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Our Eminent First Professor
Dean Carl B. Spaeth

LAWYER

Stanford

Copyright in the Information Age



Cover: Detail of illustration for
"Copyright in the Information Age,"
the article beginning on page 4.
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FROM THE DEAN

2

A Matter of Trust

The campus speech issue has more than one side and no easy answers.

By Paul Brest

FEATURE ARTICLES

4

Copyright in the Information Age

New technologies are expanding the nature and use of intellectual property. Can the law keep pace?

By Paul Goldstein

10

Our Professor, the President

Benjamin Harrison and his landmark lectures on the Constitution helped put your alma mater on the map.

By Howard Bromberg

ALUMNI/AE WEEKEND

16

Friends, Football, and a Famous First

An account of the festivities, including the award to Supreme Court Justice Sandra Day O'Connor '52

Featuring Dean Brest and Justice O'Connor



16

DEPARTMENTS

24

School News

42

Class Notes

87

In Memoriam

94

Alumni/ae Gatherings

Back Cover
Coming Events

From the DEAN

A M A T T E R O F T R U S T

PAUL BREST delivered the following message at the Law School's 98th Commencement on June 16. It is based on a talk he gave at Swarthmore College earlier in the month upon receiving an honorary doctor of laws (LL.D.) degree.

There is reason for concern about the state of free inquiry in American universities, and equal reason for concern about the well-being of diverse students on our campuses.

THOUGH this is a day for looking forward to life after law school, I'd like to glance backwards for a moment and consider a great challenge that faces Stanford and other institutions of higher education—and that faces you as well.

Let me begin by recounting recent conversations I had with two students here this spring. Lisa is an African-American woman who is about to graduate. She has done well in law school, and is on her way to a clerkship with an excellent judge, followed by a job with a prestigious law firm. She hopes eventually to become a law teacher—a realistic aspiration, which I strongly support. Our conversation focused on the discussion of affirmative action in a course she had taken this term. Lisa acknowledged that the class discussion had been both considered and considerate, but said that it had made her physically ill. "When people question affirmative action," she explained, "they're questioning my very right to be here." Lisa went on to say—this bright, capable young lawyer—that during her three years in law school there was no day on which she did not feel that, because of her race, her qualifications and ability were called into question.

Jeff is white. He just finished his first year and is going to spend the summer working for the firm that Lisa will join after her clerkship. He came by my office to ask my views about affirmative action in faculty hiring—a hot topic around the Law School

this past year. Jeff, who described himself as politically “middle of the road,” did not come to argue but to inquire. We spent the better part of an hour discussing some of the basic issues of affirmative action, such as the reasons behind it and the fairness and constitutionality of different methods of pursuing it. Jeff’s seeming naïveté led me to ask (in a roundabout way) whether he ever discussed these issues with classmates—for Jeff is a gregarious sort; I often see him chatting with friends in the student lounge. He replied that he was reluctant to—lest he

*If you feel like you’re
walking on eggs,
imagine what it feels like
to be the egg.*



Paul Brest
Richard E. Lang Professor and Dean

say the wrong thing. “What could happen?” I asked. “You know,” Jeff replied, “some people roll their eyes and think you’re insensitive or a racist.”

There are lots of quick ways to dismiss Lisa or Jeff. You can dismiss Lisa’s feelings as the inevitable price of affirmative action, not of any actual discrimination she has encountered. In any event, she should develop a tougher skin, for she’ll never be as protected in the “real world” as she is on the campus. As for Jeff—no one is stopping him from speaking his mind, and if he espouses racist positions, well then, he should have the courage of his convictions and take responsibility for his views. These facile responses are often accompanied by popular slogans or clichés: “politically correct” to brand any view to the speaker’s left; “racist” to describe almost anything that gives offense; and “privileged” as a redundant modifier of “white male” or even “white woman”—as if any Stanford student were not privileged compared to the population at large.

These easy put-downs may embody some partial truths. But they are conversation-stoppers. They obstruct any genuine understanding of the problems.

My own view is that Lisa’s and Jeff’s stories are interdependent. Though the apocalyptic talk in the media is way overblown, there is genuine reason for concern about the state of free inquiry in American universities. There is equal reason for concern about the sense of acceptance and self-esteem—and even the safety—of students of color, women students, and gay and lesbian students on our campuses.


It is difficult for any of us to discuss, with academic dispassion, issues that are central to our identity or existence. And if Lisa feels threatened in her everyday life, she’s going to be especially reluctant to engage Jeff on controversial issues of racial justice. It’s no easy matter to create an environment where Lisa feels at ease. The incidence of hate speech and violence is on the rise, and even if the campus is a relatively benign place, the world outside is not. Certainly not for poor people of color. And not even for upper-middle-class Black people. You may have seen a recent newspaper article about the discrimination experienced by Black consumers—ranging from suspicious looks to false arrests for shoplifting. When I asked a Black colleague whether she had such experiences, she laughed bitterly. She said she is often watched closely in department stores. She had just attended a convention in San Francisco where the hotel guards assumed she was a hooker until she started wearing her convention badge conspicuously on her coat. These are common occurrences for people of color in our country that I and other whites seldom experience.

So, if Jeff feels he’s walking on eggs when he talks to Lisa about issues of racial policy, imagine what it feels like to be the egg. Yet unless Jeff can talk without feeling that his every word and gesture will be interpreted with a presumption that he is stupid, insensitive, or worse, it’s a lot easier for him just to shut up. Both Lisa and Jeff will lose much of the opportunity that Law School offers them if they

Continued on page 41



NEW TECHNOLOGIES
ARE EXPANDING
THE NATURE AND USE
OF INTELLECTUAL
PROPERTY.
CAN THE LAW KEEP
PACE?

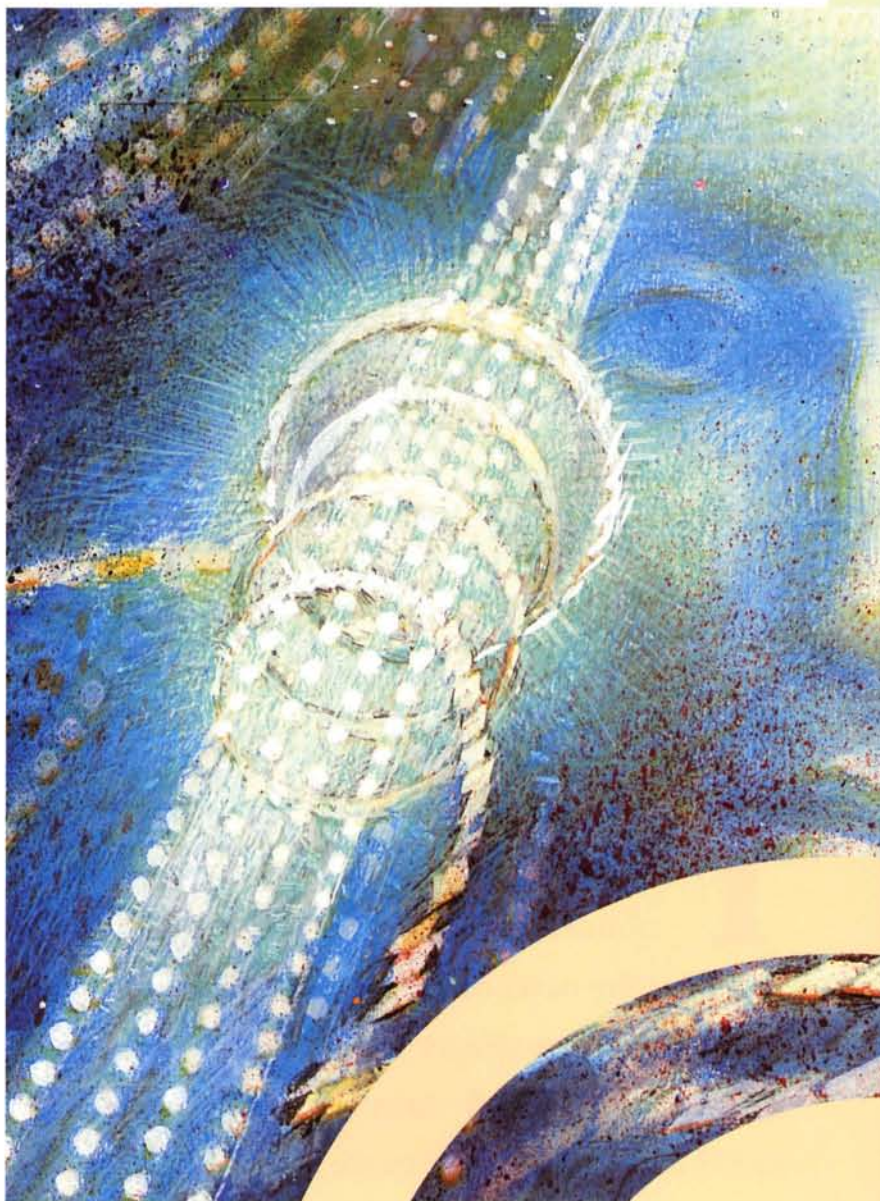


Copyright in the Information Age

By Paul Goldstein
Stella W. and Ira S. Lillick
Professor of Law

THE AGE of Information is truly upon us. Information — news, data, entertainment — pervades, complicates and enriches almost every aspect of our daily lives. Consider the news or music programs we awaken to, the daily newspaper we read at breakfast, the vast, computerized databases such as LEXIS, NEXIS and WESTLAW that we use in our work, the television programs and videocassettes we watch at home, the sound recording that lulls us as we read the latest magazine or book at night.

And this is just the beginning. The potential of home on-line information services has barely been scratched. Digital-audiotape (DAT) recorders are joining, and might even supersede, the still-new compact disc. Picture telephones may one day enter the mass market. Faxed and computer-to-computer exchanges of scholarly and scientific



work may someday outstrip traditional modes of publication.

At first glance, this proliferation of media for transmitting information may portend crossed wires and information traffic jams. In fact, the opposite is true. As Charles H. Ferguson observed in a recent issue of the *Harvard Business Review*, "the underlying technologies of printers, photocopiers, fax machines, telephone switches, computers, cameras, voice-mail systems, CD players, data archives, and televisions will soon be astonishingly similar. In some cases they already are." Increasingly, information will be embodied and trans-

mitted—with and without its owner's consent—across these and other media in digital form.

For consumers, the prospect is exciting: more information faster, less drudgery in research and data gathering, new forms and choices of entertainment. For producers, the global information economy is burgeoning, with the United States a major exporter.

These developments pose important challenges to copyright law and policy. Copyright is a market-driven mechanism, a property right that aims to stimulate the production and dissemination of information desired by

consumers. Yet, new information technologies promise to alter copyright's responsiveness to consumer demand.

To ask, as some do, whether copyright will survive the new information technologies is to get the question backward. Copyright law is an instrument, not an end in itself; it aims to serve consumer welfare. The correct question is whether the new information technologies will survive—and flourish—under copyright. How must copyright adapt if it is to serve consumer interests in an expanding information environment?



CONFIDENT prediction about the technologies that will shape the information environment of the future is of course impossible. Even at this moment, a child may sit before a computer terminal, not dreaming that she will someday invent a technology now unimagined, one that will overturn most of what we know about information's capacity to entertain and instruct. Consider: the revolution wrought by the personal computer is today barely ten years old.

Copyright law's responses to the new information technologies are easier to predict. The copyright act now in force is rooted firmly in the first United States copyright act passed in 1790. To be sure, two hundred years of technological development have tugged and pulled the law in several directions. Copyright's subject matter has expanded from maps, charts and books to include musical compositions, choreography, dramatic works, motion pictures, sound recordings and computer programs. The law's original exclusive rights—to print, reprint, publish and vend—have grown to include the right to perform, display and adapt copyrighted works. Cable and satellite television have come within copyright's net, as has the rental of sound recordings and computer software.

The same institutions that have shaped copyright law over the past two hundred years seem likely to shape it over the foreseeable future. Because these are relatively conserva-

tive institutions, this means that copyright will largely stay its course: Congress will balance the claims of competing constituencies, courts will fill the interstices of the statute, and the Copyright Office will continue to guide Congress and creators through the copyright maze.

Within these institutional constraints, where will information technologies pull copyright law in the coming years? In what directions will copyright channel technology?



HISTORY TELLS us that copyright will continue to widen its subject matter to embrace the products of new information technologies. Two issues complicate this trajectory—one short term, one long term.

For the short term, there is the question of protection for computerized databases. Copyright has protected collections of data from the beginning. But the fit, never felicitous, has become increasingly awkward as data collections have grown in economic importance. The problem is that one part of copyright law aspires to protect works of high authorship, while another part bends to protect the drudge work of data compilation. The Germans call the latter *kleine Münze*—small change—and many countries consign it to the outskirts of copyright. But it takes a lot more than small change to create data collections, and the outskirts of copyright may prove a dangerous neighborhood for their survival.

Apart from subsidy, some form of protection will be needed if firms are to continue to invest in producing databases for consumer use. But copyright may not be the answer. The term of copyright (typically 75 years for databases) and the law's robust array of remedies may offer more incentives—and more monopoly pricing—than database production requires. At the same time, copyright's requirement of original authorship may undercut needed incentives. (The United States Supreme Court has held, only this past Term, that one of the oldest forms of database—the telephone directory white pages—is uncopyrightable.)

One possible development is a division of intellectual property protection into two tiers: conventional copyright for works like novels, paintings and musical compositions that reflect an author's personality; and a different intellectual property regime for databases and other products of information assembly.



