recently become a mother. I am now learning first hand the difficulties of integrating my nearly twenty-year legal career with that new role.

The problem belongs not only to me and other women, but also the profession as a whole. Women now constitute 50 percent of the students in many law schools. Moreover, the issues we women are broaching interest many men as well. The same law firm culture that makes normal life all but impossible for women attorneys cannot be particularly wholesome or attractive for male attorneys, either.

In fact, job conditions for lawyers generally may be getting worse. I have noticed signs of a trend (at least in large firms) for lawyers to work harder than ten or fifteen years ago. Concerns over profitability and competition seem to be increasing. Sabbatical programs for partners are disappearing. Surveys of lawyer satisfaction indicate growing discontent. And venerable firms in many cities are dissolving over conflicts in philosophy and the division of profits.

All this seems to me indicative of changes sweeping our profession.² As Bob Dylan wrote, "You don't need a weatherman to know which way the wind blows."

The human cost of these changes can be seen most clearly in the stresses and career choices of women attorneys. But consider these young women as the canaries in the coal mine. Their problems transcend gender. Law firm partners should realize that by paying attention to the so-called women's issues, they may improve the morale and productivity of all.

The Glass Ceiling

We've all heard about the "glass ceiling"—the phenomenon that seems to keep women from attaining positions of greater pay, power, and prestige in business and the professions. Many observers say it's only a matter of time: Wait for the diehards opposed to the advancement of women to retire, we're told.

This is, in my view, unrealistic. The fundamental problem is more stubborn, and it is twofold. First, women—no matter how senior—are not viewed as competent until we prove otherwise. Moreover, our competence must be proven over and over again. Imagine the effect of having to deal repeatedly with a presumption that you are inferior.

Second, working women are squeezed by competing demands. Stanford economist Victor Fuchs writes in his new book, Women's Search for Economic Equality, that because of their commitment to having and raising children, women are no closer to economic equality than in 1960. In fact between 1980 and 1986, employed women increased the total hours they worked (including paid employment, child rearing, and housework) by 7 percent, while men decreased theirs by an equal amount.

This workload disparity translates into disparities in both status and income between women and men lawyers in private practice. A study of Harvard Law School graduates who remained in private practice ten years out of law school showed that 59 percent of the men had made partner; only 23 percent of the women had.

It should be no surprise, then, that women ten years out have a 40 percent lower median income than their male counterparts. The average income of partners in the top fifteen United States firms (according to an August 1988 New York Times report) is \$739,000. The average income for a seventh-year associate in New York City's twenty largest firms is, by contrast, \$139,000.

problem of our underrepresentation at the upper levels.

False Assumptions

Why are so many women leaving major firms? When pressed for an explanation, many male lawyers say, "for personal reasons". But that explanation no longer satisfies me; I want to probe the facts and assumptions behind it.

In 1986 and 1987, I was one of a subcommittee of three members of the State Bar's Women in Law Committee, which undertook to meet with the managing partners of the largest law firms in five California communities—

ENDANGERED

s it possible to work over 2000 hours a year and have a normal family life?

Overall, 94 percent of all law firm partners are men; and women partners are increasing by only about 1 percent a year. It would, even under the best of circumstances, be a long time before women are represented proportionately.

But these are not the best of circumstances. We are witnessing a hemorrhaging of women at the middle and senior associate levels of large law firms in my city and, from what I hear, other cities throughout the country. Simply waiting for more women to join firms, or rise naturally through the ranks, is not going to solve the

San Francisco, Sacramento, San Jose, Los Angeles, and San Diego. In reviewing the information obtained and attitudes revealed in those meetings, I came to appreciate the extent of the structural problem. Law firms constitute a tremendous force against change. And, like other institutions, they will not change unless forced to.

Then too, there is an enormous gap between what women expect practicing law to be like and what really happens. While they know in the abstract that personal sacrifices are expected, they have no idea of the real impact on their lives. They also do not realize how difficult it is to "fit in" in the male-dominated culture—an essential to firm advancement.

Why, for example, are 40 percent of the women lawyers under 35 childless, while only 17 percent of the men are? Why are women, at both the associate and partner levels, also single in much higher percentages than men? Is it possible to work over 2000 hours a year and have a normal family life? And what does it portend when in society generally, women still do 70 percent of the domestic work, spend twice as much time on housekeeping as men, and bear primary responsibility for raising children?

A Question of Values

I believe that legal institutions perpetuate and reinforce the present situation. Archibald Cox has said that the ideals and values of the profession are transmitted by individual example; that stands true for the microcosm of a law firm as well. What are the basic values of a law firm where 2000 billable hours a year is increasingly considered the irreducible minimum for the associate who wants to make partner or the partner who wants to advance?

Here's a revealing anecdote: A typically busy, new litigation partner in a large firm had just become a father. But due to a blood disorder, the infant needed a complete transfusion. Rather than joining his wife and baby during that anxious time, the new father was found working at the office. He was loudly praised within the firm for his devotion to his work. My question was, Why didn't a senior partner send this man home to his family?

Such institutional attitudes (that is, the attitudes of the more senior lawyers who set a firm's tone) have at least as distorting an effect on the life of law firm women. True, the more blatant forms of sexual prejudice have been eliminated. But we have kept more subtle and intractable barriers to full participation by women.

There is pressure to conform to the values of the institution, and pressure to emulate male behavior in negotiation, litigation and management styles. The ultimate pressure, though, is to produce billable hours—the most

important measure of "commitment" for purposes of compensation and advancement. This pressure leads to long hours—not all of them, I suggest, necessary or productive. (Some seem to be spent parading the halls convincing others how hard you are working. I am particularly concerned by reports of "padding" of billable time.)

Law firms have responded by creating a two-tiered system. There is the "full-time" partnership track, for those men and very few women who are willing to conform to the 100 percent male-oriented values of the institution. These women, if they marry, often decide not to have families. Those who do manage to have children usually wait until after becoming partners, in the hope that they will be more secure in their positions.

Then there is the second tiercomposed almost entirely of women who make less than an all-encompassing commitment or who don't conform to the institution's values in some other way. Those people are either forced out of the firm or isolateddoomed to the status of contract lawyer, permanent associate, or any other title for nonparticipants in firm profits. Some work part time. But either way, they are "off track"-that is, not considered partnership material. They get only the repetitive, less challenging tasks and commensurate rewards in terms of pay, power and prestige.

What's the harm if women lawyers freely choose the "mommy track"? The problem is that the choice is often not free; rather, it is dictated by the increasingly intense pressures of large firm law practice colliding with the other demands made on women's time. There must be a middle ground.

Why Should Law Firms Care?

Women lawyers are not going to just go away—we are in the profession in growing numbers and we comprise many of the people whom you are at least initially hiring. Besides, the quality-of-life issues we raise are only intensified by our gender—they are not our exclusive domain.

Consider how much a major law firm spends recruiting law students—not to

(Continued on page 31)



Louise A. LaMothe '71 has for over ten years been a partner in the 200-lawyer Los Angeles firm of Irell & Manella. A business litigator, she joined the firm in 1974 after three years on the University of Kansas law faculty. She earned her AB (with distinction) as well as JD at Stanford, and was Note Editor of Stanford Law Review.

LaMothe served on the California State Bar's Committee on Women in the Law, and was its chair in 1987/88. She has also been on the faculty of the National Institute for Trial Advocacy (1978-88), a governor of the Association of Business Trial Lawyers (1982-4), lawyer representative, Ninth Circuit Judicial Conference (1986-87), and councilmember of the ABA's Section of Litigation (1986-).

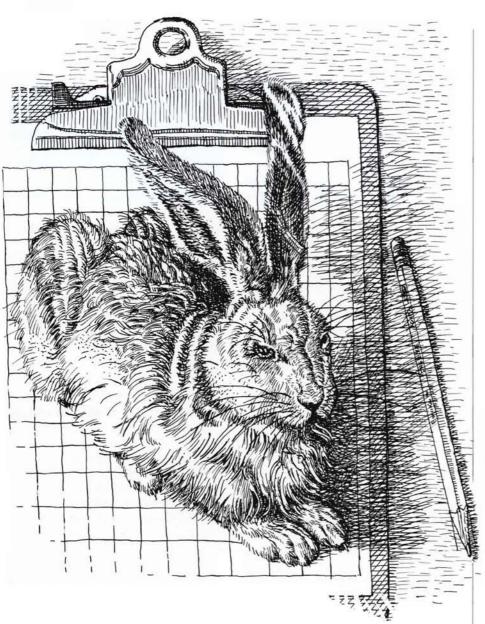
LaMothe and her husband, David Kaplan (an economics professor at Santa Monica College), recently added parenthood to their responsibilities.

This article is based on an invited talk given October 15, 1988, during Alumnilae Weekend, and an updated version presented May 5, 1989, at the Board of Visitors meeting.





The Hidden Cost of "Animal Rights" Politics



by John Kaplan Jackson Eli Reynolds Professor of Law

BIOMEDICAL RESEARCH is now under serious political attack from a variety of organizations and individuals who, for ideological reasons, desire to stop or drastically reduce the use of animals in experimentation. Supporters of medical progress are peculiarly unready and ill-equipped to fight this battle. Yet unless it is fought, and fought well, the health of this and future generations will suffer.

Animal rights activists appear to be willing and able to use virtually any tactic to achieve their purpose. They rarely declare their goal directly—perhaps because this would lead to an open discussion of all the benefits and costs of biomedical research. Instead, they contend that they are not against animal research *per se*, but just want to add one or another small restriction to make sure the research proceeds more humanely.

The result is a series of restrictive measures, seemingly less radical, but each making the use of animals more expensive and more burdensome—chipping away bit by bit at our ability to conduct animal research.

Research scientists, who bear the brunt of the attacks, have hardly begun to make their case to the public. They are not grass-roots organizers and, for the most part, lack the political skills to bring out supporters on demand, whether for local zoning board meetings or congressional hearings.

Compounding this, the researchers have been unable to communicate the fact that a series of seemingly reasonable measures, may still cause cumulative damage. The task of putting these small pieces into context has yet to be accomplished effectively. It is difficult enough to estimate the cost of experiments conducted under increasing restrictions; it is impossible to predict the costs of experiments not done or research not undertaken.

Further, the researchers—constrained by concern for the privacy of patients and the dictates of good taste—have hesitated to counter the opposition's photographs of pathetic research animals, with photographs of human burn victims, quadriplegics, or other actual or potential beneficiaries of biomedical research.

How, then, are members of the public to judge the trade-offs? Who speaks for people sick and in pain? Who speaks for the future?

An authoritative analysis of the issue has recently been provided in a report of the National Academy of Sciences-National Research Council.¹

This report should, I think, convince the unbiased reader that the use of animals in research is essential if the progress that has been made in the prevention, treatment, and cure of ailments that cause human suffering is to continue. This will be the case for the foreseeable future, despite the development of alternatives to animal use for some areas of investigation. (Experiments that turn out in retrospect to have been unproductive are an unhappy but inevitable by-product of the scientific method.)

The NAS-NRC report also set out reasonable and comprehensible standards for the humane treatment of animals in research. However, the report slighted what I believe is the most important practical aspect of the issue of "animal rights"—the political dimension. Specifically, the report failed to deal with two problems:

First, that although humane treat-

ment of research animals is important, there comes a point when added governmental inspections, restrictions on the sizes of cages and other facilities, and layers of bureaucracy do more to inhibit research than to increase humane treatment of animals. Consider a parallel: some pets are treated inhumanely, but it is unlikely that massive and expensive regulation would solve the problem; instead it would simply discourage pet ownership.

Second, and even more important, the report should have highlighted the growing strength of the advocates of animal rights in the political arena.

Added restrictions
on the treatment of
lab animals
shackle researchers
and threaten
medical progress.

This is something that has to be experienced firsthand to be fully appreciated.

At Stanford, plans for the construction of a new laboratory animal facility were approved by the county planning commission two years ago. The building had been designed as the most up-to-date and humane facility for research animals in the country and was to replace facilities that were older and certainly less desirable from the point of view of animal welfare. Nonetheless, activists, led by the Palo Alto Humane Society, appealed the commission's decision and began a campaign with the county supervisors to block the building permit.

Because issuance of the permit was basically a zoning question, the group's original objection that animals would be inhumanely treated was neither relevant nor persuasive. The activists therefore shifted their focus, claiming that since pending federal animal welfare regulations would eventually require changes in the building, the permit should be delayed. This argument failed because the regulations would have no fundamental effect on the zoning issues under consideration.

Undeterred, the activists next claimed that dangerous substances (such as radioactive materials, toxins, and recombinant DNA) might escape from the facility. Although generally acknowledged to be a sham, this argument worked, at least temporarily. Under California law, if there is a "serious controversy" over environmental issues, an environmental impact report (EIR) must be filed. When the EIR - the first ever required for a Stanford research buildingwas completed, the county supervisors gave the necessary approval unanimously. But the rise in construction and other costs during the months needed to prepare the report cost Stanford about \$1.3 million.

This tactic of raising false issues of environmental safety in an attempt to stop animal research has been repeated across the country. In Berkeley one animal rights group, "In Defense of Animals," and an organization called "Berkeley Citizens for a Toxics-Free Environment" brought a lawsuit to prevent the University of California from building an animal facility. The dispute was resolved ten months later in favor of the university, but with a nuisance cost rivalling that incurred at Stanford.

Moreover, the attacks are escalating in city after city as animal rights groups gain control over financially well-endowed humane groups, often in dramatic takeovers. The resources now available to these groups far outweigh those available for defending research. For instance, the New England Antivivisection Society has taken full-page advertisements in the New York Times and the Washington Post. The ads make a number of claims that are at best half-truths and

(Continued on page 49)



High-Tech Videos Offer Stress-Free Learning

SOMETHING'S strange. This Stanford student lawyer is as calm as a veteran

In his role as defense attorney, he confidently objected when a witness said that the plaintiff "walked up to us, pointed at the defendant, and said, 'This idiot cut me off. It's all her fault."

