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The Changing World of Law
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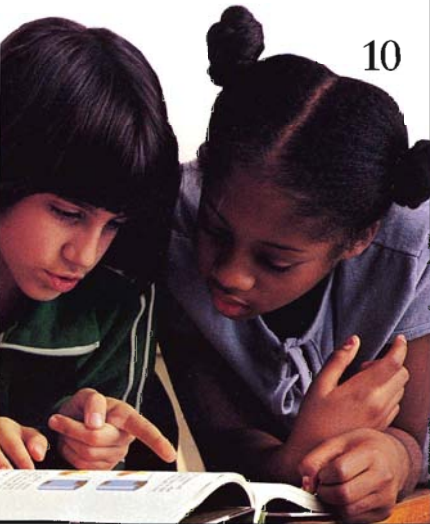
Cover: Detail of illustration for
“Thinking about Tort Law,” the
interview beginning on page 4.
Oil pastel, by Jim M’Guinness.

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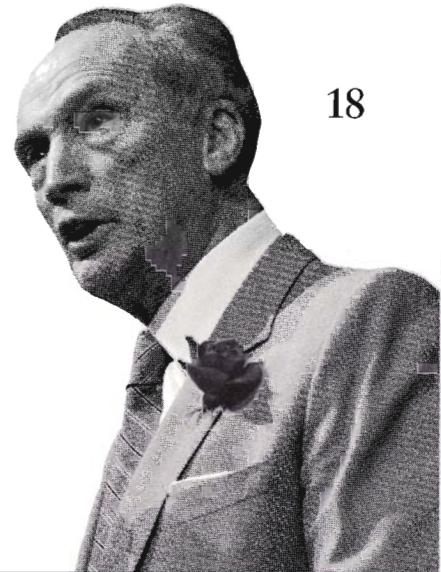
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From the DEAN

A C O M M U N I T Y O F D I S C O U R S E

*Understanding diverse perspectives
is essential to the education
of lawyers for the complex society
in which they will practice*

ALSA, BLSA, NALSA, SLLSA. These are acronyms for student groups at Stanford Law School that are organized around the race and ethnicity of their members—the Asian, Black, Native American, and Latino Law Students Associations. Does the proliferation of these so-called “alphabet organizations” reflect a fragmentation of student life along racial and ethnic

lines? Or does it have a positive value?

I’d like to talk candidly about this question and the broader issues of intergroup relations it represents. The dangers of racial divisiveness certainly are no greater at Stanford than elsewhere in the country. But this is our community, and it is up to us to make it a good place to

live and work. Moreover, because of Stanford’s strong traditions of fair play and tolerance, we have a good chance of dealing constructively with our differences—perhaps even in a way that serves as a model for others. Thus, we are presented with both an opportunity and a responsibility.

In my view, the key to a vibrant and joyful community—and law school should be a joyful experience—lies in mutual respect and continual interchange among its members. I shall

call this a “community of discourse”—perhaps, in view of our considerable diversity, a “multicultural community of discourse.” This phrase captures the idea that, whatever our differences, we are engaged in a common venture—a venture characterized by conversation and interaction.

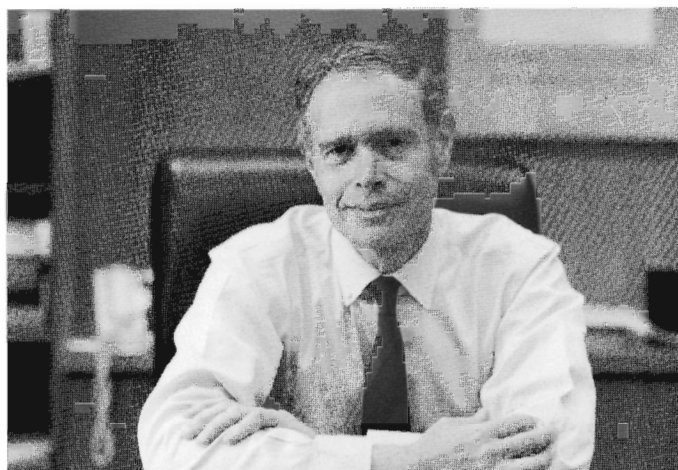
Our common venture is education and, as Mari Matsuda has noted, “Human beings learn and grow through interaction with difference, not by reproducing what they already know.”¹ Although the members of our community hold many values in common, our diversity makes it

*Whatever
our differences,
we are engaged in
the common venture
of education—a
venture characterized
by conversation and
interaction*

likely that we approach at least some aspects of law and policy from different perspectives. We therefore have a lot to offer to and learn from one another. To quote from the Report of the University Committee on Minority Issues:

*Gender, racial, ethnic, cultural, religious, and other individual or group differences enrich the educational and social environment where we teach and learn, live and work. These differences, rather than inhibiting communication and concord, should present us opportunities to find mutual understanding and respect in a heterogeneous community.*²

Maintaining a community of discourse is especially crucial to our enterprise as a school of law. The legal system is situated in a multicultural society; its dynamics, tensions, and outcomes reflect the interplay—often the struggle—among diverse interests and cultures. The interaction of these interests and cultures within the walls of the Law School contributes



Paul Brest
Richard E. Lang Professor and Dean

to our own understanding of the legal system and informs our aspirations for it. A multicultural community of discourse is essential to training lawyers who will work with clients and communities, and wield power, in an increasingly diverse society.

A community of discourse must have at least four ingredients. First, its members must be fully welcome and equal citizens of the community. Second, they must be free to express their views, without censorship or censure, on the many controversial and sometimes highly charged issues that are discussed in a university and law school. Third, while the community's members may identify with various ethnic, political, cultural, and other such groups, we must recognize each other's individuality at the same time as we work to understand the particular histories and values of these groups. Finally, we must engage in continual conversation with each other.

Let me bring these general principles down to earth by giving you an example that captures the flavor of our current concerns, and then describe measures we are taking to foster discourse within the Law School. In recent years students have sometimes talked about feeling “silenced.” This term first entered our language at the School in a moving and thought-provoking panel presented a few years ago by some students who described how they—as women, people of color, and gay and lesbian people—felt excluded, sometimes to the extent of feeling voiceless, in law school. At that same panel, a white male student in the audience said that he, too, felt silenced because other students shunned him when he expressed conservative

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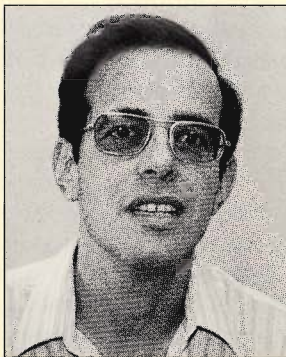
Thinking about Tort Law

An interview with
Robert Rabin
A. Calder Mackay Professor of Law

IS THE TORT SYSTEM working? Are there too many lawyers? What about delays? Administrative costs? How might the system be improved? And what are the prospects for reform? Professor Rabin, a national authority on tort law, addressed these and other questions in a recent interview with editor Constance Hellyer.

Rabin served as Reporter for the ABA Commission on Improving the Tort System, which produced a set of reform proposals accepted in 1986 by the national House of Delegates. He has since been a consultant with the American Law Institute project on the tort system, for which he is preparing a monograph on no-fault alternatives in the product and environmental harm areas.

A member of the faculty since 1970, Rabin is the author of *Perspectives on Tort Law* and coauthor, with Professor Marc Franklin, of *Cases and Materials on Tort Law and Alternatives*, along with numerous articles on aspects of tort, administrative and environmental law.



Has tort law changed much in recent years?

Tremendously. Over the past twenty years, tort law has turned into a very dynamic field. Some areas, like medical malpractice and product liability, have become increasingly significant. There is also a widespread concern — mostly justified — about the rising number of claims, higher award levels, and burdensome administrative costs. Torts is no longer the sleepy backwater of a generation ago.

People seem to be suing over more things.

The framework of liability has been expanding. We see new duties to assist others, to inform, and to compensate for economic harm and emotional distress. In the products area, we see a move from negligence to strict liability.

But there's more at work than just a change in doctrine. There's a new understanding of what kinds of wrongs trigger grievances. Who would have thought, twenty-five years ago, that the standard design of a sophisticated product might, in and of itself, be grounds for a tort action? The perceived wisdom was that if the product broke down, then there was a departure from the norm in the way the product had been manufactured, which might be the basis for a tort claim. But now the norm itself — the standardized design — can be grounds for challenge. That's a real change in thinking.

So before, you'd need an assembly-line error to sue, but now you can do so for a supposed design shortcoming?

That's right. Many commentators point out that the design defect litigation ends up being framed in terms of a cost-benefit analysis

There is reason to question whether the tort system does a very good job in promoting the goals of either compensation or deterrence.



The cost of delivering a dollar to a tort victim is enormous

that sounds like negligence. But this doesn't negate the shift in mentality to claiming for kinds of injuries that were just accepted at an earlier point in time.

For example, the whole notion that a car — even though it is a standardized model — may result in legally actionable post-collision injuries to the person inside the car, is recent. Today, the car must be designed not just to avoid accidents, but also to avoid injuries to someone inside the car after the accident occurs. This kind of heightened liability is true of lots of products today.

Do you see problems with today's tort system?

I think there are very real problems, beginning with the expense of the system. The administrative costs involved in delivering a dollar of compensation to a tort victim are enormous and growing. Studies by the Institute for Civil Justice at Rand show dramatic increases in the cost of personal injury litigation, with a very large proportion of the total dollars expended going to lawyers' fees, insurance costs, and expert witness fees. In the principal injury categories, more than half the money expended goes to various administrative costs. So, expense is a major cause for concern.

More generally, there is reason to question whether the tort system does a very good job in promoting the goals of either compensation or deterrence. It is certainly a very expensive way to generate compensation for accident victims. Social insurance schemes or no-fault schemes would be more cost-effective ways to accomplish that objective.

From a deterrence perspective, tort law may not be very rational either. It's just a

loose framework for reaching decisions, rather than a set of specific rules indicating when liability will be assigned. A manufacturer who scans state reports trying to figure out what changes ought to be made in product design isn't going to get much help.

Does this uncertainty have a chilling effect — for example, in medicine?

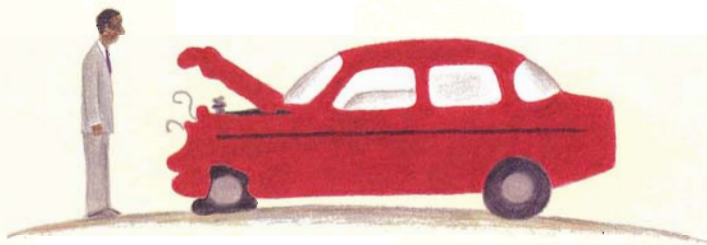
People in the medical field are convinced that it does, and I'm sure to some extent they are right. The question is whether some of the chilling effect is in fact beneficial, and what balance is struck. That's hard to say.

Most doctors who are candid will tell you that even today — let alone fifteen or twenty years ago — a great deal of medical negligence goes unaccounted for. To the extent that the tort system is narrowing the gap between how much negligence is out there and how much is being picked up, and providing signals and incentives to safer conduct — I suppose tort law is having a salutary effect.

The same goes for "defensive medicine": some of it may be socially wasteful, but some of it may in fact be beneficial. It's a complicated issue.

Are there other areas of tort law that cause concern?

You could look at each of the major areas and find some problems. The one I've been writing about lately is the handling of mass tort claims like asbestos, the Dalkon Shield, Agent Orange, and DES. The courts seem woefully inadequate as an institutional mechanism for dealing with such issues. It is, after all, a mechanism established originally to deal with two-party claims, focusing on corrective justice questions between those



parties — a scenario far removed from the kind of mass tort claims I've mentioned.

Is the problem with these cases one of size?

Partly — there can be hundreds or even thousands of cases. But it's also that the causal determinations are very problematic. We may be looking at long latency diseases that don't show up for twenty years after the injury or exposure occurs. And there's a great deal of scientific uncertainty associated with the toxic elements that are the alleged source of the injury.

So you have to argue in terms of increased risk factors rather than one-to-one causation?

That's right. Critics of the system question whether juries can adequately understand the scientific, epidemiological, and technological issues at the core of such claims. Similarly with medical malpractice cases: one wonders whether juries can — or should — be second-guessing expert decisions.

Some critics are alarmed about huge jury awards.

The Rand studies do indicate that the very largest awards are getting larger. But that's a small proportion of the cases, where people are seriously injured. I haven't seen any data indicating that a larger *percentage* of claims is resulting in liability now than ten years ago; or that, in the middle range of injuries, claims that were resulting in a certain level of awards ten years ago are resulting in a much higher level now. The only phenomenon that seems clear from the data is the spiraling in high-side awards — which doesn't suggest in

itself that juries are routinely finding liability whatever the underlying facts, or regularly awarding much higher damages across the board.

In fact, at least 95 percent of tort cases get settled outside of court. The main factor in spiraling costs is the lawyering and litigation costs associated with settlements. Of course, you have to keep in mind that settlements reflect the perception about the likely result in court. So the high-side cases are getting settled at a higher award level — and taking more time to settle — when the guess is that, if they had gone to trial, the award would have been high.

Is there too much lawyering in tort law?

Yes and no. There's too much lawyering in respect to delaying strategies and numbers of lawyers involved on a given case. It's destructive of the system when five or ten lawyers take discovery that one or two could conduct; or when, in a mass tort case, a hundred lawyers represent various groups of injury victims, and even when the case is consolidated, they haggle among each other and can't agree on a consolidated approach. So, yes — within the internal dynamics of the tort system, there is too much lawyering.

However, when it comes to having counsel available for legitimate claims, I wouldn't say there are too many lawyers. It's good to have lawyers available for people who feel aggrieved. Some communities and clients may not have as much representation as they ought to have.

What about the silly cases you read of — like the cat burglar who sued for injuries incurred when he fell through a skylight?



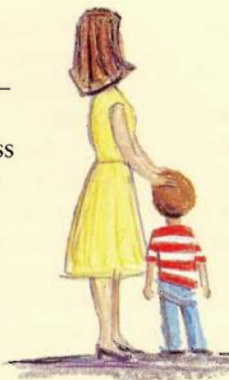
I would lay a significant part of the responsibility for frivolous cases — cases that ought not to be brought — at the feet of trial court judges who fail to exercise their power to dismiss claims and to direct verdicts, rather than at the feet of the attorneys. It wouldn't take very many dismissals or penalties for non-meritorious claims to discourage lawyers from bringing frivolous cases.

But I don't like the idea of taking legislative measures against plaintiffs' attorneys, such as cutting the contingency fee, that would discourage them from bringing litigation. The appropriate approach should be to address the problem — lawsuits lacking in merit — directly by dismissal. How you influence judicial initiatives in a decentralized system is another question. But I think that, to some extent, the criticism is being leveled at the wrong source.

I've been wondering whether people have become unrealistic about the normal risks of life. They seem to feel that if anything bad happens, it must be somebody's fault, so sue.

There's something to that. But I wouldn't assign blame to the public any more than I would castigate personal injury lawyers. If cases are being brought when there's no legal or scientific underpinning for a claim, then they ought to be thrown out of court — that's all.

The same goes for those seemingly outrageous cases critics drag up to indicate that anybody can recover nowadays — for example, the person who sued the telephone com-



pany after he was injured by a car that rode up on the curb and hit him in a phone booth. Plaintiffs wouldn't bring these cases if they were dismissed at the pleadings or directed verdict stage of the case. If the doctrinal framework of tort law has expanded to the point where these cases *should* properly be sent to the jury, then criticism is appropriately directed at the principles of tort law — not the jury or plaintiffs' lawyers.

Of course, the injured guy in the phone booth has a problem if he can't get money from anyone.

Well, that's an argument — and a legitimate one — against the substantive rules of a negligence system. If you can't prove negligence and you have a broken leg, you don't recover. If you can prove it and you have the same broken leg, you do recover.

If you were king, and could ignore history and create an ideal tort system, what would it be?

I'll tell you where I would start, rather than where I would end up. I would begin with a comprehensive, no-fault model — in other words, a system that presumes recovery rather than one based on a starting assumption of non-recovery — and try to deal one-by-one with the issues that would arise under such a scheme.

These problems would include how to draw a line between accidents and the illnesses that are attributable to the background risks of living. That is, when a toxics claim or medical malpractice claim is brought in, how would we go about deciding whether it should be compensated or not?

Reform is most needed in the area of mass torts for toxic damage

Then there are the problems of fraud. Do you allow someone who slips in the bathtub to recover against the no-fault scheme? Assuming you do, how do you deal with the possibility that lots of persons would feign such injuries in order to get disability income and not have to work?

Other questions involve what kinds of defenses, if any, should be recognized. Suppose someone willfully injures himself or herself. Should that person recover?

One would also have to worry about the funding mechanism—to build some deterrence into the system. There would be a very serious question of how to structure the financing of the pool, and how much of the accident prevention job could be done by the regulatory system, wholly apart from the tort system.

That would be my starting point: to see whether a comprehensive no-fault system makes sense in view of all the problems it would raise.

Could you promote deterrence by assessing the responsible parties—the way companies with a track record of layoffs have to pay more into the unemployment insurance system?

Actually, workers' compensation—which is our principal operating no-fault system—is also experience rated. But yes: accident prevention is influenced, for better or worse, by how the funding is structured.

Note, however, that it would be possible to deliver compensation far more cheaply by switching to a pure first-party social insurance system. But then we would be abandoning deterrence as a goal—or, at least,

relying entirely on the regulatory system for achieving any deterrence.

Are we likely to get any kind of sweeping reforms?

Based on the history of tort law, I'd say that fundamental legislative reform—such as workers' compensation or auto no-fault—only comes in a period when legislatures are sensitive to and interested in even wider reform. Workers' comp was part and parcel of the political mood that prevailed in the Progressive Era. Auto no-fault was part and parcel of the consumer-environmental period of the early 1970s. Unless there is some broad-scale sociopolitical movement that links up with tort reform, tort reform tends to be very narrow and incremental—the way it was in the mid-'80s—and just tinkers with the existing system.

Starting from the other end—with the present system—what would you change first?

Reform is most needed in the mass torts, toxic area mentioned earlier. There are two general strategies that could be utilized.

One is a "public law" version of the present system that would rely on consolidating the cases, along with a variety of other techniques too complicated to spell out: proportionate liability, insurance fund judgments, scheduling of damages, and other features. Unfortunately, the handful of cases where these measures have been used, like Agent Orange, haven't been great successes.

Another would be an administrative compensation scheme, modeled in part on

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I N T O T H E



FUTURE

*Where are law and legal practices headed?
A look, by four informed observers,
at some driving forces. First...*

ENVIRONMENTAL IMPERATIVES

By Denis Hayes '85

I BELIEVE we are on the threshold of a "Green" age. Environmental threats have taken the place of nuclear war as the preeminent peril to our species. It is no longer possible to ignore the fundamental reality of environmental limits or the need to develop a sustainable society. This will involve major changes in the way we do things, individually and collectively. Inevitably, governments will be called upon to set the rules, establish the framework, and mediate the conflicts.

With this in mind, I see four distinct trends that may evolve and have a profound effect on the law and lawyers.

International cooperation. The environment has become a global issue. There are many problems that no single country can solve by itself: threats to the ozone layer, global warming, ocean pollution, rain forest destruction, and acid rain. We will need a high degree of international cooperation if we hope to resolve such concerns.

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Regulations and sanctions. As the environmental movement matures into a powerful group, issues will be framed in simpler (but not "simplistic") terms. The social justice movement is merging with the environmental movement. As a result, environmental issues are increasingly stated in moral terms, as right and wrong. One consequence of this will be a larger role for criminal law in the environmental arena.

We're also going to see more pressure from government for hazardous waste levels of zero. The trend will be toward industrial processes that cost a premium, but are necessary because it has become nearly impossible to dispose of hazardous waste anywhere on this planet.

Waste material recycling has caught on with a passion across the nation. There is now a glut on the

market for almost every kind of recyclable material. We need to create new sources of demand, using government procurement policies and consumer education.

Energy. Conventional energy plants—those using fossil fuel or nuclear fuel—are running into huge operational difficulties. In addition, there will be increasing constraints placed internationally on carbon dioxide emissions. Taxes, tariffs, and strict rules and regulations on the use of current energy sources will also drag us increasingly into investments that promise greater efficiency and renewable energy resources.

Ten years ago this country was at the forefront of renewable energy research, development, and commercialization. But under the Reagan administration—for reasons I will never understand—research supported by taxpayers' dollars was virtually shut down. Today we lead in no area of renewable energy development. There's been a lot of concern over the loss of video recorder and semiconductor technology to foreign competitors. I submit, however, that we should be far more concerned about the loss of cutting-edge energy technology.

Whether or not U.S. companies manufacture the equipment, solar energy will play a huge role in the future. One consequence for lawyers is that the field of utility law will have to address a different set of issues rooted in the decentralized and intermittent nature of this resource.

Water. Water law can only grow in importance—not much new water is

being made, and we are not cleaning up the water we already have. Stanford Law School will make an enormous contribution if it can expand its training in this area.

In sum, environmental issues and needs are likely to permanently alter the legal environment of the future. Tomorrow's lawyers need to be trained to understand and cope with these dramatic changes.