COMPUTER-CREATED products seem likely to test the boundaries of copyright subject matter over the longer term. Computer programs exist today that, with little or no human intervention, can produce crossword puzzles, weather maps and even

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other computer programs. The future promises more elaborate applications, and the products will often look no different than works created by flesh-and-blood authors. While genius and labor may be required to produce the programs that generate these products, no more than the cost of electricity will be needed to produce the products themselves. Who is the author of these automated works—the author of the computer program that generates them, or the computer program itself? And where is the required originality to be found?

Congress may find the answer in a *sui generis* regime crafted specifically to the investment economics of computer-created products. The question is sufficiently important that the World Intellectual Property Organization—a United Nations agency charged with oversight of international intellectual property arrangements—held a worldwide conference on artificial intelligence and intellectual property at Stanford Law School in March of this year.



TECHNOLOGICAL advances can also be expected to create new ways to replicate and use copyrighted material. The great drama of copyright reform in the last century has been the law's effort to catch up with the decentralization of economically significant uses of copyrighted works.

Home videotaping and audio-taping, computer downloading, and library and office photocopying all threaten copyright's basic incentive structure, because the transaction costs of enforcement against these decentralized uses will often exceed any eventual reward to producers. How should copyright's exclusive rights be tailored in a world where, increasingly, the most economically valuable uses of copyrighted works will lie outside the copyright owner's effective control?

As with new information products, the challenge will be to maintain proper rewards and incentives for information producers. Judging by the past, Congress will respond by expanding copyright to encompass at least some new uses. But the expansion of rights has been—and may continue to be—more halting than the expansion of copyright subject matter. Recent failed efforts to bring home videotaping within copyright control suggest a troubling pattern: By the time Congress or the courts are in a posture to act definitively, the new use has become too widespread, too deeply entrenched in popular habit, to be easily dislodged through legal rules. When Universal City Studios filed suit in the *Betamax* case to halt sales of videocassette recorders used to copy copyrighted programs

off the air, relatively few American homes had VCRs. But by the time the United States Supreme Court heard final arguments in the case, VCRs were a fixture in the American home, posing a practical hurdle to a decision for the copyright owner.



PARADOXICALLY, some of the same technologies that have facilitated decentralized uses of copyrighted works may also help to solve the debilitating problem of transaction costs. Pay-per-view television is a current, rudimentary example of technology's ability to facilitate market pricing for dispersed uses of copyrighted works.

For the future, consider the celestial jukebox—a fantastic technology, to be sure, but also, realistically, one that is not far from hand. A single facility will store great numbers of copyrighted works in digital form—sound recordings, motion pictures, novels, newspapers—any one of which can be summoned on command, beamed up to a satellite, beamed down to a user, and paid for by the user through an automated billing system. It is 2 AM, and you want to hear Bartok's *Concerto for Orchestra*. Which conductor do you prefer? Fritz Reiner? Zubin Mehta? Or perhaps Sergey Koussevitzky, in the historic 1944 Boston Symphony performance? Punch in your selection and the system will bill you accordingly—presumably at a price that reflects the relative demand for that particular version.

The genius of the celestial jukebox is that it will pay a work's owner for every use of his work, at virtually no transaction cost. And, with information and entertainment readily available whenever the user wants it, the temptation to make unauthorized copies should decline; correct pricing—low prices for a great number of uses, rather than high prices for a few—should all but eliminate incentives for subscribers to copy and store works off the system.



THE NEW digital environment will increasingly allow the user, rather than the producer, to define the terms and content of access—a trend that portends changed conditions for authorship.

Repositories exist that collect vast bodies of information—financial, demographic, legal, technical, scientific—making them instantly accessible through computer facilities. Vendors can assemble information into daily reports tailored to a subscriber's individual needs. Are

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on necessity.

you interested in reading everything about developments in contemporary dance but nothing else? The technology exists for a search service to place a custom-tailored dance newsletter on your doorstep or in your computer mailbox.

Computer programs exist today that can manipulate sounds and im-

ages into full-blown works. Do you want to enhance your musical abilities? Digital sampling will soon have you singing like a Caruso. Technology promises far richer audio and visual enhancements for the future.

These developments spell significant changes for copyright law's underlying incentive structure. Little copyright incentive is needed to produce a custom-tailored newsletter, still less for the subscriber to create his own journal from available data. Contracts will facilitate the first arrangement, self-interest the second. Again, we may in some areas see a diminished role for copyright's traditional incentive structure and an increased need for protection focused on the information repositories themselves.

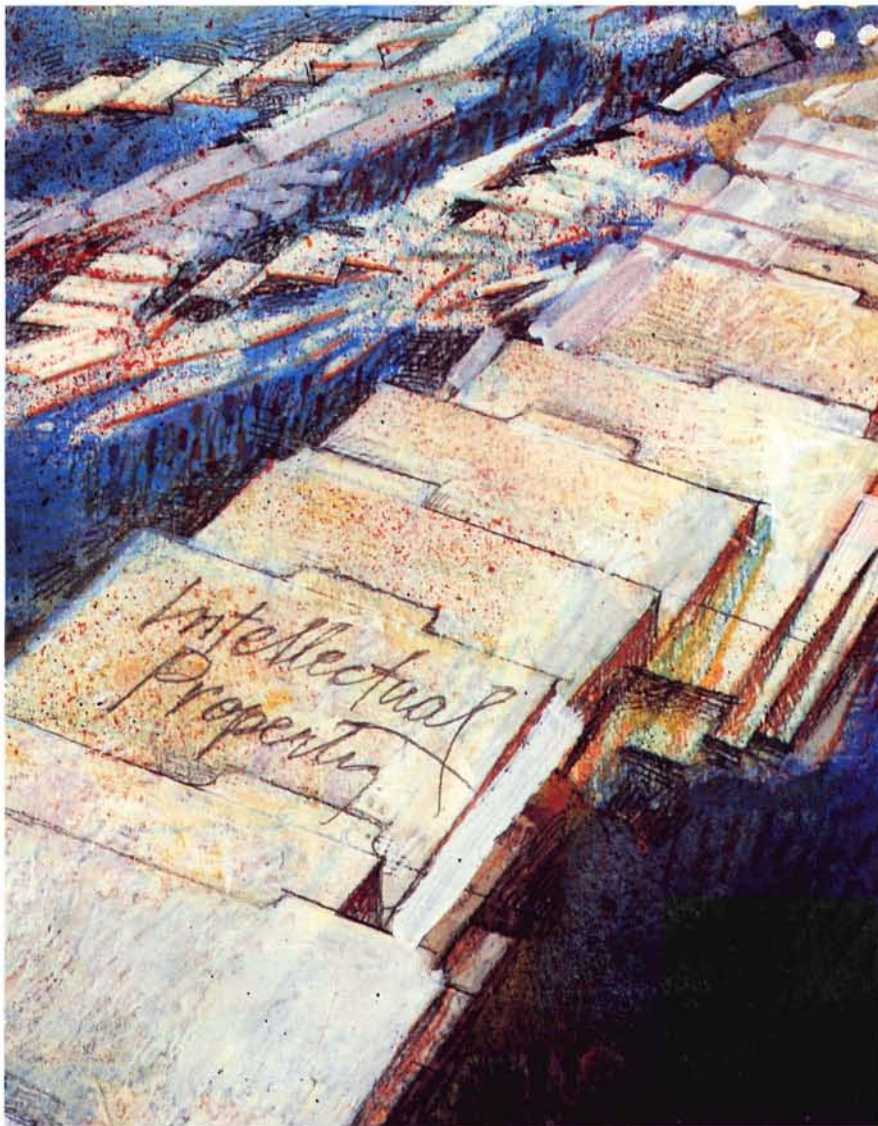


AS INFORMATION ASSUMES an increasing role in private and public life, access to information may begin to verge on necessity. If copyright continues to be enforced, access will be at a price—one that may, too often, be too high for the poor to pay. Copyright itself is an inefficient mechanism for redistributing wealth. Other means will need to be found to repair the widening information gap between society's haves and have-nots.

A similar problem recurs on a global scale. The divide between economically developed nations that are net copyright exporters, and economically less-developed nations that are net copyright importers, is today growing, not shrinking. But, unlike other trade commodities, information is a public good and perhaps deserves different treatment in international treaty and trade arrangements.



UNDERLYING all this change is a fundamental paradox: As the copyright industries increase in importance, so the importance of copyright enforcement may in some quarters recede. We are still in the early stages of the Information Age. The public's acceptance today of private property



in information is far less secure than its acceptance of private property in land.

It takes no greatly refined moral sense to know that stealing a cassette from a music store is wrong. But having paid for the cassette, you may feel no compunction about taping a copy to play in your car—or, perhaps, to give to a friend. Where, you may wonder, is the harm?

The harm, of course, is that by making rather than purchasing the additional copies, you deny income to everyone from the retailer all the way back to the composer. The ultimate loser? The consumer. As the rewards to creators, producers and sellers diminish, so too do their incentives to respond in the future to a

broad array of consumer demand.

Notions of private ownership—particularly ownership of something so fugitive as information—are slow to take root in the popular conscience. Yet, as new technologies enable covert access to copyrighted works, and private enforcement increasingly becomes cumbersome and inefficient, public respect for intellectual property may emerge as the single best safeguard against misappropriation. Just as travelers today instinctively stay off a stranger's land, so travelers in the information environment of the future may instinctively observe copyright law's implicit "No Trespassing" sign.

Ultimately, the great task for copyright will be not enforcement,



PAUL GOLDSTEIN is one of the nation's leading authorities on copyright law. His many publications include a landmark, three-volume treatise from Little, Brown & Co., Copyright: Principles, Law and Practice (1989, supplemented annually) and a widely adopted law school text, Copyright, Patent, Trademark and Related State Doctrines (3rd ed., 1990).

Goldstein joined the faculty in 1975 and was named to the Stella W. and Ira S. Lillick Professorship in 1985. A popular teacher, he has twice won the School's John Bingham Hurlbut Award for Excellence in Teaching. Goldstein is Of Counsel to Morrison & Foerster, where he works with the firm's intellectual property group.

The present article grew out of addresses at the bicentennial celebration of the copyright and patent laws in Washington, D.C., and at the University of Dayton Law School in connection with its Program in Law and Technology.

but education. This prophecy—that education about copyright law's ability to increase net social welfare will be an important focus of public policy in the future—perhaps reflects an educator's bias. But it is hard to imagine a more important or, ultimately, a more liberating mission for copyright discourse in the years to come. □

Thurs



THE PRESIDENT

Howard

By Howard Bromberg, J.D.

STANFORD'S first professor of law was a former President of the United States. This is a distinction that no other school can claim. On March 2, 1893, with two days remaining in his administration, President Benjamin Harrison accepted an appointment as Non-Resident Professor of Constitutional Law at Stanford University.

Harrison's decision was a triumph for the fledgling western university and its founder, Leland Stanford, who had personally recruited the chief of state. It also provided a tremendous boost to the nascent Law Department, which had suffered months of frustration and disappointment.

David Starr Jordan, Stanford University's first president, had been planning a law program since the University opened in 1891. He would model it on the innovative approach to legal education proposed by Woodrow Wilson, Jurisprudence Professor at Princeton. Law would be taught simultaneously with the social sciences; no one would be admitted to graduate legal studies who was not already a college graduate; and the department would be thoroughly integrated with the life and



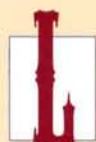
Leland Stanford (left) entertained President Harrison (seated) and Postmaster General John Wanamaker (right) at the Senator's campus home during the presidential tour of 1891. Wanamaker would later help Harrison prepare the Stanford lectures.

mission of the university. It was a dynamic blueprint that Jordan hoped would attract established scholars.

He was soon disillusioned. Most of the well-known law professors Jordan approached showed interest in his plans, but no more than that. Two professors did accept offers of employment; but one subsequently decided to go to Cornell, and the other, after some thought, asked for a leave of absence to observe the progress of Jordan's plans. It appeared that the Law Department

would open in the 1893-94 academic year without a single professor.

And then Leland Stanford managed one of the more spectacular coups in the history of American education.



LELAND STANFORD and Benjamin Harrison had been firm political allies since the days when they were both United States senators. Their alliance ripened into a close friendship

during Harrison's four difficult years in the White House.

In 1891, Senator Stanford helped arrange a presidential cross-country train tour, during which Harrison visited and was impressed by the university campus still under construction. When Harrison was defeated by Grover Cleveland in the 1892 election, it occurred to Senator Stanford to invite his friend—who had been one of the nation's leading lawyers before entering the Senate—to join the as-yet empty Stanford law faculty.

Few expected President Harrison to accept. Not that Senator Stanford had failed to make the terms attractive. Harrison was offered a limited teaching schedule; the opportunity to lecture on any topic he chose; and the then-fantastic salary of \$10,000. But Harrison had already made it clear that he wanted to spend the years after his presidency quietly.

The President also had to consider the proper role of an ex-president. America had a strangely ambivalent attitude toward its former chiefs of state: It was thought undemocratic to provide them with pensions, but degrading to their former office for them to accept paid employment. Certainly no ex-president had ever joined a college faculty. Teaching per se—much less, teaching at a struggling young college—might not be an appropriate sequel to the nation's highest office.

Nonetheless, after several weeks of zealous effort by Senator Stanford, Harrison did accept. His reasons can best be described as patriotic. Harrison had become convinced during his presidency that American public life had been corrupted by greed and selfishness. The remedy, he concluded, was to educate Americans in the benefits of self-government and instill a "greater reverence for law." If he could inculcate in new generations the values of disinterested citizenship and service, he wrote President Jordan, he would "accomplish a work more lasting than anything I have yet been able to do."

enjoyable” that they had heard at Stanford.

Perhaps more significant, however, was the reaction of the apple-cheeked Stanford student who would someday himself be President: Herbert Hoover. “I profited by the lectures,” he would recall. Harrison’s stay also gave the earnest 19-year-old his “first contact with a great public man”—an amusing episode still vivid to Hoover when he began writing his memoirs some twenty years later [see *opposite page*].