"What's the basis of your objection?" demanded the judge.

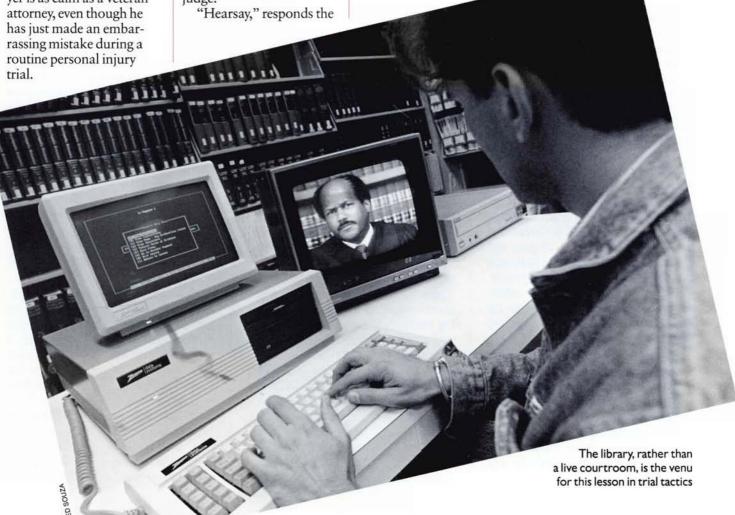
student-wishing almost defendant. After the plainimmediately that he could take his objection back, when the opposing attorney retorts: "Your honor, I'd like to make an offer of proof that when the plain-

tiff made this statement, he

was only three feet from the

tiff said it, the defendant didn't say anything."

Why isn't our student lawyer embarrassed? Because he knows that he can cancel his objection—even



substitute another move by simply hitting a different key on the personal computer in front of him. The entire episode transpired not in a courtroom, but as part of a simulated trial on a video disc.

Interactive video teaching programs, under development for several years (Stanford Lawyer, Fall 1986, p. 20), are now ready and available nationwide. Fifteen mini-courses have so far been produced. The low-stress, self-learning devices have been enthusiastically accepted, with some 200 of the School's students taking advantage of discs in the Law Library.

"The interactive video lessons teach practical skills that often are ignored in law school, and even in law firms," says Tim Hallahan, senior research associate at the Law School, and an experienced trial lawyer. Hallahan is producing the videos—the first learning tools of their kind for lawyers-through a partnership program between Stanford and the University of San Francisco law schools.

Discs now are available on negotiation, trial skills, how to examine an expert witness, how to take a deposition, how to interview clients, and how to argue motions. Other videos are in production on discovery, how to select a jury, and how to counsel clients.

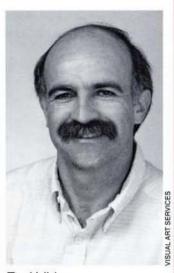
The lessons—complete with different responses for each choice a student might make-are written by Hallahan and law students (for credit), with the advice and counsel of law professors and practitioners. Scripts are based on real cases and enhanced with interesting characters, stories, and

humor when possible.

Hallahan recruits lawyers to play themselves, and hires actors for the roles of witnesses, bailiffs, judges, and juries. "I tell the actors to act like real people," he says. "The idea is to make students feel as though they're really there."

The videos, which can be leased to schools and institutions for \$300, take about two years to produce at a cost of \$10,000 to \$50,000 each.

So far, law schools are the main clients. But Hallahan foresees the teaching tools also being used by law firms, the government, the military, and corporations. Yet another use is for continuing legal education - in fact, nine states have already certified the programs for mandatory CLE credits.



Tim Hallahan

The distributor is Lawvers Cooperative Publishing Company. For more information, call (716) 546-5006, or write: Interactive Video, Veralex Inc., One Graves St., P.O. Box 92824, Rochester, NY 14692. 🗆

-Based in part on a press release by Theresa Johnston of Stanford News Service

Borgersen **Becomes** Associate Dean

ELLEN BORGERSEN became Associate Dean of Academic Affairs July 1.

Her predecessor, Professor Robert Weisberg, has returned to full-time teaching and research after two years in the administrative post.

Borgersen has been teaching at Stanford Law School as an associate professor since 1983.

In her new position of associate dean, she will be responsible for overseeing the School's curriculum and academic standards.

"Many positive changes are emerging from the faculty," Borgersen said in a recent interview. "I look forward to being in a position to provide administrative support."

Formerly in private practice with the San Francisco law firm of Morrison & Foerster, Borgersen wants to help bridge the gap between theory and practice. "It's typical for legal academics to put too much emphasis on what the courts do and too little on what lawyers do," she observed.

Her academic interests are litigation, organization theory, and feminist theory. She plans to continue teaching a course, "The Politics of Procedure," as a senior lecturer at the law school.

An experienced attorney, Borgersen was with Morrison & Foerster from 1978 to 1983, and has been admitted to the bar in both California and Washington, D.C.

She entered practice after serving in 1977-78 as a judicial clerk with Justice



Associate Dean Borgersen

Potter Stewart of the United States Supreme Court, and before that with then-Chief Judge Frank M. Coffin of the U.S. Court of Appeals for the First Circuit, in Washington, D.C.

Borgersen received her ID magna cum laude in 1976 from the University of Michigan Law School, where she was elected to the Order of the Coif and served for two years on the Michigan Law Review, first as an associate editor (1974-75) and then as project editor (1975-76).

A New Yorker by birth, Borgersen graduated from Hunter College High School in 1967 and earned her undergraduate degree (BA, 1972) in philosophy from Antioch College in Yellow Springs, Ohio.

For the year before entering law school, she served as a staff assistant in the office of the undersecretary of the U.S. Department of Health, Education and Welfare, in Washington, D.C.

Borgersen is married to Prentiss Willson, Jr., an attorney and partner at Morrison & Foerster.

John Hope Franklin Gives Phleger Lecture



Professor Franklin

IT was standing room only on March 3 when John Hope Franklin delivered the 1989 Phleger Lecture, "Race and the Constitution in the 19th Century."

An expert on black history and the James B. Duke Professor Emeritus at Duke University, Franklin was currently spending six weeks at the School as the Herman Phleger Visiting Professor.

His Phleger Lecture (the basis of the article beginning on page 10) shed light on the legal problems confronted by free Negroes before and after the Civil War. Franklin reported that race as much as slave status determined the creation and enforcement of legal inequality.

During his Stanford residency, Franklin also taught a course, "The Law of Bondage and Freedom, 1820-1860," and met with black and other students.

THE PHLEGER PROFESSORSHIP

The Herman Phleger Visiting Professorship allows for a person of high distinction to teach at the School and to deliver a public lecture or lectures. The professorship was established in 1972 through gifts by Herman Phleger and his wife, the former Mary Elena Macondray.

Phleger, who died in 1984, had been a member of the San Francisco law firm of Brobeck, Phleger & Harrison since 1925. An expert in international law, he served Presidents of both parties, including seven years as U.S. representative to the Permanent Court of Arbitration at The Hague.

Professor Franklin is the

seventh Phleger Visiting Professor. The previous six

Charles E. Wyzanski, Jr., Senior Judge of the U.S. District Court for the District of Massachusetts: Simon H. Rifkind, former U.S. District judge (New York) and senior partner in Paul, Weiss, Rifkind, Wharton & Garrison; Edward H. Levi, former U.S. Attorney General; Shirley M. Hufstedler, first U.S. Secretary of Education; Nicholas deB. Katzenbach, former U.S. Attorney General; and A. Leon Higginbotham, Jr., judge on the U.S. Court of Appeals, Third Circuit.

"What Really Matters"

Professor Thomas Campbell—now on leave as a U.S. Congressman—offered this advice to students, shortly before his departure in January for Washington, D.C.

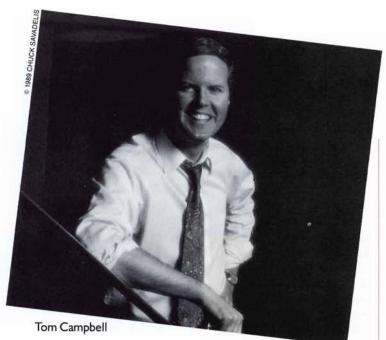
I LEAVE Stanford Law School with only one regret: that I was never able to address an entering or graduating class. Along the way, a few students asked for advice, but most didn't, and I wished they had. So if I had had to give an address to a law school class, here is what I would have said-to an entering class, I think, because there is so much to be gained in our law school. It would have been a mercifully short speech.

Law school brings the joys of classmates. They are as bright as yourself. There is so much to learn from them. Pause a moment and listen to them.

Law school brings the comradeship of hardworking people other than teachers. Do you know who washes the chalkboards? What is the name of the person working to help you in the library, and why, in God's name, do you assume a short-tempered tone with them?

Your professors are an exceptional lot. They mean very well. But they are often wrong. Learn from them. Admire their honesty; you will find them crusadingly so. Forgive their occasional stridency, but don't ignore it. Your values are as legitimate as theirs: whether traditional, avant-garde, liberal, or conservative.

Spurn the cliques—the groups that are convinced



they are correct, and even use that term in congratulatory description of their own views of public policy.

It's great to work for a corporate law firm. It's great not to. You can do as wonderful work representing employers as unions, being a prosecutor as being defense counsel. Suspend judgment a bit more, so that when you do exercise it, it will flow down like a mighty river. Save it for what really matters: like warring against bigotry, or standing up for individual liberty.

Law can redistribute wealth. Law can protect minorities when the majority desires to redistribute wealth. Law is nobler in the latter function, since any majority can take from a minority—passing a law to authorize such a taking restrains no base impulse.

Give of yourself. This does not necessarily mean traditional pro bono legal activity. It does mean talking with someone whose loneliness shows. It means finding delight in humans, even if you must let humanity save itself for a while. If

you're too busy to ask the janitor if he had a nice weekend, I'm not particularly interested in your politically correct pro bono brief.

Don't take yourself so seriously. There is laughter in every voice, the potential for joy in every predicament. Just imagine what your professor was like at his or her first moot court; what your senior partner did at his or her first deposition. Walk through life with a light step. Smile a lot; others will too.

And never sell principles short, neither your own nor someone else's. Select just a few that really matter, and recognize that

the other person has her or his own set too. But hold to yours. Recognize what a formidable person you are that someone else wants so much to shake your hold of them. That's high praise. And the humor is that your worst antagonist is paying you your highest compliment.

Finally, forgive a lot. Forgiveness should be showered on the undeserving. It's wasted on friends. It is completely certain that you will be misjudged all your life by those not worthy to judge. So surprise them: smile and forgive.

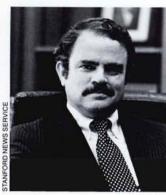
Reprinted from the November/ December issue of the Stanford Law Journal.

A Perpetuity of Deans

MORE than forty years in the history of Stanford Law School are spanned in this photograph. In the place of honor (*front and center*) is Carl B. Spaeth, Dean from 1946 to 1962. Gathered round are four of the six who have since taken the helm (*clockwise, from the left front*): Bayless Manning (1964-71), Paul Brest (1987-present), John Hart Ely (1982-87), and J. Keith Mann (Acting Dean in 1976 and 1981-82). Missing but not forgotten were Charles J. Meyers (1976-81), who had recently passed away, and Thomas Ehrlich (1971-76), who was absent with regrets. The photo was taken October 14, 1988 at Carl and Sheila Spaeth's campus home.



Ely Named to Paradise Chair



John Ely

THE PARADISE **PROFESSORSHIP**

THE Robert E. Paradise Professorship in Law has been awarded to former dean John Hart Elv. One of the nation's principal experts in constitutional law, Ely has been concentrating on teaching and scholarly work since stepping down as dean in 1987. Ely came to Stanford in

1982 after professorships at both Yale and Harvard and a presidential appointment as General Counsel of the U.S. Department of Transportation. The most recent of his many kudos is an honorary doctorate from the University of San Diego Law School (Fall 1988, page 22).

The Paradise Professorship in Law was established in 1983 through the generosity of Robert Paradise and his wife, Ione.

Mr. Paradise, who earned both his undergraduate (AB, Phi Beta Kappa, 1927) and law (ID, Order of the Coif, 1929) degrees at Stanford, is a noted specialist in oil and gas law, with experience both in private practice and as a general counsel for engineering and energy firms. Now retired, he remains a co-owner of Anacapa Oil Corporation.

Ione Paradise, a graduate of UCLA, has been a leader in the American Association of University Women. She served as president of its California Division from 1968 to 1970.

The couple lives in Arcadia, near Los Angeles.

The Paradise Professorship has been previously held by Howard R. Williams, now emeritus, and Robert C. Ellickson, now at Yale.

Spaeth Drive a Rousing Success

MINORITY students have close to a half million dollars in new financial aid resources as a result of last year's all-out effort to endow the Spaeth Fund.

Hard work, and a challenge grant from Miles Rubin '52, turned a fund that had dwindled to less than \$20,000 into a healthy endowment of \$406,483.

The drive—a major focus of the School's 1988 development efforts - raised over \$200,000 from 573 individuals, plus a \$25,000 grant from the Valley Foundation, and earned all \$135,000 generously offered by Rubin in matching gifts. Another \$45,000 was added through the Hewlett Foundation's Centennial match to the University.

The Carl B. Spaeth Fund was started in 1972 by Rubin and Victor Palmieri '54 to increase scholarship support available to minority students. This nucleus was quickly augmented by a core group of 18 other alumni/ae founders. Awards from the Fund are based on need, with a preference for minority students.