WORLD TRENDS

By Thomas C. Heller

LET ME BEGIN with five points that are general and abstract enough to hold up over time.

Economic competition. We are moving from a period in which competition is dominated by security to a time when competition is dominated by economics. Paul Kennedy, in his book *The Rise and Fall of the Great Powers*, argues that when economic systems, particularly in nations, come to power, they dominate competition. These nations then become preoccupied with making the world safe so that their economic systems can continue in the status quo. Ultimately, though, this huge security burden brings down those nations as economic powers.

Looking at the different types of policies that we have in the U.S.—defense policy, trade policy, research policy—we see that issues of containment and security have dominated the last forty years. How we get out of that box, and begin to imagine policies in ways that are not driven by mistaken notions of security, is a real issue. I'm not saying that we can forget about issues of security, but that they are fundamentally changing our economic advantage and power. The sooner we come to terms with that, the better.

Balance of power. There are major geographical shifts going on in the world. The Pacific Basin is of overwhelming importance. Europe, too, is a vibrant, exciting region of the world that is making tremendous progress, both with the 1992 initiatives in Western Europe and with the breakdown of the boundaries between East and West.

The three dominant regions—East Asia, Europe, and North America—will probably exert a reasonably commensurate influence over the way the world develops over the next twenty years. However, I don't see a substantial convergence among them of institutional forms; Asia, Europe, and North America will continue to reflect their historical differences. Institutions—whether they are universities, corporations, or states—are going to have to become used to operating within these different cultural and institutional systems.

Regional disparities. There is an increasing lack of concern with the Third World, which I find frightening. Two of the traditional advantages of less developed countries have been slipping in economic importance. These are natural resources, which hold less value than in earlier times; and a large unskilled labor pool, which is fast being displaced by new technologies.

Today, when we look at world trade, we see a tremendous expansion of commerce among the advanced industrial countries. One result is that Latin America, which held 20 percent of U.S. export/import business twenty years ago, has only about 5 percent today. The reason is not that we now trade so much less with Latin America as that we trade so much more with Europe and Japan.

In addition, the comparative advantage of the Third World in agriculture remains subject to protectionism on the part of First World countries. The U.S., Japan, and

Europe are vastly subsidizing their internal agricultural production, at the expense both of their consumers and of Third World countries that could compete under other circumstances.

Lastly, there is a frustration in the First World over the tendency in much of the developing world to rely on the backwater politics of socialism.

The only countertrend to decreased interest toward the Third World comes from the movement to save the environment. It is clearer every day that advanced industrial countries have no hope of dealing with the problem without coming into more intimate relationships with the Third World, where so much of the resources associated with global climate change are located.

Interrelatedness. Over the next twenty years the distinction between domestic and international domains will disappear. Whether you work at GM or Stanford, you will not successfully run your institution if you don't understand the blurring of the distinction; it will be impossible to understand one without understanding the other.

Information revolution. As George Shultz has pointed out, the technological advances in the way information can be processed and delivered is making an impact on both public and private institutions. He notes that the recent loss of confidence in Eastern European governments was accelerated by the fact that the leaders could no longer insulate the populace from information.

In the future, vast reductions in the cost of moving information will continue to make major changes in production, in the organization of firms, and in the character of markets.

THE TRENDS just described are likely to result in a number of institutional

changes, within corporations, labor, government, and universities.

Corporations. Visiting M.I.T. economist Michael Piore presents excellent arguments for the existence of a major corporate trend away from mass production toward specialized products developed through extensive research and development. He contends that mass production is collapsing in part because high-wage countries like the United States are losing their advantage in semiskilled industries to lower-wage countries.

Production will be vastly reorganized if we shift to products that are heavy in R&D. There will be many more strategic alliances among corporations, both within the U.S. and internationally. The sharp lines drawn between corporations and reflected in our antitrust law will not be as clearly defined. R&D will likely join production processes in being spread out worldwide.



Labor. Nations with advanced economies are moving from a system dominated by semiskilled labor to a system requiring a variety of skilled generalists. Our present educational system needs to be revamped to train these employees. Continuing education will become important over the life span of a person.

We also will see huge international mobility of labor, encompassing all levels: super-skilled, professional, and unskilled.

Government. Our government can be expected to change markedly, given our increasingly complex systems and the degree of international commerce and information flow. You simply cannot impose the kind of control you had in an insulated national system. You can't make tax policy or labor policy here that does not have huge spillover effects. I see the demand for state and government controls decreasing as we become more international and move away from a mass production system dependent on semiskilled labor.

Universities. These broad trends are resulting in major changes at the law school and university level. Stanford, for example, is creating new forward-looking disciplines focused on the environment, business, and engineering. Our expanding continuing-education program reflects a break in the boundary between the University and the community. The University is internationalizing rapidly — building centers in Japan and Western Europe that are not just teaching centers, but also research centers.

The challenge for the Law School is how to respond to these various changes and build them into our system, so that they become assets in the years to come.



A CHANGING NATION

By Lewis H. Butler '51

WE CAN FORETELL a great deal about what is going to happen twenty years from now. The key is to look at what demographers already know. After all, the 21-year-olds of A.D. 2010 have already been born and counted. This and other population data are sufficiently accurate to provide a framework for thinking about the future.

Let me first summarize what demographic trends mean for the future of the practice of law: Over the next twenty years and beyond, we are going to be involved much less with the asserting of rights and much more with the negotiation of conflicting rights.

Ethnic diversity. Perhaps the most important trend that demographers describe goes as follows: America has been a European nation since its beginning, and we've come to call people who are not European "minorities." In the next century, however, this country will cease being a European nation; it will be a world nation. Around the middle of the century, the term "minority" will be totally inaccurate, because the European, or white, population of the U.S. will drop below 50 percent.

Time magazine recently ran a cover story that asked, "What will America be like when whites are in the minority?" The answer is that the change will overpower us in its complexity — overpower in the sense that every

institution will have to adjust to this new reality.

We can see this happening on a smaller scale in California. Already, a majority of the people under the age of 24 in the state are Hispanic, Asian, or Black. By the year 2010, whites generally will have ceased to be a majority in California. So the old saw that California is just like the rest of the states, only more so, is proven true. The first multiracial, multicultural society in any modern industrial nation will appear in California and is appearing right now.

The lawyers who practice here in the Bay Area in 2010 will deal with a population that is about 25 percent Asian, 25 percent Hispanic, 8 percent Black, and 40 percent white. I am extremely optimistic about this change, because I think it is possibly the most exciting thing that has ever happened in a nation. Essentially we are being tested here as to whether we can find a way to build a multicultural society.

Cultural differences alone will become a very complex subject. Looking at Central Europe today, you note that, as soon as external threats and police states disappear, ethnic conflict reappears. In this country, we have 200 or 300 years of experience in dealing with ethnic conflict and assimilation. Nevertheless, the future will bring an increase in the magnitude of tensions, because we are dealing with much more profound cultural and racial differences.

Civil rights. Along with new cultural tensions will come a set of questions that we have no answer to and have not even thought much about. For example, *Brown v. Board of Education*: What is the meaning of school desegregation — much less integration — given the current population characteristics of our major school systems?

Specifically, in California there is not a single large school system that has more than 30 percent whites. And some systems are 95 percent non-white. Yet we have been trying to achieve racial balance in school systems. Is that really what the law requires? And is it even feasible? We may soon be trying to negotiate things that seem impossible for courts or anybody else to deal with.

Clearly, we are going to have to completely reexamine notions like desegregation and affirmative action. Most of the notions that have developed during the 1950s and 1960s around the civil rights movement are going to be difficult to apply in California in the next twenty years, and in the national context after that.

Health care. Other emerging issues include the already financially strapped health care system. Twenty years ago we talked about the right to health care the same way we talked about a legal right to a jury trial.

We now have 37 million people in the U.S. without health insurance. We have corporations that are contending that they cannot compete with the Japanese, because of the soaring cost of health care. It's clear that no nation can afford the bill for all of this and be internationally competitive.

Health care is now 11 percent of the GNP and may soon be the largest industry in the country. Something has to give. Concepts of malpractice, of who is entitled to care, of rationing—of almost anything you can think of in the health care business—are going to have to change. We will not be able to do for everyone what we are technically capable of doing.

Schools. Education has similar problems. We're going to have to have education for a multicultural society. There are legal decisions saying that bilingual education must be pro-

vided; this is causing conflict from people who are not bilingual, who claim that money is being taken from them.

We can expect to have such conflicts—deeply felt conflicts arising from ethnic and cultural differences—throughout our educational system.

Politics. In politics, there will be a similar situation. There are lawsuits now about district lines that make it virtually impossible for new local majorities to elect a representative. I foresee many such cases ahead that will need to be resolved.

Finally, all this will be fought out in a realm of budget deficits—limited amounts of money and struggles to retire, or at least reduce, the incredible accumulation of debt.

Who is going to negotiate all these conflicts? My conclusion (by process of elimination) is that it will be lawyers—but lawyers who are very different from the ones we have now. We need lawyers who have been trained to operate in a multicultural context, who know a great deal about economics, who know a great deal about social policy, and who can bring together people who will not want to come together.

The biggest need this country is going to have is to produce really

skilled generalists, because we are going to be involved in conflicts that no specialist can solve. Where are we going to produce these skilled generalists? Law schools are the logical place. I hope and expect that, when the year 2010 arrives, Stanford Law School will in fact be graduating generalists capable of coping with the fascinating but very different society that we are going to face.

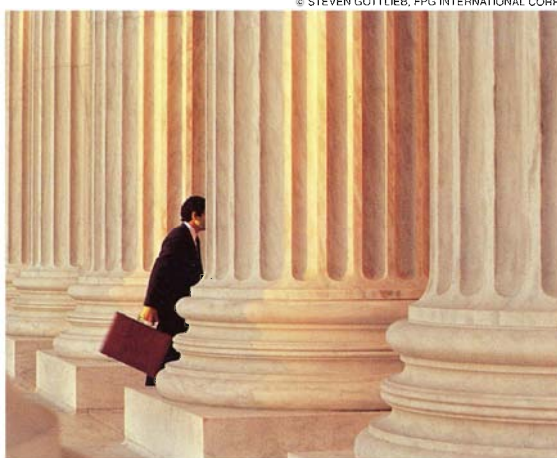
LAW AND THE LEGAL SYSTEM

By Lawrence M. Friedman

THE ONLY intelligent way to peer into the future is to treat it as a kind of extrapolation from the past. With that as my guide, I will tell you a true story about a very small island of 200 people in the Atlantic called Tristan da Cunha. It's a desolate, nontropical place, one of the least desirable habitats on earth.

An expedition in the 1930s found nothing that resembled a legal system on this island. There were no courts, no judges, no jails, and no police. Equally interesting, there was also nothing that could be classified as crime. Nobody could remember the last murder, robbery, rape, or arson. (Incidentally, the paragons of virtue who lived there were the direct descendants of shipwrecked sailors and prostitutes—two groups that lack an outstanding reputation for living within the law.)

The social scientists who studied this phenomenon explained it



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In the **FIELD**

Warsaw Spring

*A professor finds both promise and paradox in
Solidarity-led Poland*

By William Benjamin Gould IV
Charles A. Beardsley
Professor of Law



THE CHILL of winter's air is still not entirely dispelled. It is an exhilarating, giddy experience this cloudy June 1 day in Warsaw as I walk through the doors of the Sejm Ustawodawczy, the Polish House of Parliament.

The office doors of MPs are festooned with cards carrying the Solidarity logo, the rooms decorated with Solidarity posters, photos (some quite humorous) of Prime Minister Tadeusz Mazowiecki, Solidarity labor leader Lech Walesa, and Solidarity parliamentary chairman Bronislaw Gerek. Cheerfully obliging parliamentarians and their assistants allow me to photograph it all.

My thoughts flash back to my last visit to Poland, three years ago, when Solidarity was an outlaw organization. The Roman Catholic editor of a Solidarity paper and I were in the midst of coffee at the Hotel Europejski in Warsaw. A security agent eavesdropped in a manner so intimidating—ostenta-

tiously pushing his chair backward from the table across from ours—that he ended up virtually seated at our table.

On that same visit, my pro-Solidarity interpreter was too fearful to interpret my speech's laudatory references to Solidarity. How ironic, I recall, that only the day before the Hotel Europejski incident, I had thought that a Solidarity activist I met with in a garden was being paranoid. Convinced that we were being bugged, he moved to a different bench. Perhaps I had been unduly hopeful, I thought later, writing that Solidarity is "still around" upon my return to this country.¹

But now it is a year after the historic, power-sharing compromise with the Communists, and Solidarity is in power, the first non-Communist government in the East since the Iron Curtain descended. I put my memories aside as I enter Geremek's tasteful parliamentary office to speak of a Poland where shops that once had bare shelves now contain goods—but the hard reality is 400,000 workers unemployed and real wages slashed 40 percent in four months, the consequence of the Polish government's austerity plan to slice the fat out of Polish industry.

Visit with a Leader

We greet one another. We have not talked since 1981—three months before martial law—when we met in this medieval historian's Warsaw University office. We laugh at the gray hair we have both acquired in the interim. How does it feel, I ask, on the "morning after" the euphoria of the 1989 Roundtable Agreement that restored Solidarity's legal status and resulted in the ouster of the Communist Party as the sole political force?

Geremek responds: "Each morning afterward, I asked myself, 'Is it true?' Now I know it is true—there are no more doubts." Speaking expansively in rapid, fluent English, he says, "Our daily routine is focused on the management of the economy. We have passed beyond political protest. Now I worry about an Argentina-type hyperinflation."

Later on he emphasizes his views on the impossibility of a Communist



*The political
overthrow of
communism was
the easy part; the
hard part is
economic reform.*

return in Poland and simultaneously avoids criticism of those, like Walesa, who want to accelerate the timetable for completely free elections on the ground that one of the signatories to the 1989 accord, the Communists, no longer exists as a political force.

Geremek does not comment on Walesa's alleged political ambitions and the momentum provided them by political as well as economic discontent in Poland—that is to say, the rapid achievement of multiparty systems in neighboring Hungary and Czechoslovakia, which foments both envy and divisiveness inside the ranks of Solidarity. Can Solidarity survive as a political entity under these circumstances, I ask, given the voter apathy manifested in the recent local elections and the emergence of fractious factions in dispute over issues so disparate as foreign

investment, abortion, and the teaching of Roman Catholic doctrine in the public schools?

Geremek states that his political group, the Civic Federation or Council, is the "main force" in Solidarity, and he derides the right-wing influence of Christian Nationalists or Democrats with whom I spoke a few days earlier in the industrial city of Lodz.

But he readily notes that, notwithstanding its dominance of May's local or municipal vote, Solidarity would not have the overwhelming support that it garnered in the 1989 elections, if parliamentary elections were held today. "We would only get 50 percent, with the other political parties sharing the remainder," Geremek states. He notes that workers and farmers, Solidarity's traditional base of power, are disillusioned with the government's monetary policy.

He seems to concede the inevitability of political fissures, saying that Solidarity will soon be more of a trade union movement, as it was in the heady, euphoric days of 1980 and early 1981. (Solidarity continues to play both a trade union and a political role.) And he warns ominously against those who would "exploit" Poland's economic problems for political advantage—again not mentioning Walesa and the presidency—over issues ranging from the "unification of Germany to foreign investment." Geremek notes also that the Communists, though dead politically, maintain a pressure point through their own unions (they were active in the May railway stoppage, in which Walesa intervened).

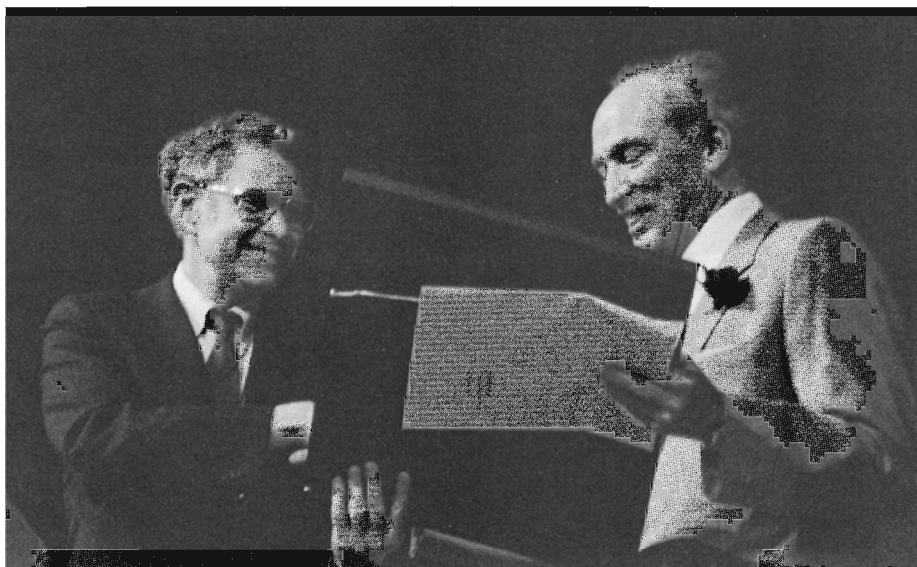
It is difficult to see this political cauldron, I reflect to myself, as dividing into left and right (contrary to Western press reports) given the government's economic policy, which is "right," and its refusal to repudiate Roundtable, which is viewed as "left."

Of Lights and Tunnels

I turn from politics to economics—Poland's desperate first order of business. Is there "light at the end of the tunnel?" (When I told a Polish friend that I would pose this question to Geremek, she gave her own answer: the

Continued on page 51

School NEWS



ROBERT A. ISAACS

Dean Brest (left) did the honors

Pierre Trudeau Delivers 1990 Ralston Lecture

FORMER Canadian prime minister Pierre Elliott Trudeau came to Kresge Auditorium January 30 to deliver an address and receive the School's Jackson H. Ralston Prize in International Law. An overflow crowd of students, faculty, and reporters witnessed the event.

The Ralston award, noted Stanford president Don Kennedy in welcoming remarks, "recognizes original and distinguished contributions to the development of the rule of law in international relations and in the establishment of international peace and justice."

Trudeau's considerable contributions were described by Dean Brest, in presenting the prize. Citing

the Canadian statesman's "deep, life-long commitments to peace, justice, and liberty," Brest observed that Trudeau had not only advanced the cause of human rights in his multi-ethnic nation, but also served as a peacemaker on the international scene. One such effort—a successful 1984 initiative to break an East-West negotiating impasse over conventional arms reduction—earned the Canadian the Albert Einstein International Peace Prize.

THE MAN

Pierre Elliott Trudeau was born October 18, 1919 in Montreal, Quebec, of both French and English stock.

He earned a BA with honors in 1940 from Jean

de Brébeuf College in Montreal; a law degree, also with honors, in 1943 from the University of Montreal; and a master's in political economy in 1946 from Harvard. There followed several years of postgraduate studies in law, economics and political science at the Ecole des Sciences Politiques in Paris and at the London School of Economics.

Trudeau was admitted to the bar in the Province of Quebec in 1943, where his legal practice focused on labor law and civil liberties cases. During the next two decades, he also helped found a Quebec review called *Cité Libre*, served as an associate professor of law at the University of Montreal, and traveled

widely. One trip to mainland China resulted in his book, *Deux innocents en Chine Rouge* (1961).

In two subsequent books, he addressed the challenge of pluralism in his nation: *Canadian Dualism/La dualité Canadienne* (1960); and *Federalism and the French Canadians* (1968).

Trudeau was first elected to public office in 1965, as the member of the House of Commons for Montreal's Mount-Royal riding, which he represented throughout his long public career. A notable addition to the legislature, he was selected to serve as parliamentary secretary to then-Prime Minister Lester B. Pearson in 1966 and 1967 and as minister of justice and attorney general in 1967-68.

In 1968 Trudeau became the leader of the Liberal party, guiding it to victory that same year. His election as prime minister helped defuse separatist tendencies threatening to divide the Canadian confederation. Then 48 years old, he led his country for a total of fifteen years (1968-79 and 1980-84).

Among Trudeau's achievements as prime minister was the patriation of the Canadian constitution, which originally had been an act of the British Parliament. He was also responsible for the enactment of the Canadian Charter of Rights, a fundamental piece of legislation analogous to the U.S. Bill of Rights.

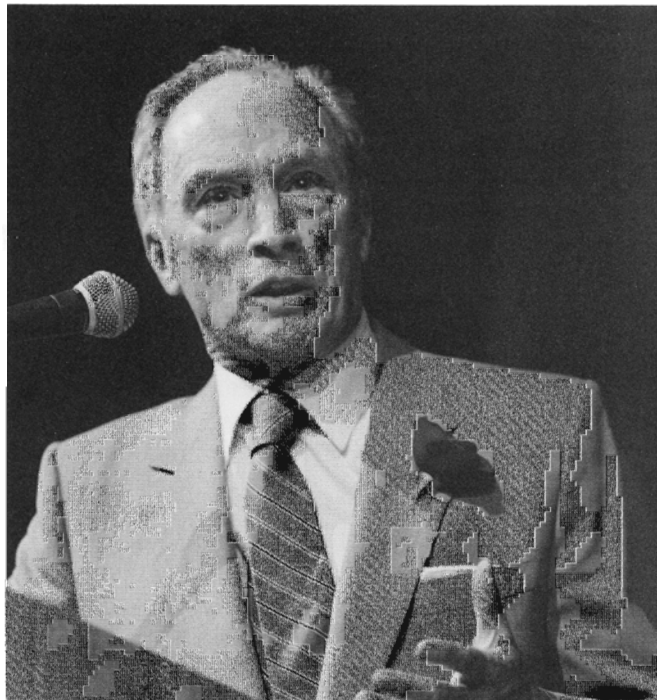
The implementation of Canada's policy of official bilingualism was another accomplishment of his tenure. While prime minister, he also played a leading

role both in the English-speaking British Commonwealth and in La Francophonie, the international association of French-speaking countries.