Harrison, though at Stanford primarily to speak on constitutional history, also participated actively in the life of the University. The former President delivered speeches on Founders Day, at the Students’ Midwinter Fair, and to the Stanford Christian Association and the Trustees; visited the Stanford chapter of his old fraternity, Phi Delta Theta; and gave several tender eulogies to his friend, Leland Stanford, who had died the previous summer.

Among his many get-togethers with student groups, Harrison had a private meeting with 70 law students. He encouraged them to engage in “profound study,” not only of the decisions of cases, but of the general principles that determined those decisions. The former President also urged them, once they become lawyers, to put the well-being of society before their own professional goals. They should be “influential . . . on the side of justice, good morals, and right politics.”

PRESIDENT HARRISON left Stanford on April 16, 1894, for his home in Indianapolis. His plan, he then announced, was to resume his lectures the following year, bringing the story of the Constitution from its adoption to the present day.

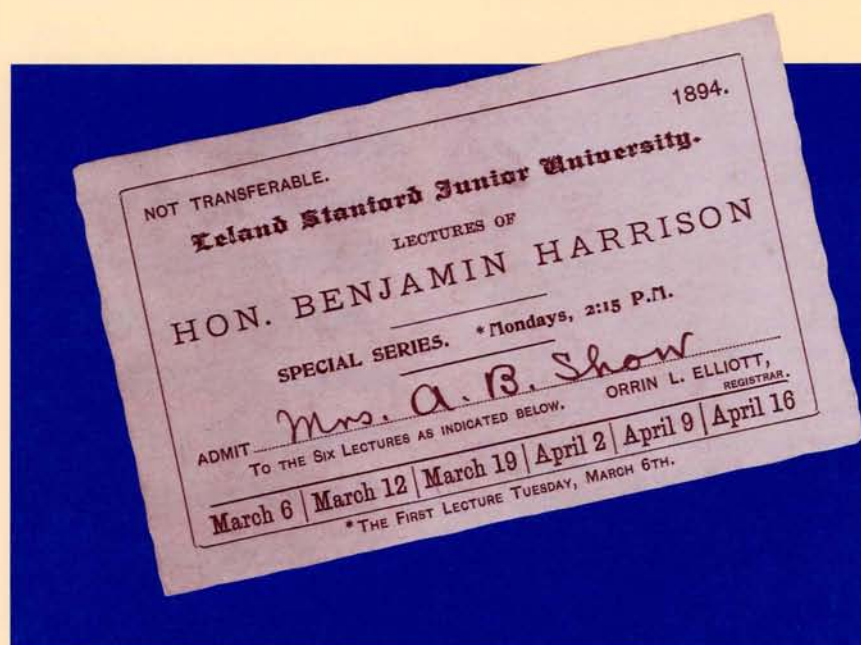
It never happened. Harrison remained officially on the faculty until 1896, but did not return to the Stanford campus. There were several reasons. Leland Stanford’s death had broken the strong link of friendship. Equally important, it

removed the only University official with experience at the highest levels of government. Without the founder’s guiding hand, the University administration dismayed the former President by allowing unauthorized publication of Harrison’s lectures, and by ineptly handling a theft of wine from Harrison’s room. (An account of this curious episode appeared in the June 1991 issue of *Stanford Magazine*.)

Perhaps the most important reason for Harrison’s change of plans,

United States Senate.”

Harrison’s tenure at Stanford, though brief, was of great significance. From a national perspective, the Stanford lectures were a major educational and civic event, presenting to a broad audience—apparently for the first time—the evolutionary theory of the Constitution. In addition, Harrison’s professorial undertaking established university teaching as worthy of an ex-President. Several of Harrison’s immediate successors in the Oval Office would in fact follow his example.



however, was the severe strain that teaching exacted on the weary former President. He had found the task of preparing definitive lectures—they would eventually be published as a book—so draining as to be “work and not fun.” Nor was delivering the lectures any easier. Harrison was famous for his oratorical abilities—one of the reasons why Senator Stanford was so eager to recruit him—and enjoyed the swirl and noise of the political hustings. But when he looked out on a hall packed with 800 eager Stanford students, notebooks open, pens in hand, Harrison felt “more trepidation” than when he “addressed the

To Leland Stanford’s young university, the appointment of the former President brought a new and precocious stature. Stanford University and its influential founder had accomplished a feat that had eluded even the most hoary and prestigious of the eastern colleges.

But the greatest impact of Harrison’s tenure at Stanford was on the newly launched law program. Formerly spurned and humiliated by several professors, the Law Department became the most glamorous department in the University the instant Harrison joined. Enrollment more than doubled, the library expanded, and the vacillating pro-

fessor on leave came to teach. In the sometimes difficult years to follow, the Stanford Law Department, soon to be the Stanford Law School, could always take inspiration from the lofty example set by its first professor. □



The Lectures

Although somewhat dated by their too-heavy emphasis on the evolutionary nature of constitutional formation, Harrison's Stanford lectures still make interesting and informative reading. They are contained in *Views of an Ex-President* (Bowen-Merrill, 1901), a posthumous collection of Harrison's speeches published by his widow.

The drafts of the lectures—over 860 pages worth—are among the Benjamin Harrison Papers at the Library of Congress (also available on microfilm). From these documents, it is possible to observe Harrison's painstaking preparation, as well as the extensive readings and authors he used for authority. —H.B.



HOWARD BROMBERG taught *Legal Research and Writing* at Stanford Law School from 1988 to 1990 and is currently a candidate for the J.S.D. degree. Trained in both history and law (Harvard B.A. 1980 and J.D. 1983), he has been commissioned to write the history of Stanford Law School's first 100 years. Readers with papers, anecdotes, or photographs from the School's past are encouraged to get in touch with Bromberg at Escondido Village 96-D, Stanford, CA 94305; telephone (415) 497-0887.



Once and Future Presidents

HISTORY SOMETIMES takes curious turns. One such was the encounter at a Stanford baseball game of the twenty-third President of the United States and the impressionable student who would eventually become the thirty-first in that high office. Their meeting—described by Herbert Hoover in his memoirs—was both amusing and revealing:

“Former President Benjamin Harrison had been induced by Senator Stanford to deliver a course of lectures upon some phases of government. I profited by the lectures. But then as manager of the baseball team I had a stern duty to perform. We had no enclosed field. We collected the 25 cents admission by outposts of students who demanded the cash. One afternoon Mr. Harrison came to the game. Either he ignored the collector or the collector was overcome with shyness. Anyway that outpost reported to me that Mr. Harrison had not paid. I collected the money. Mr. Harrison was cheerful about it and bought also an advance ticket to the next week's game. He would not take the 50 cents change from a dollar. But I insisted that we were not a charitable institution and that he must take it. Justice must occasionally be done even to ex-Presidents . . .”

—Herbert Hoover, *The Memoirs of Herbert Hoover*, Vol. 1: *Years of Adventure* (Macmillan, 1951), p. 21.

Alumni/ae WEEKEND



RUSS CLINTS THE RECORDER

The guest of honor, Justice Sandra Day O'Connor '52, with Professors Barbara Babcock and Gerald Gunther.

Friends, Football, and a Famous First

THE START was right here, and the heart still is." With these warm words, Sandra Day O'Connor '52—the first woman to serve on the U.S. Supreme Court—accepted the School's 1990 Alumni/ae Award of Merit.

The award ceremony, with Dean Brest as host, took place before some 200 happy graduates and friends at the all-classes banquet on Saturday, September 22, during the annual Law Alumni/ae Weekend. Guests included University president Donald Kennedy, several alumni/ae jurists, and the dis-

tinguished attorney whom Dean Brest termed "president of the most exclusive club in the world: the Men's Auxiliary to the Supreme Court"—John J. O'Connor III '53.

The O'Connors had spent time the previous day with students at the School. On the invitation of Women of Stanford Law, Justice O'Connor spoke to a standing-room-only audience in Crown Quad's largest classroom. WSL co-chair Jamie Grodsky ('92) and Professor Barbara Babcock (the School's first woman professor) joined in introducing the trail-blazing

justice. The session ended with a question-and-answer period, followed by a reception in Crocker Garden. (Excerpts from the O'Connor events—Dean Brest's tribute and the Justice's talks to students and alumni/ae—appear on pages 20 to 23.)

Alumni/ae Weekend proper was launched Friday at 5 PM with the now-traditional reception at the campus home of Paul and Iris Brest. Members of ten classes (all from years ending in 0 or 5), plus the indefatigable Half-Century Club, then scattered for their respective reunion dinners.

FROM THE CAPITOL

The Saturday morning program began with a talk by Professor-cum-Congressman Thomas J. Campbell (R-12th California) on what he has learned as a freshman legislator. Some nuggets:

- ▶ "Process controls substance. Therefore, the person who controls the agenda has great power."
- ▶ "Thirty seconds wins over thirty minutes any time."
- ▶ "As the proximity to an election narrows, the ability to affect votes by positives decreases, while the ability to affect votes by negatives grows."
- ▶ "Your influence in the House is inversely proportional to the time you spend on C-Span."
- ▶ "There is, at the end of the day, some justice."

Congressman Campbell concluded this somewhat wry presentation on a more serious note: "What really matters is whether the votes you cast will be ones you would be comfortable with twenty years hence."

YOUNG LAWYERS

Next on the program was a panel of graduates from the Classes of 1980 and 1985. Their assignment: to give their views, as relative newcomers to the legal profession, on their practice and, more generally, their quality of life.

The panelists represented a range of career choices. Ramon Gonzales '80 is a law-firm partner specializing in labor and employment law litigation with Sutin, Thayer & Browne of Albuquerque. Brad Jones (JD/MBA '81) is involved in high-tech industry investments with Brentwood Associates of Los Angeles. Ascanio Piomelli '85 is dedicated to legal services as director of the East Palo Alto Community Law Project. And Nancy Rapoport '85 specializes in bankruptcy law and litigation as an associate at Morrison & Foerster of San Francisco. Professor Robert Weisberg '79 served as moderator.

The perspectives of the panelists were—as might be expected—varied. But interestingly, all seemed generally satisfied with their choice of law as a profession, their post-law-school careers, and their lifestyles.



Top: Adam von Dioszeghy '70 and companion, with Law Fund chair William F. Kroener III '71.

Above: panelists Ramon Gonzales '80 and Nancy Rapoport '85.

Right: Congressman Tom Campbell.



VIEW FROM THE BRIDGE

The morning concluded with a "State of the School" report from Paul Brest. The Dean was happy to inform returning alumni/æ that student "disengagement" is no longer an issue and that the general atmosphere at the School is one of a "community of discourse." Other good news included:

- Further advances in the law and business curriculum;
- Integration of legal ethics into the substantive curriculum (the "pervasive method"), including many of the first-year courses;
- The establishment at the East Palo Alto Community Law Project of a guardianship clinic in which law students can assist grandparents and other relatives in gaining the legal right to make decisions for children in their primary care; and
- Progress in and the need for continuing expansion of the curriculum in international law.

MUCH TO CELEBRATE

A large contingent of the visiting alumni/æ and families then proceeded, box lunches in hand, to the Stanford Stadium. It was quite a spectacle. The Cardinal, clearly on an upward trajectory, romped up and down the field, earning a 37-3 victory over the unfortunate Beavers of Oregon State University.

Other alumni/æ took advantage of the chance to linger in sun-dappled Crocker Garden, talking with old friends and former professors—including the inimitable Moffatt Hancock.

The crowning occasion of Alumni/æ Weekend 1990 was, of course, the above-mentioned banquet. Held at the Hyatt Palo Alto, it encompassed not only the award to Justice O'Connor but also plenty of time for conversation and dancing.

This year's Alumni/æ Weekend is scheduled for September 26-28. Members of all years are welcome, with special events planned for the Half-Century Club ('40 or earlier) and for the reunion classes of years ending in 1 and 6. Feel free to call Margie Savoye of the Alumni/æ Relations office, (415) 723-2730, for information. □

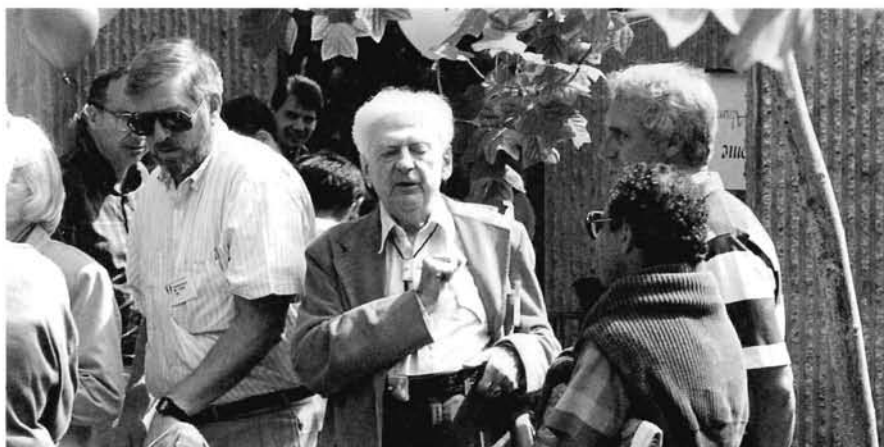


PHOTOS BY MARCO ZECCHIN





Opposite page, left: Professor Robert Weisberg '79, panel moderator. *Top:* John J. O'Connor III '53 and John H. Bickel '60. *Below:* Former Associate Dean Jack Friedenthal and Jo Anne Friedenthal '60.



This page, top: The welcoming party, hosted by (below) Dean Paul Brest and Iris Brest. *Center:* Professor emeritus Moffatt Hancock at the Crocker Garden luncheon. *Below, left:* Roderick Hills '55 and Stanford president Don Kennedy at the all-alumni/æ banquet.