The Fund honors Carl B. Spaeth, who, as Dean from 1946 to 1962, oversaw the development of the modern School.

Sallyanne Payton '68, the School's first black graduate, chaired the recent drive. Now a law professor at the University of Michigan, she was honored last year by Stanford Law School with its Alumni/ae Award of Merit (see page 67).

Response to the Spaeth Fund appeal was widespread, with one-quarter of the School's donors designating their 1988/89 gifts to the Spaeth campaign. Prominent among these were former Spaeth Fund recipients, minority graduates generally, members of classes who targeted the Fund for their reunion-year giving, and several law firms who observed Martin Luther King, Ir.'s birthday with \$5,000 gifts. Current students pitched in also by participating in a telethon and holding two fundraising events.

"We are deeply grateful," Payton wrote to the many donors. "It is only through generosity such as yours that Stanford can meet its commitment to maintaining student diversity - and to making legal education at Stanford affordable to all who are offered admission."

'Superb' Papers **Net National** Honors for Grads

COMPETING against nearly 100 essayists, two recent Stanford Law graduates took top prizes in the 1988 National Nathan Burkan Memorial Competition in copyright law.

Gillian K. Hadfield '88 placed first with an essay entitled "The Economics of Copyright: An Historical Perspective." Linda A. Newmark '88 placed fourth with her paper, "Performance Rights in Sound Recordings: An Analysis of the Constitutional, Economic and Equitable Issues."

The two, who wrote their papers while at Stanford, had also placed first

and second, respectively, in the School's Burkan competition.

Sponsored by the American Society of Composers, Authors and Publishers (ASCAP), the Burkan Awards are given annually for outstanding papers on copyright law. This year's competition had 99 submissions from 66 law schools.

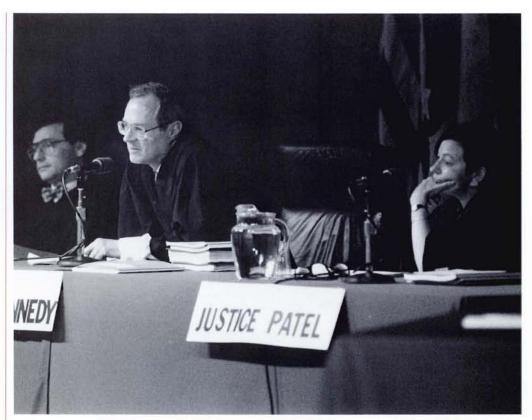
The two Stanford winners are former students of Paul Goldstein, the Stella W. and Ira S. Lillick Professor and a leading expert in the field of copyright law.

Goldstein finds it easy to explain why the two won: "Each wrote a superb paper. Gillian Hadfield tackled a difficult topic and ventured into uncharted territory with great imagination and energy. Linda Newmark added a new, fresh perspective to a subject often dealt with before."

Hadfield is currently clerking for Chief Judge Patricia M. Wald of the U.S. Court of Appeals, District of Columbia. Newmark is an associate with Cooper, Epstein & Hurewitz of Beverly Hills.

Their winning essays will be published in Volume 38 of ASCAP's Copyright Law Symposium (Columbia University Press).





Kirkwood Court justices Alex Kozinski, Anthony Kennedy, and Marilyn Patel

Justice Kennedy Chairs Dynamic Moot Court Finals

PREPARED arguments went out the window at the 1989 Kirkwood Moot Court Competition. Kelly Klegar '89, who was first up, had scarcely uttered two sentences when the questions began. By the time all four finalists had been to the podium, they were nearly breathless. It was an impressive display of grace under pressure.

Associate Justice Anthony M. Kennedy of the U.S. Supreme Court presided over the lively session. With him on the panel were Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit, and Judge Marilyn H. Patel of the U.S. District Court for the Northern District of California.

Calling their decision

"very close," the panel split the honors. The team of Sean Johnston and Christopher Lynch received the Walter J. Cummings Award for best brief, while Klegar and her co-counsel, Sallie Kim, received the newly named Mr. and Mrs. Duncan L. Matteson, Sr. Award as best team of advocates. A second Matteson Award went to Johnston and Lynch as the runner-up team in the Kirkwood Finals. And Kelly Klegar earned the top individual honor: the Walter J. Cummings Award for best oral advocate. All four are members of the graduating. Class of 1989.

Kennedy, in his comments following the contest, pronounced the arguments "very well done."

"Strong, vigorous, wellprepared oral advocacy is important," he continued. "It provides a force, a momentum, and an array of choices" to the judicial process. And, in a close case, "the court needs the help of an oral argument."

Such dialogues, concluded the Justice, are both a symbol and a manifestation of "the importance of an independent, efficient, and excellent Bar to the functioning of an independent, efficient, and excellent judiciary."



THREE recent Stanford Law graduates have won public service fellowships through a new nationwide program created by the law

David Giles, '89, Catherine Ruckelshaus '89, and Susan Woolley '88 will each receive \$32,500 a year for two years to work in public interest jobs. The three are among 25 students selected from some 600 applicants for the coveted fellowships.

David Giles will work on an education project for children of migrant farm workers. He will focus on bilingual education and try to ensure that school districts are providing the children with an adequate education.

Giles has taught English, biology, and math to both high school and elementary school children of limited English proficiency.

Cathy Ruckelshaus will

work to set up a walk-in legal clinic in the Santa Clara Valley for low-income and minority women employed in the high-tech or agricultural sectors.

She told the Stanford Law Journal (February 1989) that "Legal problems such as sexual harassment and child care cut across social and economic lines." While in Law School, she helped set up a TRO clinic in East Palo Alto for victims of domestic violence.

Susan Woolley will assist attorneys at the National Center for Immigrants' Rights, Inc., in Los Angeles,

to provide legal and other needed services for indigent clients.

Woolley, now clerking for Judge Judith N. Keep of the Federal District Court for California's Southern District, has a master's degree in Latin American Studies from the University of Wisconsin at Madison and has worked for the Ford Foundation in Mexico. At Stanford, she worked in the Immigration Law Clinic and was elected president of her Law School class.

-Reported by Wendy Leibowitz (2L)

Lucchesi Named To AALS Post

ELIZABETH Lucchesi, director of the Stanford Law Fund, is chair of the Section on Institutional Advancement of the American Association of Law Schools. She was elected to the post during the AALS annual meeting in New Orleans in January.

The AALS section is responsible for professional development programs involving the alumni relations, publications, and development staffs of member organizations.

Lucchesi has directed the Stanford Law Fund since 1985, during which time contributions have nearly doubled to close to \$1.4 million annually. She also organized the recent and successful Spaeth Fund drive (see page 24).

With Stanford University since 1970, Lucchesi has worked as Director of Alumni/ae Relations for the Law School and Assistant Director for Alumni Programs for the Business School. She also serves regularly as an advisor to Stanford freshmen.



Elizabeth Lucchesi

Friends in Deed

AN unprecedented number of Stanford Law students submitted plans last winter to spend this summer doing public interest work. That was the good news.

The bad news was that grant money was available for only about half of the students. And without grants for basic living expenses, most students could not afford to spend a summer doing pro bono work.

Loath to disappoint anyone eager for public interest experience, Dean Paul Brest and the students of SPILF (Stanford Public Interest Law Foundation) devised an emergency rescue plan.

The strategy was a novel one: Students with summer clerkships at law firms would ask their future employers for contributions so that classmates could undertake alternative law jobs. As a show of the School's commitment to public interest work, the Dean promised to match any contributions dollar for dollar.

Thirteen firms responded to the urgent appeal. They were: Brobeck, Phleger & Harrison in Palo Alto: Brown & Bain, Palo Alto; Dewey, Ballantine, Bushby, Palmer & Wood, New York; Graham & James, San Francisco; Jackson, Tufts, Cole & Black, San Francisco and San Jose; Katten Muchin & Zavis, Chicago; Mayer, Brown & Platt, Washington, D.C.; Powell, Goldstein, Frazer & Murphy, Washington, D.C.; Shartsis, Friese & Ginsburg, San Francisco; Sidley & Austin, Los Angeles; Simpson, Thacher & Bartlett, New York;

Wilmer, Cutler & Pickering, Washington, D.C.; and Winston & Strawn, Chicago.

A capstone gift of \$100,000 in endowment for the summer public interest program was pledged on May 15 during the Board of Visitors meeting, by Kenneth and Harle Montgomery, the founders

of the Montgomery Summer Public Interest Grant Program. The Chicago couple's many gifts over the years also include the endowment for the chair now known as the Kenneth and Harle Montgomery Professorship in Public Interest Law.

The happy result of all this activity is that 23 Stanford Law students have been able to accept public interest jobs this summer. And in future, the new Montgomery gift will help support a permanent increase in the number of students able to taste the rewards of public interest work.

Jackson of KZSU Earns University Award

FIRST-YEAR law student Shauna Jackson (AB'88) is among six Stanford students to receive a Dean's Service Award for exceptional contributions to the University.

Iackson has served as a resident assistant in Madera and the American Studies house and is now a resident assistant for the Suites in Governor's Corner. Her consuming interest, however, is KZSU, the campus radio station. Currently its manager, she also has worked there as a producer, chief announcer, disc jockey, researcher, reporter, and program director.

The opportunity to manage KZSU, a studentrun station staffed by nearly 100 volunteers, helped Jackson decide on Stanford Law School instead of Harvard or Yale, where she also had been accepted. Her mission at KZSU is "to make the station more accessible to a wider range of students and to improve the quality of the station's programs."

She is pleased at the increases in news programs, live broadcasts from White Plaza, and coverage of such sports as women's basketball. Interested alums in the Bay Area can find KZSU at 90.1 on their FM dials.

Jackson, who worked at Rolling Stone and MTV during her college summers, plans to take advantage of the Law School's law and business curriculum with an eye towards going into communications and entertainment law.

Shauna Jackson (IL) in action



Faculty Notes

Barbara Babcock's "Clara Shortridge Foltz: First Woman"-the initial installment of her Foltz biography—appeared in the December issue of the Arizona Law Review, She discussed the next installment, "The Personal Is Historical: Clara Foltz and the California Constitution," at an October meeting of the American Society of Legal Historians in Charleston, S.C., and at a March conference on "The California Constitution in Transition" at Hastings Law School. California's first female lawyer was also her topic as luncheon speaker for the AALS section meeting on Women in Legal Education, in New Orleans in January. In March, she spoke on "Defending the Guilty" at the annual partners' retreat of Paul, Hastings, Janofsky & Walker in Palm Springs.

Paul Brest has publicly endorsed the proposal now before Congress to raise the salaries of federal judges by 30 percent. His statement to that effect, released May 1, was cosigned by the law deans of Chicago, Columbia, Harvard, Michigan, Pennsylvania, UC-Berkeley, Virginia, and Yale.

The Dean also organized and moderated a widely attended panel discussion in April of "Free Speech at Stanford," featuring William Cohen, Thomas Grey, Gerald Gunther, and Charles Lawrence. The speakers, all experts in constitutional law, addressed the relationship of First Amendment rights to the University's Fundamental Standard for student conduct and current proposals to limit certain hurtful forms of expression.

Thomas Campbell, on leave from Stanford as Congressman for California's 12th District, reports that academic work and research done here laid the groundwork for some of the legislation he has introduced. One bill would create an antitrust exemption for joint ventures to manufacture and commercialize innovations, and another would give states veto rights over off-shore drilling. He has also coauthored legislation to restrict assault weapons on a national basis. (A parting message from Campbell appears on pages 22-23.)

Lance Dickson has been invited by the University of Puerto Rico to serve as consultant to its School of Law and help the school develop its law library. He has previously evaluated the libraries of all three Puerto Rican law schools as part of the accreditation process of the American Bar Association.

Robert Flanagan, Cooperating Professor from the Graduate School of Business, published a new book, *The Economics of the Employment Relationship* (Scott-Foresman, 1989). An article, "Compliance and Enforcement Decisions Under the National Labor Relations Act," appeared in the July 1989 *Journal of Labor Economics*.

John Hope Franklin, a distinguished visiting professor, delivered the School's 1989 Herman Phleger Lecture on the subject of "Race and the Constitution in the 19th Century" (see pages 10 and 22). This spring, he also presented the W.E.B. DuBois Lecture at the University of Massachusetts— Amherst, on a most appropriate topic: "W.E.B. DuBois: A Personal Memoir."

Lawrence M. Friedman is spending spring term in the Department of History at Princeton University. He presented a paper, "Rights of the Accused and Fundamental Fairness: State Historical Developments," at a conference at the Albany Law School in Albany, New York.

James Lowell Gibbs, Jr. was named first holder of the Martin Luther King, Jr. Professorship, one of twelve endowed chairs of the University's Centennial Campaign. Gibbs is chair of the Anthropology Department, as well as a Cooperating Professor at the Law School, where he coteaches "Law in Radically Different Cultures."

Ronald J. Gilson has recently delivered lectures on leveraged buyouts at the Institutional Investor Institute's Winter Pension Fund Roundtable, and at the Lowe Institute of Political Economy, Claremont McKenna College. He also has lectured on fiduciary duties to bondholders, at a conference entitled "High Leverage, Low Protection: The Two-Sided Problem of Corporate Debt," sponsored by the Samuel and Ronnie Heyman Center on Corporate Governance at Cardozo Law School; and on the economics of associate career patterns, at the Law and Business Workshop of the Washington School of Business.

Paul Goldstein had a fruitful June, with the publication of two works. The first was a landmark threevolume treatise, Copyright: Principles, Law and Practice (Little, Brown & Company), and the second a chapter, "Copyright Law: Agendas and Options," in New Directions in Telecommunications Policy (Duke University Press). He recently traveled to Vanderbilt Law School and Arizona State College of Law to present papers at conferences on Intellectual Property and Trade Law and on Copyright Computer Software, respectively. Professor Goldstein has also been appointed to the Software Protection Forum Planning Group of the National Academy of Sciences and elected a Trustee of the Copyright Society of the U.S.A.