Trudeau resigned as Liberal Party leader and prime minister in June 1984. He currently practices law with the Montreal firm of

her late husband, international lawyer Jackson H. Ralston.

Trudeau is the fifth person to receive the Ralston Prize. The previous recipients are Oscar Arias Sánchez, president of Costa Rica (1989); Jimmy Carter, former president of the United States (1987);



"We're living in an age when the only constant factor is rapid change. The question is: Can we harness change in order that our human societies now and in the future be equitably governed?"

—Pierre Elliott Trudeau,
Ralston Lecturer in International Law

Heenan, Blaikie, John, Potvin, Trepanier & Cobbett, and continues to speak and write on constitutional issues surrounding Canadian federalism.

THE PRIZE

The Jackson H. Ralston Prize was established at Stanford Law School by Opal V. Ralston in honor of

Tommy T. B. Koh, ambassador to the U.S. from Singapore (1985); and Olof Palme, former and subsequent prime minister of Sweden (1977).

Prize recipients are recommended by the Stanford Law School dean to a selection panel composed of the president of Stanford, the chief justice of the Califor-

nia Supreme Court, and the secretary general of the United Nations. The Law School advisory committee that initially proposed Trudeau was chaired by Professor William B. Gould IV.

THE LECTURE

Trudeau's lecture, enigmatically titled "The Challenge of Equality and Other Things," turned out to be a thoughtful and eloquent disquisition on some fundamental world problems and the assumptions and practices that contribute to them.

Signs of trouble are abundant, warned the 71-year-old statesman, beginning with the economic situation. In eight years, "the richest country in all of history went...from being the world's greatest creditor to being its largest international debtor." The situation in the Third World has also worsened, he pointed out. In fact, since 1984 the "net transfer of funds to the developing world has been negative." These same struggling countries, he said, are being "incongruously enjoined" to live within their means.

Second, Trudeau observed that "in the world's greatest democracy" there appears to be a "lack of vitality of the political process," evidenced by poor voter turnout and the power of incumbency among office holders.

A third problem, he said, is the lack of consistency or principle in the relations between nations. He cited several discrepancies, among them: "One superpower is condemned for waging wars by proxy in Angola and Ethiopia, while the other is absolved for doing the same in Cuba

and Nicaragua.”

A fourth danger is environmental degradation on a global scale. “An entire generation has barely escaped from the fear of nuclear annihilation when it is asked to come to grips with the threat to human survival coming from ecological destruction,” he said.

The seriousness of the situation Trudeau described was emphasized by quotes from William Butler Yeats’s apocalyptic poem, *The Second Coming*: “... Things fall apart; the centre cannot hold; / Mere anarchy is loosed upon the world, / The blood-dimmed tide is loosed, and everywhere / The ceremony of innocence is drowned; / The best lack all conviction, while the worst / Are full of passionate intensity. ... And what rough beast, its hour come round at last, / Slouches towards Bethlehem to be born?”

Trudeau concluded his tocsin with a challenge directed mainly to the world’s richer nations: “Only if statecraft and public law are diligent in the constant reshaping of social contracts appropriate to the rapidly changing times will our crowded world feel secure from the terrible vision of Yeats.”

The full text of Trudeau’s Ralston Lecture is being published in the forthcoming *Stanford Journal of International Law* (26:371). For a copy, call (415) 723-1375. □

New faculty

Noted Professor Margaret Jane Radin Joins Stanford Team

THE NEWEST face on the Stanford Law faculty is Margaret Jane Radin. A nationally known expert in property law and legal theory, she arrives as a full professor.

Radin was previously a tenured member of the University of Southern California Law Center faculty. Officially appointed to the Stanford faculty on January 1, 1990, she completed the 1989-90 school year at USC, taking up residence at Stanford in time for the 1990 autumn term.

She teaches basic property law, jurisprudence, land use planning, local government law, and advanced seminars in political economy and legal philosophy.

In announcing her appointment, Dean Brest said: “Professor Radin brings a distinguished record of scholarship and teaching experience. We feel very fortunate to have her joining our faculty.”

Radin has chaired three major committees of the American Association of Law Schools: the sections on jurisprudence (1984), property law (1986), and law and the humanities (1987). She has also served as vice president (1987-89) of the American Society for Political and Legal Philosophy.

Radin began her law teaching career at the University of Oregon, serving as an assistant professor of law from 1976 to 1978. She became a member of the USC faculty in 1979, received tenure in 1982,



Margaret Jane Radin, Professor

and was named to the endowed Carolyn Craig Franklin professorship in 1987. In addition, she has been a visiting professor at the law schools of UCLA (1978-79) and Harvard University (1984-85), and taught in the California Continuing Judicial Studies Program.

Radin’s undergraduate college work was done at Stanford (AB ’63, with great distinction), where she majored in music and was elected to Phi Beta Kappa. She then earned a master’s degree in music history at Brandeis University (MFA, 1965) and completed her doctoral course work in the same field at the University of California, Berkeley, in 1968. She earned her law degree from USC in 1976, with membership in the Order of the Coif.

Radin’s legal publications include articles in such leading journals as the *Harvard Law Review*, *Columbia Law Review*, and *Stanford Law Review*.

In her writings on property law, Radin examines not just the law per se, but also the underlying assumptions that permit land and certain other goods to be treated as marketable commodities, that is, items that may be bought and sold.

“The study of property is basically the study of who gets what in this world,” she explained recently. “In the modern western legal tradition, property is anything that counts as a resource—anything that is scarce and that people find valuable. Many argue that property today includes babies, kidneys, blood, and other vital possessions for which markets—legal or illegal—have developed.”

Radin is currently examining the moral meaning and appropriateness of such markets in a book for Harvard University Press.

Her interest in legal philosophy has also led her to study and write on concepts of rules and rule-governed behavior, and how they bear on legal decisionmaking.

Radin’s other interests include American pragmatist thought as it relates to law and to feminism. In a recent paper for a symposium on pragmatist thought, she stressed the importance of considering the perspective of women and others who are not in the dominant group.

Radin is married to Layne Leslie Britton, the vice president of business affairs for CBS’s West Coast entertainment division. The couple has two young children. □

Bill Hing Appointed to Regular Faculty

BILL ONG HING, an immigration expert and public interest attorney, has been appointed to the faculty with the tenure-line rank of associate professor. Already an integral part of the Stanford Law community, he has taught here since 1985.

Hing is a key participant in the new Lawyering for Social Change program. His courses, which are strongly clinical, involve the East Palo Alto Community Law Project, and

of California Rural Legal Assistance. Another kind of recognition came in January 1990 from the Carnegie Endowment for International Peace, which named him to the advisory committee for its Immigration Policy Project.

Hing has written or coauthored a number of publications, among them: *Handling Immigration Cases* (Wiley Law Publications, 1985, 1990 supp.), *Immigration and Deportation Defense Manual for Volunteer Attorneys* (Voluntary Legal Services Program, California State Bar, 2d ed., 1983), and *Making and Remaking Asian America Through Immigration Policy* (forthcoming).

"Bill brings unique perspectives and strengths to our faculty," says Dean Brest. "His scholarship, teaching approach, and practice experience will contribute greatly to the development of our curriculum in public interest law."

Hing was born and raised in the small town of Superior, Arizona, where his family was one of just three Chinese-American families, the others being cousins. His parents were both grocers. Trilingual (in Cantonese, Spanish, and English), Hing was editor-in-chief of his high school newspaper.

Hing went on to the University of California at Berkeley, earning his AB in psychology. Next was a JD (cum laude) from the University of San Francisco.

"Very early in law school, I developed the

ambition to be a good legal services attorney and, if the opportunity presented itself, to go into teaching," Hing recalled in a recent interview.

He volunteered during his first law school summer to work with the San Francisco Neighborhood Legal Assistance Foundation (SFNLAF) in Chinatown. "I fell in love with that office," he said. "I felt like I was accomplishing something. It made law school much more meaningful."

Hing was introduced to teaching through two USF programs. One involved using third-year students as reading and writing instructors for first-years. And the other was a "street law" project in which law students taught civics for eight weeks in local high schools—in his case, Lowell High.

Upon graduation, he became the immigration staff attorney at SFNLAF. He began teaching law in 1977, becoming successively an adjunct professor at the New College of Law and the University of San Francisco Law School, an associate professor at Golden Gate University, and, starting in 1985, a visiting and then acting associate professor at Stanford.

Asked what particular role he plays at the Law School, Hing said: "I represent a different racial and class background—a different perspective—which I hope students and other faculty will come to value. I'm also open to different approaches to legal education. And I hope to help move the School forward

in its commitment to public interest."

Hing and his wife, radiologist Lenora Fung, MD, have three young children and live in San Francisco. □

New titles

Barton, Grey and Wald Named to Endowed Chairs

THREE of the School's professors—John H. Barton, Thomas C. Grey, and Michael S. Wald—were appointed to endowed chairs on June 15, 1990.

Barton, an expert on high technology and international business law, has been given the title of George E. Osborne Professor of Law.

Grey, an authority on constitutional law and legal theory, has become the Nelson Bowman Sweitzer and Marie B. Sweitzer Professor of Law.

Wald, an expert on children and public policy, is now the Jackson Eli Reynolds Professor of Law.

Each of the professors has been a tenured member of the faculty for at least ten years.

JOHN BARTON

Barton, a 1968 graduate of Stanford Law School, is the founding director of the School's new International Center for Law and Technology (STANFORD LAWYER, Fall 1988, pp. 4ff.).

Knowledgeable in science as well as law, Barton focuses on issues where the



Bill Hing, Associate Professor

he was its acting executive director for six months in 1987.

Since 1982 Hing has also been the director (on a pro bono basis) of the Immigrant Legal Resource Center. Founded by Hing, the ILRC provides training and consultation statewide to community agencies serving immigrants and refugees.

Hing was honored by the San Francisco Bar Association in 1984 with its Special Legal Services Award. And in 1989 he received the Public Interest Award



John Barton, Osborne Professor

two realms intersect. He is the author of four books, including *The Politics of Peace* (Stanford, 1981) and *The Regulation of International Business*, with Bart Fisher (Little, Brown, 1986).

Much of his current work relates to issues of trade among the Pacific Rim nations. Barton serves frequently as a consultant and adviser on legal technological issues to governmental and private bodies. He is now engaged in a study, funded by a grant from the Hitachi Foundation, on the role of law, lawyers, and the legal profession in the evolving Pacific Basin business community.

Barton's main areas of teaching and research are international law and high technology and the law. He is also an acknowledged expert in international business transactions, the transfer of technology to developing nations, and the impact of biotechnology on such nations. In addition, he teaches a course on international human rights.

Broadly educated, Barton worked for a time as a systems engineer before beginning his legal studies. He received a BS magna

cum laude in 1958 from Marquette University, where he majored in both philosophy and physics. In law school, he was an editor of *Stanford Law Review* and graduated as a member of Order of the Coif. Barton was invited to return to Stanford as a teacher in 1969, just a year after his graduation, and was granted tenure in 1975. In 1980, the School's graduating class voted to give him the annual John Bingham Hurlbut Award for Excellence in Teaching.

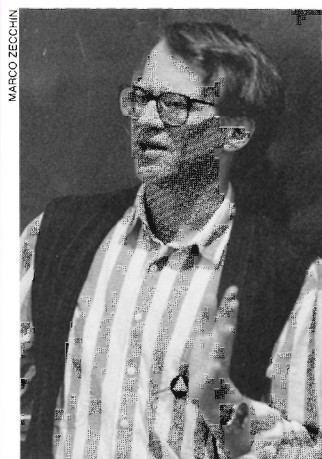
The chair that Barton now holds honors the late George E. Osborne, a stalwart of the faculty from 1922 to 1958. The previous holder, Jack H. Friedenthal, is now dean of the George Washington University National Law Center in Washington, D.C.

Barton is married to Julie Barton, a consultant on corporate elder care. The couple has five children and five grandchildren.

THOMAS GREY

Grey is a nationally renowned scholar in the areas of constitutional law, legal and political philosophy, and law and interpretation. His publications

Thomas Grey,
Sweitzer Professor



include an edited volume, *The Legal Enforcement of Morality* (Knopf, 1983), and numerous law review articles.

A former Stanford undergraduate (AB '63), Grey drafted the widely discussed interpretation of the Stanford University student-conduct code concerning discriminatory verbal harassment of individuals. The goal of this undertaking was to curb such harassment while still protecting free speech and academic freedom. Grey's final draft was accepted by the University's Student Conduct Legislative Council on May 24.

As a scholar, Grey is best known for a series of articles arguing that American constitutional law has reflected—and should now openly recognize—the existence of certain rights (such as privacy) that are not explicitly stated in the Constitution.

Grey is currently engaged in research on pragmatism in American legal thought. He has a book forthcoming on pragmatist elements in the work of Justice Oliver Wendell Holmes. In another forthcoming book, Grey analyzes the relevance for legal theory of the writings of lawyer-poet Wallace Stevens, whose own thinking had a strong pragmatist strain.

A philosophy major at Stanford, Grey pursued further studies at Oxford University in England (BA, 1965). He received his law degree from Yale (LLB, 1968) and then served two judicial clerkships, first with Judge J. Skelly Wright of the U.S. Court of Appeals in Washington, D.C., and then with Justice Thurgood

Marshall of the U.S. Supreme Court.

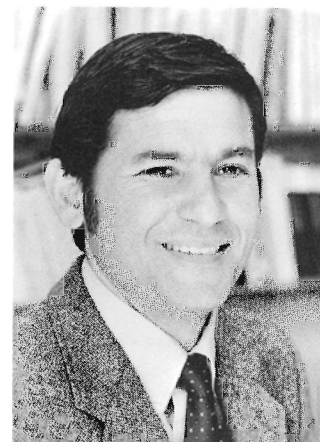
Grey joined the Stanford law faculty in 1971 and became a tenured professor in 1978.

The Sweitzer chair was established in 1971 from a bequest by Nelson B. Sweitzer, who named it in memory of his parents. Its first holder, art law expert John Henry Merryman, is now an emeritus professor.

Grey is married to a fellow Stanford Law professor, Barbara Allen Babcock.

MICHAEL WALD

Wald is the leading authority in an area of academic law that he virtually created: the legal treatment of juveniles (STANFORD LAWYER, Spring 1988, pp. 10ff.). He has been the



Michael Wald, Reynolds Professor

principal draftsman of major child welfare legislation at the state and federal levels and has presented courses to juvenile court judges, social work groups, and other child care professionals.

Interdisciplinary in his approach, Wald joined with a psychiatrist and a psychologist to write *Protecting Abused and Neglected Children* (Stanford, 1988). He previously

worked with the ABA's Juvenile Justice Standards Project (1972-77) to draft model legislation for state intervention on behalf of such victims.

In 1984 the American Psychological Association presented Wald with its Distinguished Child Advocacy Award. That year he also began a three-year stint as director of the Stanford Center for the Study of Youth Development.

Wald was a major contributor to the path-breaking report, *Conditions of Children in California*, released last year by Policy Analysis for California Education. He continues to participate in efforts to improve the prospects of the younger generation as a member of the California State Task Force on Drug Exposed Infants.

His commitment to service unites with innovative teaching in clinical courses involving the East Palo Alto Community Law Project, which he has helped and advised since its inception.

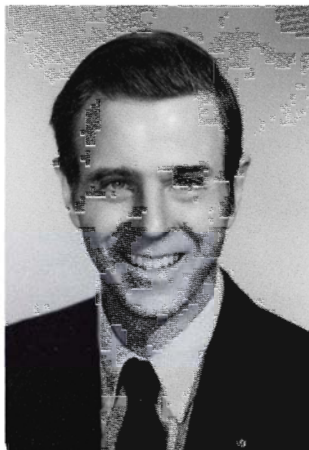
Wald came to Stanford in 1967 fresh from Yale, where he had just earned advanced degrees in both political science (MA) and law (LLB). He received tenure in 1976.

The chair to which he has been named resulted from a bequest by Jackson Eli Reynolds (AB, 1896), who taught at the School before becoming a successful New York attorney and banker. The previous holder, eminent criminal law scholar John Kaplan, died last year.

Wald's wife, Johanna, is an attorney in San Francisco with the Natural Resources Defense Council. The Walds have two grown children. □

New rotating chair

Crocker Gift Promotes Faculty Scholars



Donald Crocker '58

A FACULTY Scholar chair—the School's first—has been established through the good offices of Donald W. Crocker '58, trustee of the estate of his mother, Josephine Scott Crocker (AB '23). Professor Ronald J. Gilson, director of the School's developing Law and Business Program, is its first holder.

Named in honor of Helen L. Crocker (AB '82)—Donald's daughter and the late Mrs. Crocker's granddaughter—the new chair will provide recognition and support to a succession of younger faculty members for terms of up to three years.

THE CROCKER FAMILY

The newly established Helen L. Crocker Faculty chair continues a long tradition of Crocker family involvement—as students, volunteer fund-raisers, trustees, advisers, and donors—with Stanford University and Law School. The matriarch of the clan, Josephine Scott Crocker, received her AB here in

1923 and saw three children earn Stanford degrees: twins Donald W. Crocker and Benjamin Scott Crocker (both AB '56, JD '58) and Stephen H. Crocker (AM 1966).

In 1970, Mrs. Crocker endowed her first Stanford chair—the Wm. Benjamin Scott and Luna M. Scott Professorship in Law. Named in honor of her late parents, the chair is now held by a former Assistant Attorney General of the United States, William F. Baxter.

The tragic death in 1973 of Benjamin led to the establishment of a second chair—the Benjamin Scott Crocker Professorship in Human Biology—by Josephine and her husband, Roy P. Crocker, and other members of the family (with matching funds from the Ford Foundation). The Law School's popular Crocker Garden is also named in Ben's honor.

Mrs. Crocker herself was honored in the naming of a third chair, endowed at the Law School in 1978—the Josephine Scott Crocker Professorship in Law and Economics, held by noted scholar A. Mitchell Polinsky. Mrs. Crocker died in 1988 at the age of 86, having by then seen a number of grandchildren graduate from Stanford.

Don Crocker, in guiding the most recent Crocker gift to Stanford, chose to honor two of these grandchildren. Nina C. Crocker (AB '86), the daughter of his late brother Benjamin, is named in the title of a

new Faculty Scholar chair in the School of Humanities and Sciences, while the Law School's Faculty Scholar chair is named for Don's daughter, Helen.

Helen L. Crocker received an AB from Stanford in 1982 as a communications major. Her husband, Stanford classmate Karl R. Frykman, went on to earn an MBA at Harvard and is now vice president of Poolsaver in San Dimas, California, and a manager with Anthony Pools. The Frykmans have three children and live in Rolling Hills very near Helen's parents.

"Dad really should have named the chair after himself," she says modestly, adding, "He knew I always wanted to go to law school."

Donald W. Crocker is prominent among those striving, in his words, "to save the taxpayers' money in the savings and loan debacle." Long a voice of caution, he was president and CEO of Lincoln Savings & Loan during the successful years before its acquisition in 1984 by Charles Keating's American Continental. He then took a one-year assignment for the Federal Savings and Loan Insurance Corporation to oversee liquidation of San Marino Savings, after which he formed the FSLIC's Western Region and served as its director.

Since 1988, Crocker has been president and chief operating officer of the J. E. Robert Companies, an enterprise based in Alexandria, Virginia, which specializes in acquiring and managing troubled assets. Its most recent assignment—the first major asset management

contract let by the Resolution Trust Corporation—is to manage a \$2.7-billion portfolio in the Southwest.

Crocker, a dedicated Stanford volunteer, received the University's Gold Spike in 1981. At the Law School, he is, among other things, a former chair (1977-79) of the Board of Visitors and the founder, in 1979, of the Dean's Advisory Council on Law and Business.

RONALD GILSON

Professor Gilson is a nationally recognized authority in the turbulent field of acquisitions and mergers. In addition to directing the School's Law and Business Program, he is a reporter for the American Law Institute's Corporate Governance Project, with special responsibility for standards governing transactions in control, and a member of the California Senate Commission on Corporate Governance, Shareholder Rights and Securities Transactions.

Gilson's many published works include a book, *The Law and Finance of Corporate Acquisitions* (Foundation Press, 1986),

New visitors' chair

Heafey Professors Bring Outside Expertise



Edwin Heafey '55, donor

for which he has provided supplements annually.

Gilson also is involved in research on the application of economic and financial analysis to the organization of the legal profession, especially the corporate law firm. Formerly a partner in the San Francisco firm of Steinhart, Goldberg, Feigenbaum & Lader, he is now of counsel to Marron, Reid & Sheehy. □

Ronald Gilson, Crocker Scholar

A VISITING professorship was established last spring through a gift from alumnus Edwin A. Heafey, Jr., of Oakland, California.