In Praise of Sandra Day O'Connor '52

ON SEPTEMBER 25, 1981—almost nine years to this day—Sandra Day O'Connor became the nation's 102nd Justice of the Supreme Court of the United States. She was the second Stanford Law School graduate named to the Court and the first woman ever to become a member of that body.

I want to give you a sense of the wonderfully whole person who lies behind these facts and transcends them.

Sandra Day was born in 1930 to Harry and Ada Mae Wilkey Day, who made their home and their living on the Lazy B Ranch, a large spread on the New Mexico-Arizona border. The day she was born, her father was stuck in a federal courthouse in Tucson battling a bunch of lawyers in a case that had dragged on for years. He recounted: "I don't remember telling Sandra I wanted her to be a lawyer, but after dealing with slick lawyers for ten years, I thought: 'Damn, I'd like to have a little legal advice from somewhere in the family.'"

While Sandra Day spent some of her early years in El Paso, which had the best schools around, her real love was her home on the Lazy B. This was a working ranch, and she worked. "I didn't do all the things that boys did," she recalls, "but I fixed windmills and repaired fences."

Upon graduation from high school at the age of 16, she applied to Stanford, where she was accepted despite stiff competition from returning GIs. Sandra Day was the president of her dorm and of Cap & Gown; she majored in economics—not a typical women's subject at the time—and graduated with great distinction.

Sandra Day attended Law School under the so-called "3-3" plan, by which a student's senior year could



By Paul Brest
Richard E. Lang
Professor and Dean

also be her first year of Law School. Needless to say, she excelled, and was a member of the Law Review and the Order of the Coif.

One evening in her third year, Sandra was working on a Law Review assignment together with a second-year student—one John O'Connor. They had dinner afterwards—and for the following 41 evenings. When asked about this years later, she mused: "Beware of proofreading over a glass of beer."

Some years after her graduation, Justice O'Connor had occasion to reflect on her years at the Law School. In a letter thanking law students who had started a book fund in honor of her appointment to the Supreme Court, she wrote:

"It was at Stanford Law School that it all began; it was there that I commenced my long, totally unexpected walk into history. The Law School was such a joy to me (except possibly during dead week). I marveled at the talents of great professors. I developed some of the closest friends I will ever have. I crammed for finals at the end of my first year with my good friend Bill Rehnquist. I met my husband on a Stanford Law Review assignment. . . . Beyond those personal relationships, my opportunities for service as an assistant attorney general, as a state senator and as a judge all flowed from the school you now attend."

Sandra O'Connor's life up to and including Law School gave her good reason to believe that the world would treat her based on her own merits. So her first efforts at finding a job as a recent graduate must have come as a shock. "I interviewed with law firms in Los Angeles and San Francisco," she recalled. "None had ever hired a woman associate before, and they were not prepared to do so." (One firm actually counteroffered with a job as a secretary.) But, she said, "I wasn't frustrated. I was just redirected toward public service, and it hasn't been disappointing."

From 1965 to 1969, Sandra O'Connor served as assistant attorney general of Arizona (she was the first woman, of course). In the words of a colleague: "She had a mind like a steel

trap. She drove a hard bargain and didn't cave in."

From 1969 to 1975, she served in the Arizona Senate, and was chosen majority leader (needless to say, also the first woman). Senator O'Connor's views were described as in the Republican mainstream with "moderate to conservative commitments, though on many issues she disregarded political ideology. . . . She was strictly an issue-oriented person. If the program was good for the state, it didn't make a whole lot of difference to her which side initiated the issue." (Among other things, she supported the Equal Rights Amendment.)

A Democratic colleague described Senator O'Connor's workstyle with awe: "She worked interminable hours and read everything there was. It was impossible to win with her. We'd go to the floor with a few facts and let rhetoric do the rest. Not Sandy. She would overwhelm you with her knowledge."

During this period Sandra O'Connor decided to take up golf. She took daily lessons with the club pro at Paradise Valley Country Club for several years, and only then played her first game—and shot under 90. Her brother once said: "Whatever she did, whether it was important, unimportant, or semi-important, or very important, she just would do it with perfection. . . . If you said, 'The job is to wash the dishes,' she would do it better than anyone else." A friend said that "with Sandra O'Connor there ain't no Miller time."

From 1975 to 1981 Judge O'Connor served on the Maricopa County Superior Court and then on the state Court of Appeals, appointed to the latter position by Governor Bruce Babbitt, who spoke of her "astounding intellectual ability" and her "great sense of judgment."

It was while serving as a court of appeals judge that she received a phone call from William French Smith, President Reagan's Attorney General. Mr. Smith had been a partner at the Los Angeles firm that had made the interesting counteroffer when she had sought her first job after law school. She recounts that when the Attorney General telephoned to ask her if she could come to Washington to talk about a position there, "I



Alumni/æ Award of Merit recipient

immediately guessed he was planning to offer me a secretarial position—but would it be Secretary of Labor or Secretary of Commerce?"

The rest, as they say, is history—a history that is still unfolding.

At her Senate confirmation hearings, Senator Baucus asked the nominee how she wanted to be remembered. She replied: "The tombstone question—what do I want on my tombstone? I hope it might say: 'Here lies a good judge.' If I am confirmed," she went on to say, "I am sure that I would be remembered as the first woman to have served on the Supreme Court. I hope that in addition I would be remembered for having given fair and full consideration to the issues that were raised and to resolving things on an even-handed basis and with due

respect and regard for the Constitution of this country."

Justice O'Connor has taken a leadership position in at least two areas of constitutional law. One is the law concerning the separation of church and state. Even Laurence Tribe, not known for his lavish praise, says that "her religion test is the best effort around."

The other area is federalism. Justice O'Connor is the only member of the current Court ever elected to a public office, the only one to serve in a legislature.

Each Halloween, Justice O'Connor brings a pumpkin to her chambers for her clerks to decorate. Last year, in honor of the Justice's first grandchild, the clerks fashioned a Grandma Justice, who sported yellow curls and a pleased smirk. A blissful-looking pumpkin baby attired in a pink dress lay in its arms. The Justice holds the affection not only of her children and grandchild, but of her clerks and, as she describes them, her growing number of "grandclerks" as well.

Justice Sandra Day O'Connor—for what you have given your State and the Nation in an extraordinary career devoted to public service and for the example you have given the students, both the women and men, of Stanford and other law schools—it is an honor to present you with the Law School's Alumni/æ Award of Merit; and in this tenth year of your appointment to the Supreme Court, to wish you many, many more and extend my hope that you'll return to celebrate some of them with us. □

Excerpted from Dean Brest's remarks in presenting the seventh annual Alumni/æ Award of Merit, on September 22, 1990 at the Alumni/æ Weekend banquet.

The Making of a Justice

NINE YEARS AGO this very day [September 21, 1981] the Senate was voting on my nomination for the Supreme Court. I remember sitting in a little back room at the Senate, waiting for the vote. I could hear the proceedings on a P.A. system. The senators' names were called, and they all said, "pass." The names were called again, and again they all passed. I was in a near state of disarray, thinking, "What's happening?" Finally, one of the senators wandered in, and said, "Oh that happens all the time. We never get around to it until the third roll call." Well, they finally did get around to it, and it was an astonishing and surprising day.

I thought that I would share with you a little commentary on the process of selecting a Justice. President John Adams once said, "My gift of Justice John Marshall to the people of the United States was the proudest act of my life." Another less satisfied President referred to one of his appointments to the Supreme Court as "my biggest mistake." Well, how do Presidents go about giving such gifts or making such mistakes?

In almost 200 years, only 104 Justices [105 counting Souter] have actually served on the Court, which comes to about one nomination every other year. A nomination to the Court, then, is in terms of frequency about half as special as a presidential nomination. A nomination to the Court also involves infinitely less public participation and releasing of balloons, but it is still the occasion for public interest.

The constitutional requirement that Supreme Court appointments be made with the "advice and consent" of the Senate was inserted during the closing days of the Constitutional



By Hon. Sandra Day O'Connor '52
*Associate Justice,
U.S. Supreme Court*

Convention. It replaced the original language, "reject and approve." Almost all the debate at the Constitutional Convention concerning the judicial branch focused on the process for appointing Justices. The criteria for selection were not debated. The delegates simply assumed that the selection would be on the basis of merit. Doctor Benjamin Franklin suggested the Scottish mode of appointment in which the nomination proceeded from the lawyers, who always selected the ablest of the profession in order to get rid of him and share his practice among themselves.

The activity of the Senate Judiciary Committee has certainly increased through the years in terms of their desire to actually question the nominees. For many, many years it was thought improper for judicial nominees to be questioned at all. If I remember correctly, the first time that a nominee actually appeared before the Committee was the appointment of Justice Brandeis. Then it was done only a little bit; just a few questions were asked.

With the nomination of Judge Bork we saw perhaps the most extensive questioning of a potential Justice and very full replies by the nominee. I doubt that the Senate is going to retreat from that involvement. It does provide national television coverage for the participants, and that's sometimes irresistible. I think the nation is quite fascinated with the process anyway and rightfully so, so I would be surprised to see any retreat from the current level of inquiry.

What are the factors influencing the selection of a nominee to the Court? It is hard to generalize. Justice Holmes once said the job of a jurist requires a combination of Justinian, Jesus Christ, and John Marshall. That combination, as we all know, is rarely attained. Because the nominee will usually outlast (in office at least) the President who makes the appointment, there can be no doubt that the President generally seeks through the appointment to have a lasting effect on the Court and the nation. Unsurprisingly then, all but twelve nominees have been of the same political party as the President making the nomination, but it's generally conceded that Presidents are frequently disappointed.

When asked whether a person becomes any different when he puts on a judge's robes, Justice Frankfurter

responded, "If he's any good, he does." Presidents Jefferson and Madison were exceedingly disappointed at the failure of their appointees to resist the influence of Chief Justice John Marshall. Theodore Roosevelt was similarly chagrined at some of the rulings of Justice Oliver Wendell Holmes. When Holmes cast his vote against the government in an important antitrust case, Roosevelt is reported to have said, "I can carve out of a banana a judge with more backbone than that." As Alexander Bickel has said, "You shoot an arrow into a far distant future when you appoint a justice, and not even the man himself can tell you what he will think about some of the problems he will face." President Truman captured the heart of the problem in these remarks: "Packing the Supreme Court simply can't be done. I've tried it and it won't work. Whenever you put a man on the Supreme Court, he ceases to be your friend."

◆

The appointments to the Court of another Stanford alum, President Herbert Hoover, are illustrative of the unexpected results of these appointments. You will recall that President Hoover placed three Justices on the Court in the four years of his presidency: Chief Justice Charles Evans Hughes and Associate Justices Owen J. Roberts and Benjamin N. Cardozo. They were still members of the Court during the years when a number of President Franklin Roosevelt's New Deal legislative proposals and enactments were struck down. This persistent habit led to the Roosevelt Court-packing plan and ultimately to Justice Roberts's switch in time that saved nine.

There is little doubt about the very real effect the switch has had on constitutional jurisprudence. The view that the Constitution allows extensive government regulation of the economy was no temporary political

expedient—it has become settled law. The degree to which the Supreme Court will interfere with economic legislation is now severely circumscribed. In a real sense the very structure of our government with its huge administrative apparatus was made possible by the switch of the Hughes Court's appointees of President Herbert Hoover.

It's always dangerous to play the "what if?" game with historical facts, but I think it is possible that constitutional law and perhaps the structure of the Supreme Court itself would look different today if President Hoover had been more concerned with ideology and less with qualifications and balance in making his appointments. Imagine if, instead of Benjamin Cardozo, President Hoover had appointed his conservative Attorney General William Mitchell; or if instead of Charles Evans Hughes, the President had appointed a free market ideologue. Of course, one never knows; as I said earlier, service on the Court has changed the thinking of many a Justice. Owen Roberts came to the Court as a well known, laissez-faire capitalist and yet changed his mind. You shoot an arrow into a far distant future when you appoint a Justice.

◆

When we get a new Justice, it is more than gaining a new Justice. In a very real sense, it creates a new Court. Each new Justice who joins us changes the working dynamics in ways subtle and sometimes not so subtle.

◆

I think all of us as judges try to set aside any personal concerns we have and approach the issues that we have to decide as objectively as we can. But we're all human, and no doubt each of us is influenced in very subtle ways—sometimes ways which we ourselves don't recognize—in how we analyze problems, how we approach them, the weight that we give some arguments to the exclusion of others. Try as we will we are still the product of our backgrounds.



The honoree and her student introducer – Jamie Grodsky (3L) – following the Justice's September 21 meeting with students.

Continued on page 41

School NEWS

New Faces of 1991

School Makes Three Notable Additions to the Faculty



IAN AYRES

*Lawyer-Economist Brings
Corporate Law Expertise*

THE LAW and Business curriculum is gaining a new asset with the addition of antitrust expert Ian Ayres. Previously a professor at Northwestern Law School, Ayres has accepted the invitation of the Stanford Law faculty to become a permanent professor here.

A rising star in the field of corporate law, Ayres received a J.D. in 1986 from Yale (where he was articles editor of *Yale Law Journal*) and a Ph.D. in economics in 1988 from Massachusetts Institute of Technology. This feat was foreshadowed by his Yale

undergraduate record, which included majors in both economics (with distinction) and Russian and East European Studies (also with distinction), election in his junior year to Phi Beta Kappa, and graduation (B.A., 1981) *summa cum laude*.