Hank Greely published "Contracts as Commodities: The Influence of Secondary Purchases on the Form of Contracts," 42 Vanderbilt Law Review 133 (1989). He is the primary author of "The Ethical Use of Human Fetal Tissue in Medicine," a position paper of the Stanford University Medical Center Ethics Committee, which was published as a special report in the April 20, 1989 New England Journal of Medicine. Greely also served as a member of the Financing and Service Subcommittee of the California AIDS Leadership Commission.

With Tim Ford ('74), he successfully represented Dewey Coleman, a prisoner on Montana's death row, in an en banc hearing before the Ninth Circuit. By a vote of ten to one, the

court held that Coleman had been unconstitutionally sentenced to death.

Thomas Grey had an article, "Holmes and Legal Pragmatism," published in the April Stanford Law Review (41:4). He spoke on "Criteria for Judicial Selection" at the partners' retreat of Paul, Hastings, Janofsky & Walker held in March in Palm Springs.

John Kaplan is this year's winner of the John Bingham Hurlbut Award for Excellence in Teaching by vote of the 1989 graduating class.

Professor Kaplan served on the committee that authored the recent National Academy of Sciences-National Research Council report, The Use of Laboratory Animals in Biomedical and Behavioral Research. His personal views on the matter were published as a perspective article, "The Use of Animals in Research," in Science (Nov. 11, 1988)—the basis also for the At Issue piece beginning on our page 18.

Gerald M. Meier, Cooperating Professor of International Economics, published a fifth edition of Leading Issues in Economic Development (Oxford University Press, 1989). Meier also prepared a report, "Ownership and Control Restrictions on Direct Foreign Investment in Developing Countries," for the International Finance Corporation of the World Bank. One of ten finalists in the O'Melveny & Myers Centennial Grant Program, he is currently organizing a conference on "The New Political Economy and Development

Policy-making," to be held at Lake Paipa, Colombia, this Iuly.

Miguel Mendez received the 1988 Legal Services Award of the Mexican American Legal Defense and Education Fund. The award, which honors his work on behalf of the Hispanic community, was presented March 8 at MALDEF's annual awards dinner in San Francisco.

John Henry Merryman received his second honorary doctorate this April, from the University of Trieste in Italy. His first came in 1982 from the University of Aix-Marseille in France. Both citations praise his work in comparative law. Recent publications by the emeritus professor include "The Retention of Cultural Property," U.C. Davis Law Review 21:477 (1988) and "How Others Do It: The French and German Iudiciaries," Southern California Law Review 61:1865 (1988). In December 1988 and in April 1989 Merryman visited the International Institute for the Unification of Private Law in Rome to help draft a proposed international convention on the rights of good-faith purchasers of stolen or illegally exported cultural property.

A. Mitchell Polinsky had an article, "Legal Error, Litigation, and the Incentive to Obey the Law," in the Spring 1989 Journal of Law, Economics and Organization. (Professor Steven Shavell of Harvard was the coauthor.) Also this spring, the second edition of Polinsky's textbook, An Introduction to Law and Economics, was published by Little, Brown & Company.

Robert Rabin gave a talk on approaches to teaching tort law at the AALS Workshop on Torts in Washington, D.C., March 9-11. During a busy April, he spoke at a University of Texas Law School faculty workshop, participated in the annual meeting of the Visiting Committee at Northwestern University Law School, and attended a session of the ALI Torts Project at Harvard, where his paper on no-fault alternatives to tort liability in the products and environmental areas was discussed.

Deborah L. Rhode presented papers at three recent conferences. The first, in November 1988, marked the 20th anniversary of no-fault divorce reform, and was cosponsored by the Earl Warren Center at Berkeley and Stanford's Institute for Research on Women and Gender. Professor Rhode's paper (coauthored with Martha Minow of Harvard Law School), "On Divorce Reform: Re-forming the Questions; Questioning the Reforms," will be part of an edited collection, Divorce Reform at the Crossroads (Yale Press, forthcoming).

The second paper, "Gender Difference, Gender Disadvantage, and Gender Dominance: The Politics of Paradigms," was given at an international conference on "Equality and Difference: Gender Dimensions in Political Thought, Justice, and Morality," sponsored by the European University Institute in Florence, Italy.

Professor Rhode made

the third presentation in April, at another conference sponsored by the Stanford Institute. Her subject this time was the legal policy dimensions of adolescent pregnancy.

Byron D. Sher won a landslide reelection in November 1988 to his 21st District California State Assembly seat.

Michael Wald researched

and wrote several chapters of what has been hailed as a "major, ground-breaking report," Conditions of Children in California, by Policy Analysis for California Education. His conclusions: "Although there are some disturbing trends in children's well-being, the majority of California's children are healthier, wealthier and have completed more schooling than at virtually any time in our

history." Wald cautioned, however, that "California is moving in the direction of having two groups of children: one advantaged, one disadvantaged. A substantial, growing minority are being left behind."

Robert Weisberg was among 885 law professors from throughout the country to appear as signators to an amicus curiae brief in Webster v. Reproductive Health Services, the abortion case currently before the Supreme Court. The brief, which argued in favor of a woman's right to choose, was also signed by Barbara Babcock, Robert Girard, Thomas Grey, Mark Kelman, Gerald Lopez, Miguel Mendez, and visitors Mary Dunlap and Patricia Williams.

PUBLIC INTEREST

(Continued from page 3)

legal services lawyers. Realistically, and for the foreseeable future, those needs can only be met through pro bono work by lawyers in the private sector. That is, by most of you.

Again, things seem more difficult today than they did for my generation. In the 1960s, law firms competed as much over the amount of time an associate could devote to pro bono work as they did over salaries. If one of my classmates forgot to ask about a firm's pro bono policy, the interviewer might well volunteer the information. By contrast, a young lawyer recently wrote:

We're told that law students aren't asking about pro bono anymore. Law students aren't stupid. They're looking for jobs. They're not going to ask something that indicates they are not willing to play this new law firm game—to bill as many hours as is humanly or inhumanly possible. Just as they're instructed that it's bad form to ask about how much vacation time they will be getting, they also know not to ask how much time the firm will tolerate in "do-good" activities.

When these law students become young lawyers they emulate what they see around them. Young lawyers see a bottom-line business, where a certain amount of pro bono, civic and bar work is tolerated but certainly not encouraged. Rewards come to those who use any extra time in developing client relationships.³

This strikes me as unduly pessimistic. At some firms, pro bono work does count toward an associate's "billable" hours. And for all the talk about the profit squeeze, some employers actively encourage pro bono work, and many others are quite willing to accommodate it. While some bar associations are considering mandatory pro bono requirements, many firms are participating in voluntary programs.

What really matters ultimately, however, is your own commitment to pro bono practice. If your employer doesn't actively encourage it and you want to do it, you've got to ask for it. You don't have to go it alone: Get some of your associates to join you. You may be surprised to discover how many firms respond, in effect, "I'm glad you asked that question." For the time seems once again to be ripe—or at least ripening.

The main reason for doing pro bono work is that it's badly needed. Another reason, not far behind and closely linked, is that it's deeply satisfying. Whether you're writing an amicus brief in a civil rights case, helping an AIDS victim obtain medical benefits, or helping a battered wife obtain a temporary restraining order—the feeling of satisfaction is almost tangible. The satisfaction is both personal and professional. Many of you came to

law school with the sense, however vague, that you would enter a profession dedicated to providing "justice for all." Pro bono work is a constant source of renewal of the commitments that make the difference between a job and a profession.

I want to mention briefly one other form of public interest work—perhaps "public service" is the better wordthat lawyers can do. This is the work, typically done by relatively senior lawyers, who devote substantial time, or even take leaves from private practice, on behalf of governments or nonprofit institutions. The names of Stanford alumni and alumnae such as Warren Christopher, Shirley Hufstedler, and Jim Gaither come to mind. Some of you will eventually perform public service of this sort. But working in the public interest is an acquired habit. And the time to begin is right now.

The responsibility, as I said, is ultimately yours. But law schools have a role to play as well. A good legal education should encompass professional ethics, not only in the sense of dealing fairly with clients, adversaries, and other parties; it should cultivate the affirmative responsibilities of public service. The best way to attract lawyers to public interest practice—whether as a full-time occupation or as part-time pro bono work—is to allow them to experience its satisfactions. And the best time to do this is while they are still law students.

The East Palo Alto Community Law Project has presented tremendous opportunities for this. About half of you have helped—through field placements in Law School courses and volunteer work—to provide legal services to one of the area's most impoverished communities.

The Montgomery fellowships, supplemented by funds from the Stanford Public Interest Law Foundation (SPILF), have also offered a chance for students to spend a summer devoted to public interest practice. What better way to get a taste of what it's like? As you know, the demand for these fellowships was unexpectedly-and gratifyinglygreat this year. You will be pleased to know that Ken and Harle Montgomery—the godparents of so many public interest programs at Stanford have made a very substantial pledge to augment the summer fellowship fund, and I hope to use their generous example to encourage contributions from others.

Concerns have been voiced about a rift at the School between students aspiring to pursue full-time careers in public interest law and those planning to enter private practice. But let me close by remarking on an event this spring that symbolizes what's best about this place and gives me hope about its possibilities as a community.

When we learned that the demand for the Montgomery fellowships far exceeded the supply, SPILF and the Law School administration initiated a rescue program, in which we asked students planning to work at private law firms to ask their firms to help support classmates who wished to spend the summer in public interest work. (The School also pledged to match the firms' contributions with funds of its own.) Many students wrote and phoned their law firms. Thirteen firms responded to the call, and the crisis was averted (see page 27).

This cooperative "pro bono" effort is an auspicious example of working together in a common cause. I hope that our wonderfully diverse community will find many other ways of working together over the coming

WOMEN

(Continued from page 17)

mention the time spent interviewing, wining and dining them. To that, add the cost of the salaries and training of young associates. Think of the loss, then, when many of these associates leave. Think of the even greater loss when a senior associate or partner leaves. Law firms need to create programs to make firm life livable and attractive at all levels.

Developing personnel policies that conserve the firm's resources can be seen as a bottom-line issue. What business willingly squanders its most important resources—its people—by policies that are blind to their needs? That is no way to have good morale and low turnover, twin objectives of any well-run business.

Here are some specific suggestions for policies that I believe should be in place in major law firms:

Child Care. Most law firms, like most other United States businesses, sadly still think of child care as a "personal matter." Of course, the type of child care parents choose is personal. But can law firms truly be obliv-

years, and that you—members of the Class of 1989—will continue to participate in these efforts as members of our extended family.

For now, best wishes and good luck in the life that awaits you on the other side of the bar exam. May you do well and do good.

Footnotes

- 1. Gordon, Robert, "The Independence of Lawyers," Boston University Law Review, 68:1 (1988), 1-83.
- 2. Williams, Harold, "Professionalism and the Corporate Bar," *The Business Lawyer*, 36 (1980), 165-66 (quoted in *id.*, 4-5).
- 3. Barbara Mendel Mayden in Young, K., et al., "Greed is Good?" *Barrister*, Winter 1988, 13-17.

ious to the impact of child care problems on their workers?

Most studies show that working mothers report much greater stress than all other workers due to their combined job and family demands. Men too report stress when child care duties force *them* to miss work. In many two-earner families, the big issue is, Which parent is going to sacrifice job time and opportunities in order to respond to the child's needs?

I do not know of a single law firm in the country with on-site day care, and maybe that's not what is needed most. But Wilmer, Cutler & Pickering in Washington, D.C. recently opened an emergency child care facility, as a backup for parents who suddenly find that the baby sitter can't come, or who want to take an infant for a checkup at lunchtime without going all the way home to pick him up.

You may wonder if this is the proper function of a law firm. But what do absences of attorneys and staff cost you? Wilmer, Cutler found that the firm easily made up the cost of its center in increased attorney productivity. Employee morale also increased.

Other Washington law firms have shown interest, and Arnold & Porter, for one, plans to open a similar center. A small firm interested in providing backup child care might pool resources with other firms. Those who do will probably find that women attorneys and staff are not the exclusive users. Men under 35 report serious concerns about managing work and family responsibilities; they too would benefit from innovative programs that reduce stress.

Parental Leave. Most firms routinely allow maternity leaves in the range of three months, usually paid. There has been much debate recently in the California state legislature and Congress about the costs and benefits of mandating that employers provide unpaid leaves of up to four months for parents of either sex.

These measures have not yet been enacted. But because of major changes in the workforce, parental leave is an issue that will not die. It makes business sense for law firms to have leave policies for parents, applying them equitably to men and women-and

not just on paper.

One managing partner in the meetings I discussed earlier said firms need not only to adopt a written policy, but committo enforcing it. I concur. If your firm has a parental leave policy, is it assumed that new fathers will, or will not, take it? Do the men on "partnership track" routinely forgo paternity leave? And is the new father who opts to take it regarded as a wimp? What are the firm's leaders doing to encourage fathers to spend time with their families?

Even maternity leave, sad to tell, may meet with resentment. I have heard it said to women lawyers, "You get to take time off to have a baby"-as if the woman were going on vacation. What are the values of a firm where this is muttered in the halls?

Part-Time Work. Discussion of parttime work has intensified, and the ABA Commission on the Status of Women is drafting sample part-time work policies. Despite the talk, however, such policies seem to be implemented mainly on an ad hoc basis. Even firms that express willingness to try part-time arrangements seem to have reservations.

The managing partners at the meetings I mentioned made comments such as these: How can any firm justify on economic terms allowing any associate to work part time? What if everyone wanted to do it? Many men want to spend more time with their kids, but can't; why should the women be "allowed to"?