The limited-term chair is designed "to enrich the intellectual life of the School by bringing distinguished professors to Stanford for periodic stays," explains Dean Brest. The visitors—two so far—spend a term here teaching, participating in seminars and meetings, and interacting generally with students and faculty.

The first person to serve as the Edwin A. Heafey, Jr. Visiting Professor was Allan Axelrod of the S. I. Newhouse Center for Law and Justice at Rutgers University. In residence at Stanford during the 1990 spring term, Axelrod holds the permanent title at Rutgers of William J. Brennan, Jr. Professor of Law, Emeritus.

Axelrod is a noted expert in commercial law and coauthor of the casebook, *Land Transfer and Finance* (1970, rev. 1977). While at Stanford, he taught two advanced courses: Secured Transactions; and Advanced Debtor-Creditor Relations.

The Heafey visitor for 1990/91 is Roman L. Weil, professor of accounting at the University of Chicago's business school. Coauthor of a leading text, *Financial Accounting* (6th ed. in press), Weil is teaching a course of the same name for law students. The course provides an introduction to financial reports and statements and, equally important, to the events and

accounting methods that underly them.

Weil is also teaching an advanced seminar—Expert Witness: Applications of Microeconomics—which analyzes litigation problems involving accounting and economics expertise.

EDWIN HEAFEY '55

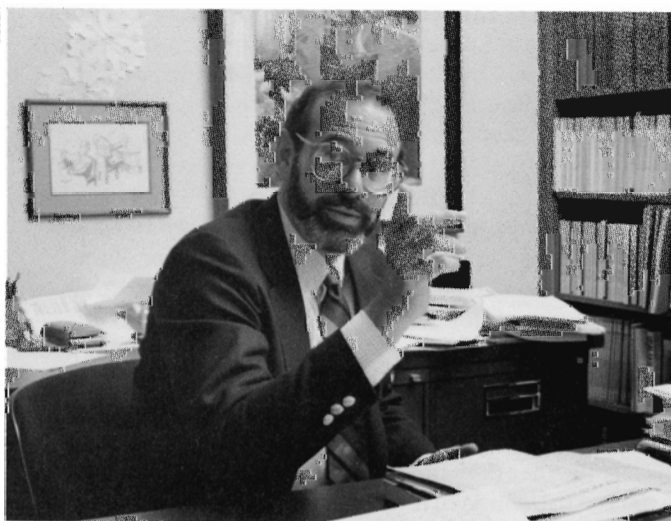
The donor of the visiting professorship, Edwin A. Heafey, Jr., graduated from Stanford Law School in 1955. He is a senior partner of Crosby, Heafey, Roach & May, a law firm with offices in both Oakland and San Francisco.

An expert trial lawyer, Heafey is the author of a text for attorneys, *Trial Objections*, published in 1967 by California Continuing Education of the Bar, University of California. He has also taught and lectured widely, including fifteen years (1963-78) as an instructor in trial practice at UC-Berkeley's Boalt Hall.

Heafey has been a fellow of the American College of Trial Lawyers since 1972 and a member of the American Board of Trial Advocates since 1967, a year in which he also served as ABOTA's national president. In 1974 he was chairman of the California State Bar's committee on civil trial procedure reform. He is currently serving on Stanford Law School's Board of Visitors.

Heafey was instrumental in the establishment of an endowed book fund in memory of his late law school classmate and law partner, Justin M. Roach, Jr. His gift to create the new visiting professorship is his contribution to Stanford University's five-year Centennial Campaign. □

ED NELSEN



Harvard's Michelman Launches Leah Kaplan Human Rights Series

PROFESSOR Frank I. Michelman of Harvard presented the School's first Leah Kaplan Lecture in Human Rights, on April 25. Leah Kaplan, the named donor of the new lectureship, is Stanford University's ombudsperson and director of the Stanford Help Center.

Dean Brest, in announcing the inaugural lecture, thanked Ms. Kaplan for her "extraordinarily generous and wonderful gift" and characterized Michelman as a "most appropriate inaugural chairholder."

A Harvard faculty member since 1963, Michelman is a noted expert in constitutional law. His 1969 article, "On Protecting the Poor Through the Fourteenth Amendment," is considered a landmark in human rights scholarship. His many other writings include a coauthored amicus curiae brief, on behalf of some 900 law professors around the country, urging the Supreme Court to reaffirm the basic principles of *Roe v. Wade*.

Michelman spent the spring 1990 term at Stanford as Leah Kaplan Visiting Professor of Human Rights. While in residence he taught courses in both constitutional theory and property law.

Michelman's inaugural Kaplan lecture dealt with civil liberty implications of proposals to outlaw flag-burning. Titled "Saving Old Glory: Thoughts on Constitutional Iconography," it was subsequently published in the July issue



D. MARINER/STANFORD DAILY

"It's worth recalling that the Stars and Stripes is not... the first symbol of nationhood that authorities have sought to maintain as a symbol also of national virtue, affection, or loyalty... Once upon a time, it was the Crown."

—Frank I. Michelman,
Leah Kaplan Visiting Professor of Human Rights

of *Stanford Law Review* (42:6).

The new human rights lectureship was established, says donor Leah Kaplan, "to provide a means by which students at Stanford, particularly those who intend to enter the practice of law, may deepen their knowledge of legal and moral issues of human rights, civil liberties, and civil rights in both domestic and international spheres."

LEAH KAPLAN

Leah Kaplan is a psychiatric social worker and leading member of the Stanford University community. For eighteen



CHUCK PANTER

Leah Kaplan, donor

years—from 1964 to 1982—she helped countless students through the Counseling and Psycholog-

ical Services of Stanford University.

From 1974 to 1979 she also served as Assistant Dean of Student Affairs, with particular responsibility for female students. Recognizing that rape and other sex crimes were seriously underreported on campus, she initiated education and prevention efforts. She has also addressed the problem of sexual harassment, developing informal guidelines in 1978 that provided the basis for the formal guidelines adopted by the University in 1981.

In 1979 Kaplan became a special assistant in Stanford University's Ombudsperson's Office, and in 1984 was promoted to the post of Ombudsperson. In addition, since 1982 she has directed the Stanford Help Center, a free, short-term counseling service for Stanford employees and their families.

Kaplan was honored by Stanford University in 1980 with a Lloyd W. Dinkelspiel Award for distinguished service to undergraduate education.

Her donation for the new lectureship took the form of a gift deed leaving a remainder interest in her campus home to Stanford University.

Interviewed last spring, she described herself as an "advocate for the little person." Equally apt was Dean Brest's description of the inaugural Kaplan lecture: "a great event for a great gift by a great woman." □

Phleger visitor

Chancellor Allen of Delaware Discerns Trend re Corporate Duties

THE CHIEF judge of the only court in the nation primarily devoted to corporate law—the Delaware Court of Chancery—spent the better part of a week at the School during the spring 1990 term, meeting with faculty and students and giving two lectures.

The judge, who bears the title of Chancellor, is William T. Allen, a former corporate law practitioner who has led the Delaware court since 1985. Here as a Herman Phleger Visiting Professor, his appearances included a talk to students on April 3, sponsored by the Law and Business Society, on the subject, “The Emerging Role of Outside Directors in Corporate Governance.” A second lecture, “A Glimpse at the Struggle for Board Autonomy in American Corporation Law,” was delivered April 5 at a faculty club dinner in his honor.

Professor Ronald Gilson, director of the School’s Law and Business curriculum, served as Allen’s host for the three-day visit.

Allen, in his talks, pointed out that the traditional profit-orientation of corporation directors is being challenged. Statutes in 24 states now permit directors to consider not only the interests of their stockholders—the bottom-line profit criterion—but also “the interests of employees, customers, creditors, suppliers, and other relevant groups.” In

some instances, he said, “very large-scale considerations such as the interests of the national and state economy are specifically identified” as factors that may also be considered by directors.

“The legal implications of these statutes for our corporation law, if generally followed, could be breathtaking,” he said.

And even if taken to apply only to takeover attempts, he observed, “these statutes could be expected to have an effect on the market for corporate control and thus to have some, positive or negative, efficiency implications.” □

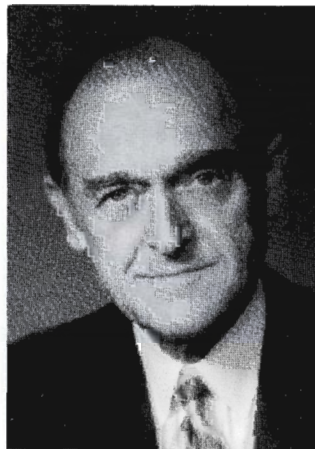
Breathtaking implications:
William T. Allen



MARCO ZECCHIN

Phleger visitor

Judge Justice of Texas Explains Judicial Activism



Not a potted plant:
William Wayne Justice

A UNITED States district court jurist known for his activism—Judge (and former Chief Judge) William Wayne Justice of the Eastern District of Texas—was here for four days in March as a Herman Phleger Visiting Professor. Constitutional law authority Gerald Gunther, the William Nelson Cromwell Professor, was his host.

Justice, in various classroom visits and a public lecture, shed light on the role of a front-line judge confronting civil rights problems in a difficult environment—in his case, a district redolent of the deep South.

During nearly a quarter-century on the bench, Justice ended segregation in East Texas schools, guaranteed free public education to children of illegal immigrants, directed Texas to stop abusing juveniles at state detention centers, ordered junior colleges to reinstate male students expelled for long hair, mandated bilingual education in grade schools, and directed an overhaul of the Texas prison system.

His March 21 Phleger lecture focused on the controversial prisons case, *Ruiz v. Estelle* (503 F. Supp. 1265, S.D. Texas 1980), in

which conditions and treatment were found to be unconstitutionally cruel. Judge Justice had exercised unusual initiative by ordering consolidation of numerous complaints into a class action, finding counsel for the class members, and ordering the U.S. Justice Department to appear as *amicus curiae*. “I was not,” the judge noted wryly, “a potted plant.”

The jurist went on to explore the philosophical and legal rationale for such activism, saying, “Whether you call it avoiding the risk of erroneous decisions, deciding the litigated case, doing substantive justice to the parties, or simply getting to the truth, a judge has a duty to get right answers.”

Judge Justice’s address will be published in the forthcoming issue (43:1) of *Stanford Law Review*. □

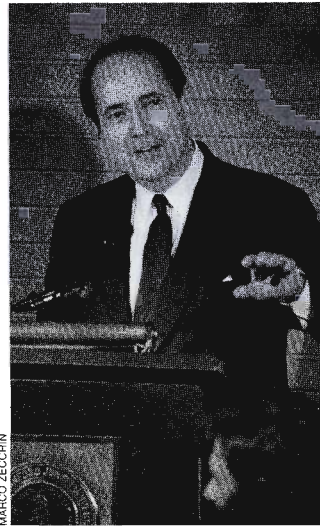
Attorney General Thornburgh Urges Public Service

THE KEYNOTE speaker at the annual Stanford Law Review banquet on March 22 was no less than the Attorney General of the United States, Dick Thornburgh.

The former two-term Pennsylvania governor took as his theme “energy,” particularly “political energy,” which he called “the absolute, operative essential for making government go. Enfeebled administration...can only lead to bad government,” he said, citing founding

father Alexander Hamilton. “Energy in office is the real guarantor of good government,” Thornburgh declared.

The Attorney General went on to assert that “energy has returned to the executive. The law is becoming more diligent in the pursuit of wrongdoing, even to the criminal prosecution of the Drexel Burnhams and the Exxons and the HUD and DOD rip-off artists. That is why I want to suggest to you that public service today offers



MARCO ZECCHIN

a grand opportunity, especially to young lawyers,” he told the Law Review members. “At your age, starting

Political energy:
Dick Thornburgh

out on your careers—you have energy. Loads of personal energy.”

Thornburgh concluded with the hope that his listeners would find ways to “channel and direct” their energies and “the splendid legal education you have received here, to the good of your community and your nation.” □

Also heard

Notables at National Federalist Symposium Debate the Future of Civil Rights Law

THE NATIONAL Federalist Society came to Stanford for its ninth annual symposium, March 16-17, with the Stanford Federalist Society as organizers and hosts. “The Future of Civil Rights Law” was the theme of the event, which was open to all members of the Stanford Law and University communities.

The star-studded symposium featured, among others, former attorney general Edwin Meese III; former U.S. assistant attorney generals Wm. Bradford Reynolds, Charles Cooper and Lois Haight Herrington; federal judges Frank Easterbrook (7th circuit court of appeals), Stephen Reinhardt (9th circuit) and

Alex Kozinsky (also the 9th); a member of the U.S. Civil Rights Commission, William Allen; the general counsel of the Equal Employment Opportunity Commission, Charles Shanor; former assistant secretary of state Alan Keyes; and a number of scholars, including Stanford professors William Cohen, John Hart Ely, Thomas Grey, and Deborah Rhode.

Dean Brest, in his initial welcoming remarks, praised the Stanford Federalist student group not only for their role in bringing the national symposium to Stanford, but also for making “an ongoing and valuable contribu-

tion to pluralist discourse at the School.”

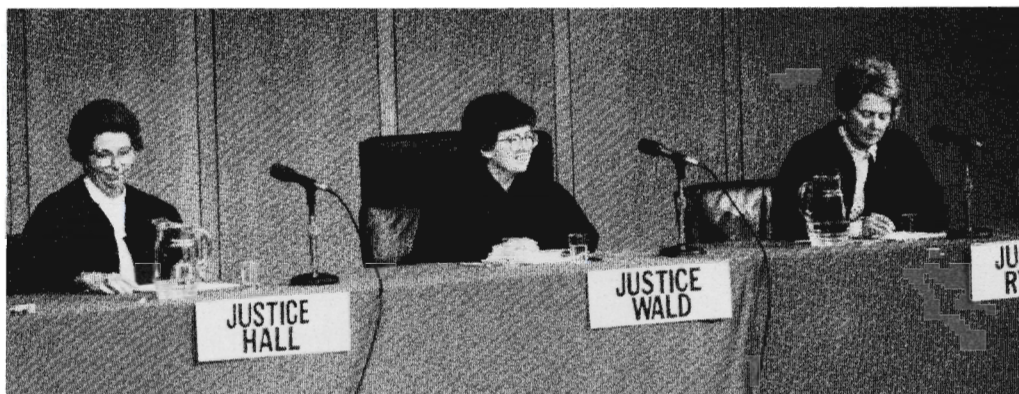
The national Federalist Society for Law and Public Policy describes itself as “an organization of conservative and libertarian law students, lawyers, judges and law professors who are interested in the current state of the legal order. The society is founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to the Constitution, and that it is emphatically the province and the duty of the judiciary to say what the law is, not what the law should be.”

Symposium discussions tended to be critical of affir-

mative action, judicial activism, and other government initiatives. However, panelists with differing views were deliberately included to ensure that the majority view did not go unchallenged and that debate would be—and, as it turned out, was—lively.

The Stanford directors of the symposium were then-students Neil Morganbesser, JD/MBA '90, and Paula Stannard '90. David Anderson '90 was the chapter president. □

Student Finalists "A Pleasure to Listen to"



Justices pro tem Hall, Wald, and Rymer

THREE United States Court of Appeals judges sat as justices of the Marion Rice Kirkwood Moot Court finals on May 11: Patricia M. Wald of the District of Columbia Circuit, and Cynthia H. Hall '54 and Pamela A. Rymer '64 of the 9th Circuit.

The hypothetical case developed for the 1989-90 competition was (as usual) devilishly complex. It involved a pregnant Jehovah's Witness, a court-ordered blood transfusion, a healthy birth, a trial on the issue of damages for physical and emotional distress, and peremptory challenges of Catholics as jury members.

The panel was unani-

mous in praise of the Stanford finalists, noting the "splendidly high quality" of their work (Wald), "well-written, clear, and concise briefs" (Hall), and the overall "commitment, preparation, and honesty of analysis and persuasion" (Rymer).

The two teams of finalists consisted of third-year students Bonnie Robin-Vergeer and Jerry Fowler, for the petitioner, and David Anderson and Jeffrey Lamken, for the respondent.

Honors as top team went to Fowler and Robin-Vergeer, who received the Walter J. Cummings Award for the best brief and (on a split decision) the Mr. and

Mrs. Duncan L. Matteson, Sr. Award as the best team of advocates.

The team of Anderson and Lamken won the other Matteson Award, for the runner-up finalists in the semester-long competition.

The Walter J. Cummings Award for best oral advocate went to Lamken, an academic standout who would soon be declared the 1990 Nathan Abbott Scholar for having the top cumulative grade-point average in his graduating class.

The Kirkwood Moot Court program is directed by lecturers Randee G. Fenner and Lisa M. Pearson. □

3Ls Jeffrey Lamken,

David Anderson,

Bonnie Robin-Vergeer,

and Jerry Fowler



PHOTOS BY MARCO ZECCHIN

Tuition Waived for Six Students Committed to Public Service Law

STUDENTS who plan to enter public service careers may now receive full-tuition fellowships for their second and third years of law school. The new Public Service Fellowship program was announced in May by Dean Brest, with the first awards given for the current, 1990/91 school year.

The program is designed to reduce a major financial barrier for students pursuing government and public interest careers: debt accumulated in the course of obtaining a legal education. (Tuition at the School has reached \$14,168.) Fellows whose financial needs exceed the amount of tuition are eligible for additional assistance as well.

Students receiving the tuition fellowships are expected to pursue a curriculum that includes a significant component of public interest law courses, to spend at least one summer working in public service, and to plan to make their careers in public service.

Any fellowship recipient who later changes his or her mind about entering public service, or who works less than three years in a qualifying job, will be morally obligated to treat the fellowship support as a loan and to repay it at the rate typical for student loans.

The School's Public Service Fellows are selected by a

committee consisting of a faculty member, a member of the administrative staff, one second-year and one third-year student, and a graduate of the school.

Criteria for selection include demonstrated commitment to public service, intention to seek permanent employment in public service, and academic achievement in the first year of law studies.

The first six fellows are:

► Elizabeth Butler (3L), the 1986 winner of the University's J. E. Wallace Sterling Award, who spent two years (one as a John Gardner Public Service Fellow) at the Children's Defense Fund in Washington, D.C.

► Jamie Kogan (3L), who has worked at the offices of the Manhattan D.A. and the U.S. Attorney for the Southern District of New York, and who coordinated the 1990 summer grant program of the Stanford Public Interest Law Foundation (SPILF)

► Ed Swanson (3L), a former worker with Operation Crossroads Africa and the House Select Committee on Hunger, who last year co-chaired the domestic violence clinic of the East Palo Alto Community Law Project

► Susan Bowyer (2L), the current vice president of SPILF, who has worked with the United Farm Workers Union and the University of San Francisco Law Clinic and interned with California Rural Legal Assistance

► Julia Friedlander (2L), a former analyst with the New York City Department of Health, who co-

edited *Beyond the Casebook*, a supplementary reader for law students, and who co-chairs the EPACLP Domestic Violence Clinic

► Michael Rossotto (2L), a former Friends of the Earth activist, who currently serves as president of the School's Environmental Law Society

RELATED PROGRAMS

The new Public Interest Fellowship program is one of three Stanford Law School programs designed to ease economic constraints on students and former students interested in public service law. The first two programs are the Public Interest Low Income Protection Plan (PILIPP) and the Montgomery Summer Public Interest Grant Program.

PILIPP, which was introduced five years ago, assists recent graduates who choose relatively low-paying public service jobs. Eligibility for PILIPP aid is limited to those whose income does not exceed a specified ceiling (currently \$37,500 for 1990 gradu-

ates), adjusted annually for inflation and job longevity.

PILIPP, which now has 26 participants, lends graduates money to help meet the monthly education loan bills due for their undergraduate and law study. Recipients who continue in eligible public service employment for several years may ultimately have their PILIPP loans forgiven.

The chief outside funding source for the PILIPP program has been the Cummins Engine Foundation.

The six-year-old Montgomery Summer Public Interest Grant Program provides grants to current students who chose to spend one of their law school summers in relatively low-paying public service jobs rather than in the more lucrative summer employment available at large law firms. Last summer, 12 students received Montgomery grants.

Philanthropists Kenneth and Harle Montgomery of Chicago are responsible for this program. The couple has also earned the School's gratitude as donors of the School's endowed professor-

ship in public interest law.

A fourth program is sponsored by SPILF (the Stanford Public Interest Law Foundation), an independent organization of students and alumni/æ that raises money from several sources for a range of research, educational, and service activities. Last summer 10 Stanford law students received SPILF grants.

INFORMATION on these and other public interest programs and opportunities—including the national fellowships sponsored by Skadden, Arps (see page 34)—is available to graduates as well as students through the School's Career Services office, directed by Jeanne Vatterott.