In the five short years since law school, Ayres has been admitted to the Illinois Bar, clerked on the Tenth Circuit Court of Appeals, spent a summer as scholar in residence at a law firm (Chicago's Sonnenschein Nath & Rosenthal), written 12 academic articles, co-authored a book for the Oxford University Press, served as associate editor of the journal *Law and Social Inquiry*, conducted an empirical research study with the American Bar Foundation, and engaged in various pro bono activities.

This past academic year (1990-91) he was both a visiting professor at the University of Virginia and a guest scholar of the Brookings Institution. Now at Yale for a term as visiting professor, he plans to take up residence at Stanford early in the new year.

Ayres made news this

spring when the *Harvard Law Review* (104:817) published "Fair Driving: Race and Gender Discrimination in Retail Car Negotiations." The article, which was based on Ayres's ABF research study, showed that the proffered price of an automobile can vary significantly depending on the race and sex of the shopper. Car dealers (at least in the study area of Chicago) offered the highest prices to black males and black females, and the lowest to white males, even though all buyer-testers followed an identically scripted bargaining strategy.

Other articles by Ayres explore issues where economics and law intersect. In a 1989 *Yale Law Journal* piece (99:87), "Filling Gaps in Incomplete Contracts," Ayres and co-author Robert Gertner discussed how lawmakers should establish legal rules that private parties can contract around. Ayres has also written about antitrust policy and the increasingly subtle forms of collusion by which industries may defeat the purpose of antitrust laws.

His Oxford Press book,

written with John Braithwaite, suggests innovative methods for delegating regulatory authority to private actors. Now in press, it is called *Responsive Regulation: Transcending the Deregulation Debate*.

Much of Ayres's work exhibits a concern for the less-privileged members of society. The automobile shopping study is one example. Another is a paper for the *Northwestern Law Review* on retail markup disclosure. A third involves the price and availability of insurance, with Ayres serving as an economic expert to the attorneys general of 18 states for the case *In re Insurance Antitrust Litigation*, C88-1688 (N.D. Cal.).

He has been continuously involved in pro bono work, participating in such activities as the Harvard Prison Legal Assistance Project and the New Haven Battered Women's Temporary Restraining Order Project. Just last September, he convinced a judge to vacate a death sentence in an Illinois case where he had been counsel.

In a lighter vein, Ayres is remembered at Yale as much for his singing as his

scholarship. He was a soloist with the Yale Russian Chorus and with Wiffenpoof. Also a marathon runner (Boston 1984, in 3 hours, 12 minutes), he placed first in the 1989 five-kilometer run of the Law and Society Association.

Ayres's first lap as a Stanford Law professor will be in the Spring term of 1991, as a teacher of the foundation course in Finance Theory. □



JANET E. HALLEY

*Attorney's Views
Illumined by Humanities
Scholarship*

JANET E. HALLEY is entering law teaching after practice experience with Skadden, Arps, Slate, Meagher & Flom of Boston and, before that, a judicial clerkship on the U.S. Court of Appeals for the Sixth Circuit. No stranger to teaching, however, she has a doctorate in English literature and five years in the classroom as an assistant professor at Hamilton College in New York.

While in law school (Yale, J.D., 1988), Halley drew these diverse strands together by founding and

serving as one of the first executive editors of the *Yale Journal of Law and the Humanities*. And in two published articles, she has examined the way in which legal prohibitions affected expression and personal identity in Renaissance England. "Heresy, Orthodoxy and the Politics of Religious Discourse: The Case of the English Family of Love," appeared in the journal *Representatives* (15:98 [1986]). The other article, "Equivocation and the Legal Conflict over Religious Identity in Early Modern England," was published this year in the above-mentioned Yale journal (3:33).

Halley spent her law school summers at the Employment Law Center in San Francisco (1986) and at Silvergate, Gertner, Fine & Good in Boston (1987). During this period (1986-87), she was also a Thomas Emerson Fellow with the Connecticut Civil Liberties Union in Hartford. Her appeals court clerkship (1988-89) was with now-Chief Judge Gilbert S. Merritt in Nashville, Tennessee.

As a Skadden, Arps associate, Halley has been working mainly in the area of litigation. She is a member of both the Massachusetts and New York State bars. Other professional memberships include the Law and Society Association and the Modern Language Association.

Halley holds degrees in English literature from Princeton (B.A., 1974, *summa cum laude*), where she was elected to Phi Beta Kappa, and the University of California at Los Angeles (Ph.D., 1980).

Halley's activities and writings—both before and

after taking up legal studies—often focus on feminist concerns and sexual identity issues. While at Hamilton, she helped design and implement its Women's Studies Program. Then, as a Yale law student, she participated in the Women's Temporary Restraining Order Project and the Niantic Women's Prison Project, becoming director of training for the first and coordinator of the second. She also founded and organized a Women's Reading Group on Feminist Theory and the Law. In addition, she wrote successful grant proposals raising money for a legal network in Connecticut for issues surrounding AIDS.

Her recent publications include "The Politics of the Closet: Towards Equal Protection for Gay, Lesbian and Bisexual Identity," *UCLA Law Review* (36:915 [1989]) and "Constitutions of Sexual Orientation Identity" (in collaboration with Christine A. Littleton), *Journal of Law, Gender & Sexual Orientation* (forthcoming—see page 35). She is also co-editor (with Sheila Fisher) of a book, *Seeking the Woman in Late Medieval and Renaissance Literature: Essays in Feminist Contextual Criticism* (University of Tennessee Press, 1989).

Halley joins the faculty this fall as an associate professor. Her principal teaching subjects are civil procedure, family law, Native American law, and law and symbolic systems. □



KIM ANTOINETTE TAYLOR

*Public Defender is a Pro
in Criminal Law
and Procedure*

KIM ANTOINETTE TAYLOR joins the faculty with ten years of experience at the Public Defender Service of the District of Columbia, the last three years as its director.

The Washington, D.C. agency, which has 78 attorneys on staff, is one of the country's leading PD services. Its caseload includes about two-thirds of the most serious felonies in the nation's capital, with an increasing number of complex murder cases. Taylor, in her three years at the helm, is generally credited with having improved the morale and effectiveness of the service.

Also recognized for her legal expertise, Taylor is on the faculty of the National Criminal Defense College and is a former Fellow in Professional Responsibility at Yale Law School (1990). She has also taught or lectured at Yale, Georgetown, and Harvard, and in a number of professional education programs. In 1988, she became a barrister of the American Inn of Court.

Taylor is active in the

profession as a member of the American Bar Association's Criminal Justice Council and vice chair of its Indigent Defense Services Committee. She is on the board of directors of the National Legal Aid and Defender Association and chair of its Defender Committee. Also a member of the National Association of Criminal Defense Lawyers, she is vice chair of its committee on the Delivery of Legal Services to Indigent Defendants.

Taylor was educated at Brown (B.A., 1977) and Yale (J.D., 1980). Entering Brown as a National

Merit finalist and a New York Regents Scholar, she proceeded to earn departmental honors in English and American literature. Her courtroom ability and public interest concern emerged at Yale, where she was a semifinalist in the Barristers' Union Trial Competition and a participant in the Danbury Prison Project of the Yale Legal Services Organization.

Taylor was introduced to law firm practice through two summer associate positions. She spent the year after graduation as an associate at Crowell & Moring of

Washington, D.C., working on litigation cases.

Her decade with the Public Defender Service, which she joined in 1981, exposed Taylor to all phases of court proceedings in both criminal and family courts. Starting as a staff attorney, she advanced to the PDS directorship in 1988 after serving as deputy chief of its trial division (1986-87) and director of its attorney training activities (1987-88).

The latter position—a short leap to law school teaching—involved conducting a six-week pro-

gram for the entering class of staff attorneys, running monthly sessions for outside attorneys interested in representing indigents under the Criminal Justice Act, and some continuing education of staff attorneys.

Taylor joins the Stanford faculty this fall with the rank of associate professor. She will make her debut in the first-year Criminal Law course, while preparing an advanced course for the next term on Criminal Prosecution and Defense. □

Board of Visitors

2010 Inquiry Goes Global

"SURELY the most ambitious meeting in the history of the Board of Visitors," said Dean Brest of the 33rd annual convocation, May 2-3, of the School's chief advisory council. The agenda, put together by the Dean and the 2010 Task Force headed by Kendyl Monroe '60, was indeed impressive (see box). Over

the course of two days, some 30 speakers, panelists, moderators, and commentators were tapped. These included not only Board members, alumni/æ, and professors, but also a number of non-lawyers and foreign nationals.

The task of these many experts was to address a question vital to the future



Visitor Valda Staton '83 and Dean Brest

of Stanford Law School: What will be the roles of the legal profession two decades hence?

AN ONGOING PROJECT

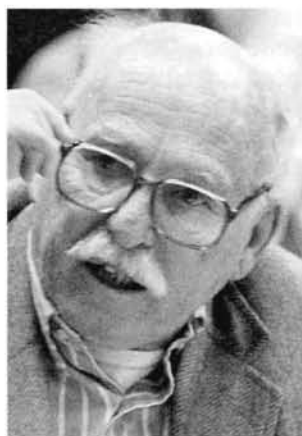
This inquiry represented the second stage of a project, recommended in 1989 and launched in 1990, to assist the School in forecasting and meeting the challenges of a changing world. Last year, the Board surveyed a broad range of trends, both domestic and global, and identified some of their implications for the content and practice of law (*Stanford Lawyer*, Fall



Associate Dean Ellen Borgersen



Nancy Hicks Maynard '87



Thomas Elke '52

PHOTOS BY MARCO ZECCHIN



Andre de Baubigny '58 and Anne Bingaman '68

1990, at pages 10 and 40). The next and final meeting of the series in 1992 will concentrate on legal education and the role that Stanford Law School might best play.

In designing the current 1991 meeting, the 2010 Task Force chose to focus on a specific area of law and policy: the environment. Environmental issues, it was thought, make good case studies—not only because of their intrinsic interest and significance, but also because they raise challenges illustrative of new demands on the legal profession generally. Such demands include the need to relate to non-law disciplines (notably science and technology) and to extra-territorial economic, political, and legal regimes.

The format adopted for each of three structured sessions was innovative: an opening presentation by one or two expert “provocateurs,” followed by a panel discussion in which a moderator would direct questions and hypotheticals to appropriate panelists, and a “wrap-up” by a member of the 2010 Task Force. Questions and comments from the 100-member Board were wel-

Board of Visitors

AGENDA **May 2-3, 1991**

The Roles of Lawyers on the Domestic Scene

Presenter: Ralph Cavanagh, Natural Resources Defense Council, San Francisco

Moderator: Paul Goldstein, Stella W. and Ira S. Lillick Professor, Stanford Law School

Panelists: Carl Anthony, Earth Island Institute, San Francisco; William H. Armstrong '67, McCutchen, Doyle, Brown & Enersen, Walnut Creek, California; Frank D. Boren '58, World Wildlife Fund, Washington, D.C.; Howard V. Golub, Pacific Gas & Electric, San Francisco; Barton H. Thompson, Jr., JD/MBA '76, Associate Professor, Stanford Law School

Wrap-up: James E. Bass* '87, Gibson, Dunn & Crutcher, Los Angeles

The Roles of Lawyers in the International Community

Presenter: Ambassador Richard Benedick, Senior Fellow, World Wildlife Fund, Washington, D.C.

Moderator: Joseph A. Grundfest '78, Associate Professor, Stanford Law School

Panelists: David M. Barnard, Linklaters & Paines, New York; John H. Barton* '68, George E. Osborne Professor, Stanford Law School; Thomas C. Heller, Professor of Law and Director of Overseas Studies, Stanford; W. Brian Rose, Stikeman, Elliott, Toronto, Canada; Christoph von Teichman, Schön Nolte Finkelnburg & Clemm, Hamburg, Germany; Edith Brown Weiss, United States Environmental Protection Agency, Washington, D.C.

Wrap-up: William F. Kroener III* JD/MBA '71, Davis Polk & Wardwell, New York

How Will the Legal Profession Respond to the Challenge?

Co-Presenters: Roderick M. Hills* '55, Donovan Leisure, Rogovin, Hoge & Schiller, Washington, D.C.; Eva J. Paterson, Lawyers' Committee for Urban Affairs, San Francisco

Moderator: Deborah L. Rhode, Professor, Stanford Law School

Panelists: Ronald J. Gilson, Professor and Helen L. Crocker Faculty Scholar, Stanford Law School; Ellie Goodwin, Natural Resources Defense Council, San Francisco; Peter W. Huber, Manhattan Institute for Policy Research, Washington, D.C.; Louise A. La Mothe '71, Irell & Manella, Los Angeles; Richard Mallery* '63, Snell & Wilmer, Phoenix

Wrap-up: Ellen Borgersen*, Associate Dean, Academic Affairs, Stanford Law School

Summary and Plenary Discussion

Introduction: Miles L. Rubin* '52, National Direct Marketing Corporation, New York

Moderator: Nancy Hicks Maynard* '87, The Tribune, Oakland, California

Summarizer: Edward D. Spurgeon* '64, University of Utah, Salt Lake City

Penultimate Comments and State of the School Address: Paul Brest*, Richard E. Lang Professor and Dean, Stanford Law School

Closing Comments: Kendyl K. Monroe* '60, Sullivan & Cromwell, New York

* Member, 2010 Task Force

came throughout the meeting, with the fourth and final session—the Summary and Plenary Discussion—being wholly devoted to input from the board. This last session was also informed by the Dean's annual State of the School report.

Taken as a whole, the proceedings provided an informative, intriguing, and insightful look into the changing legal environment as it will affect not only the lawyers of tomorrow but even those now well established in practice. As Nancy Maynard '87 observed during the closing session: "Change is going to happen. The question is whether or not we will be ready for it."

Credit for guiding the long-range planning project goes to the 2010 Task Force, which includes—in addition to Dean Brest and Kendyl Monroe—Prof. 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, Miles L. Rubin '52, and Edward D. (Ned) Spurgeon '64.