Career advancement fears are also raised: the self-fulfilling prophecy that women who work part time will get only peripheral projects leading to a dead-end career; or comments such as, "I can see how a probate attorney can do it-but a litigator?"

This need not be so. There are instances in which women (and men) have successfully worked part time. What it requires is flexibility, a willingness to be reasonable, and an appreciation of the competing interests that

need to be satisfied on both sides. And women (or men) who choose this route should have partnership open to them-it may just take longer to get there. There need be no insurmountable obstacle.

Even firms with part-time work policies limit them to associates. At the partner level, the only opportunity presently open to women who want to work at less than full throttle is an "of counsel" position. That is unacceptable, I maintain. The arrangement deprives the woman lawyer of many of the benefits of partnership earned through years of service-including sharing in firm profits and the opportunity to participate in firm investments.

Why assume that to function as a partner a woman must work "full time"? Many firms accommodate partners who want to spend time on outside business interests or management of family investments; their profit participation is simply reduced commensurately. Why, then, is this same arrangement not routinely made available to women (or men) who wish to reduce their time commitment due to parental responsibilities? There are rational alternatives to full-time partnership in firms with the flexibility to see them.

Strategies for the Future

You may be wondering, How can we do these far-fetched things? But I say, How can you not? We are facing a big challenge.

If you want to recruit and hold the best young lawyers-as you surely do-you must pay attention to their needs. Find out their concerns and what is important to them.

I can tell you that women tend to measure success by their personal lives as well as their professional accomplishments. And, from what I hear and see, young women are increasingly unwilling to make the historical compromises of remaining single and childless in order to fit into malecreated institutions.

Money alone, while it may lure them initially, will not keep them for long. Both men and women are seeking ways to set rational boundaries on their jobs. They will either leave those institutions, as they are presently doing, or bend them.

If you are worried about the effect on your firm's "bottom line," why not consider creative ways to enhance productivity - for example, by increasing the use of computers and telecommunication, allowing the flexibility of working from home, and encouraging more imaginative use of secretaries' abilities?

The firms that will succeed in our increasingly competitive profession are those with policies that further the concerns of lawyers - 50 percent of them women — who are coming along. Successful firms will not simply use a talented young associate for three or four years and drive her out. Instead, the firms will take a long-term approach to careers, recognizing that accommodation during the five-to-ten years of young parenthood helps protect the firm's investment in the career of a well-trained attorney. That will be smart management.

Footnotes

- 1. See, for example, the report of the American Bar Association's Commission on Women in the Profession (ABA, February 1988). Also, the May 1988 issue of Stanford Law Review (40:5), which includes a comparative study of Stanford Law women graduates and an article, "Perspectives on Professional Women," by Professor Deborah L. Rhode.
- 2. One indication of the tensions in the profession can be seen in the content of the latest ABA Journal (April 1989), which contained articles on quality of life trade-offs of smaller firms, the results of lawyer satisfaction surveys, and new law firm compensation models to maximize economic return for partners.

Photograph: Taken by Chuck Savadelis, with Jeanette Swent (1L) as the harried attorney. Eduardo Bhatia (2L), Robert Eaton (1L) and Robert Topor (Director of Stanford Publications Services) lent a helping hand.

VISITORS

Some 82 alumni/ae and friends participated. Shown here are (back row) Heidi Duerbeck '72 and Jim Gansinger '70, (center row) Regina Petty '82 and Valda Staton '83, and (front row) Ned Spurgeon '64, Jim Hamilton '59, and Joe Gordon, Jr. '64.

HE COLLECTIVE wisdom and experience of the members of the Board of Visitors were tapped as never before, during its 31st annual meeting, May 4-5, 1989. "The Board is evolving," observed Richard Mallery '63, Chair for the last two years. "We hope to become more useful to the School, as well as more collegial."

This year's focus, simply put, was The Future — of the legal profession in general and the School in particular. Three full sessions, and a good part of the traditional Summary and Advisory Session, were explicitly devoted to "Stanford Law School in the Year 2010"—the title of the longrange planning committee co-chaired by Kendyl Monroe '60 and Edward Spurgeon '64, with Dean Brest (see pages 38-40). And the other sessions and events of the meeting were designed to enrich the future-oriented discussions.

The meeting opened with the Dean's annual State of the School



report (*pages 35-37*). The present being prologue to the future, Brest's report laid a foundation for the explorations to follow.

Two other sessions dealt with trends and concerns of the legal profession. Ethics in the changing environment of legal practice was the subject of a panel consisting of Professors Deborah Rhode, Ronald Gilson, and Robert Gordon. One compelling observation: Legal ethics and behavior appear to be inextricably linked to the way in which lawyers get paid.

A second panel, featuring Professor Rhode and attorney Louise LaMothe '71, addressed obstacles to the integration of women into the profession. Said Rhode: "To present this as an individual rather than institutional problem is to misconceive the problem and interfere with the solution." (LaMothe's views are given in the article beginning on page 14.)

Other relevant events included meetings of the Board committees for

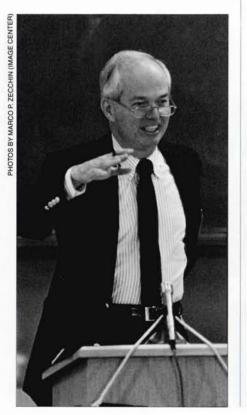
two of the School's developing programs: the Stanford Center on Conflict and Negotiation (co-chaired by Professor Robert Mnookin and Guy Blase '58); and the Committee on Lawyering for Social Change and the East Palo Alto Community Law Project (co-chaired by Professor Gerald López, EPACLP director Shiela Rush, and Judge LaDoris Cordell '74). A luncheon for Board members with students, and a dinner with faculty members, further broadened the dialogue.

The Visitors were rewarded for their labors with not only a sense of a job well done, but also invitations to the remarkably lively Kirkwood Moot Court Competition finals (see page 25) and the Law School's Cinco de Mayo celebration.

Capping the two-day meeting was a festive banquet at the Faculty Club enjoyed jointly by the Board and by the participants in the Kirkwood finals. Associate Justice Anthony Kennedy of the U.S. Supreme Court, who had presided over the competition that afternoon, provided graceful after-dinner remarks.

Referring to his recent meetings with jurists from Pacific nations, Justice Kennedy said: "It struck home to me that the independence of the judiciary is a very fragile thing; and our strongest ally is the independence and integrity of the Bar." Law schools—through such means as visiting committees and moot court competitions—help "to sustain the vital bond and kinship that exist among all attorneys, whether on the bench or the Bar."

Dean Brest, in his closing words from the podium, offered "very sincere thanks" to Dick Mallery and all the members of the Board of Visitors for their time, energy, and insights. "We benefitted enormously," he said, "from putting you to work."



Board chair Dick Mallery '63 (*left*) presided, while (*below*, *left* to *right*) Professors Ron Gilson, Deborah Rhode, and Bob Gordon discussed trends in the legal profession.



STATE OF THE SCHOOL, 1989

Paul Brest Richard E. Lang Professor and Dean

TANFORD LAW SCHOOL is a vital and forward-looking place, with a strong educational base and a number of exciting programs under development. The trajectory, by almost any index, is clearly upward. The drive to self-improvement is unceasing, as students and faculty seek ways to make the School ever more intellectually stimulating and to prepare students for law practice in the twenty-first century. Future progress depends importantly on the support—financial and otherwise—of the School's graduates.

This was the general tenor of Dean Brest's second annual report to the Board of Visitors. Some specifics:

Admissions. The number of applicants continues to rise, with 5255 candidates for admission in Fall 1989. We're doing well in enrolling members of minority groups and—equally important—in retaining these students.

Our current first-year class is older and more diverse, with the average age now at 25.4. Of the 168 students in the class, 40 identify themselves as members of a racial or ethnic minority group. The overall ratio of women to men is 2:3. The average LSAT score is 43 and undergraduate GPA 3.6.

New faculty. We continue to seek candidates who will add to the strength and diversity of the faculty. Joseph Grundfest will join us next year on completion of his service as



Dean Brest told of new faculty talent, course clusters, student opportunities and choices, and the generosity of friends.

a Commissioner of the Securities and Exchange Commission. Joseph Bankman, a tax law expert who visited in 1988-89, will stay on as a tenured professor. Two other young legal scholars, Deborah Weiss and James Whitman, have been engaged as tenure-track assistant professors. Additional offers to join the faculty are outstanding. (Biographical information on new faculty will follow in the next issue.)

Faculty research leaves. Semester-long triennial leaves have been introduced for the faculty. These supplement the traditional year-long sabbatical leaves and provide faculty with much needed time to pursue their scholarly work and engage in curriculum development. Such leaves are becoming the norm among leading law schools; adopting them here was important for competitive as well as intrinsic reasons.

Visiting faculty. We are making good use of the potential of visitors to broaden our curricular offerings and bring attorneys with practice experience into the classroom. Some 52 visitors and lecturers will be here in 1989-90. This enrichment benefits not only our students but also creates opportunities for synergistic interactions with the permanent faculty.

Curriculum. Progress has been made in developing sensibly sequenced and coordinated course progressions, notably in the Law and Business curriculum and in Lawyering for Social Change. The increased emphasis on transactional work in Business Law is indicated by the titles of two new courses: Counseling the Business Enterprise (taught by a former law firm senior partner); and What Every Lawyer Should Know About Business.

The course sequences are by no means exclusive. "I am strongly committed not to have the School fragmented along different tracks," declared the Dean.

J.S.D. program. The effort to prepare promising minority J.D.s for law school teaching has been slowed for lack of funds. The two candidates admitted last year are doing well. However, only one new candidate—a woman of Mexican and Native American ancestry—could be admitted this year. The School continues to look for foundation support for this important and unique program.

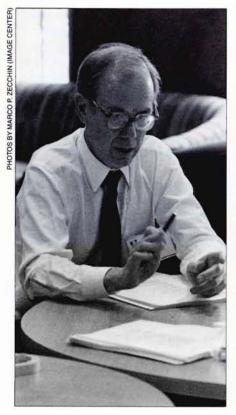
Graduate employment. Our students are having great success—thanks in part to the efforts of the Career Serv-

ices office—in obtaining starting positions with law firms. And some 34 of the 1989 graduates have obtained judicial clerkships.

Our continuing efforts to provide information and assistance on alternative forms of employment are bearing fruit. So far, 8 of our graduating students have chosen full-time jobs in the public service sector. And there are indications—such as the increase in summer public interest employment (see below)—of a heightened interest in pro bono work. (For more on this subject, see From the Dean, pages 2ff.)

The School has excellent data on the initial job choices of graduates, but lacks information on their subsequent careers and career changes. Statistical analysis of such data could reveal trends in the legal profession,

The hardworking participants included (below) Bill Murane '57 and (right) Becky Love Kourlis '76, John Sabl '76, and Larry Boyd '77.



indicate the variety of career paths open to legally trained individuals, and suggest improvements in the education we provide. Planning for such a study is under way.

Public interest summer employment. A record 44 continuing students submitted grant applications for public interest work this summer. This was gratifying, except that the demand exceeded the supply of funds available. We immediately launched an emergency fund drive and, happily, raised enough to meet the present need and enlarge our grant resources for future years (more on page 27).

Student life. The School is fostering faculty-student interactions through a variety of means, including lectures by outside speakers of interest. Each lecture is followed by an informal reception open to all.

Responding to a recommendation of last year's Quality of Life task force (Fall 1988, pages 43-45), the School has established an adviser system. Each first-year student will have both a faculty and a student adviser available.

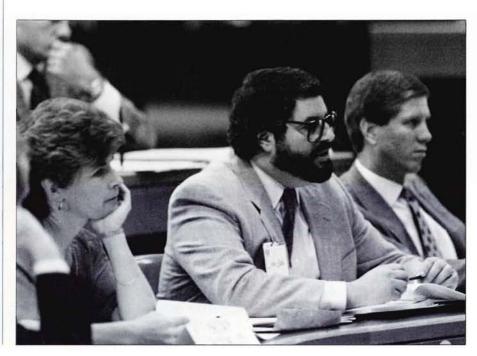
Dean Brest expressed some concern over an apparent divergence within the student body between those planning to enter the profitmaking sector and those interested in public interest law. He plans a conference in 1989-90 to bridge this gap.

Another continuing issue is the level of tolerance among students towards other students with different backgrounds and political beliefs. The Dean said that this would be at the top of his agenda when the new school year begins in September.

The Student Lounge is being renovated thanks to the generosity of the Class of 1949, which has made this project the focus of its Fortieth-Year Reunion fund-raising drive.

Distinguished visiting lectureships. The next recipient of the Jackson H. Ralston Prize in International Law will be Pierre Elliott Trudeau, former prime minister of Canada.

The previous recipient, Oscar Arias Sanchez (*Spring 1988*, *p. 38*), has not yet been able to visit the campus and present his Ralston Lecture, but he hopes—the Costa Rican legislature willing—to do so soon.



Financial developments. First, some bad news. The University is running a deficit, which requires belt-tightening all around. In addition, some income we were using for the East Palo Alto Community Law Project and for a professorship has been interrupted. Richard Mallery, who practices in the same state as the asset in question (donated Arizona real estate) has kindly volunteered to advise the University on the problem.