The School invites graduates with experience in public interest law or government to share information with students either by visiting the School or by inviting one or more students to spend a few hours at their office. Giji Dennard '85, the new coordinator for public service activities, can be reached at (415)723-6756. □



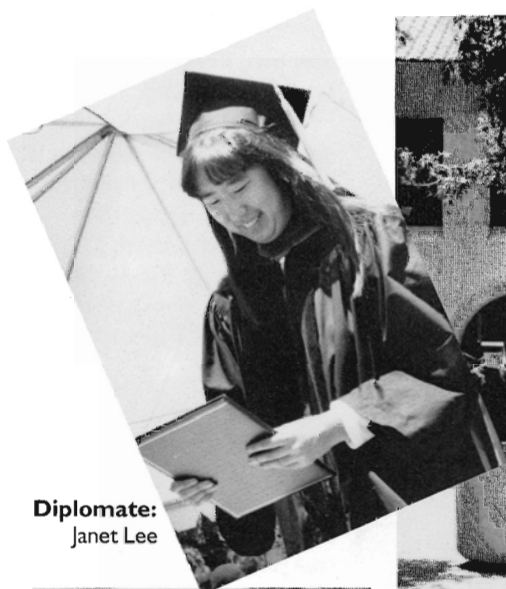
Public service fellow Julia Friedlander (2L), in a planning meeting for the East Palo Alto Community Law Project's Domestic Violence Clinic. Also shown is EPACLP staff attorney Robert Miranda.

Reason to Celebrate

THE SCHOOL graduated its 97th class on June 17. A total of 164 degrees—157 JDs, 4 MSLs, and 3 JSDs—were conferred, along with a host of awards and prizes (see p. 32).

The winner of the 1990 John B. Hurlbut Award for excellence in teaching was Professor Charles R. Lawrence III. Lawrence, a member of the faculty since 1986, delivered an evocative address on the importance of sharing the “gift of self,” both in law school and beyond (see box).

The 1990 Commencement ceremonies, though



Diplomate:
Janet Lee



Standard bearer: Audreyline McFarlane,
heading up the academic procession



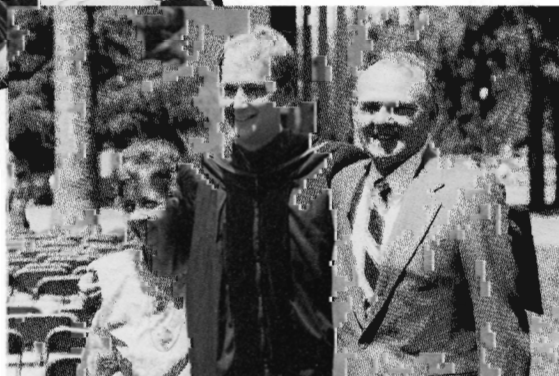
Spokesperson: Class co-president
Jancy Hoeftel



Master of ceremonies:
Dean Brest, with Amy Reid



Achievers: Class marshal
Gene Colón and JSD recipients
Kittipong Kittayarak and Paul Kuruk



Celebrants: The Paul Williams party



Overachiever: Kathryn Monson Latour

PHOTOS BY JOHN SHERETZ

in many ways typical, had some unique features. This was, for instance, probably the first year in which a class president (the irrepressible Jancy Hoeffel) donned a chicken mask. Evoking the puckish spirit of the late John Kaplan, she advised: "Be unconventional, be creative!"

Another innovation was a tribute to "unsung heroes" of the Law School—staff

members representing the Law Library and the offices of Student Services (registrar) and Student Affairs. Said co-president Jim Losey: "We as a class give thanks and recognition [for their] unflagging and very professional service, hard work and patience—even cheeriness."

Dean Brest devoted his parting message to the subject of "community"—a

vision of the Law School as a place "where all groups can engage their differences in a process of mutual enrichment." Noting that graduates of the School are vital members of its extended community, the Dean said: "We depend on your understanding, your loyalty, and your conviction that the institution is worth the effort, to continue to communicate even in

moments of disagreement." (The Dean's column at page 2 grew out of this talk.)

The ceremonies concluded on a traditional note, with a recessional of deans, faculty, and newly minted graduates, to the happy applause of assembled well-wishers. □

Hurlbut Award Address

The Unofficial "Culture of Gift Exchange"

By Charles R. Lawrence III, *Professor of Law*

AT STANFORD Law School, as at most educational institutions, one finds two coexisting cultures of teaching and learning. One is a culture of commodification, and the other a culture of gift exchange.

In the culture of commodification, legal knowledge, or the material symbols which indicate its acquisition, is bought and sold. Law schools serve as certifying institutions—as screeners and sorters of would-be lawyers—and as hiring halls. Professors make deposits in students' heads and withdraw their deposits at exam time. Paulo Firere calls this "the banking concept of education."

In the banking concept of education, knowledge is a commodity transferred by those who consider themselves knowledgeable to those whom they consider to know nothing. The students accept their ignorance as justifying the teacher's existence—but they never discover that they educate the teacher.

In the culture of gift exchange there are no grades or credits, no top ten percent of the class. There is no certification of acquisition of knowledge, no bill of lading that can be handed to a hiring partner as proof that this package contains marketable merchandise.

Most of the culture of gift exchange occurs outside of the classroom. It is most often found in that part of our curriculum that is not listed in the catalogue, that part for which no tuition is paid. Gift exchange happens in study groups and shared apartments, in football pools and coed intramurals, while putting law reviews and newspapers to bed, organizing demonstrations and panels, listening to good music and eating

good food, taking care of a classmate's children, and just plain hanging out. It happens wherever people talk and, more importantly, listen to each other—share their experiences, confront their political differences, and talk face to face about conflicting values. It consists of that most precious gift—the gift of self.

The commodified culture is what this law school sells, what pays the bills. But the real business of learning and living goes on in the gift exchange culture. Increasingly students are calling upon us to bring that culture to our classrooms and to the boardrooms of the firms where they will go to work. Increasingly they are showing us that we will all be liberated by a shift in the balance between these two cultures. This is your first gift to the law school.

Those of you who are leaving this community go, as you came, bearing many gifts. It is your obligation, your responsibility, to give those gifts away. Go forth, my friends, into this astonishing world and give it all away.

Excerpted from Professor Lawrence's Hurlbut Award address, June 17, 1990.



Honored teacher: Charles Lawrence

Student Awards and Honors

Nathan Abbott Scholar, for the highest cumulative grade-point average in the class: Jeffrey A. Lamken, winner also of the First- and Second-Year Honors for the highest average in each of his previous two years of law school.

Urban A. Sontheimer Third-Year Honor, for the second highest cumulative grade-point average in the class: Stephen Rourke Reily.

Order of the Coif, the national law honor society, to which the following were elected: Lamken and Reily, plus David Lloyd Anderson, Steven M. Dunne, Carol Federighi, Stephen C. Ferruolo, Kevin David Gerson, Paul B. Halpern, Janet C. Hoeffel, Joseph Glynn, Stephen Lunney, Jr., Neil Barry Morganbesser, Kurt Edward Stitche, Bonnie I. Robin-Vergeer, Noah James Walley, Tracy Joel White, and Gordon E. Wood, Jr.

The 16 new Coif members also graduated "with distinction," an honor accorded a total of 43 of the Class of 1990 for high academic achievement during their three years of law school.

Hilmer Oehlmann, Jr. Prizes, for outstanding work in the first-year Research and Legal Writing Program: Dunne, Federighi, Ferruolo, Morganbesser, and Reily, plus Michael Paul Adams, Betsy L. Allen, Steven F. Benz, Katherine Ann Eccles, Robert H. Edwards, Jr., Wendy R. Leibowitz, Frances Marie Leos, James A. Losey, Thomas Peter Maliska, Susan Ludlow Pilcher, Melissa J. Rhodes, Stephen C. Slotnick. Benz was also president of the 1989-90 *Stanford Law Review*, while Pilcher was its managing editor.

Mr. and Mrs. Duncan L. Matteson, Sr. Awards, in the Marion Rice Kirkwood Moot Court Competition: Jerry Stewart Fowler, Jr. and Bonnie I. Robin-Vergeer as Best Team of Advocates. A second Matteson Award went to David Lloyd Anderson and Jeffrey A. Lamken as the runner-up team.

Walter J. Cummings Awards, also in the Moot Court finals. For best oral advocate: Lamken. For best brief: Fowler and Robin-Vergeer. (More on page 28.)

Frank Baker Belcher Award, for the best academic work in evidence: Janet C. Hoeffel.

Steven M. Block Civil Liberties Award, for distinguished written work on issues relating to personal freedom. First-place recipient: Janet C. Hoeffel. Second-place recipient: Mathew Samuel Nosanchuk.



Happy throng: The graduating Class of 1990, backed by 1000 relatives and friends

Carl Mason Franklin Prize for best papers in international law: Janet Lee and Paul Robert Williams.

Olaus and Adolph Murie Award, for the most thoughtful written work in environmental law: James A. Losey.

Board of Editors' Award, for outstanding editorial contributions to the *Stanford Law Review*: Heather Ann Bell.

Irving Hellman, Jr. Special Award, for the outstanding student note published in *Stanford Law Review*: Janet C. Hoeffel.

Johnson & Swanson Law Review Award, for making the greatest overall contribution during the third year of law school: Bonnie I. Robin-Vergeer.

Jay M. Spears Award, for outstanding service to *Stanford Law Review* by a second-year member: for 1989, Hugh W. Baxter.

United States Law Week Award, for outstanding service to the *Law Review*: Lisa Alane Schuh.

Lawrason Driscoll Moot Court Awards, to officers of the Moot Court Board: Alicia Diana Garcia, Michael Nathan Goen, Michael George Kovaka, Michael Primont, Melissa J. Rhodes, and Lisa Alane Schuh.

R. Hunter Summers Trial Practice Award, presented by officers of Serjeants-at-Law for outstanding student performance: in 1989, Linda A. Sciuto.

On Money, Honors, Students, Computers, Jobs, and More

HIGH-TECH LAW

THE HITACHI Foundation has approved a \$106,000, two-year grant to the School for a study of the role of law, lawyers and the legal profession in shaping and responding to the emerging Pacific Basin high-technology community.

The project is being directed by a team consisting of Professors John H.

Barton (see page 21), Robert W. Gordon, and Lawrence M. Friedman. The group hopes to identify trends that will help guide curriculum design and, more broadly, the School's thinking in regard to planning for the year 2010.

SUPREME AUTHORITIES

Stanford Law School professors and deans are well

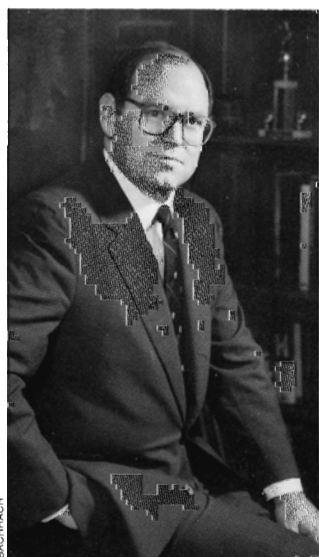
represented in a new volume, *The U.S. Supreme Court: a Bibliography*, by Fenton S. Martin and Robert U. Goehlert (Congressional Quarterly, 1990). Those cited include William F. Baxter, Ellen Borgersen, Paul Brest, John

became a Commentary piece in the June 3 issue of the *Washington Post*.

For a subscription, write or call: Stanford Law & Policy Review, Stanford Law School, Stanford, CA 94305-8610; telephone (415) 725-7297.

Friendly persuasion

Kroener '71 Heads Law Fund



Bill Kroener '71

WILLIAM F. Kroener III, a volunteer since 1973, has assumed leadership of the Stanford Law Fund beginning with the current, 1990-91 year. Bill Kroener is a JD/MBA graduate (1971) and former managing editor of *Stanford Law Review* (Vol. 23). Since graduation, he has been with the international law firm of Davis Polk &

Wardwell, working at various times in the firm's New York City, London, and Washington, D.C. offices. He currently divides his time between New York and Washington.

An expert in banking law, Kroener is a director of the Mitsubishi Bank Trust Company of New York and Mitsubishi Capital Inc. He serves the legal profession as a member of the banking committees of the American Bar Association and the New York State and City counterparts. His activities also include looking into the future as a member of the ABA's Special Task Force on EC 1992 and of the executive committee of the Stanford Law School Board of Visitors' Task Force on 2010.

Kroener succeeds to the Law Fund chairmanship after two years as vice chair and head of the increasingly successful personal solicitation program. □



Computer access: The Swig Room

Hart Ely, Lawrence Friedman, William B. Gould IV, Thomas Grey, Gerald Gunther, Myron Jacobstein, Robert Rabin, Kenneth Scott, Michael Wald, and Robert Weisberg. Several professors have more than one entry.

STUDENT JOURNAL MAKES NEWS

"The most comprehensive look at the problem to date"—that's what Leonard Silk of the *New York Times* (June 1, 1990) called the *Stanford Law & Policy Review's* 14-article symposium on the savings and loan debacle.

The Spring 1990 issue also caught the attention of the *Wall Street Journal* and *Fortune*, among others. And one article, by faculty member Joseph Grundfest,

LIBRARY ON LINE

The Law Library has converted the Swig Room opposite the information desk into a state-of-the-art facility for computer-assisted legal research (CALR). Formerly used for rare books, the room is named for the late Benjamin Swig of Fairmont Hotel fame, a major benefactor when Crown Quad was built in 1975.

The new facility, says Public Service Librarian Paul Lomio, "is one of the largest and best-equipped CALR facilities in the country." Swig Room users will find 12 terminals providing unlimited and unrestricted access to LEXIS, NEXIS and WestLaw, along with printers. Complimentary software is available for communica-

tions, citation checking, document formatting, and on-line tutorials.

HUMANITIES DIALOGUE

Eden Quanton (3L) is the founding editor of *Stanford Humanities Review*, an interdisciplinary journal launched last spring. Quanton has done graduate work in Slavic literature as a Mellon Fellow at Stanford.

The second issue (Fall/Winter 1990) of the *Humanities Review* fea-

Times, and the *Los Angeles Times*, which put him on its editorial board.

Dembart maintained a journalistic presence during his first and second years of law school by writing weekly book reviews in the *Los Angeles Times*, *Sunday Examiner*, and elsewhere. His new responsibilities preclude continuing as senior articles editor of *Stanford Law Review*, but he hopes to complete law school with his class in June 1991.

Editorialist Lee Dembart (3L), with Deans Brest and Borgersen



tured a number of articles on the theme, "The Powers of Law; the Laws of Power." One, a roundtable debate on Critical Legal Studies, involved Professors Tom Heller, Tom Grey, Robert Gordon, Mark Kelman and William Simon, with Richard Perry '90 as moderator.

For subscription information, write: Stanford Humanities Review, Stanford Humanities Center, Mariposa House, Stanford, CA 94305.

IN HIS OWN WRIT

Third-year student Lee Dembart became the editor of the editorial pages of the *San Francisco Examiner* on June 25. Now 44, Dembart has reported for the *New York Post*, the *New York*

A TRAGIC LOSS

Vivian Gorey, a student who had just completed her first year of law school, died in Menlo Park on June 8, 1990. Witnesses to the fatal accident said she appeared to be trying to catch the train that struck and killed her. She was 29 years old.

Gorey was a native of Buenos Aires, Argentina, and a graduate of the University of Buenos Aires. Before coming to Stanford, she lived for a time in Germany, where she started her own business as a translator.

She is survived by her husband, Kevin Gorey, her parents, and two sisters.

The family prefers that donations be made to the Stanford Law School



Vivian Gorey, 1961-1990

memorial fund established in her name for the benefit of other international students. Her law firm employers, Folger & Levin of San Francisco, and her husband's coworkers at Silicon Graphics Computer Systems of Mountain View are major contributors.

SKADDEN FELLOWS

Three Stanford graduates are among 25 recipients nationwide to win 1990 Skadden Fellowships. Established in 1988 by the international law firm of Skadden, Arps, Meagher & Flom, the year-long, renewable fellowships are awarded to graduating law students and judicial clerks for the pursuit of public interest law projects of their own design.

Bob Hughes '89 received his award to assist once-homeless children through Advocates for Children of New York. Richard Klawitter '90 is focused on low-income housing issues on Chicago's South Side, where the Legal Assistance Foundation of Chicago maintains a neighborhood office. And Juliette Steadman '90, who worked last year with the Immigrant Legal Resource Center in

San Francisco, continues there on a project to help children of immigrants achieve legal status.

THE NEW GRADUATES

A pre-Commencement survey of students graduating in the Class of 1990 showed the following employment patterns: law firm associates, 52 percent; judicial clerks, 28 percent; non-law, public interest, government, or postgraduate education, 10 percent; and business firms, 1 percent. The remaining 9 percent of respondents were not pursuing employment immediately because of travel or other plans.

Geographically, the jobs chosen were dispersed over 20 states, with the largest concentrations being in California (40 percent), New York (12 percent), and the District of Columbia (10 percent).

UP AND COMING

The 1990 crop of entering students totals 170—105 men and 65 women. Members of minority groups number 56. All told, the students come from 83 colleges. A hefty number—30—also have advanced degrees: 14 with a master's, 10 with PhDs, 4 MDs, and 2 MBAs.

Some 29 states are represented, plus the District of Columbia and Puerto Rico; 7 students come from other countries—3 from Canada and 1 each from Belgium, England, Japan, and Russia.

The average age is 24½, with 26 students over the age of 30. Nearly half the class members—48 percent—have been out of school two years or more.

The students arrive with an impressive median

LSAT of 44 and a median GPA of 3.75. But "more important," Admissions Director Dora Hjertberg told them, "you are truly a very diverse group. Many of you have studied and/or worked abroad; seen government service on the federal or state levels; and worked for accounting, marketing, and consulting firms, as well as law firms. A number of you have either worked in or contributed substantial amounts of time to social concerns. You will find your class to be very interesting."

CREATIVE GIVING

Students involved in fly-backs last fall were able to generate contributions for the homeless by channeling their travel arrangements through a cooperating agent and by choosing no-cost or low-cost lodgings. The actual money was provided by law firms, who reckoned their donations in terms of the cost savings achieved by participating job candidates.

The effort—part of the nationwide Students Against Homelessness project—involved students at 14 law schools and 3 business schools, and many major recruiters. Julie Hansen '90 was the coordinator at Stanford Law School.

ERRATUM

Let the record show that Victor M. Minjares '88 and Mary Dent '89 were the editors of the award-winning 1987/88 volume of *Stanford Law Journal*. The two 1988 graduates credited in the previous *STANFORD LAWYER* (page 35) were in fact editors of the 1986/87 volume. Apologies to all. □

Faculty Notes

John Barton was named to the endowed George E. Osborne Professorship in Law on June 15, 1990 (see page 21). He spent several weeks last winter in Mexico City on a World Bank project studying legal aspects of the Mexican agricultural research sys-

tem. Currently, he is one of three professors carrying out a two-year study, financed by the Hitachi Foundation, of the role of law, lawyers and the legal profession in shaping and responding to the emergence of the Pacific Basin high-technology community.

Tom Campbell, though officially "on leave" as a U.S. congressman, offered a

spring-term Sunday seminar here, on issues before the House Judiciary Committee. (Campbell was principal coauthor of major antitrust legislation passed by the Committee to improve American competitiveness by permitting more joint ventures.) He also spoke at the Stanford Medical School alumni/æ reunion in May. His subject: litigation reform, the high cost of malpractice insurance, and approaches to comprehensive health care.

Mauro Cappelletti is a member of a group of European and American scholars asked to advise the government of Czechoslovakia on the preparation of a new constitution. His recent publications include "Human Rights and the Proceduralist's Role," for the *Essays in Honor of Sir Jack Jacob*; and "Challenging Legal System-Building," for the *Proceedings of the Academy of Italy*. In November 1989, he presented a report to an international congress in Palermo, Italy.

Law Librarian **Lance Dickson** contributed a chapter entitled "La recherche juridique" to *Droit des états-unis* (Paris: Dalloz, 1990), a book edited by Alain A. Levasseur.

Marc Franklin was a guest in residence last spring at Drake University Law School, meeting classes and delivering talks at the law school and in collaboration with Drake's School of Journalism and Mass Communication.

Ronald Gilson has been appointed to a three-year term as the School's first

At the fore

Stanford Law Review's Dynamic Duo



Kevin Haynes and Shauna Jackson (both 3L)

THE MEMBERS of Stanford Law Review have elected Shauna D. Jackson (AB '88) as president. She is the first black woman to serve in that role. Readers will recognize Jackson as the KZSU manager who last year won a University Dean's Service Award (*STANFORD LAWYER*, Spring/Summer 1989, page 27).

Teamed with Jackson as managing editor of the 1990-91 *Review* is Kevin V. Haynes, a 1986 Rice University graduate who transferred to Stanford from Yale Law School in 1989. Both officers, who were chosen by secret ballot, earned their stripes working on the *Review* during the 1989-90 school year.

The *Law Review* banquet at which this photo was snapped was also attended by such luminaries as Attorney General Dick Thornburgh (see page 27), Texas Judge Wayne William Justice (page 26), and Leah Kaplan Visiting Professor Frank I. Michelman (page 25). □

Helen L. Crocker Faculty Scholar (see pages 23-24).