Left: Bruce Sattler '69 and Sallie Kim '89.
Below: Cinco de Mayo celebrants

CHANGE OF PACE

The Visitors enjoyed a number of events in addition to the official 2010 proceedings. Lunch during the first day was taken with second-year students, in small informal groups designed to promote easy interaction. Dinner that evening was hosted by the Board itself, as a means of welcoming first-year students into the fellowship, privileges, and responsibilities of membership in the extended Stanford legal community. Judge Pamela Ann Rymer '64 of the Ninth Circuit Court of Appeals was the featured speaker (see page 29).

Two other student events were held in conjunction with the Board's



PHOTOS BY MARCO ZECCHIN

annual meeting. One was the Kirkwood Moot Court final competition—as always an impressive display of mental agility (see page 30). The second was a Cinco de Mayo celebration in Crocker

Garden. Though the date (May 3) was a bit early, the food and music were *sabroso*.

The Board's two-day agenda concluded with a dinner-dance at the Faculty Club. Joining the Visitors were the moot court students and judges, most notably Supreme Court Associate Justice Byron White.

Justice White, in after-dinner remarks, confirmed the need for searching inquiries such as the 2010 project. "The law schools of this country are commanding probably more than their fair share of the extremely talented people who graduate from college," he observed. This boon, the justice declared, confers on law schools "a responsibility to use it well." □



Left: Gary Williams '76 and Robert Garcia '78.
Above: Roderick Hills '55.

Rymer Provides Food for Thought

Judge Pamela Ann Rymer of the U.S. Court of Appeals for the Ninth Circuit described the essence of "professionalism" to first-year students at a dinner given May 3 by the Board of Visitors.



I SUGGEST that what the profession needs is a renewal of *personal* professionalism. The values that define our profession are the one sure thing in changing times. Law firms come and go. Institutions change character and composition. But the moral force that you bring to what you do is portable and immutable.

What do I mean by personal professionalism? First, to do everything with integrity. Second, to let the accumulation of wealth be a happy, but incidental consequence of the practice of law, never the principal objective. Third, to foster collegiality and to take seriously the role of officer of the court. Fourth, to maintain a sense of public duty. And fifth, to practice so as always to have pride, tomorrow.

Without integrity, nothing else matters. Our entire system of justice is a search for truth—and truth depends on the integrity of every participant. Integrity means honesty to the court, your clients, and your conscience. That entails *responsibility*: the choice to take on a cause with merit, no matter what the money involved—and the courage not to take on a cause which has no merit, no matter what the money involved; to counsel this way, or that, having regard only for what the law is or ought to be; and to balance benefits against burdens—to litigate, to arbitrate; to disclose, to conceal; to confront, to compromise.

It requires *perseverance* and *commitment*, so that among competing priorities, devotion to the interests of a client is paramount along with the public interest. And it requires *perspective*: to bring to each problem a broad-gauge understanding of the social, economic, political and philosophical context in which decisions are made.

Integrity means *honor and civility* as well: never to cut a corner or mis-cite a case, fudge a material fact, go back on your word, or take a position because you can get away with it instead of because it is the right

and proper thing to do; always to be helpful, courteous, and professional to the judge and the jury, and to be considerate of opposing counsel. Lack of civility does not win cases; it often loses them.

To be honorable also means to put blinders on to matters that are, or ought to be, extraneous: the law is not, and must not be allowed to be, a game of pushing buttons that have to do with bias, or prejudice, inhumanity or insensitivity.

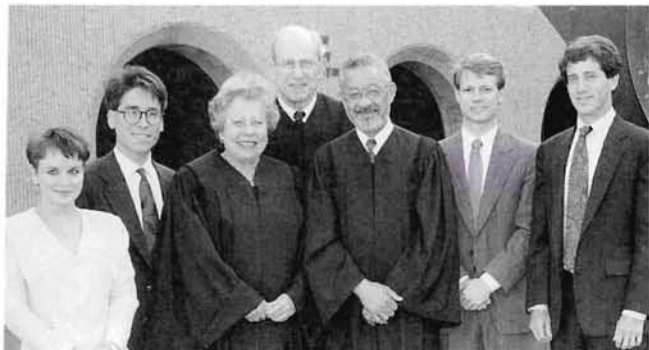
In court or out, integrity is the greatest influence on reputation; and the reputation that precedes and follows a lawyer is the single most valuable asset he or she can ever have.

Integrity is one commodity that has no price. Yet the economics of practice are staggering. Make no mistake: I am all for lawyers—even judges—making money. But the profession will ultimately bottom out if the bottom line is the bottom line. Neither personally nor professionally should we allow the paper chase to become a "pecuniary chase."

Equally important is our obligation to contribute. As John Gardner put it: "Freedom and obligation, liberty and duty—that's the deal. ... [I]t isn't in the grand design that we can have freedom without obligation. Not for long." Law is inextricably affected with a public interest; to be a part of the profession is a privilege which comes from the state, and it is right that some measure of ourselves, our education and experience be returned to the common good.

Finally, it is necessary for tomorrow, to ask the tough questions today: Are we doing enough to make the legal process less of a maze, less of a morass, less of a maddening experience for those who entrust to the bench and bar their most serious problems? Are courts too pricey for people of ordinary means? Are lawsuits too readily filed? Are the courts doing their best? Are other fora better? Do we—lawyers and judges—serve the interests of the public in the fair, efficient and impartial administration of justice?

Whether you put professionalism into your profession—that, ladies and gentlemen, is up to you." □



Justices Nelson, White and Broussard, with competitors Levine and Justman (left) and Eaton and Meisel (right).

Moot Court

Kirkwood Finalists "Superb"

FOR THE THREE seasoned jurists, it was, perhaps, just another moot court. But for the four Stanford finalists, it was an unforgettable first: an appearance before a bench headed by a member of the Supreme Court of the United States of America.

The High Court justice was Hon. Byron R. White, whose 29 years of service make him a veteran of both the Warren and Burger eras. Joining him on the panel were two other appeals court justices: Hon. Allen E. Broussard of the Supreme Court of California, and Hon. Dorothy W. Nelson of the U.S. Court of Appeals for the Ninth Circuit.

Their reason for encouraging moot court activity was explained in part by Justice White: "Oral argument makes just enough difference just often enough that we can't afford to give it up." Noting that briefs often leave him with doubts to resolve, he said, "We use oral argument to help us firm up our decision."

The Stanford hypothetical was, in Justice Broussard's words, "a

very challenging and interesting problem." And, one might add, current. The issues: random drug testing of amateur athletes and prohibition of racist speech on a campus.

The competitors acquitted themselves well, leading Justice Nelson to say: "Stanford students continue to be among the most outstanding in the nation. You all deserve credit for a truly superb job."

Honors went to both teams, with Anthony Justman and Raleigh Levine getting the award for best brief, while Rob Eaton and Ted Meisel were declared the best team overall. Eaton was also the top oralist. (Asked later about his exceptional composure and ability to cite chapter and verse, Rob revealed that he had spent eighteen months abroad as a Mormon missionary.) All four were in their final year of law school.

Pronouncing the performance of the participants "very good, very close," Justice White concluded: "I'm just happy to be here." □

Law Library

The Underwriters

SOMETIME during this school year, the Robert Crown Law Library expects to acquire its 350,000th book. The identity of that book is still unknown. But one thing is certain, says Law Librarian Lance Dickson: "It will have been purchased with funds contributed by a remarkable association called The Friends of the Stanford Law Library."

The Friends is a quiet group of behind-the-scenes library supporters. The organization has very little formal business. All members pay dues (in one of four categories of membership), which are donated to the Law Library to develop its collections. Each added volume bears a bookplate identifying it as "Given by Friends of the Stanford Law Library." In the past six years alone, reports Associate Law Librarian Rosalee Long, more than 5,000 new books were purchased with contributions from the Friends.

Friends funds have helped build collections in various fields, including maritime law and copy-

right law. The greatest emphasis in recent years has been in comparative law, particularly European legal materials.

"There is a growing interest in the law of the European Communities and the new economic order of 1992," Dickson notes. "Our library is well placed to satisfy this interest, thanks to the support and prescience of the Friends."

The Friends organization was founded in 1959 when the Honorable Louis E. Goodman, United States District Judge for Northern California, invited a small group of interested persons to join him in a venture to strengthen and improve the then-small Stanford Law Library. Interestingly, the founding members of the Friends included a number of persons who were not Stanford Law School graduates—a characteristic the group retains.

Judge Goodman was chosen to act as the first Chairman of the Friends,



Keeping pace—with significant help from the Friends.

assisted by an executive committee of Allan E. Charles '27, Herman Phleger, John A. Sutro, and Professor John Henry Merryman (as Secretary). Thirty years later, the Friends still include many of the original founders. Sutro is the current Chair, while Charles and Merryman currently serve on the executive committee, together with Richard J. Guggenheimer, J. Sterling Hutcheson '49, Stuart L. Kadison '48, and David Vaughn (who recently replaced Robert P. Hastings).

One of the treasures of the Law Library is a truly magnificent folio edition of the *Code de Napoléon*. Printed on blue paper, it is one of only three such copies produced in Florence by Molini, Landi in 1809. The book—previously part of the late Judge Goodman's personal library—was presented in 1962 by Mrs. Goodman. The generosity of the Goodman family has continued to the present day with the participation of the founder's daughter, Mrs. Dudley Bennett.

The Friends are not, of course, the only benefactors of the Law Library, but their record of support is impressive and sustained. "This is a group which has had a vision of library excellence for more than thirty years," says Lance Dickson. "The results are real and tangible. The Friends are literally in our good books." □

Readers interested in joining the Friends of the Stanford Law Library should call or write to Ann Vogel, (415) 725-0198; Robert Crown Law Library, Stanford Law School, Stanford, CA 94305-8610.



Alexis Johns, Renée Glover and Warren Dean, with Glover fille.

Words to the Wise

A RECORD 187 academic degrees were granted in 1990–91. Another record was set in commencement attendance, with 1,350 well-wishers thronging the lawn in front of Crown Quad on June 16 to honor the degree recipients and hear what the speakers had to say.

Of the degrees conferred this past year, 179 were the J.D. professional degree, 2 the advanced J.S.M., 3 the doctoral J.S.D., and 1 the M.L.S. (a master's degree for nonlawyers). Nothing if not high achievers, the J.D. graduates also took with them large numbers of honors, awards, and prizes (see pages 32–33).

The keynote speaker and winner of this year's John Bingham Hurlbut Award for excellence in teaching was Barbara H. Fried, an assistant professor who has been teaching tax law since 1987. She was chosen for the honor by a vote of the graduating class. "No reward for this job could be sweeter than this," said Fried, as she accepted the award

from Class President Timothy Fox.

Fried counseled the graduates: "Life is short and dear. Don't throw it away on things that don't matter to you." She shared some wisdom that had helped her at a significant decision point in her own life (when she left

"You have great talents. Try to match them with desire."

—Chinese cookie fortune

private practice for law teaching). The source was somewhat unorthodox—two Chinese fortune cookies—but the advice good: "Make up your mind what you want to do, and do it"; and "You have great talents. Try to match them with desire."

Fried went on to say: "Some parts of our lives we choose; most parts choose us." The chal-



Barbara Fried, Hurlbut teaching award winner.

lenge, she concluded, is "to take this life—cobbled together out of choice and necessity—and make of it a life that matters."

Tim Fox, in a brief but moving speech, told of how legal activism had helped improve the schooling available to his mentally disabled brother. "Law is an incredibly powerful tool to touch people's lives," Fox declared. "We have a tremendous opportunity to make a difference. Let us accept the responsibility to use this opportunity."

In the final address of the ceremony, Dean Brest urged the departing graduates to understand and support the commitment of Stanford and other institutions of higher learning to "creating a nurturing environment for a diverse student body and for the vigorous exploration of diverse ideas."

His parting words: "I wish you—and us—good luck." □



Laurels to Graduating Students

MEMBERS of the Class of 1991 earned these honors and awards:

Nathan Abbott Scholar for the highest cumulative grade point average in the graduating class: John Winston Thornburgh, winner also of the First- and Second-Year Honors for the highest GPA 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: Gary Scott Feinerman.

Order of the Coif, the national law honor society, to which were elected: Thornburgh and Feinerman, plus Dan Levi Bagatell, Michael James Dahl, Rob Eaton, Clark J. Freshman, H. Jay Kallman, Raleigh Hannah Levine, Alex Miller, Michael Kevin Moyers, William J. Needle, Jay Pomerantz, Olga Popov, Peter Savich, Amy Lynn Silverstein, Edward W. Swanson, Rosemary Shea Tarlton, and María Tai Wolff.

The 18 new Coif members also graduated "with distinction," an honor earned by a total of 47 graduates 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: Kallman, Levine, Popov, Silverstein, Swanson, and Tarlton, plus Scott Applebaum, Abraham Rubalcava Brown, Gerald Quinton Brown, Philip Joseph Deutch, James Edwin Earle, John Alexander Fandel, Timothy Patrick Fox, Peter James Hama-saki, Anthony John Justman, Robert J. Klein, Thomas Patrick McLean, Bradley Peter Miller, Valerie Rae Park, David Enrico Reibel, Jonathan Henry Sherman, Ethan S. Steinberg, and Jerome Theodore Will.

Frank Baker Belcher Award for the best academic work in evidence: William Glenn McCullough.

Top Left: The procession, lead by standard bearer Rhonda Reaves.

Above: Julie Matlof, William McCullough, Alexandra McKay and Thomas McLean, in good order.

Right: Dean Brest, with congratulations for all.

Lower right: Lee Meisel and admirers.