On the plus side, the Law School has had a good fund-raising year. Some highlights:

- ► a visiting professorship, established by Edwin A. Heafey, Jr. '55. The first holder will be Professor Allan Axelrod of the S.I. Newhouse Center for Law and Justice at Rutgers University.
- ▶ a visiting professorship in human rights. The donor, Leah H. Kaplan, is Stanford University's ombudsperson and director of the Help Center. Harvard professor Frank Michelman, an expert in constitutional law, will be the first Kaplan Professor.
- ► the Jay M. Spears '76 Memorial Library at the East Palo Alto Community Law Project. More than 100

- gifts have been received in Spears's honor—a testament to the love and sense of loss felt by his family, friends, and members of the Stanford Law School community.
- ► an endowed chair in Business Law (the donor being anonymous for the time being)
- ▶ a challenge grant from Thomas Elke'52 toward development of the Lawyering for Social Change curriculum. The Dean noted that this complemented a grant for the Law and Business curriculum made two years ago by Kendyl Monroe'60.
- ► a student aid fund from Albert Horn's1
- ▶ and, finally, substantial Centennial pledges from John Finney '68 and James Gansinger '70, both members (like Elke, Monroe, and Horn) of the current Board.

For these and all other gifts to the School, the Dean expressed deep gratitude. At the same time, the School has a number of near-term special funding needs. Three of particular interest:

expendable and endowed funds

- for the East Palo Alto Community Law Project
- ► renovation of Crown Library's public area to accommodate computer-age bibliographic resources
- ► creation of an endowed fund for a Law and Business professorship to honor the name and contributions of Charles J. Meyers, the former Dean whose death last year was so widely mourned (Fall 1988, pages 82-83).

Dean Brest concluded by saying: "I am still having fun being Dean. Much of the pleasure of the job is derived vicariously from the accomplishments of others—colleagues, students, and staff." The sine qua non, however, is "the gratifying support of our graduates—something that energizes us all."

Also engaged were (left) Melva Christian '77, Marsha Simms' 77, Gary Williams' 76, and (below) Gil Berkeley' 70.





THE SCHOOL IN THE YEAR 2010

HE TASK FORCE on Stanford Law School in the Year 2010 was created in the summer of 1988 as a "strategic planning committee," explained Task Force co-chair Kendyl Monroe '60, in his introduction to the 2010 deliberations. The purpose of the endeavor (which parallels the University's longrange planning effort) is "to anticipate the future as well as we can, and to identify achievable improvements for that future." Working groups exist for three areas of interest: Teaching and Scholarly Mission; Law Library and Information Resources; and Administration, Finance, and Development. Each group (see below) consists of both Board members and relevant Law School faculty and staff.

The 2010 Task Force, during the preceding months, had drafted an outline of topics and trends for study. The next step—and primary undertaking of the 1989 Board of Visitors meeting—was to evaluate and refine that outline so as to suggest the scope and content of investigation. Copies of the draft outline were provided to all Board members, along with two background documents on trends in the legal profession.*

The evaluation process began in a plenary session, following Monroe's introductory remarks and a preliminary presentation by the chair of each working group. The remainder of the session was devoted to comments and suggestions by the Visitors.

The Board next broke into small sections (one for each working group) to explore their subjects in more depth. Each of these meetings



Task force co-chairs Kendyl Monroe '60 (above) and Ned Spurgeon '64 (page 33) seek to identify "achievable improvements."

was co-chaired by a Visitor and a Law School faculty or staff member, with another Visitor chosen by the group to act as Reporter.

The process culminated in a second plenary session, where reports from the small-group meetings were heard and discussed by the full Board.

All this brainstorming produced—not surprisingly—a wealth of topics for consideration by the 2010 Task Force in the months ahead. A synopsis, drawn from both plenary sessions and the Summary and Advisory session, follows.

TEACHING AND SCHOLARLY MISSION

Kendyl Monroe '60 and Edward Spurgeon '64 for the Board; and Associate Dean-designate Ellen Borgersen for the School. Roderick Hills '55, Reporter.

The global context. Changes in the structure of political and economic systems, said Hills and other Visitors,

should be taken into account in planning for the School's future. Relevant developments include:

- ► the growing internationalization of business — multi-national enterprises, Europe post-1992, and the burgeoning Pacific Rim economy
- ► the "Americanization" of European law firms
- ► the emergence and spread, notably in Third World and communist countries, of the Rule of Law, with concomitant changes in lawyers' roles.

Trends in legal practice. A number of issues, normative as well as practical, were raised:

- ► What should be the role of law, lawyers, and law firms in our society?
- ► Should the legal profession be reactive or proactive?
- ▶ litigation and lawyering—Is there too much?
- ► technology What is its impact and potential?

The economics of law need also be examined, for example:

- ► income distortions between the private and public sectors, and between teachers and practitioners
- ► the pricing and quality, kind, and availability of legal services
- ► alternative approaches—legal clinics and self-help modalities
- ▶ the cost of legal education.

In addition, there are the human, personnel factors:

 underrepresentation and barriers to full participation for women and minorities ▶ burnout—part-time and other alternative work arrangements.

One Visitor noted that cross-cultural and transnational comparisons may offer helpful insights on such questions.

The Law School curriculum. The task is to examine current strengths and weaknesses, and suggest needed and anticipated areas of growth. Some interesting policy issues:

- ▶ breadth vs. depth—Should Stanford try to do everything, or define a niche, e.g., the Pacific Rim?
- ► analytical training vs. knowledge acquisition—emphasizing the rulemaking process more than the rules themselves; the need, in this changing and complex world, to instill curiosity and openness.
- ► benefits of interdisciplinary work—credit for courses in other schools and departments, such as the Business School and language departments
- ► length of study Would two years of law school suffice?
- ► professionalism What does it mean, and how do we teach it? Value systems and legal ethics; relations with the organized Bar.

Teaching methods. Which methods are most effective, and for what kinds of material?

- ► conventional (Socratic, information transfer) vs. clinical (live client and simulation)
- ► new technologies, such as interactive video
- ► practical skills training, such as lawyering and trial skills, legal drafting, negotiation and other alternatives to litigation
- ► making use of practitioners and judges in the classroom.

Faculty. What are the School's present and future needs, and how can they best be met?

- ► size and quality—affirmative action, recruitment, tenure standards, retirement policies
- ► joint appointments with other departments, research appointments as with the Hoover Institution
- ► salaries and housing costs, office space
- ► research leaves funding for empirical research, which generally requires data collection and analysis, and often fieldwork as well.

Students. How, in addition to teaching and curriculum, can the School enhance the educational experience for students?

- ► the number of students—Should it be increased for economic or other reasons?
- ► criteria for admission—the "mix," and what the students bring to the educational process. Should we have prerequisites, and if so, which?
- ► quality of life—fostering both the intellectual (class attendance and

The Visitors formed working groups on three areas of future import. Dick Mallery '63 (below) headed the one on administrative concerns.



preparation, informal learning, journals and other organizations) and social aspects of law school

► career aspirations—private practice, government, public interest, and non-legal careers. Informing students of diverse career options and encouraging a variety of summer employment experiences; minimizing the role of educational debt in job decisions.

Relations with others. Interactions with other disciplines and organizations can enlarge the School's perspective and provide added stimulation. Among those current and potential:

- ▶ within Stanford—interdisciplinary programs and research centers, such as the new Stanford Center on Conflict and Negotiation (see page 9)
- ► off campus business, government, practitioners; new opportunities for participation as, for example, center "associates"
- ► Board of Visitors—role in longrange planning; mechanisms for dialogue with faculty, students.

LAW LIBRARY AND INFORMATION RESOURCES

William Kroener' 71 for the Board, with Law Librarian Lance Dickson. Carolyn Paris' 78, Reporter.

New technologies. With on-line bibliographic and retrieval systems already in place, what can be predicted about future needs?

- ► a continued—in fact, increased—demand for books and other printed materials (generated, ironically, by researchers using efficient computer search systems)
- ► physical constraints—space for added computers, audiovisual materials, and a collection that is growing generally; new standards for earthquake protection
- ► user education—teaching students about the relative advantages and dis-

advantages of different technologies

► decentralization—the possibility of information delivery, not just in the library, but via computer to students' rooms.

The collection. Currently "lean and mean," the Library has several areas of present and future need, some related to the developing curriculum.

Staff. The present staff, while excellent, is "stretched," according to Lance Dickson. New areas of expertise to be covered include developing subject areas and computers and other high-tech systems.

ADMINISTRATION, FINANCE AND DEVELOPMENT

Richard Mallery '63 for the Board; Associate Deans Thomas McBride and John Gilliland for the School. Mallery, Reporter.

The purview of this group includes:

Staff. An essential element, what is its role in the future?

- technology and the changing needs for secretarial support
- ▶ the School as an exemplary employer.

Physical plant. New needs, both for space and the design of that space, are being created by new programs, new modes of teaching (e.g., clinical), increased numbers of faculty, student groups and meetings, and the Library.

Finances. The two sides of the coin are, of course:

- expenses—programs, salaries, student financial aid
- ► revenue—tuition, individual giving, law firm giving and matching, affiliates programs, and foundations and government.

Alumni/ae. How can we increase the number of graduates who are involved with and give regularly to the School?

- regional law societies and events
- summer programs and conferences
- ▶ increased help from the Career

Services office to alumni/ae seeking job changes

 start a tradition of giving while prospective graduates are still students (see below).

Alumni/ae and students. How can the two groups meet and develop a shared sense of being a part of the greater Stanford Law School community (the focus of Dick Mallery's interest)?

- regional events for summer clerks
- ▶ moot court judging
- ► special interest networks (e.g., public service attorneys)
- ► a dinner for first-year students, hosted by the Board of Visitors, as a welcome and orientation to the Law School community
- ▶ possibly, an alumni/ae-student mentor system.

Amply advised, the chairs of the 2010 working groups met the following morning to map their next moves. As Kendyl Monroe observed, "It's an ongoing process."

Kenneth and Harle Montgomery (seated, right and left of center) were saluted for yet another exemplary deed (see page 27). Also shown are (between the Montgomerys) Professor Deborah Rhode, (podium) Dean Brest, and (clockwise from the Dean) Jerome Braun '53, Louise LaMothe '71, Professor William Baxter and (left rear) Larry Boyd '77 and Professor Robert Rabin.



^{*}James Jones, "The Challenge of Change: The Practice of Law in the Year 2000," Legal Administrator, November/December 1988, pp. 28-35 (abridged from 41 Vanderbilt Law Review 4, May 1988); ABA Section on Legal Education and Admissions to the Bar, "Task Force on Law Schools and the Profession: Narrowing the Gap" (study proposal, 1989).

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BEYOND LITIGATION

(Continued from page 8)

We think our resolution respects and protects the vital interests of both parties. On the one hand, Fujitsu is assured that it will receive the specific interface information that provides it with a reasonable opportunity, through its independent development efforts, to maintain IBM compatibility.

IBM, on the other hand, is assured that Fujitsu is using only the specified information and that IBM will be compensated for this use—that its enormous investment in system software is being protected and respected.

And don't forget the consumer. The resolution protects the customer's investment in application programs and promotes competition.

In short, a win-win solution! I'm particularly intrigued by the Secured Facility—Is that a novel idea?

Yes—at least as a mechanism for resolving a dispute.

The Secured Facility regime permits a few Fujitsu software engineers, under strict safeguards, to examine a great deal of IBM programming material. But they are permitted to extract only a limited subset of that information, as defined in "Instructions" we have issued. All the extracted information must be documented on survey sheets, which are closely reviewed for compliance. Only then may Fujitsu use the information with immunity in its independent software development.

Couldn't someone with a photographic memory subvert that?

No. The arrangement in effect creates a wall between the Fujitsu employees exposed to sensitive IBM information inside the Secured Facility, and those Fujitsu programmers involved in software development. The Fujitsu employees with Secured Facility access have career path restrictions: they are barred for a year thereafter from working on the development of any similar Fujitsu software.

There are other safeguards in place as well, and the arbitration panel has broad remedial authority. Finally, both companies are fully committed to the regime.

Do you expect your IBM-Fujitsu resolution to influence the handling of future business disputes?

As you understand, arbitration is binding on the parties involved, but not on any third parties. Thus our arbitration doesn't establish formal legal precedent, either for courts or other arbitration panels.

But I do hope the IBM-Fujitsu arbitration will serve as an example of how alternative dispute resolution procedures can be used to resolve, promptly and fairly, even very complicated largescale disputes.

Is the trend towards a global economy and international joint ventures likely to make such alternative approaches more attractive?

Absolutely. Companies can be extremely reluctant to get involved in disputes in the courts of other countries. In many places (Japan, for instance) litigation can take a decade or more — and it's often not too speedy in this country. In addition, the remedial authority in different countries varies. There can also be concerns about bias: Is the forum neutral?

So for all these reasons, arbitration clauses are increasingly common in international commercial transactions. The new United States-Canada trade agreement, for example, provides for arbitration panels and mechanisms—thus substantially removing future disputes from politics.

Does arbitration offer opportunities for more creative solutions than are possible in the usual courtroom?

Arbitration is a creature of the parties, necessarily created by contractual agreement. It can be enormously flexible—with the agreement of both sides—in developing procedures that are efficient and responsive.

We were able, in terms of remedies, to do a number of things that a court could not have done. A court could not readily create and oversee a secured facility regime, for example. It's true that courts sometimes appoint special masters. And judges in desegregation or prison cases occasionally assume a managerial function. But in commercial litigation, that rarely happens.

Another advantage to arbitration is the opportunity for the parties to choose the judge. In most court-based regimes, it's a bit of a lottery. Judges are necessarily generalists, and there can be little assurance that the assigned person has any particular skills that might help in the resolution of a given dispute. In arbitration, on the other hand, two companies with an argument about, say, the quality of soybeans, can select an arbitrator who actually knows something about agricultural practices.

Are there any lessons you learned from the IBM-Fujitsu arbitration that apply to dispute resolution generally?