Gilson is the author of three recent contributions to the working paper series of the School's John M. Olin Program in Law and Economics. They are: "The Devolution of the Legal Profession: A Demand Side Perspective" (No. 62 in the series); "Unlimited Liability and Law Firm Organization: Tax Factors and the Direction of Causation" (No. 63); and "Reinventing the Outside Director: An Agenda for Institutional Investors" (No. 66). Outside directors were also the subject of a lecture he gave in June at a conference on the Fiduciary Responsibility of Institutional Investors held at the Salomon Brothers Center for the Study of Financial Institutions, Stern Graduate School of Business, New York University. At another conference—Dynamics of Corporate Control IV: Evolving Legal Standards Applied to the Frontiers of Corporate Strategy—he lectured on "The Bench, the Bar, the Academics and the ALI: A Short History of the Application of the Business Judgment Rule to Takeovers."

Gilson was one of two Stanford Law professors (the other being Joseph Grundfest) dubbed a "top scholar" in the February 1, 1990 *Wall Street Journal*.

Paul Goldstein delivered a principal address at the Bicentennial celebration in Washington, D.C., of the copyright and patent systems. Invited to look forward, he spoke on "United States Copyright Law in Its Third Century." Goldstein

also presented several short papers at a conference in West Berlin on United States compliance with the Berne Convention. The annual meeting of the United States Copyright Society was the occasion for another presentation, this time on the influence of academe in the development of U.S. copyright law.

The third edition of Goldstein's widely adopted casebook, *Copyright, Patent, Trademark and Related State Doctrines: Cases and Materials on Intellectual Property Law*, is now off the press (Foundation Press, 1990).

Robert Gordon presented the annual Clark Lecture in December 1989 at UCLA's Clark Institute for Seventeenth and Eighteenth Century Studies. "Absolute Property in Theory and Practice" was his subject. In January 1990, Gordon served as Distinguished Visiting Professor of Legal Theory of the Faculty of Law for the University of Toronto, where he lectured on "Images of Order and Disorder in United States, British, and Canadian Public Law." The next month he delivered the Mellon Lecture at the University of Pittsburgh School of Law, speaking on "Private Practice as Public Service."

William B. Gould IV has been asked to chair the city of San Francisco's new Task Force on Collective Bargaining. Mayor Art Agnos announced Gould's appointment, along with the establishment of the new task force, on June 22, 1990.

The previous March, Gould presented a paper at the American regional congress of the International

Society of Labor Law and Social Security, held in San Jose, Costa Rica.

Later this spring he traveled to several cities in Central and Eastern Europe, meeting with academics, labor leaders, and political figures (see "Warsaw Spring," pages 16ff). While overseas he delivered a paper, "Employment Protection and Job Security in the U.S. and Japan," at the International Conference on Workers' Protection and Labor Market Dynamics held in Berlin, and a lecture—believed to be the first by an American since the outbreak of World War II—to the law faculty

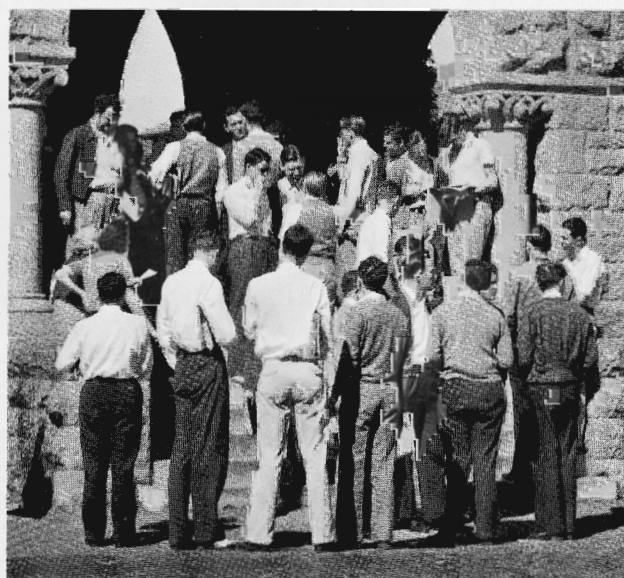
of Humboldt University in East Berlin.

Thomas Grey is the new Nelson Bowman Sweitzer and Marie B. Sweitzer Professor of Law (see page 22). His efforts in the University debate over discriminatory harassment came to a successful resolution in May, with the adoption by the Student Conduct Legislative Council of his language for an interpretation of the Fundamental Standard.

Grey addressed the general issue of harassment and free speech in a paper for a conference on the future of civil rights held in April at the University

Help wanted

History in the Making



WERE YOU studying, teaching, or otherwise involved with Stanford Law School at any time before 1960?

We are seeking background materials—lecture notes, research papers, letters, diaries, photographs, etc.—for a history of the School. Personal recollections, either written or oral, are also welcome.

Please contact the historian commissioned for the project: Howard Bromberg, 96-D, Escondido Village, Stanford, CA 94305; telephone (415) 497-0887.

of Chicago, as well as at various other forums around the country. Among them: a workshop on legal theory at Boalt Hall (in March); a panel at the 1990 Federalist Society national meeting at Stanford (also March); a national conference on women in legal education, New York University Law School (April); and in his role as State Lottery Visiting Scholar at San Jose State University (May).

Joseph Grundfest—a “top scholar” by one *Wall Street Journal* account (Feb. 1, 1990)—has had contributions recently published in the *WSJ*, *Fortune*, *Oxford Analytica*, and *Stanford Journal of Law and Public Policy*. The last, which attracted considerable media attention, was titled “Lobbying into Limbo: The Political Ecology of the Savings and Loan Crisis.” He also submitted testimony to the Pennsylvania State legislature regarding the Keystone State’s new antitakeover statute.

Grundfest has recently made a number of oral presentations as well: at the Harvard Business School Conference on Structure and Governance of Enterprise; the Federal Bar Council; CEPR Conference on Deposit Insurance; and Financial Executives Institute.

In other news, he has been named an adjunct scholar to the American Enterprise Institute. And—truly enterprising—he received a patent (with his father, Michael Grundfest) for a method of manufacturing printed circuit boards.

Gerald Gunther returned to New York City, where

he grew up, to receive honorary doctorates (LLD degrees) from two institutions: Brooklyn Law School and Brooklyn College of the City University of New York. Brooklyn Law also awarded him its Richard J. Maloney Medal for Outstanding Service to Legal Education and invited him to deliver the address at its June 1990 commencement exercises at Lincoln Center in Manhattan. The law school’s citation recognized Gunther as “the dean of American constitutional law scholars” and lauded him for (among other things) “his integrity and his honest and candid approach to constitutional law.” Brooklyn College cited his “outstanding commitment to the principle of freedom of speech,” and his “contribution to civic life.”

Gunther’s ongoing participation in the ABA Task Force on the First Amendment resulted last spring in a coauthored amicus brief defending the rights of flag burners in the most recent round of such cases at the U.S. Supreme Court. The Court agreed with his position that the 1989 law banning flag burning is unconstitutional. Gunther also continued (“with less success,” he notes) to voice his First Amendment and policy arguments against Stanford’s proposed curbs on racist speech.

Bill Ong Hing has been named to the Advisory Committee of the Immigration Policy Project of the Carnegie Endowment for International Peace. He and Professor **Gerald López** were the recipients of Irvine Foundation funding for work last summer

on the development of a new course, The Impact of Immigration Law and Policy on Asian American and Mexican American Communities.

Hing, who has been teaching here since 1985, has been appointed to the tenure-line position of associate professor of law (see page 21).

Mark Kelman is currently thinking and writing about antidiscrimination law. A working paper—“Concepts of Discrimination, with Special Reference to ‘General Ability’ Job Testing”—appeared in July as No. 65 in the School’s Olin Law and Economics Series. Kelman has also consulted with the Office of Technology Assessment on issues related to integrity testing.

Sharon R. Long, coteacher with Hank Greely of a course on problems of tobacco, was recently spotlighted by *Fortune* magazine (October 8, 1990) as one of twelve of “America’s Hot Young Scientists.” A biologist by training (PhD, Yale, 1979), Long is an associate professor in Stanford’s Biological Sciences department and recipient of a National Science Foundation Presidential Young Investigator Award (1984-90). Now also a cooperating associate professor of law, she was cited by the *Fortune* editors for, among other things, “an uncanny ability to use the tools of one discipline to solve mysteries in another.”

John Henry Merryman spent part of the spring semester at the University of Florida College of Law as its O’Connell Distinguished Visiting Professor. A very active Stanford

“emeritus,” Merryman is also serving as president of the newly formed International Cultural Property Society and as chairman of the Board of Editors of the equally new *International Journal of Cultural Property*.

A. Mitchell Polinsky cochaired a conference at Stanford last May on “The Law and Economics of Liability and Insurance.” The event, which brought together leading experts from around the country, was cosponsored by the School’s John M. Olin Program in Law and Economics and the American Economic Association’s *Journal of Economic Perspectives*.

Robert Rabin continues his work on various aspects of tort reform (subject of the interview beginning on page 4), serving as a consultant on the American Law Institute tort liability project and as a discussion leader at a June meeting of the American Assembly in New York. Rabin also recently published an essay on the regulatory system, “The Administrative State and Its Excesses: Reflections on the New Property,” 24 *Univ. of S.F. L. Rev.* 273 (1990).

Deborah Rhode is the editor of *Theoretical Perspectives on Sexual Difference*, a collection of essays just published by Yale University Press. This interdisciplinary volume grows out of a conference sponsored by Stanford’s Institute for Research on Women and Gender and features contributions by some of the nation’s leading scholars in law, philosophy, political theory, history, psychology,

literature, sociology and economics.

Last spring, Rhode delivered the Charles Miller lecture at the University of Tennessee, choosing adversarial ethics as her topic. She also participated in a Yale University symposium on Feminism and the Law.

Renato Rosaldo, Stanford professor of anthropology and a cooperating professor of law, adds to his considerable list of publications a new book, *Culture and Truth: The Remaking of Social Analysis* (Beacon Press, 1989).

Kenneth Scott was called to Washington by the U.S. Senate's Committee on Banking, Housing and Urban Affairs to provide expert testimony on the current savings and loan disaster. In a statement May 17, he warned the Committee that insufficient attention had been paid to the fundamental structure of deposit insurance and the "perverse incentives" it provides. "Cleaning up the debris is not fixing the problem," he observed.

William Simon presented the University of Maryland's 1990 Rome Lecture, speaking on the delicate question of "Lawyer Advice and Client Autonomy." He spent the fall of 1989 in Berkeley as a visiting staff member at the Center for Community Economic Development. Simon is currently preparing a new course, "Labor and Capital: Workers as Creditors, Investors and Owners," which tries to integrate issues from corporations, labor, commercial and pension law concerning the economic interests of workers.

Michael Wald has been named to the Jackson Eli Reynolds Professorship in Law (see pages 21-23).

Robert Weisberg had an article, "A Great Writ While It Lasted," published in the Spring 1990 issue of the *Journal of Criminal Law and Criminology*. Part of a symposium on criminal procedure, the piece discussed recent Supreme Court decisions restricting federal habeas corpus rights. Weisberg, who holds a PhD in English in addition to a JD, is currently writing on literary approaches to law.

James Whitman had his first book published, in July 1990, by Princeton University Press. Based on his University of Chicago PhD dissertation in intellectual history, it is called *The Legacy of Roman Law in the German Romantic Era: Historical Vision and Legal Change*. Earlier this spring, Whitman gave a paper on the New Deal and fascism, at a legal theory workshop sponsored by New York University Law School, and participated in the first of two international conferences devoted to Continental influences on Anglo-American law in the 19th century.

STAFF

Frank Brucato, the School's Associate Dean for Administrative Affairs, has been appointed to the University's Management Liaison Group charged with advising the Repositioning Steering Committee and central administration units on the feasibility of their budgetary proposals.

Research librarian **Paul Lomio** has been teaching

a graduate level course, Resources in the Law, at San Jose State University. An article by him, "Intellectual Property Law and the Protection of Computer Programs," was published in the June 1990 issue of *Database* magazine.

Iris J. Wildman, Senior Reference Librarian, is the coauthor (with R. Carlson of Fred B. Rothman & Co.) of *Researching Copyright Renewal: A Guide to Information and Procedure* (Rothman, 1989). The 85-page handbook explains copyright law and the procedure for searching for renewals, and includes a year-by-year analysis of the renewal section of the *Catalog of Copyright Entries*.

FORMER TEACHERS

Paul J. Hoepfer, a lecturer in 1989-90, is once again full time at Northshore Consultants and Management Corporation in Beverly Hills, but with the title now of Director (rather than Vice President). During his Stanford stay, Hoepfer helped develop and then

cotaught a new course, What Lawyers Should Know About Business.

Samuel D. Thurman, professor emeritus and esteemed member of the Class of '39, is the 1990 recipient of the Robert J. Kutak Award of the ABA's Section of Legal Education and Admissions to the Bar. The award, which recognizes "outstanding contribution to the improvement of legal education," was presented in a ceremony August 5 at the Field Museum in Chicago. Currently a professor at Hastings College of Law, Thurman taught twenty years at Stanford (1942-62), served as dean and then professor of the University of Utah Law School (1962-75), and at various times headed the top three law-school accrediting agencies in this country. The much-honored professor had a chair established in his name last year at Utah (STANFORD LAWYER, Spring 1990, page 52). □

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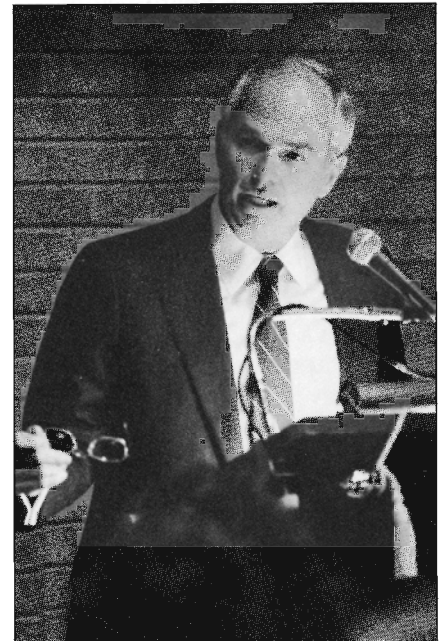
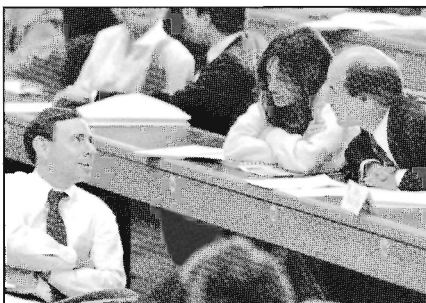
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Board of VISITORS

Experts in a range of fields participated in the Board's discussion of long-range trends



A.D. 2010

WHAT WILL the world of legal practice be like, twenty years hence? And how can Stanford best educate its students for that world?

These bottom-line questions are currently being addressed by the Board of Visitors under the chairmanship of Kendyl K. Monroe '60. The goal: to advise and assist the School in meeting the challenges of the twenty-first century. Dean Brest welcomes the initiative; indeed, he has become an active participant. "To the degree that we

Top: Dean Brest, reporting progress on many fronts. **Below:** Michael Roster '70 and Cathy and Vincent Von der Ahe '71, in conversation. **Top center:** Brooksley Born '64, Charles Silverberg '55, and Stephen Heard '64, enjoying a light moment.

Center: George Dikeou '64 and Dorothy An (then 3L), during a lunch with students. **Top:** Jerusha Stewart '83 and Jim Gansinger '70, in a discussion session. **Below:** Richard Mallery '63, welcoming first-year students.

succeed," says Brest, "we will not only serve our own students but also indicate a direction for legal education generally."

The enterprise was launched at the May 1989 annual meeting (STANFORD LAWYER, No. 41, pp. 33-42) with three agenda-setting sessions. This year's meeting on May 10 and 11 expanded and intensified the process.

With a record 96 Visitors in attendance, the 1990 group worked through a carefully structured sequence of presentations and discussions designed to identify significant trends and select the questions most needing further study. The agenda was planned by Dean Brest, Mr. Monroe, and a 2010 Task Force also including Professor John Barton '68, James Bass '87, Associate Dean Ellen Borgersen, Roderick Hills '55, William F. Kroener III '71, Richard Mallery '63, Nancy Hicks Maynard '87, and Edward D. Spurgeon '64.

In a letter to the Board before the landmark meeting, Monroe noted that the School's 2010 deliberations coincide with a similar undertaking by Stanford University. This year's Law School Board of Visitors meeting—which included a talk by Stanford President Donald Kennedy—also signified the beginning, in Monroe's words, of "an interchange between the Law School and the University on this important topic."

SCANNING

The first session of the annual meeting provided an overview of global and national trends likely to affect the legal practice of the future. Four areas of significance were addressed: the environment; world political economy; domestic issues; and the role of law and legal institutions in modern, complex societies.

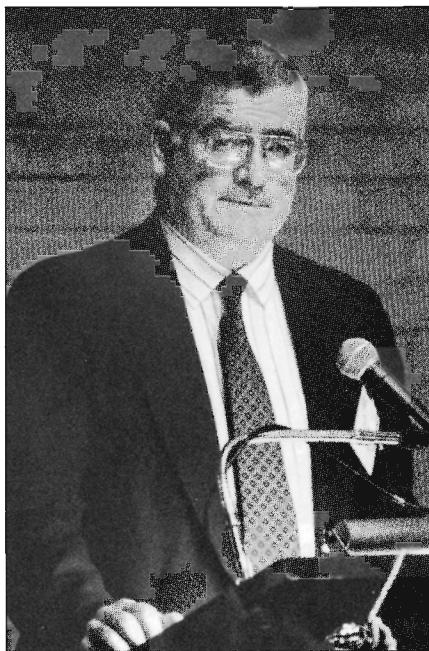
The speakers for this session were Earth Day coordinator Denis Hayes '85, Stanford international law professor Thomas C. Heller, California Tomorrow president Lewis H. Butler '51, and Stanford professor and legal his-

torian Lawrence Friedman. Their forecasts are provided in the article, "Into the Future," beginning on page 10.

BRAINSTORMING

The Visitors were invited, in the plenary discussion session that followed, to generate further "prophecies" based on their own considerable experience and knowledge. Professional facilitator Dave Sibbert moderated the discussion, while simultaneously providing mural-sized notes for all to see.

Board members predicted, among



other things: an increased need for and use of alternative forms of dispute resolution; growing internationalization of the practice of law; greater impact and use of technology in legal practice; increased involvement of women and racial minorities in the profession; and a trend towards non-lawyers' playing greater roles in areas traditionally reserved to the legal profession.

The lunch arrangements encouraged further open-ended discussion, this time with lawyers in the making. Animated clusters of Visitors and current law students, provisioned with box lunches, could be seen conversing throughout the student lounge,



Left: Kendyl Monroe '60, chairing the two-day meeting. **Right:** Ned Spurgeon '64, Utah's dean, in a supportive role. **Top:** Hon. Miriam Wolff '39.

Photos by Marco Zecchin

Crocker Garden, and adjacent areas. As is usual with such encounters, the agenda took care of itself.

LAWYERING SKILLS

The session that afternoon focused more particularly on the question: What skills will lawyers need in A.D. 2010? Three Law School experts in relevant fields offered their perspectives, followed by a panel of four eminent alumni practitioners.

Former SEC commissioner Joseph Grundfest '78, now a Stanford associate professor of law, discussed the area of business transactions. "A good rule of thumb for the 21st century is that a lawyer who is just a lawyer isn't much good as a lawyer," he said. "A lawyer will have to be as much businessman as legal technician, and will have to be imaginative in ways that a client can't conceive." Grundfest, who has done doctoral-level work in economics, cited a need for modern tools of finance and risk management, in addition to the more traditional skills associated with legal practice.

For a look at the developing area of alternative dispute resolution, the Board turned to Melanie Cohen Greenberg '90, associate director of the Stanford Center on Conflict and Negotiation. Greenberg outlined the basic types of ADR approaches available, noting that lawyers increasingly will need to understand and apply such options in their practice. "Effective lawyers in the year 2010 will need to be process architects, who can evaluate cases and design ways of resolving conflicts that are not necessarily aimed towards a win-lose result," she said. Training and education is one part of the equation, another being interdisciplinary research like that of Professor Robert Mnookin and others associated with the SCCN.

A third area of the law likely to undergo change is legal services, particularly the representation of underprivileged clients. Associate Professor Bill Ong Hing, an immigration law expert with considerable clinical expe-

rience, spoke of the need to consider not simply individual cases, but also recurrent, systemic problems. "Legal-services lawyers should be proactive planners as well as reactive litigators," he said. "You have to learn not only how to bring a suit, but also how to educate the community so it can resolve problems that lead to litigation."

Hing also said that lawyers, in taking complete charge of a case and paternalistically solving it, may help the client only temporarily. The more con-



Above: Prof. Joseph Grundfest '78, speaking on the art of business transactions. **Above right:** Melanie Cohen Greenberg '90, on dispute resolution. **Right:** Assoc. Prof. Bill Hing, on legal services.

structive role, he suggested, is to "demystify" the law, encourage clients to build on their own problem-solving abilities, and involve them in finding a solution. "Don't forget," Hing noted, "that a client brings skills to the situation."