Below: JoLani Hironaka and Lillie Hsu, in a festive mode.





PHOTOS BY MARCO ZECCHIN

Top: The happy throng, al fresco before Green Library.
Middle: James McPhail, savoring the moment.
Bottom: Tim Fox, class president and spokesman.



Steven M. Block Civil Liberties Award for distinguished written work on issues relating to personal freedom: Clark Freshman, first place; Susan Elizabeth Holley, second place; Paul Stephen Schmidtberger, third place.

Carl Mason Franklin Prize for the best paper in international law: John Joseph

Moore, Jr. (co-winner, 1989–90).

Richard S. Goldsmith Award for the best research paper concerning dispute resolution: Raleigh Levine (1990–91) and Bradley Robert Mozée (1989–90).

Olaus and Adolph Murie Award for the most thoughtful written work in environmental law: Bradley Miller (first place) and Bradley Mozée (second place).

Board of Editors' Award for outstanding editorial contributions to the *Stanford Law Review*: Dan Bagatell and Martin Frederick Hansen (1990–91); and Jonathan Sherman (1989–90).

Irving Hellman, Jr. Special Award for the outstanding student note published by the *Review*: Alexander Elias Silverman.

Jay M. Spears Award for outstanding service to the

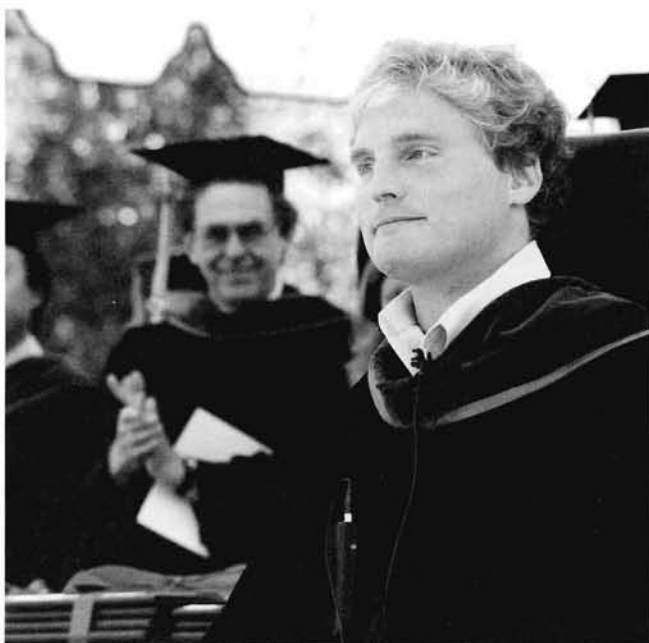
Review during his second year of law school: John Moore.

United States Law Week Award for outstanding service to the *Review*: Dixie K. Koons Hieb.

Mr. and Mrs. Duncan L. Matteson, Sr. Awards, in the 1991 Marion Rice Kirkwood Moot Court competition: Rob Eaton and Ted David Meisel as best team. The Matteson Award for runner-up team went to Anthony Justman and Raleigh Levine. (More on page 30.)

Walter J. Cummings Awards, also in the Moot Court finals. For best oral advocate: Eaton. For best brief: Justman and Levine.

R. Hunter Summers Trial Practice Award, presented by officers of Sergeants-at-Law for outstanding student performance: Brian Paul Akers (1988–89). □



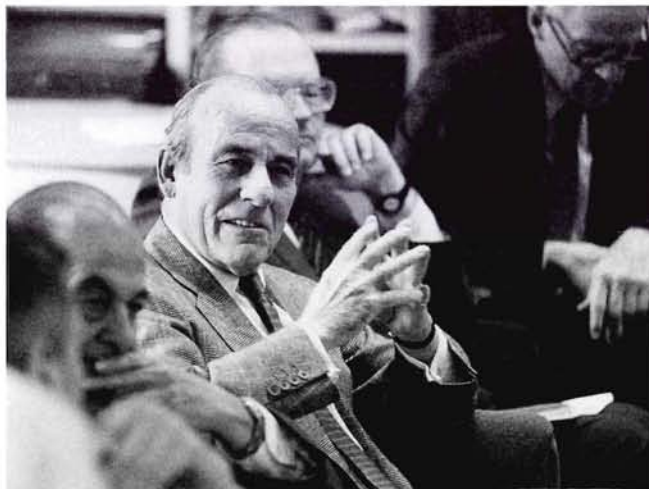
Good Tidings (and Some News You Can Use)

ON THE MARK

STANFORD Law School was the place to be on Monday, February 11, 1991—at least if your business relates to the U.S. Securities and Exchange Commission. For on that day, just as the new SEC regulations on insider trading were released, one of its leading drafters was at Stanford to speak at a professional seminar on the subject. Organized by Associate Professor Joseph Grundfest (a former SEC commissioner), the event was the first in the nation at which the implications of the new regulations were explained.

The School's exquisite timing was the result of Grundfest's alertness to developments in Washington, D.C. When the regs came down late the previous week, Stanford—along with eleven Silicon Valley firms recruited as co-sponsors—was ready with the full-day informational program. SEC Commissioner Edward H. Fleischman, the above-mentioned drafter, was the featured speaker. Robert Singletary (SEC's acting regional administrator in San Francisco) and several knowledgeable attorneys from the participating firms completed the program.

Designed for large investors, officers in publicly traded corporations, and the attorneys, accountants, and other professionals who advise and counsel them, the seminar attracted some 200 registrants from throughout the Bay Area legal and financial community. □



Marshall Small '51, Deane Johnson '42 (*speaking*), G. Williams Rutherford '50, and Henry Wheeler '50 were among the counselors at the first meeting of the Law and Business Advisory Council.

BUSINESS WORLD

STANFORD Law School, in a move to add depth of experience to its program in law and business, has enlisted a number of seasoned attorneys to constitute a Law and Business Advisory Council. Walter L. Weisman '59 of Los Angeles is the chair.

The purpose of the new

group, says Dean Brest, is "to provide the faculty and Dean with systematic feedback on how the School's program in law and business comports with the real world of law and business in which our graduates will practice, and to help us develop ideas for improving the program." □

The foundation was laid at the group's first meeting, March 1, with informational talks by the chair of the School's Law and Business Program, Ronald Gilson, several other law professors, and the dean of the Graduate School of Business. The Council plans to meet annually. □

TOP PAPER—AGAIN

FOR THE THIRD consecutive year, the *Stanford Law Journal* has been named in the national ABA competition as the best overall newspaper in its category (papers from schools of 750 or fewer students). The *Journal* also won three other 1989/90 first-place awards: two for feature articles and one for an editorial cartoon.

The winning feature in the category on internal law school affairs was written by Joan Krause (now 3L) about the Loma Prieta earthquake. The other top feature won in

the category of substantive law. Written by William Boyle '91, the article concerned discrimination against homosexuals in the military.

Peter Chadwick '90 created the first-prize editorial cartoon on internal law school affairs, as well as placing second in the category for cartoons on broader aspects of the law. (Readers may recall seeing Chadwick's winning cartoon from the previous year's competition, in our Spring 1990 issue).

Other second- and third-place prizes to the 1989/90 *Journal* were won for editorials and for

an article by Krause, co-authored with Lisa Cuevas (3L), on the late Professor John Kaplan.

The editors of the winning volume were Carmine Broccole, David Vogel, and Carin Duryee. Laurels also go to Matt Viola, whose sound business management kept the student paper in good financial condition. All four graduated in June 1991. □

To advertise in or subscribe to the *Journal*, call (415) 725-2569.



Tony West (3L)

LAW REVIEW PRESIDENT

THE MEMBERS of Stanford Law Review have elected Derek Anthony (Tony) West as president. A 1987 honors graduate of Harvard, West has experience in editing, publishing, and fiscal management. He was an editor last year of the *Stanford Law & Policy Review*, in addition to being an SLR member. And at Harvard, he was publisher of the *Harvard Political Review* and chair of the Forum Projects Committee of the Institute

of Politics at the John F. Kennedy School of Government.

West worked after college in the Dukakis presidential campaign as chief of staff to the treasurer, in the campaign's Boston office. Following the 1988 election, he became finance director of the Democratic Governors' Association in Washington, D.C.

His comment, on becoming head this spring of the law review: "I'm very honored and excited about the challenge. The *Stanford Law Review* is a laboratory from which some of the most provocative ideas in legal scholarship are launched. We should continually look for new ways to bring these emerging ideas to the legal community." □

Subscriptions to the Review are available at \$30/year (6 issues). To order, call (415) 725-0181.

LAW AND ECONOMICS

STANFORD'S interdisciplinary program in law and economics received a two-year renewal grant of \$513,673 from the John M. Olin Foundation of New York. The program—named the John M. Olin Program in Law and Economics following the foundation's initial grant in 1987—is directed by A. Mitchell Polinsky, the School's Josephine Scott Crocker Professor of Law and Economics.

Olin program activities include frequent seminars, "free lunch" discussions for students throughout the University, and a

working paper series. In addition, it has supported a wide range of research by students and faculty. Last October, the Program co-sponsored, with UC-Berkeley's law and economics program, a major conference on constitutional law and economics. □

Interested readers may call Professor Polinsky or Barbara Adams, the Olin program's administrative director, at (415) 723-2575.

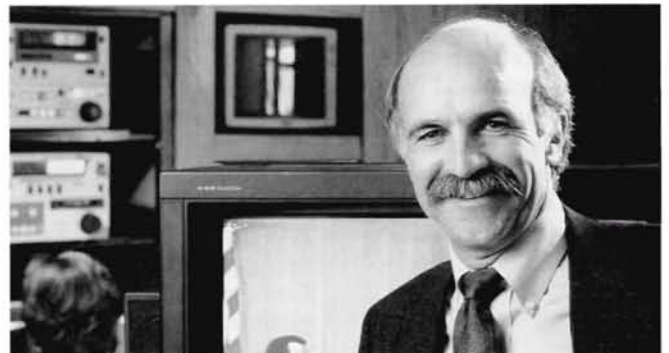


SEX, LAWS AND SCHOLARSHIP

NEWS is being made this fall with the publication of the inaugural issue of *The Journal of Law, Gender & Sexual Orientation*. The journal is remarkable for at least two reasons. It is one of the first scholarly periodicals in this country jointly covering and linking legal issues of sex and sexual orientation. And, though it originates at Stanford, JLGSO is edited and published in conjunction with students of other law schools, particularly Golden Gate and California Western. Also unusual, though not unique, is the *Journal's* interest in interdisciplinary approaches.

The *Journal* editors, seeking to encourage scholarship on the issues it addresses, are sponsoring a writing competition for students from any school or academic discipline, with three cash awards and publication as prizes. September 30, 1991, is the deadline for entries. Plans for future activities include a symposium on bisexuality and the law. □

For a subscription to the forthcoming inaugural volume (2 issues), call (415) 725-2569. Alumni are also invited to volunteer as editorial advisers, competition judges, or symposia planners.



Hallahan: a new way to learn

CONTINUING EDUCATION BY VIDEO

CALIFORNIA'S Continuing Education of the Bar (CEB) has begun to make available, for purchase or lease, the series of interactive video programs developed at Stanford by

senior lecturer Timothy Hallahan (*Stanford Lawyer*, Spring/Summer 1989, pp. 20-21). Under the title "LawQuest," the series teaches litigation skills to individuals wherever and

Continued on next page

whenever a computer, videodisc player, and monitor are available. The seven programs so far released deal with the following subjects: interviewing, motion skills, rules of evidence (California as well as federal), evidentiary foundations, direct and cross-examination, opening statements and closing argument, and legal ethics. □

Further information is available from CEB representatives. For Northern California, call Debora Tempel, (415) 642-6642; for Southern California, Dave Simala (714) 964-6531.

STUDENT SCHOLAR

JAMIE A. GRODSKY (3L) is the author of an article in the Fall 1990 issue of *Jurimetrics Journal*, on the subject "The Freedom of Information Act in the Electronic Age: The Statute Is Not User Friendly." Grodsky, a former analyst with the U.S. Congress's Office of Technology Assessment, concludes that the paper-oriented FOIA is not well adapted to computerized data and suggests some amendments to the twenty-five-year-old statute. □

Faculty & Staff Notes

Janet Cooper Alexander earned national attention for a paper published in the February 1991 *Stanford Law Review* (43:497). Based on empirical research, it is titled "Do the Merits Matter? A Study of Settlements in Securities Class Actions." Alexander found that—contrary to either common assumptions or economic models—settlement outcomes did not approximate expected trial outcomes, but instead were resolved regardless of the merits at an apparent "going rate." She gave invited lectures on the subject in April, for law and economics seminars at both Harvard and Berkeley, and was also a panelist in May for a forum sponsored by the Stanford Law and Business Society.

Earlier in the year, Alexander delivered "A Tribute to Justice Thurgood Marshall" (for whom she clerked in 1979–80) at the Third Annual Justice and Humanity Award ceremony of the Legal Aid Society of San Diego. And in October 1990, she spoke on the topic "Women in the Law: An Assessment and an Agenda" at a Scripps College presidential symposium.

Barbara Allen Babcock continues to speak and write about the pioneering woman attorney who is the subject of her historic biography in progress. In a May article, "Clara Shortridge Foltz: Constitution-maker" (*Indiana Law Review*, Vol. 66), Babcock traced the origin of the unprecedented sex-

discrimination clauses of the 1879 California constitution to the efforts of the Woman Suffrage movement and to Foltz's suit for admission to Hastings School of Law. Foltz had been refused "on the sole ground that she was a woman," explains Babcock. Although Foltz eventually won her suit in the California Supreme Court after Hastings appealed an initial decision in her favor, the long delay of litigation prevented her from completing the course of instruction. In June 1991, the Hastings faculty redressed this historic wrong by awarding Foltz a posthumous LL.D.—bringing to a happy conclusion a student campaign of rectification largely inspired by Babcock's research and writings. Babcock received the degree on Clara Foltz's behalf at the Hastings graduation ceremony.