Procedural flexibility can be valuable. In this case, the parties gave the arbitration panel considerable discretion to design the process. We were able to choose different dispute settlement techniques for different problems or issues. Broadly speaking, we acted as mediators in developing the framework for the resolution, and as arbitrators in implementing that framework. In addition, we presided over meetings of responsible executives of both parties using a mini-trial format. We also held independent fact-finding meetings with customers. And we resolved some claims with "final offer" arbitration—the technique used in major league baseball to establish disputed salaries for ball players. It was a dynamic process.

Ongoing jurisdiction for the neutrals, which provides for continuity over time, is also very important. The parties in this case had an extended history of disputes. Having in place a framework for resolving future disputes helped build their confidence in particular decisions along the way.

For myself, there was also a lesson in having to actually *decide* issues. Academics and lawyers are generally

required to analyze, describe, critique, and advocate. That's not enough, however, when you're responsible for *resolving* issues in the face of conflict.

It also brought home the importance, when you're acting as a neutral, of demonstrating that you really understand the arguments and concerns of each side. This doesn't necessarily make people happy when you rule against them. But it is psychologically and practically very important to the success of the process.

How did you personally become interested in dispute resolution?

I think there were three factors. First, as an undergraduate economics major and during a year of graduate study, I became intrigued with the literature on bargaining and game theory.

Second was my own research in family law, including some work on divorce bargaining.³ (If there was ever an area where the traditional adjudicatory approach is often inappropriate, it is in child custody disputes and divorce.) That work led to research on negotiation in other contexts⁴ and an interest in current studies on mediation and other forms of dispute resolution.

Third was my early exposure (between clerking and becoming a law teacher) to law practice, mainly in the business area. The discovery process in commercial litigation struck me as frequently inefficient and wasteful. At some visceral level, the waste bothered me, and I felt there could often—not always, but often—be other ways.

What do you think needs to be done?

Fundamentally I think that we ought to be exploring ways of making dispute resolution more efficient and fair. There's not going to be one magic solution for all, but a number of changes could make things better.

I see some promising signs. There is a great deal more experimentation with mediation now. Arbitration is being used more frequently. Commercial litigators are becoming increasingly inventive at figuring out new sorts of procedures for resolving disputes more efficiently. And courts themselves are

experimenting with techniques of "early neutral evaluation" to promote early settlement of lawsuits.

Of course, we'll always have a need for litigation and for coercive and authoritative means of resolving disputes that parties can't work out themselves. But a key task now is to better understand *why* negotiations fail—what the various reasons are that parties are unable to resolve disputes. And then, to think about what institutional and procedural mechanisms can be developed to overcome these barriers.

Will this be a focus of the new Stanford Center on Conflict and Negotiation?

Yes—in fact, the organizing theme of SCCN research is the examination, from a variety of disciplinary perspectives, of barriers to the negotiated resolution of conflict.

What kinds of barriers? Psychological problems like mutual suspicion?

All sorts of barriers—psychological, economic, strategic, institutional, political, cultural and social barriers.

Amos Tversky, one of my SCCN colleagues, has done path-breaking studies on cognitive barriers. He has analysed how individuals struggle with internal conflict when they try to assess risk and make decisions in uncertain situations such as negotiation. Many of the human tendencies he has identified—in addition to being counterintuitive—represent formidable barriers to resolving disputes.

Lee Ross, a SCCN colleague in Stanford's psychology department, has identified social-psychological barriers, one of which he has termed "reactive devaluation." Lee has shown that individuals often evaluate a compromise or proposal less on its merits than on its presumed source. In one study, Stanford students were offered two alternative policies on how the University should deal with American business in South Africa. Lee documented that the students would change their preference depending on what they were told was the University's proposal.

All of us are also concerned with

strategic and institutional barriers. Bob Wilson of the Business School and I recently published a study of *Texaco* v. *Pennzoil*. We found evidence that certain features of Texas lien law, and the risk of director liability, were barriers to resolving that dispute more promptly.⁵

Do you see this research coming into Law School classrooms?

Yes, indeed. Next year I will be offering three different courses and seminars related to dispute resolution. One is an interdisciplinary seminar with my SCCN colleagues. This year the seminar involves 70 or 80 people each week, including a number of law students.

Beginning next fall, I'm offering a four-unit, open-enrollment course on negotiation. Such courses in the past have, because of their clinical nature, been limited in enrollment. But we've made changes so that a greater number of interested second- and third-year law students can take it. And next spring I'll give a course on mediation and alternative dispute resolution, with Gary Friedman, an experienced family mediator.

In addition, SCCN has inaugurated a graduate student fellow program, with three of the first twelve students being from the Law School. They will really be quite deeply involved in the Center's work. One feature of the SCCN that I hope proves valuable to law students is the opportunity to interact with other University people concerned with issues of negotiation and conflict.

Are dispute resolution alternatives generally playing a bigger part in the School's curriculum?

Definitely. The Lawyering Process course, a first-year elective, has for several years introduced students to both negotiation and mediation. A number of professors are also giving increased attention within their courses to alternatives to litigation. And Chuck Lawrence just introduced an entirely new course on mediation in his specialty of education and law, focused on minority grievances within high schools.

I'm sure that theory is teachable. But can the skills also be taught? Or are some people just natural mediators?

I believe the theory is very relevant to practical skills, and that the skills can be improved. It's true that with respect to negotiation—as with oral advocacy, brief writing, and a lot of other things—some people are more naturally gifted. But I am also entirely persuaded that people can learn how to be more effective negotiators.

Do you have any suggestions for practicing lawyers?

I think that lawyers should think of themselves as process designers—people who, when confronted with conflict, can use some creativity and imagination. They need to consider what the alternatives are and sometimes even create new alternatives.

Litigation is important, and there will always be a place for it. I'm dismayed, however, when people in kneejerk fashion head to court without really thinking through or exploring alternatives. It's very easy and cheap to file suit, but that, of course, is only the start of the process. Indeed, we know that in reality over 90 percent of all lawsuits that are filed end up getting resolved through negotiation. A key challenge is to try to figure out how that can happen sooner rather than later.

The difficulty, of course, is that in some cases one side may see a strategic or economic advantage in *not* having things happen quickly. In legal conflict there often are distributive elements—issues where to the extent that one party wins, the other side loses.

But legal disputes are rarely "zerosum games." Parties lose sight of the fact that they can both end up worse off. On the other hand, they might together be able to minimize costs or create value for themselves—to make both of them better off.

The IBM-Fujitsu case seems a nice example of the latter.

The terms of the resolution benefitted and protected the vital interests of both sides. Furthermore, just by getting the dispute resolved, both sides were able to end the uncertainty and get on with business. They can focus their energies on competing in the marketplace, not the hearing room.

Are there any disadvantages to arbitration and other alternatives to litigation?

Of course. No single process makes sense in all circumstances. One potential disadvantage of arbitration, for example, is that the scope of judicial review is very limited. Another is that the right of a party to engage in discovery is constrained unless the arbitrators are prepared to permit it. Finally, arbitration cannot create a precedent that will make new law.

Now, those disadvantages are often not too significant. A frequent problem in commercial litigation is abuse of the discovery system—it's used as an instrument of warfare rather than as a means of learning new information. The value of judicial review can also be exaggerated, since in practice, very few cases are litigated to the end, and fewer still are appealed—much less establish important precedents.

Arbitration is not a cure-all, but it can have important advantages. The key is for a lawyer involved in a dispute, or planning for the possibility of a dispute, to think through and compare the advantages and disadvantages of different processes.

Do you think attorneys should call on outside arbitrators and mediators, or do it themselves?

When a lawyer is representing one party in a dispute, he or she cannot act as an arbitrator or mediator directly. A third party would be necessary.

However, I think that without outside help, opposing lawyers can often be very creative in devising procedural mechanisms for resolving disputes fairly and efficiently through negotiation. Naturally, it takes two to tango. The challenge for the lawyer who is eager to negotiate often is persuading the other to dance.

In closing, would you tell us what are you currently working on?

In addition to teaching, I have three research priorities. First is finishing a study with Psychology professor Eleanor Maccoby on divorce, custody and conflict. Thanks to grants from NIH, we've been collecting data on 1,100 divorcing families in Santa Clara and San Mateo counties for the three and a half years after they file for divorce. We now are busily engaged in analyzing that data and making a book out of what we are learning.

Another high priority is the work Ron Gilson and I have been doing on the economics of corporate law firms. We have so far written articles on how partners divide the pie⁶ and on the life cycle of associates.⁷ We hope in the next couple of years to create a volume that will include an analysis of the role of lawyers in dispute resolution.

Finally, there's the research I'm doing with my SCCN colleagues on barriers to the negotiated resolution of conflict.

I'll be keeping busy. \Box

Footnotes

- 1. "How Sweet It Is: Mnookin Receives Endowed Chair and Arbitrates IBM-Fujitsu Dispute," *Stanford Lawyer*, Fall 1987, pp. 38-39.
- 2. "New Center Promotes Research in Conflict Resolution," *Stanford Lawyer*, Fall 1988, pp. 18-19.
- 3. For example, Mnookin, R.H., "Bargaining in the Shadow of the Law: The Case of Divorce" (with L. Kornhauser), Yale L. Journal, 88:950 (April 1979).
- 4. E.g., Mnookin, "Bargaining in the Shadow of the Law: A Testable Model of Strategic Behavior" (with R. Cooter and S. Marks), *J. of Legal Studies*, 11:225 (1982).
- 5. Mnookin and R. Wilson, "Rational Bargaining and Market Efficiency: Understanding Pennzoil v. Texaco," *Virginia Law Review*, 75:295 (1989).
- 6. See Gilson, R. and Mnookin, R., "Dividing the Pie: An Economic Inquiry into Law Firm Profit Sharing," *Stanford Lawyer*, Fall 1984, page 4ff.; and "Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits," *Stanford Law Review*, 37:313 (1985).
- 7. Gilson and Mnookin, "Coming of Age in a Corporate Law Firm: The Economics of Associate Career Patterns, *Stanford Law Review*, 41:567 (1989).

QUASI-FREE

(Continued from page 13)

acquiesced in this seminal act of racial discrimination.

If the First Congress, with such fresh memories of the framing of the Constitution, could with impunity violate the dignity of persons on the basis of race, it is not surprising that succeeding congresses followed suit. The Second Congress, in an act establishing a "uniform militia throughout the United States," said: "Each and every free able-bodied white male citizen of the respective states ... who is or shall be of the age of eighteen years and under the age of forty-five . . . shall . . . be enrolled in the militia . . ." In effect, the act told the 5,000 blacks who saw service in the War of Independence (all of whom were freed after the war) that their services were not only no longer needed, but that they were not worthy to serve in the militia of the nation whose independence they had helped achieve. Thus was this country launched on a policy of racial bigotry that would in the future mar race relations in war as well as in peace.

One other example will suffice to illustrate the racial views expounded by the immediate successors of the Framers. In 1801, when the new capital of the United States was established in Washington, the question of governance arose immediately. The Seventh Congress, in its act incorporating the new city, declared that "the city council be elected annually ... by the free white inhabitants of full age, who have resided twelve months in the city and paid taxes therein." The law was enacted when Founding Fathers such as Gouverneur Morris, who had spoken out against slavery in 1787, was in the Senate and Thomas Jefferson was President of the United States. But in the words of the Negro spiritual, "They never said a mumblin' word, not a word!"

Free blacks also found themselves without the vote in other jurisdictions. We may take pride in the fact that, even as the Constitution was being written, Congress under the Articles of Confederation forbade slavery in any areas

becoming territories. This occured in its most important piece of legislation, the Ordinance of 1787 (or, as it is popularly known, the Northwest Ordinance), which established the process by which territories were to be organized and admitted to the Union as states. The measure specified that a territory could be formally organized when it had a population of 5,000 free male inhabitants and could become a state when this number reached 60,000. No racial criteria were given, and, with slavery forbidden in the territory, it would be reasonable to assume that free black residents would be counted and have equivalent status with whites.

Nonetheless, in 1808, after Indiana qualified as a territory, the Tenth Congress saw fit to limit suffrage there to white males only. One would think that since the Constitution had given states the authority to determine voting qualifications, the Tenth Congress would have allowed Indiana to do so. Instead, the federal legislators told the Indiana Territory that whatever else it did, it could not permit free blacks to vote. What a remarkable way to launch a territory on the road to statehood! (Every time I pass through that central Indiana town which boasts of its strong traditions of Ku Klux Klanism, I wonder how much can be traced to the national government's policy toward Indiana in 1808.)

Slavery's Long Arm

Denial of suffrage was not the worst legal disadvantage born by free Negroes. For individual blacks, freedomitself was at risk. The Constitution and the Fugitive Slave Law of 1793 gave ample protection to slaveowners in regard to runaways. But blacks even in free states had no protection from false arrests or erroneous accusations of being fugitive slaves. All that an owner or his agent had to do was to bring the alleged fugitive before any federal or state court and, upon proof of identity, that person would be turned over. There was no provision for a trial, no provision for the alleged fugitive to defend himself or herself, or even to

give testimony. A black accused of being a fugitive slave simply had no standing before the court.

As we consider the ways in which this law could promote a miscarriage of justice, it is well to remember that there were a quarter of a million free Negroes in the Northern states by 1850 and about as many in the Southern states. With slaveholders and their agents combing the countryside from New Orleans to Boston in search of runaways, virtually every free person of color was in immediate danger of being seized and placed in slavery with no opportunity to establish a valid claim to freedom. And the Constitution provided no protection whatsoever.

Cold Comfort

It is not surprising that some states discerned a woeful miscarriage of justice. The 1820 personal liberty law of Pennsylvania was typical of legislation enacted in the 1820s and 1830s by states seeking to protect the rights of free blacks. When the case testing the constitutionality of Pennsylvania's law reached the Supreme Court in 1842, Justice Storey, speaking for the Court, declared it unconstitutional, on the grounds that power over fugitive slaves belonged exclusively to Congress. But what of the rights of free blacks falsely or unjustly accused of being runaways? The Constitution was silent, and the Court offered little comfort, except in asserting that perhaps the states did not have a duty to assist the federal government in the return of fugitive slaves.