WISE COUNSELORS

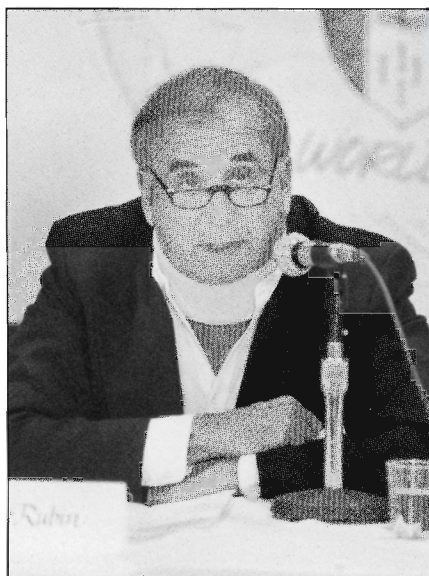
The afternoon concluded with a look at "the role of a lawyer in 2010" by a panel of noted practitioners. Miles Rubin '52, who has headed a number of corporations and foundations, served as moderator.

He was joined by three panelists. James Gaither '64, the current president of Stanford University's Board of Trustees (STANFORD LAWYER, No. 40, page 66), is a partner and former managing partner of Cooley Godward Castro Huddleson & Tatum of San Francisco. Roderick Hills '55, in addition to being the managing partner of the Washington, D.C., office of Donovan Leisure Newton & Irvine, chairs the US-ASEAN Council for Business and Technology, Inc. And Victor



Palmieri '54, a former State Department ambassador-at-large, heads his own investment firm in New York City, where he also chairs the Overseas Development Council.

The panelists agreed that in the complex world of the future, lawyers will be needed to serve as what Palmieri called "wise counselors. It's always possible to surround yourself with technicians," he observed, "but rare and wonderful to have a counselor who has moral courage, intellectual acuity,



a sense of humor, and an understanding of government."

The skills and perspective of a generalist were also stressed by Gaither, who said, "We have to open up to a different world, and keep sight of the value of judgment, creative skills, and the ability to negotiate."

And in a segue to the subject for the next day—legal education in 2010—Hills opined: "The best law school of the future will be one that assimilates the study of law with other disciplines, such as behavioral science, economics, statistics, and management. We need to do a better job of teaching lawyers how to see a problem and how to articulate that problem to others."

That evening, the Board of Visitors hosted a dinner for all first-year students. Originally proposed by former Board chair Richard Mallery '63, the event was intended to welcome the students into the extended community of Stanford lawyers and to affirm the civic values of the legal profession. Jim Gaither was the keynote speaker (see next page).

Left: Roderick Hills '55, experienced practitioner, with some sound advice.

Below left: Miles Rubin '52, the Board's vice-chair. **Below:** Victor Palmieri '54, advocating breadth.

Top: Bryant Barber '84.



OTHER MODELS

The second day of the annual meeting began with presentations on innovative teaching programs at two other universities.

Charles Halpern, the founding dean of the City University of New York Law School at Queens, outlined the thinking involved in creating a "public interest law school that would encourage students to deal with the poor and underrepresented."

CUNY-Queens, he reported, started not with curriculum but with people: first, a faculty "willing to spend large amounts of time with small numbers of students"; and second, a student body that is integrated and includes many older students with experience indicating they would be drawn to the school's public service mission. He questioned whether it is "truly critical" that a law school seek the highest possible test scores: "Students with LSATs of 34 are extremely competent and may bring other strengths," he observed.

Halpern, who now directs the Nathan Cummings Foundation, also urged attention to a neglected area in law school curriculums—the physical world and state of the environment. "We are expending the world's riches," he noted, "and will leave our children and their children impoverished."

The second educational model described to the Board of Visitors was the Graduate School of Public Policy at the University of California, Berkeley. In the words of Eugene Bardach, a professor and former acting dean: "We

A Message to Students

“We Need Your Help”

WE IN THE LEGAL PROFESSION need your help. As newcomers, you often see morality and idealism more clearly than we do. You are quicker to observe (or acknowledge) our failings as a profession, and, most importantly, you can bring about change faster than anyone else.

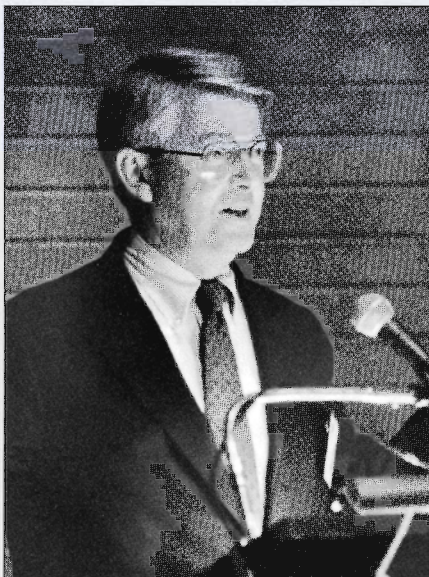
As I reflect back on the 1970s, the difference in law student attitudes toward law firms is striking. At job interviews then, interviewers were questioned about women and minorities and public service activities. And it wasn't enough to say that we cared, that we were committed to bring about change. Proof was demanded; performance was required. Firms changed because they had to, in order to attract the new lawyers they needed. I'm sad to report that we haven't heard much lately from law students about such concerns. During the 1980s students asked primarily about types of practice, compensation and partnership opportunities. I hope that as we move into the 1990s, you will once again become a force for change in our profession.

WE HAVE DRIFTED as a profession. We have become driven by the economics of today, by the same short-term profitability analysis that has sapped much of the strength and vitality of American industry.

Competition among law firms can be healthy, but unfortunately, it has caused us as a profession to forget, too often, about our obligations to society and about the need to build strong institutions that can contribute to our communities. And I believe it is causing many to ignore the high ethical standards essential to maintaining public confidence in our profession.

We can reverse this trend, but only if it is important to you that we do so. You can—and in my judgment should—demand a better balancing of our priorities. For yourselves and from your firms you should demand:

- ▶ A commitment to engage in community service, whatever the cause, be it conservative or liberal, political or religious
- ▶ A commitment to make public service of some type a part of each lawyer's career



By James C. Gaither '64
*President, Stanford University Board
of Trustees*

- ▶ A commitment to meaningful equality in our firms and judicial systems
- ▶ A commitment to address the most pressing problems of our times: the improvement of public education; the assimilation of millions of immigrants; the protection of our environment; and the improvement in the functioning of American businesses in a global economy and a broader and more diverse community of nations
- ▶ A commitment to the highest standards of ethics in the conduct of our professional lives.

By asking your profession to do those things and by committing yourself to do them as well, you will add great meaning and satisfaction to your lives. Public service will broaden your experience, add new

dimensions, and enhance your career. I frankly know of no one who has derived lasting satisfaction from serving only their own material success. Human satisfaction comes from helping others while at the same time being productive and successful professionally.

There is much to do, and we as lawyers are uniquely able to help: to form new organizations; to analyze problems and identify solutions; to devise better laws and procedures; to organize campaigns for political office or social justice. We can make a difference if we try. Life has been kind to us, and there is no better way to express gratitude than by giving something of ourselves to bettering conditions for those who are less fortunate.

TO CONCLUDE, we who have become acclimated to legal practice hope that you will speak clearly to us about what we must do to remain a proud and important profession. Public service has always been a hallmark of this law school. It is important for us and for our society to continue that honorable and worthy tradition. And it is important to embed that tradition of service into the fabric of our law firms. With your help, we can do just that.

Excerpted from an address on May 10, 1990, to first-year law students.

expect our students to go out and do good for the public interest, however they define it." The master's-level curriculum includes a core course on Law and Public Policy, along with considerable exposure to material from the disciplines of sociology, political science, and economics. Work on communication skills, both written and oral, is also emphasized, said Bardach. And generally, his school deemphasizes individual competition in favor of cooperative problem-solving.

THE UNIVERSITY CONTEXT

Stanford president Donald Kennedy was the final speaker in the session. He began by providing some background on the University's own A.D. 2010 process. The president encouraged the School in its complementary effort and expressed the hope that thought will be given to increasing the degree of interaction between the School and other components of the University.

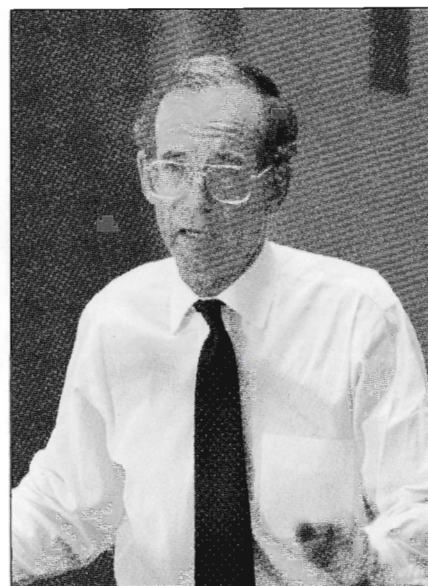
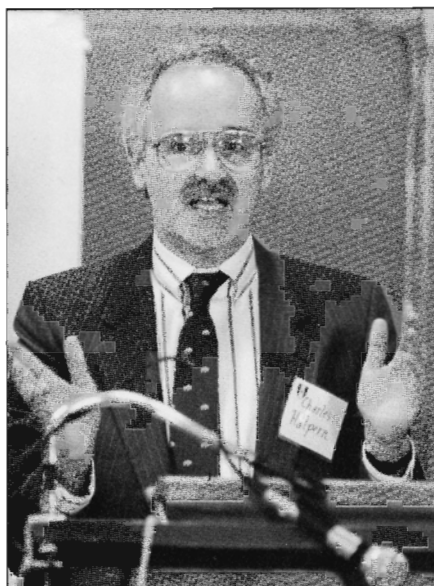
Kennedy praised the School's faculty for its leadership in campus administration and issues—such as the debate over verbal harassment (STANFORD LAWYER, No. 42, p. 4–). On the academic side, however, the president wondered if the School might increase the permeability of its boundaries with other parts of the University: "I have in mind a place," he said, "where undergraduates can undertake individual studies with law faculty members."

One area in which the School's faculty might be helpful to other departments, Kennedy noted, is curriculum design. "I believe the School of Law offers the best-organized first-year curriculum on campus," he said. "It is a brilliant illustration of tight reasoning and diligent faculty cooperation, which the rest of the campus should not ignore."

President Kennedy went on to emphasize the value of increased minority representation on the faculty, concluding with the hope that "you'll have an impact on helping students make choices that will be important not only to them but to society as well."

THE SCHOOL TODAY

Lunch for the hardworking Visitors was accompanied by a "State of the School" report from Dean Brest. Speaking at the end of his third year of leadership, the Dean was pleased to note an increase in the "level of intellectual engagement among students." This may be attributed to efforts on three fronts: reform and enrichment of the curriculum; faculty commitment to good teaching; and the attention given by the School to promoting inter-



Above left: Charles Halpern, founding dean of a public interest law school. **Left:** Eugene Bardach of UC-Berkeley, bringing another viewpoint. **Above:** Stanford president Donald Kennedy, with encouraging words. **Top:** Judge Pamela Ann Rymer '64.

action and constructive discourse (the subject of his message beginning on page 2).

Brest also brought the Visitors up to date on a range of areas, including faculty appointments, the curriculum, fundraising and financial repositioning. (A report he made shortly thereafter to the Stanford University Faculty Senate, covering this information, was mailed to Law School alumni/ae in June.)

The Dean closed with a personal

vision: "When I think of my own hopes for the Law School, three goals come to mind: excellence in the professional training we give our students; leadership and innovation in legal education; and a rich dialogue among the members of our diverse community."

PLANNING THE NEXT STEPS

The final task of the Visitors was to identify and rank—based on their own knowledge and on what they had learned during the preceding ses-

sions—those questions that most need study as a basis for the next level of 2010 deliberations.

This was done in a two-stage process, beginning with small-group discussions. The questions identified in the small groups were then reported to the Board sitting as a whole. During this plenary session (which was moderated by facilitator Dave Sibbert), the members considered and voted on the questions. A total of 16 such questions drew support, with the most votes going to the key issue: What is (or should be) the "mission of the Law School"?

The Visitors were then invited to suggest resources—individuals, organizations, or research studies—that might be useful to the Board and School in their continuing deliberations concerning the School's best course for the future.

The 2010 Task Force met promptly the next morning to consider the questions and insights brought out in the two-day general meeting and to begin planning the next steps.

In the meantime, however, the Visitors were offered some rewards for their labors: a chance to witness the final round of the annual Kirkwood Moot Court competition, a Cinco de Mayo celebration with students, and a final banquet at the Faculty Club. One of the moot court justices, Chief Judge Patricia Wald of the U.S. Court of Appeals for the D.C. District, was the banquet's featured speaker.

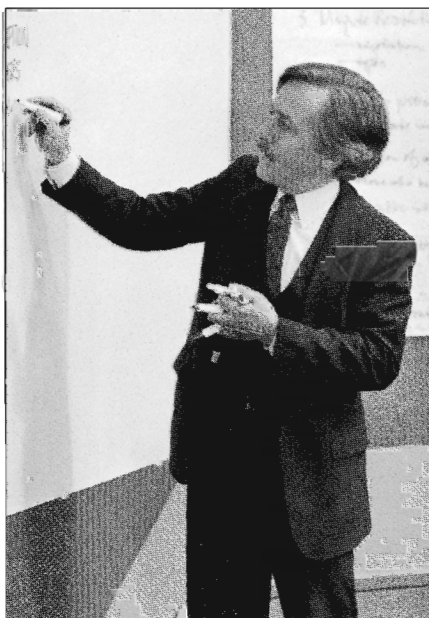
Dean Brest and Kendyl Monroe also rose to express congratulations and thanks to the members of the Board for their hard work and intellectual contributions during the two-day meeting. For his last word, Monroe chose an aphorism by Common Cause founder John Gardner: When something—like Stanford Law School—is valued, quoted Monroe, "its lovers are its best critics, and its critics are its best lovers."

—Constance Hellyer



Above: David Eaton '61, Peter Cannon '82, and Valda Staton '83, considering directions for the future.

Right: Professional facilitator Dave Sibbert, taking note. **Opposite page:** Henry Wheeler III, '50.



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Gil Berkeley '70 and Mary Beth West '72,
participating with some 100 Visitors
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Los Altos Hills, California

Fredric Woocher '78
Los Angeles, California

FROM THE DEAN

Continued from page 3

views. A heated exchange followed, in which the panelists said that they weren't talking about his sort of discomfort: If his views were in a minority in law school (which they doubted), they argued that people like him were nonetheless dominant in the larger society, while they, by contrast, were subordinated and powerless.

This struggle over the ownership of "silencing" has resurfaced from time to time, with the partisans sometimes talking as if it were a zero-sum game: "I'm silenced, therefore you can't be." There are, indeed, important differences between the experiences of the panelists and the student in the audience. But, if one can move beyond the linguistic argument, both forms of silencing are part of the problem we need to address. To the extent that minority students do not feel equal and full members of this community, their professional educations as well as their personal lives are diminished. To the extent that *any* students feel inhibited from expressing views or thoughts that their peers do not regard as "politically correct," their and everyone else's educations are diminished.

If we view these two forms of silencing as either-or problems, we won't succeed in solving either. The alternative is to develop better ways of understanding and interacting with people who are different from ourselves. Let me mention some of the ways that we are working on this at the Law School.

Public events can be an excellent vehicle for mutual understanding. This is especially true of events whose sponsors, participants, and audiences cross cultural boundaries. For example, this past year, we devoted an afternoon to small-group discussions about the issues of free speech vs. equality raised by the proposed interpretation of the Fundamental Standard. Groups of ten students, each led by two faculty members, engaged in intense and productive discussions, after which the participants broke bread together in the Student Lounge. The most telling

indication of the event's success was the racial and ethnic diversity of the students who participated—and who stayed on after dinner, talking with each other into the evening. Last year, the School also hosted a national symposium on civil rights sponsored by the Federalist Society. The event was a model of discourse, for it simultaneously presented strong conservative viewpoints and subjected them to debate.

The greatest value of such public events is stimulating individual interactions—for a sustainable multicultural community of discourse must ultimately be built on the foundations of cross-cultural personal understanding, respect, collegiality, friendship, and trust. Quite a lot of such contact already occurs. But we can do more. For one thing, we can create environments and occasions that are conducive to informal interaction. Having a comfortable place to sit down and talk makes a difference. That's why I'm especially grateful to the Class of '49 for focusing its reunion fundraising on renovating the Student Lounge. But it takes more than interior design. We need social as well as physical spaces.

It is apparent that student organizations, such as the *Law Review* and other journals, the International Law Society, and the Law & Business Society, provide great opportunities for both work and play across cultural lines. But what about the racial and ethnic organizations I mentioned earlier? Do they really promote multiculturalism, or do they encourage separation? While they have the potential to do either, I believe that on the whole they have helped our development as a community of discourse.

One function served by the "alphabet organizations" concededly has aspects of separation: The organizations provide safe havens of support and collegiality for minority students among members of their own groups. (This is nothing new or surprising. Protestant, Catholic, and Jewish student organizations, serving similar functions, have venerable traditions on university campuses.) These organizations also serve a broader function.

They enrich the life of the community at large by sponsoring gatherings and events that have a cultural or political focus, thus enhancing understanding across cultural lines.

The faculty also have much to contribute to maintaining a community of discourse. Within the classroom, we have the duty to ensure that issues are considered from a multiplicity of viewpoints and to explore the ways that doctrine and policy reflect the values and affect the lives of different groups in the society. It is our responsibility to foster respect for students' different opinions and backgrounds, while at the same time encouraging searching discussions of issues that sometimes are emotionally fraught. And we share with our students the responsibility to make the classroom an environment in which all students feel safe in maintaining and expressing their diverse identities and views. Our faculty take these responsibilities very seriously.

Minority faculty members play a particularly vital role in the School's efforts to create a multicultural community. There is, of course, no such thing as the African-American or Latino point of view. Yet there is equally little doubt that a diverse faculty tends to see the issues of social policy that pervade the law from different perspectives, and that understanding these perspectives is essential to the education of lawyers for the society in which they will be practicing. In this respect and most others, minority faculty members serve *all* students, not just members of their own group.

Building the sort of community I have described in a multicultural environment is an enormously complex process, full of difficult balances. We must become more sensitive to others and more tough-skinned ourselves. Those who are in the majority must appreciate the sense of isolation and powerlessness felt by many minority students. And the members of so-called minority groups must find ways of supporting one another without closing themselves off or falling prey to feelings of victimization.

For all these complexities, we at Stanford are in an excellent position

to create a vibrant community of discourse—a community that will at the same time make this a friendly and exciting place to spend three years and prepare our students for the complex world in which they will be practicing. If it can be done anywhere, it can be done here, and I'm dedicated to making it happen. □

Footnotes

1. *Final Report of the University Committee on Minority Issues* (Stanford University, March 1989), page 3.
2. Mari Matsuda, "Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground," 11 *Harv. Women's L.J.* 1, 3 (1988). Professor Matsuda was a visiting professor at Stanford during the 1989-90 school year.

An earlier version of this essay was addressed to the graduating class at Commencement on June 17, 1990.

TORT LAW

Continued from page 9

workers' compensation, but addressing some issues that workers' comp usually doesn't have to deal with. Workers' comp is designed primarily for cases involving an immediate injury. The less common industrial injury cases involving occupational disease are more like toxic tort cases, and workers' comp doesn't deal very well with them. So there is no readily available, highly effective administrative compensation model that we can turn to with assurance of success.

What is clear, though, is that the traditional tort approach doesn't work well at all.

What are the prospects for even such limited reforms?

At this point, not very good. People don't seem to think much about the tort system except when they perceive a crisis that might affect them: the roller skating rink is closing down, or some municipal service isn't being offered anymore, or they can't find an obstetrician.

And even when there has been a sense of crisis—as there was a few years ago—the kinds of solutions offered weren't real solutions. They were stop-gap measures that had some symbolic effect, but didn't really address the institutional shortcomings of the tort system.

An encouraging exception is what Congress did in the vaccine area, which was to create a two-stage approach—partly no-fault, partly the tort system. I personally think that's an example of a crisis triggering a sensible reaction.

More often, however, a crisis triggers a reaction that's mostly bluster, without having any clear relationship to fairness and efficiency goals. None of the measures that were enacted in the period between 1984 and 1986, when tort reform became a major political issue, dealt with hard questions, such as "How do you limit administrative costs, which are growing in such an alarming fashion?"

Do you see the trial lawyers' lobby as part of the problem—self-interested activity by a guild?

Self-interest is a problem on every side, because it doesn't lead to balanced, thoughtful kinds of proposals for reform. The self-interest of trial lawyers sometimes corresponds to injury victims' interests, but not always—and certainly not to the interests on the defense side. Similarly, insurance company, business, and occupational interests don't often correspond to injury victims' interests. As a consequence, the various interests are at loggerheads with each other, and the legislature is tied up.

Neither side has in mind the problems with the tort system that are, in fact, shared. If, for example, tort awards are out of control, then we need to think about the possibility of limiting, in some intelligent and equitable way, non-economic loss—pain and suffering. But personal injury lawyers will go to the barricades against that prospect.

If, as is also true, administrative costs are spiraling, then we need to think about whether lawyering strategies aimed purely at reducing delay are feasible. But no one on the insurance or defense side expresses any real concern about that problem.

You can see from these two examples how both sides are indifferent to concerns that are important parts of the overall problem with the tort system, and why nothing serious gets done. Instead, what gets addressed are collateral issues like insurance rates—which are significant, but linked to what you do with the tort system. Or you get attention to issues that, while related to the system's problems, are limited to a very narrow band of cases—for example, joint and several liability (part of the deep pocket problem).

How do you break this impasse?

I don't know.

Who are the victims?

Well, if the system isn't improved, we all are. When administrative costs are higher than they need to be in delivering compensation to accident victims,

those costs are reflected in consumer products. They are reflected in medical bills. They're reflected in the price that one pays for ski lift tickets. They're reflected generally in the higher prices that we pay for virtually all goods and services. So the problems with the tort system are problems for everyone. They are even more specifically problems for the injury victims who go uncompensated or are undercompensated.

Now, in the background of all this is our network of social insurance programs, like Social Security, Disability Insurance, and private health insurance. Our data are not very good on how much of the gap those first-party insurance systems fill—but certainly not the entire gap. And they don't negate the very real problem of goods and services being more expensive because the tort system continues to deal with a portion of the accidental injury population in a costly way.

Does the initiative process hold out any hope for reform?

No. I think it's worse than useless—that it's actually a dangerous way of going about reform, as the colossal misperceptions in the 1988 California battle of the initiatives demonstrated. Proposition 103—the voters' choice—still hasn't been implemented. The enormous litigation and political costs that it has generated were entirely predictable. It was addressed—in a heavy-handed way—only to the insurance companies and what rates they can charge, and totally ignored the problems with the tort system itself.

Is the ALI project you're involved in addressing the deeper issues?

That's its purpose. We won't be presenting a set of formal proposals like the ABA commission. But we will offer a set of monographs discussing alternatives that policymakers can consider in reaching their own conclusions.

For example, my work on no-fault alternatives in the toxics area will link up with work that another consultant is doing on how the traditional tort system might be changed to more of a public law model. Still other members

of the group are dealing with medical malpractice, products liability, workers' compensation, liability insurance, and related topics.

We won't have drafted a model act, but we will have addressed most of the major types of injury claims that strain the tort system at present.

How about you—has working on these projects changed your thinking or teaching in any way?

Yes. I'm more aware of implementation problems, as a result of my earlier work on the ABA commission. There were a number of judges on the commission who introduced issues for consideration that aren't immediately thought of as tort issues—such as their docket, the time devoted to discovery, the size of their backlog, and how attorneys are behaving insofar as delay and nuisance claims are concerned. It was interesting to discuss these problems with people who deal with them, and try to frame some approaches.

Similarly, on the ALI project, we have team members with diverse perspectives. Some are staunch free-market advocates, while others are committed to an insurance or workers' comp approach for compensating injury victims. To read their monographs and explore the issues with a variety of very thoughtful people has been a useful experience. It feeds into my teaching and into the other writing that I do, as well. So I've found both enterprises to be quite worthwhile.

What are you working on next?

I have two or three small writing projects to complete, following up on the ALI no-fault work. But my main project will be a social history of cigarette litigation and regulation over the past twenty-five years. I plan to look at it from a perspective broader than just the case law. There are several interesting issues—among them, freedom of choice on the smoker's side, advertising practices that are arguably deceptive on the cigarette industry's side, and reform prospects generally in a society such as ours. I see lots of ramifications for tort and regulatory law, and am eager to get started. □

WARSAW SPRING

Continued from page 17

proverbial light from a locomotive "coming straight at you at 100 miles per hour.") But this day Geremek says that he sees "two lights."

He acknowledges the severe difficulties, stating that unemployment will increase at least fivefold this year. "No one really knows what will be the result," he says, pausing for emphasis. "We did stop hyperinflation, and the results have surprised us so far," he continues, noting the March inflation figures of 5 percent monthly, down from 80 percent in January.

He does not mention the phenomenon that strikes the returning foreigner first: the absence of money changers in the streets, whose black market activities are made obsolete by the government's decision to make its currency convertible to the dollar. Sadly though for the Poles, the dollar's value has increased one hundredfold against the zloty in the last decade.

The way out of the "tunnel," Geremek observes, is bound up with the problem of how to "inculcate the criteria of skill and honesty rather than political obedience" in personnel appointments. He draws encouragement from the Communists' most recent electoral repudiation, arguing that this will accelerate expulsion of the *nomenklatura*, Poland's own *apparatchiks* through which the Communists have controlled the levers of government—the *sine qua non* for industrial efficiency.

Along with inflation's decline, the second "light," says Geremek, lies in his belief that Prime Minister Mazowiecki will introduce anti-recession measures later this year. "This will change the situation with the workers," he says. But he is silent on the measures to be taken, although the Polish government, like Hungary, has already enacted an unemployment compensation law, a measure alien to Communist systems, where the right to work was constitutionally enshrined.

And now the conversation moves back to politics. Lamenting Poland's inability to develop pluralism and a

genuine multi-party system, Geremek opines: "One can't order acceptance of political parties." He notes the existence of 118 parties, most of which are without support, and then smiles, "I have a friend who has joined 12 parties. He tells me that this is his contribution to pluralism. We will have to move toward pluralism step by step."

A Telling Incident. An aide appears, advising Geremek that others are waiting to see him. The aide fumbles with my camera before photographing the two of us. "Where is the flash?" he asks.

Eastern Europe THE CHALLENGE OF CHANGE

Poland—along with other former Communist countries seeking to modernize—faces critical issues and problems. Among them:

► **Leaders.** *How to identify and screen out former Communists who want to retain or assume new positions of leadership.*

► **Property.** *How to resolve disputes and assign ownership of property acquired by the Communist party during its decades of protected dominance.*

► **Politics.** *How labor unions should relate to the political process: At a distance, as in the United States; or through a party affiliation, as with the socialist and labor parties of Western Europe and Japan?*

► **Economics.** *How to resolve the tension between worker demands on wages and job security, and the unavoidable dislocation associated with economic reform.*

Geremek replies: "It's a professor's camera." "No," I say, "It's *this* professor's camera," emphasizing my own awkwardness. "No," the professor-turned-politician says diplomatically, "It's *all* professors' camera."

And then, with farewells said, I go through Parliament's front gate and turn for one last photo—this time of the building itself. ("You wanted to dare them," a Polish friend says later.) Immediately, a previously unseen uniformed guard appears and detains me, at one point threatening to take the film itself.

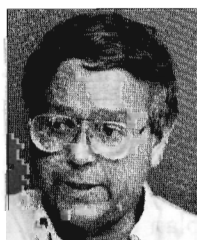
The guard has undoubtedly behaved as he always did under the old regime—personal experience dramatizing the difficulty of inculcating democratic attitudes in day-to-day conduct. Nonetheless, Stalinist era reminiscences now displace the day's warm feelings.

"The film has a photo of Geremek and him," remonstrates my escort. The guard radios his boss: "A foreigner is taking photos of Parliament. What shall I do?"

Ten minutes later a second, more relaxed guard appears and waves us on. Step by step, we move rapidly into the busy streets of Warsaw. □

Footnote

1. W.B. Gould, "Solidarity Is Still Around: 'Dissolved' Union a Player in Poland," *San Jose Mercury News*, October 11, 1987.



Professor Gould recently returned from a speaking tour in Germany and Eastern Europe. This piece is based on his article, "Is There Light at End of Tunnel for Poland?" in the San Jose Mercury News, June 10, 1990. The sidebar is drawn from a second Mercury article, "Now Comes the 'Hard Part' in Eastern Europe," July 22, 1990.

THE FUTURE

Continued from page 15

quite simply: Everybody knew everybody else. There were no strangers, no way to escape. People were locked into each other's company. Under those circumstances public opinion was so powerful that there was no need for law: No one dared violate society's rules.

A necessary role. At the other end of the scale in terms of size, complexity, mobility, and heterogeneity is a place like the United States in 1990. Today's American society consumes and demands more and more law. This is because the sheer size and complexity of the place make us all highly dependent on strangers.

A few examples: You turn on your shower and expect water to come out that won't scald you. You ride in an elevator confident that it's not going to fall fifteen floors and kill you. In each of these situations, your life is at the mercy of people you've never seen. Your contact with the people who make these things may only be a slip of paper that says "Assembled by No. 65."

The main force that guarantees our safety is a highly sophisticated regulatory process. The regulatory state develops naturally in a technologically advanced, heterogeneous society where we have an incredible amount of interaction and dependence on people who are complete strangers. We can't possibly use informal controls of the kind that worked so beautifully on the small island in the Atlantic.

My first prediction, then, is that there will be no withering away of the legal system because there will be no withering away of the social conditions that produce it. If we have a zillion cars, we are going to need a lot of traffic law. It's as simple as that.

The law will occupy an ever more central role in this country. The role of lawyers may change, the role of courts may change, but law in the broad sense is here to stay.

The demand for justice. I predict—based on a trend toward a society of what I call “total justice”—that the demand for the breakdown of barriers between what is regulatable and what is not will continue. Let me explain.

A century ago there were enormous areas of life that were outside the domain of the legal system. Furthermore, there were fairly clear understandings about who was dominant and who was not. Women did not vote. Slavery had existed until 1864, and was followed by a long period of racial subordination. Historically most societies have upheld systems of subordination. In the medieval period, for example, birth order was taken for granted as a very important determinant of your place in life.

Today, however, traditional patterns of domination and precedence are being questioned and, one by one, overthrown. Individuals and groups who have been discriminated against or feel otherwise disadvantaged now look to the legal system for help—and, increasingly, get it.

The “total justice” idea that is developing goes far beyond civil rights. It extends to the liability explosion (“If I’m injured, somebody should pay; somebody ought to be responsible if it’s not my fault”) and other areas of law. This idea has already had major consequences for the legal system.

I predict that the idea of total justice will continue to expand. A kind of radical individualism—“doing your own thing”—seems to be a characteristic of the modern world. It didn’t arise by accident, but out of very deep sources in history. The trend leads to a sense of right, of entitlement; hence to an expansion and increased use of lawyers, courts, and legal institutions. This is occurring not only here but also worldwide.

International convergence. I predict that the convergence of legal systems among nations will continue at a great and rapid pace. This is a natural trend in light of the

international convergence of social systems around us. Modern lawyers in developed countries are dealing with similar functions—zoning, income tax, business contracts, banking, securities regulation, land use controls, environmental controls—even if they have different names.

Internationalization is obviously a trend of the future within American law. The pity is that law schools are lagging behind, engrossed in what is parochial and tried and true. They are going to have to add to their offerings in the future or become irrelevant to the way law will be practiced and to the function of the legal system.

Need for research. One last observation about law schools: They have never been willing to constitute themselves as centers of basic research on the legal system. They give lip service to the notion that they ought to be centers for basic, fundamental research on the way legal systems operate, but they don’t have the resources and the will to do it.

My last prediction, therefore, is that law schools will still not be conducting basic research in the year 2010. I hope that Stanford, at least, will prove me wrong. □

Further Reading

America in the 21st Century: A Demographic Overview (Population Reference Bureau, 1989). First in a projected series of seven briefing books sharing the general title, *America in the 21st Century*.

Lester R. Brown et al., *State of the World, 1990: A Worldwatch Institute Report on Progress Toward a Sustainable Society* (Norton, 1990).

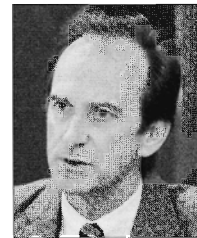
California Tomorrow: Our Changing World (magazine).

Paul M. Kennedy, *The Rise and Fall of the Great Powers* (Random House, 1987).

Lawrence M. Friedman, *Total Justice* (Russell Sage Foundation, 1985). Or, in brief, “The Pursuit of Total Justice,” *Stanford Lawyer*, Spring 1986, at page 2.

Bill McKibben, *The End of Nature* (Random House, 1989).

THE PANEL



Denis Hayes is the world-renowned environmental activist who coordinated the first Earth Day in 1970 and its sequel in 1990. A 1985 graduate of the School, he currently heads both the Green Seal and CERES projects (see page 102).



Thomas C. Heller is an expert in international economics and development. A professor and member of the faculty since 1979, he currently serves as director of Stanford's Overseas Studies Program and deputy director of the Institute for International Studies.



Lewis H. Butler is president of California Tomorrow, a think tank focused on demographic and cultural trends. Since receiving a 1951 Stanford J.D.,

he has variously been a law firm attorney, director of the Peace Corps in Malaysia, and HEW's assistant secretary for planning and evaluation.



Lawrence Friedman is the author of award-winning books on legal history and trends. A member of the faculty since 1968, he holds the Marion

Rice Kirkwood chair in law and is a professor by courtesy in the Political Science department.

The panelists originally offered their predictions in oral presentations at the Board of Visitors annual meeting, May 10, 1990.

Alumni **GATHERINGS**



Southern California: Professor Paul Goldstein spoke to a luncheon crowd including Ronald Fung '78 and Fred Merkin '78 (*above*), and Jim Bass '87 and William Tate '88 (*right*).



PHOTOS BY LISA ROMERIN

San Francisco: Alina Aldape '77, Michael Steiner '83 and Tom Lippe '82 were among those gathered (*near right*) to hear Professor Robert Mnookin talk about dispute resolution (*right*).



PHOTOS BY VAL FLECH

CHICAGO, Washington, D.C., Portland, Oregon, and several California cities — all were sites of recent get-togethers by Stanford Law graduates.

The chronicle begins on January 6, 1990, in San Francisco, with a School-sponsored reception at the Hilton during the annual meeting of the **American Association of Law Schools**. Dean Paul Brest was there to greet colleagues from around the country. Among them: former professor Thomas Jackson, current dean of the University of Virginia law school.

Law graduates in the **Washington/**





Baltimore area were invited by the local chapter of the Stanford Business School Alumni Association to a workshop on negotiation. The three-hour session, held February 24 at the Stanford in Washington campus, was led by Elizabeth Gray of Conflict Management, Inc., Cambridge, Massachusetts. Some 13 law alums, mostly JD/MBAs, took part.

The Stanford Law Society of Southern California held its annual luncheon for new members of the bar on March 9, at the Dragon restaurant in Los Angeles. Professor Paul Goldstein, the featured speaker, delineated the leading edge of intellectual property law — always a fascinating topic for attorneys in the nation's media capital.

Professor Robert Mnookin was the speaker at a San Francisco Law Society luncheon on March 21. His topic: "Barriers to the Negotiated Resolution of Conflict: New Learning from the

Stanford Center on Conflict and Negotiation." Mnookin spoke not only as the Center's founding director but also as one who had surmounted formidable barriers in resolving the famed IBM-Fujitsu dispute.

Also on March 21, South Bay alumni/æ gathered at the offices of Hopkins & Carley in San Jose to meet and talk with Dean Brest. John Hopkins '57 hosted the reception, which featured, among other pleasures, a stunning view of sunset over the Santa Cruz Mountains. Plans are now afoot to organize a Stanford Law Society chapter centered on California's second-fastest growing city.

Paul Brest journeyed farther south on March 29 to lunch with San Diego alumni/æ. The affair, held at the U.S. Grant Hotel, was hosted by Robert Caplan '60.

The Washington, D.C. Law Society got together on June 28 for a reception



Bar break: Betsy Allen '90 and Associate Dean Sally Dickson flank Frances Leos '90 (above) in this candid shot from the School's annual Crocker Garden repast (above, left).

San Francisco: Jim Gaither '64 was among the grads welcoming local students, including Alex Johns (3L) and Velina Consuelo Underwood (1L) (below, left), and (below) Aaron Edlin, Mark Strasser, and Timothy Teter (all 1L).





ABA, Chicago: Stanford's reception, with Associate Professor Hank Greeley (above, right), welcomed such far-flung visitors as (above) Hal '54 and Rhea Coskey of Los Angeles, and Doug '60 and Lucy Houser of Portland, Oregon.

at Crowell & Moring. Bob Carmody '62 arranged a wine tasting for the occasion. Another feature was "special guest" Joshua Bolten '80, General Counsel of the Office of the U.S. Trade Representative.

Newly minted graduates on campus for a bar review course enjoyed a respite on July 6 in the form of a School-sponsored buffet lunch in sun-washed Crocker Garden. There were no speeches.

San Francisco Law Society members threw a welcoming party on July 11 for

entering students. Also invited were current students spending their summers in the area. Sally Dickson, Dean of Students, brought greetings from the School. The happy affair was held — thanks to Society president Don Querio '72 — in the lofty Bankers' Club of the Bank of America headquarters.

The Southern California Law Society had its biggest Hollywood Bowl get-together ever on July 28. Spark-plugs Geoffrey Bryan and Frank Melton (both '80) organized the event, which included a tailgate picnic. The concert itself was a memorable "Beethoven Spectacular with Fireworks."

This year's American Bar Association annual meeting took place in Chicago. For its reception on August 6 the School flew in Associate Professor Henry (Hank) Greeley. His topic: "Why Doctors Hate Lawyers — and Other Thoughts on Health Law."



PHOTOS BY BRIAN HESTON

Professor Barbara Babcock was the speaker at the annual California State Bar luncheon, held this year on August 27 in Monterey. The Golden State's pioneering woman attorney Clara Foltz was the subject of Babcock's talk. Guests included professor emeritus Samuel D. Thurman '39.

The Southern California Law Society mustered 75 Cardinal fans for the September 15 Rose Bowl battle between Stanford and UCLA. A tailgate preceded the gridiron contest.

Alumni/æ Weekend 1990 took place September 21 and 22 on and near the campus. The high point was the presentation of the School's Alumni/æ Award of Merit to Supreme Court Associate Justice Sandra Day O'Connor '52. More in the next issue.

The Oregon State Bar convention in Portland was the occasion for a gathering on October 4 of local Stanford graduates and friends. Brent Bullock '86, newly elected president of the Oregon Law Society, organized what turned out to be a very festive event, complete with a wine tasting.

THE DATES of some coming events appear on the back cover. Watch your mail for information on these and other gatherings. The Alumni/æ Relations staff, at (415) 723-2730, will be happy to field questions. □



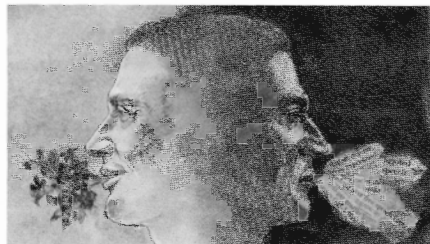
PHOTOS BY MARCO ZECCHIN



CBA, Monterey: Professor Barbara Babcock (corner) spoke at a lunch attended by, among others, Professor Emeritus Sam Thurman '39 and grateful former student Victor Beauzay '51 of San Jose (left).

LETTERS

CAMPUS SPEECH DEBATE



CONCERNING the free speech issue, and whether racial slurs are entitled to constitutional protection ["Good Speech, Bad Speech," Spring 1990], Mr. Lawrence is right.

When racial slurs are used on campus, by students, the First Amendment is not involved. It is, instead, a matter of good manners. Enrollment at Stanford does not give license to behave unmannerly, or to be gratuitously insulting. Those who do so behave should be summarily expelled. The First Amendment does not purport to regulate the conduct of the University.

Jerome F. Downs '49
San Rafael, California

Professor Lawrence's aspirations arouse sympathy, but his reasoning does not hold up to scrutiny on legal grounds.

This writer, like Professor Gunther, has first-hand experience with discrimination — specifically, five years subject to Nazi terror, most of it in concentration camps.

Consequently, as an individual, I hated the ACLU for standing up for the bigots in Skokie; as a lawyer, I recognized the legal necessity of its stand.

Suppression of free speech that is considered anathema by Professor Lawrence may well lead to suppression of speech by authorities whose standards differ from his. Suppression is suppression, which is precisely that from which the First Amendment protects us.

Ralph Perlberger '53
New York, New York

It is an error to abdicate to lawyers the decision-making role in handling the outbreak of racism at Stanford. As demonstrated by the debate between Lawrence and Gunther, lawyers are too easily distracted by "the sound of their own wheels" and often end up debating side issues, like the application of the First Amendment or a potential lawsuit.

The right way to address the problem is to get our best people thinking about how to prevent future occurrences of racist behavior. *Then* we get the lawyers involved to ensure the solution does not run afoul of applicable constitutional, statutory or policy provisions.

It's a big mistake to assume that our entering freshmen are sensitive to minority concerns. The need for sensitivity training would seem to be self-evident. Although the challenge of combating racism and valuing diversity is enormous, we cannot shrink from the task. We cannot expect the world of the 2000s to be any better than the Stanford of the 1990s.

Paul Holdorf '69
Dallas, Texas

Readers are encouraged to comment on and critique the contents of this magazine. Letters selected for publication may be edited for length. Published or not, all communications will be read with interest. Please direct letters to: Editor, Stanford Lawyer, Stanford Law School, Stanford, CA 94305-8610.

Coming EVENTS

1991

May 2-3

Board of Visitors annual meeting
At Stanford

August 8-15

American Bar Association annual meeting
(Stanford event to be announced)
In Atlanta, Georgia

September 13-17

California State Bar annual meeting
In Anaheim

September 26-28

Alumni/æ Weekend 1991
(coordinated with Stanford Centennial Celebration)
With reunions for class years ending in -1 and -6
At Stanford

For information on these and other events, call the
Alumni/æ Office, 415/723-2730

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