Storey was not alone in seeing little for Negro Americans in the Constitution of that day. Black leaders seldom invoked the Constitution as a source of anticipated support and protection. When in 1838 the new Pennsylvania constitution disfranchised blacks, some forty thousand of the state's free Negroes protested. In making their stand, not once did they refer to the Constitution of the United States, for their examination of that document revealed nothing to relieve them. Instead, they invoked the electrifying words in the Declaration of Independence which proclaimed that to protect

the inalienable rights of all people, "governments are instituted among men, deriving their just powers from the consent of the governed."

Frederick Douglass, however, found no consolation even in that sweeping document. "Are the great principles of political freedom and of natural justice, embodied in that Declaration of Independence, extended to us?" he asked his Independence Day audience in Rochester, New York, in 1852. Answering his own question, he declared: "This Fourth of July is yours, not mine. You may rejoice, I must mourn. To drag a man in fetters into the grand illuminated temple of liberty, and call upon him to join you in joyous anthems, were inhuman mockery and sacrilegious irony."

Those who nevertheless hoped that the Declaration of Independence might offer solace and comfort were flying in the face of reality. Worse still, as the rights of white Americans were being extended, the rights of black Americans were being diminished. One could see this virtually everywhere. In 1834 and 1835 blacks were disfranchised by Tennessee and North Carolina respectively. As we have seen, the Pennsylvania Constitution of 1838 did the same, with New Jersey and Connecticut following suit. And every newly admitted state, from Maine in 1819 until the end of the Civil War, wrote a constitution barring blacks from voting. Yet this is precisely the period-1820 to 1860-when the franchise was being extended to large numbers of whites who had previously been voteless.

When Congress enacted a more stringent fugitive slave law in 1850 denying accused runaways even the most elemental due process, the 434,000 blacks who were free could not fail to recognize that they had no reasonable protection under the Constitution and laws of the United States. They condemned the law of 1850 as a natural evil flowing from the Constitution of 1787. Speaking before the State Convention of Ohio Negroes in January 1851, one black delegate said:

No colored man can consistently vote

under the United States Constitution. That instrument also provides for the return of fugitive slaves. And, sir, one of the greatest lights now adorning the galaxy of American literature, declares that the 'Fugitive Law' is in accordance with that stipulation; - law unequaled in the worst days of Roman despotism, and unparalleled in the annals of heathen jurisprudence. You might search the pages of history in vain to find a more striking exemplification of the compound of all villainies! It shrouds our country in blackness; every green spot in nature is blighted and blasted by that withering Upas.

Small wonder that the reaction of many free blacks to the Fugitive Slave Law of 1850 was to flee *en masse* to Canada, convinced, as Henry McNeal Turner would say a generation later, that there was "no manhood future for Negroes in the United States,"

If Congress could disfranchise free blacks in the territories (as we have seen in the case of Indiana), it should come as no surprise that some branch of the federal government—in this case the Supreme Court—would also protect the institution of slavery in the territories. That is precisely what the Court did in 1857 in the celebrated Dred Scott case. Chief Justice Roger B. Taney not only insisted that slavery was protected by the Constitution in the territories as well as states, but that blackswhether slave or free-did not have and had never had any legal standing in the courts of the United States. In the most widely quoted passage in the decision, he said:

It is difficult at this day to realize the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted. . . . They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights

which the white man was bound to respect.

The Chief Justice may have been a better historian than a lawyer (though his assessment of slaveholders as part of the civilized and enlightened portions of the world could bear some modification). There is no evidence to contradict his description of the status of free blacks in the young republic. One looks in vain at that entire miserable period, from the writing of the Constitution to the outbreak of the Civil War, for any indication that the Founding Fathers, the fledgling government of the United States, or the great leaders of the nation in the first half of the nineteenth century pursued a policy looking toward any semblance of citizenship or equality for free black Americans.

The More Things Change

It proved an enduring legacy. What a way to initiate free Negro soldiers in the Civil War: by placing them in a segregated army and giving them less pay for the same rank and service than that given to white soldiers. And small wonder that in 1865 black people—all of them legally free by this time-looked back to the experience of free Negroes for clues to what the future would hold. The prospect was not bright. Indeed, the brief freedoms of the immediate post-war years would soon give way to a host of familiar, race-based strictures, which the Constitution was generally thought to permit. State and local curbs on black suffrage were upheld in the 1880s, including poll taxes, white Democratic primaries, and ingenious schemes to eliminate or nullify black votes. And in the 1890s, through amendments to the franchise provisions of state constitutions, state after state eliminated blacks from the political process.

Separate accommodations found legal justification in *Plessy v. Ferguson*, which in 1896 upheld a Louisiana law requiring separate railway coaches for whites and blacks, as long as the accommodations were equal. Even that doctrine was ignored three years

later, in *Cumming v. Georgia*, when the Supreme Court concluded that a white high school need not be closed if a county did not have sufficient funds to maintain a black high school as well.

One of the remarkable ironies of the post-Civil War era is that the experience on which these and other discriminatory policies were based was provided by the very Northern states that had fought slavery and achieved emancipation. Put another way, the South had no antebellum experience with a biracial society not dominated by the institution of slavery. The North did, and the South put the North's example to good use. It was the North's experience with free blacks that provided examples for the South's post-Reconstruction policies of racial segregation and discrimination in employment, housing, education, and participation in the political process. One such pre-war example occurred in 1850 in Massachusettsa state then reverberating with abolitionist sentiment. Chief Justice Lemuel Shaw of the Massachusetts Supreme Court ruled in Roberts v. the City of Boston that little Sarah Roberts, a black child, did not have the right to attend the school that she wished to attend, even though it was closer to her home than the one she was reguired to attend. The Boston School Committee had plenary authority, Shaw said, to determine which primary school a child should attend so long as it was "as well fitted" as other primary schools.

Surely over the following century, the influence of this and similar decisions in free states, with the incipient doctrine of separate but equal, would exert greater influence over the condition and destiny of black Americans than the Fourteenth Amendment. The logic of Roberts foreshadowed Plessy and Cumming, and led directly to every conceivable form of discrimination and segregation, most of it in fact unequal - such as the occasion in 1945 when forty-five black passengers, including me, were crammed into a train half-coach designed to accommodate twenty passengers and next to the baggage car. Meanwhile six German prisoners of war (white, of course) occupied a full coach car. Our discomfort gave much delight to the enemy soldiers.

Two more decades would pass before such blatant, legally sanctioned discrimination would be recognized as inconsistent with the Constitution. The factor of race which from the founding had haunted the relations of whites and blacks, both free and slave, persisted long after the abolition of slavery. White Americans could not bring themselves to subscribe to the view that free black Americans were entitled to the same privileges and rights of citizenship that whites enjoyed. The view that free blacks had no rights prevailed at the time of the framing of the Constitution, was in place when all blacks became free in 1865, and formed the basis for policy and practices that persisted throughout the nineteenth century and, indeed, for most of the present century.

That the rights articulated in the Constitution and its amendments should apply to all Americans, and not just those who were white males, was a nearly revolutionary thought in the 1960s and 1970s. Equality is, however, indivisible. As Martin Luther King, Jr., in a 1961 commencement address at Lincoln University in Pennsylvania, explained so eloquently:

Slavery and segregation have been strange paradoxes in a nation founded on the principle that all men are created equal . . . But the shape of the world today does not permit us the luxury of an anemic democracy. . . . It is trite, but urgently true, that if America is to remain a first-class nation she can no longer have second-class citizens. Now, more than ever before, America is challenged to bring her noble dream into reality, and those who are working to implement the American dream are the true saviors of democracy.

Artwork:

"The Contribution of the Negro to Democracy in America" (detail), 1943, by Charles White (1918-1979); a fresco at Hampton University in Virginia. Reproduced with Hampton's permission and the cooperation of its Archival and Museum Collection.

The mural depicts some twenty symbolic and historic figures. The latter include: Crispus Attucks (the first American to die in the Boston Massacre); Peter Salem (who fought at Bunker Hill); Nat Turner (who led an open revolt against slavery); Sojourner Truth (evangelist and civil rights crusader); Frederick Douglass (leading abolitionist and government emissary); Booker T. Washington (the educator who founded Tuskegee Institute); George Washington Carver (noted agricultural chemist); Marian Anderson (the first black to sing with the Metropolitan Opera); Leadbelly (folk and blues performer and songwriter); and Paul Robeson (world-famous baritone —and holder of a 1923 J.D. from Columbia University).

MEDICAL RESEARCH

(Continued from page 19)

reveal an ignorance of scientific methods and history. Unfortunately, such claims are accepted by some people and are converting others.

One irony in this controversy is that those opposed to animal research have seldom stood on principle and instructed their physicians not to use the fruits of biomedical research on themselves or their loved ones. We can admire the principles that impel Jehovah's Witnesses to refuse blood transfusions, and those opposed to factory farming not to eat chicken or veal, and those who object to hunting not to wear furs. But we must vigorously combat the ideology that leads those who oppose animal research to pursue their cause not by example but rather by fighting through dishonest

arguments to deprive everyone of the benefits.

Unfortunately, the beneficiaries in question are for the most part unaware of their interest and politically inactive. These include the many who owe their lives and health to past animal research, such as people who would otherwise have died from diphtheria, been crippled by polio, or suffered from countless other afflictions, and those of us who are their children. The beneficiaries of future medical technologies, moreover, do not yet know of their need, and probably have not given any thought to the matter.

Thus the political battle on behalf of those beneficiaries is currently being fought by others. The American Cancer Society, the American Heart Association, the National Council on Alcoholism, and a host of other such organizations operate as "patient groups" or advocates. They exert enormous pressure, and properly so, on legislatures and local governing bodies to advance the interest of those with whom they identify and whom they represent.

To date, however, neither the scientific community nor these patient groups have mobilized sufficiently to defend against the assault by "animal rights" activists. The result is a slow but accelerating disaster for biomedical research in the United States. And we will all suffer for it.

Footnote

 The Use of Laboratory Animals in Biomedical and Behavioral Research, report of the National Academy of Sciences-National Research Council, 1988.

John Kaplan served on the committee that prepared the landmark NAS-NRC report mentioned above. He is also a member of Stanford University's Panel on Laboratory Animal Care. This piece is drawn from an article, "The Use of Animals in Research," written for Science (242:839, November 11, 1988, ©AAAS).

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Alumni/se GATHERINGS



Reunion goers included (top, I-r) Richard Cortez '78, Robin Hamill Kennedy '78, and her spouse, Stanford President Don Kennedy. The classroom program (center) featured Paul Brest, Bayless Manning, Stuart Kadison '48, and others, as well as (below, right) a savvy audience. Lunch (bottom) was taken by the stadium.

Robert Mnookin, the Adelbert H. Sweet Professor. Mnookin and another professor, Ronald Gilson, have been analyzing the economic costs and benefits of the "up or out" tradition.

The second session on the profession, "Women in Law Practice," included presentations by Professor Deborah Rhode, director of the Stanford Institute for Research on Women and Gender; and Louise LaMothe '71, partner at Irell & Manella of Los Angeles, and the 1987-88 chair of the State Bar Standing Committee on Women in the Law. Both speakers dealt, from different perspectives, with assumptions and customs that prevent women attorneys—and men, too—from striking a healthy balance between work and family. (See related article on pages 14ff.)

As may be imagined, both these sessions evoked lively discussion. The morning ended with a succinct, fact-filled report from Dean Brest on the "State of the School" (the subject also of the report to the Board of Visitors recounted on pages 32ff.)

The rest of the day was given over to



various sorts of jollity, beginning with a tailgate lunch on Angell Field. There followed the Stanford–Arizona State game—a Cardinal romp producing a 24-3 victory.

The grand finale was the annual Alumni/ae Dinner Dance, which this year featured tributes to two esteemed individuals: Sallyanne Payton '68, recipient of the 1988 Alumni/ae Award of Merit (see page 67); and J. Keith Mann, the longtime Professor (recently emeritus) and Associate Dean who twice also served as Acting Dean.

The assemblage was brightened by the presence of what Dean Brest termed "a dazzle of deans." Those now in office (in addition to Brest) were Robert Weisberg, Thomas McBride, and John Gilliland. Past deans in attendance (besides Mann) were Bayless Manning, John Ely, Jack Friedenthal, John McDonough, William Keogh '52 and Gary Bayer '67. Thomas Ehrlich, though unable to come, sent a letter of appreciation re his former colleague in arms, Keith Mann. Also there in spirit was Carl Spaeth, with a message read by his son, Grant Spaeth (AB '54).

Mann, in a brief thank you, had warm words for the School's graduates: "It was my good fortune to teach and to learn with so many students, whose performances, careers, and contributions to your profession and society are your teachers' most fundamental source of pride and rewarding legacy." The good fortune was, by all evidence, mutual.

REGIONAL GET-TOGETHERS

Dean Brest and his wife, Iris, paid a visit November 30 to alumni/ae in the Sacramento area. The occasion was a reception hosted by Mort Friedman '56 and his wife, Marcy (AB'56) at their home in Carmichael. John Gilliland, the School's Associate Dean for Development, joined the festivities.

The Stanford Law Society of Southern California held its traditional New Admittees' Luncheon on March 16, welcoming to the ranks of the profession those local graduates who had passed the Bar. Dean Brest was on hand with congratulations and news of the School. The event, held at the Dragon Restaurant in Los Angeles, was coordinated by Don Hernandez '86 and Terrence Hughes '84. Frank Melton '80, the Society's new president, presided. Next up for the busy group: the annual Hollywood Bowl picnic.





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