John Barton has been appointed to the National Institute of Health's Recombinant DNA Advisory Committee. In addition, he is working with the Stockholm Environment Institute to organize an international biotechnology advisory commission. Here at Stanford, he serves on the Administrative Panel for Human Subjects in Behavioral Science Research.

William Baxter has been participating in various events related to government controls of economic activity. He presented the closing analysis for an ABA con-

ference titled "Competition and Regulation—Compatible Bedfellows: A Competitive Energy Industry," held in Washington, D.C., and discussed antitrust issues at the Stanford Conference on High Technology Consortia.

Baxter, who is a former chief of the U.S. Justice Department's Antitrust Division (1981–83), was also featured in the 60th Anniversary issue of *Electronics Magazine*, where he gave an interview on the impact of the AT&T and IBM antitrust cases on the electronics industry. He continues to serve as counsel to New York's Shearman & Sterling, as well as being an important resource pro bono to Stanford University's legal counsel office.

Paul Brest received an honorary doctorate (LL.D.) from Swarthmore College during its commencement on June 3. The Pennsylvania school praised the Stanford Dean as "a scholar and an innovative educator" who has throughout his career "shown a strong commitment to social service." Brest, in his acceptance speech, spoke of the need for schools and universities to be places where students of diverse backgrounds feel free to discuss and reconsider their views (the theme of several of his recent talks and writings, including the "From the Dean" column beginning on page 2).

Frank Brucato, the School's Associate Dean for Administration, has been named chair of the funding subcommittee of

the California State Bar Task Force on Loan Forgiveness.

Tom Campbell—on leave since his election in 1988 to the U.S. Congress—was a featured speaker at the September 1990 Alumni Weekend (see page 17). In March of this year he declared his candidacy for the U.S. Senate seat being vacated by California Democrat Alan Cranston. Campbell, a Republican, is running on a platform of “New Conservatism,” which he defines as embracing fiscal austerity, environmental conservation, and women’s right to choose an abortion.

Mauro Cappelletti delivered lectures in Brazil and Mexico last fall that are being prepared for publication in book form in Portuguese and Spanish. Another book, *Le Pouvoir des Juges*, was released in late 1990 by Presses Universitaires d’Aix-Marseille and Economica in Paris. Recent articles by the multilingual professor include an Italian work translatable as “New Issues in Constitutional Adjudication.”

Cappelletti is serving another three-year term on the International Association of Legal Science’s board of directors, to which he has been re-elected by the national associations of twenty-five member countries. He has also been appointed “Academic Consultant” to the Institute of Comparative Law in Japan.

William Cohen has had a number of articles published over the past year. The former William O. Douglas clerk contributed “Commentary: Douglas as Civil Libertarian” to a

volume on the legacy of the late Supreme Court justice, *He Shall Not Pass This Way Again* (1990), edited by Stephen L. Wasby. Cohen’s “State Law in Equality Clothing: A Comment on *Allegheny Pittsburgh Coal Co. v. County Commission*” appeared in the November 1990 *UCLA Law Review* (38:87). Three other Cohen pieces—“Economic Due Process,” “Economic Equal Protection,” and “Congressional Enforcement of the 14th Amendment”—were written for the supplement to the *Encyclopedia of Constitutional Law*. And a sixth work, “Rationality Review of Tort Reform Legislation Under State Constitutions: Justice Linde’s Methodology of Judicial Review,” is in press at the *Oregon Law Review*.

Lance Dickson was a member this past year of the AALS and ABA joint site evaluation team to the University of Chicago Law School. He also served as library consultant to the Consortium for Service to Latin America, in a proposal to establish an International Institute of Justice.

A survey article by Dickson on the development of law libraries in the 1990s appeared in the journal of the British and Irish Association of Law Librarians. A longer version of the report was originally presented at a meeting of the Association in Oxford, England. Dickson and co-editor Win-Shin Chiang have also completed the 12th annual edition of their *Legal Bibliography Index*.

Sally Dickson, the School’s Associate Dean

for Student Affairs, is developing a course, Criminality and Subordinated Communities, for the Spring 1992 term. The Irvine Foundation has given her a grant for the undertaking. A criminal law teacher for some 15 years (most recently at Golden Gate University), Dickson looks forward to spending some time again in the classroom.

Dickson is also principal investigator for the Stanford Upward Bound Program and a current member of the boards of the East Palo Alto Community Law Project and the Santa Clara Bar Association’s Public Interest Law Foundation.

Albert Elsen, the art professor who co-teaches the School’s course in Art and the Law, shared a podium on April 27 with Queen Beatrix of the Netherlands. Elsen was there to give an address, “Rodin and the Torso in Modern Sculpture,” at the opening of an exhibition, The Torso, at the Dordrecht Museum. The French sculptor was also the subject of a May 2 speech, “Rodin’s Vision: A Sculptor’s Mentality and Modernity,” which Elsen gave for the first Henry Moore Lecture at the University of Leeds in England.

John Hart Ely received an honorary doctorate from the Illinois Institute of Technology Chicago–Kent Law School at its commencement on June 9. The previous fall, he spent four days as the school’s Centennial Visitor. The Chicago–Kent LL.D. (hon.) is his second such degree; the first was conferred in 1988 by the University of San Diego. Ely

also had the honor this June of being elected to the influential Council on Foreign Relations.

The former Dean is focusing his current research and writing on war and the Constitution. Notable publications include two articles in *Stanford Law Review* on the “American War in Indochina.” Part I (42:877–926, April 1990) carried the subtitle “The (Troubled) Constitutionality of the War They Told Us About”—Vietnam—while Part II (42:1093–1148, May 1990) dealt with “The Unconstitutionality of the War They Didn’t Tell Us About”—Laos and Cambodia. He also spoke on the subject at the June 23 Stanford Centennial Volunteer Conference in Los Angeles.

With events in the Persian Gulf giving new relevance to the issue, Ely became a cosignator of the amicus curiae brief filed November 26, 1990, in the case of *Dellums v. Bush*, arguing that the Constitution required congressional authorization before the President sent armed forces into Kuwait or Iraq; wrote an op ed piece, “Perspective on the Persian Gulf: ‘War by Default’ Isn’t the Law,” for the December 23 *Los Angeles Times*; and spoke in this vein on January 18 to the law faculty of the University of San Diego. A related scholarly article, “Kuwait, the Constitution and the Courts: Two Cheers for Judge Greene,” appeared in *Constitutional Commentary* (8:2901) this summer.

Ely has also been receiving considerable attention for his past writings on domestic aspects of the Constitution. The

book for which he received the 1982 Triennial Award of the Order of the Coif—*Democracy and Distrust*—was the subject of a seven-paper symposium in the May 1991 *Virginia Law Review*. (Ely himself is the author of “Another Such Victory: Constitutional Theory and Practice in a World Where Courts Are No Different from Legislatures” in that same issue.)

Two of Ely’s early articles—a critique of *Roe v. Wade* and what he calls “my tome on legislative motivation”—have become the third and fifth most frequently cited articles in the history of the *Yale Law Journal*. This fact was observed in the *Journal*’s 100th anniversary issue with retrospective comments—in Ely’s case, characteristically irreverent—by authors of the leading fifteen.

For good measure, Ely also published “Another Spin on *Allegheny Pittsburgh*,” a comment on the constitutionality of various real estate taxation schemes, in the October 1990 *UCLA Law Review*.

Lecturers **Randee Fenner** and **Lisa Pearson** taught a course entitled Introduction to Constitutional Decisionmaking and the Supreme Court, for the Fall 1990 session of the Stanford Continuing Studies Program. The two have been co-advisers for several years of the Kirkwood Moot Court Program.

Barbara Fried is the winner of the 1991 John Bingham Hurlbut Award for excellence in teaching (see page 31).

Ronald Gilson recently lectured on “Corporate

Governance” at the Wharton Conference on Investment Management, and “The Interaction of Politics and Markets” at a Brookings Institution Conference on Takeovers, LBOs, and Changing Corporate Forms. During the 1991–92 academic year, he will serve as the Henley Professor of Law and Business at Columbia Law School and Columbia Graduate School of Business.

Paul Goldstein—author of the article beginning on page 4—recently saw the publication by Little, Brown of the first two supplements to his three-volume treatise, *Copyright: Principles, Law and Practice*. He served this past March as General Reporter for a three-day symposium sponsored by the World Intellectual Property Organization and held at Stanford. The first such symposium held outside WIPO’s headquarters in Geneva, it focused on the Intellectual Property Aspects of Artificial Intelligence.

This spring Goldstein also delivered two named lectures: the Donald C. Brace Memorial Lecture at Columbia University in New York City; and the Brendan Brown Lecture at Catholic University Law School in Washington, D.C. Other invited talks (all on copyright law) were presented to lawyers, business executives, law librarians, and policymakers in Chicago, Los Angeles, Tokyo, Washington, D.C., New York City, and New Orleans. Goldstein has (he says) “taken a vow of silence for the next several months.”

Robert W. Gordon traveled to Moscow in June 1990 to deliver a talk, “Alternative Forms of Corporate Organization in Post-Socialist Societies,” to the USSR College of Advocates. He was in Ann Arbor, Michigan, in October to present a paper, “Legal History as Stabilizer and Social Critic,” at a conference at the University of Michigan on The Turn to History in the Human Sciences. April 1991 found him in Ithaca, New York, giving the Frank Irvine Lecture at Cornell Law School. His subject: “Law Schools as Policy Schools.”

During the Stanford winter quarter, he also taught—in addition to his regular law school teaching—an undergraduate course with third-year law student Jonathan Sherman on Freedom of Expression and the First Amendment.

William B. Gould IV spent the summer in South Africa as a Fulbright Lecturer at the University of Witwatersrand Law Faculty in Johannesburg. During the previous months he gave a speech, “The Struggle Against Discrimination in the Legal System of the United States: The Evolution of Legislation,” at a conference in Seville, Spain, on Industrial Relations: Trends and Priorities in Hungary, Poland, and [what was then] East and West Berlin. He also spoke at a conference on Comparative Labor Law, at the Japan Institute of Labor in Tokyo; presented a paper, “Job Security Law and Practice in the United States,” at a conference on New Directions in Worker Management Relations: Soviet

and United States Perspectives, in Moscow; and delivered two lectures at Arizona State University in Tempe on “The Future of Unions.”

Gould’s book, *A Primer on American Labor Law*, appeared in a Spanish edition this spring, with a Chinese edition in work for this fall. Something of an international classic, the book has already been published in German and Japanese.

Henry T. (Hank) Greely reports giving a number of talks lately, of which four stand out: “Withdrawal and Withholding of Life Support in Adults: Beyond *Cruzan*,” at an October 1990 symposium of the Stanford University Center for Biomedical Ethics; “Discrimination on the Basis of Genotype,” at a January 1991 Stanford Centennial symposium; “California Approval of RU 486—State and Federal Legal Issues,” at a February conference co-sponsored by the Stanford and UCSF medical school departments of obstetrics and gynecology; and “Issues in Implementing a Basic Benefit Plan Through Clinical Guidelines,” at an April conference sponsored by the California Public Employee Retirement System.

Thomas C. Grey had a new book, *The Wallace Stevens Case: Law and the Practice of Poetry*, published by Harvard University Press this June. The professor continues to be in demand as an analyst of the issues surrounding hate speech on campus. He participated in a televised Fred Friendly symposium on the subject in April, and a First Amend-

ment symposium at the University of Virginia in May. His comments at a Federalist Society meeting at Stanford were published under the title "Discriminatory Harassment and Free Speech" in the Winter 1991 *Harvard Journal of Law & Public Policy* (14:1).

Joseph A. Grundfest delivered the keynote address entitled "Just Vote No" to the Council of Institutional Investors, at their annual meeting last November. His message: "Stockholders can influence corporate decisions, even in the absence of takeovers and proxy contests, by casting a 'vote of no confidence' in an incumbent board of directors, even when it stands for reelection unopposed."

Recent publications from the former SEC commissioner include "Internationalization of the World's Securities Markets: Economic Causes and Regulatory Consequences" (*Journal of Financial Services Research*, Fall 1990), "The Subordination of American Capital" (*Journal of Financial Economics*, September 1990), "Catch-22 Time" (*Mergers and Acquisition Law Reporter*, February 1991), and "When Markets Crash: The Consequences of Information Failure in the Market for Liquidity" (chapter in *Reducing the Risk of Economic Crisis*, a National Bureau of Economic Research volume edited by Martin Feldstein).

Grundfest is one of just five public policy experts nationwide to receive a John M. Olin Faculty Fellowship for the 1991-92 year. He plans to devote the year to research on

corporate governance and the application of modern finance theory to legal proceedings.

Last but not least, a teaching honor: In May, the Associated Students of Stanford University voted Grundfest the best "large class professor" in the category for graduate professional schools (business, medicine, and law combined).

Gerald Gunther has spent much of the past year writing the twelfth edition of his cornerstone book, *Constitutional Law*. He also prepared a paper for a major conference at New York Law School in April, assessing the work of the late Supreme Court Justice John Marshall Harlan. His biggest current project is editing the basic manuscript (completed in August 1990) of his forthcoming biography of Judge Learned Hand.

Professor Gunther has once again made the *National Law Journal* list of the 100 "most influential lawyers in America." The citation (March 25, 1991) noted, among other things, that Gunther "has become politically active again," specifically in regard to the proposed national flag-burning statute (which he opposed) and the issue of presidential war powers (which he considers to be constitutionally limited).

Bill Ong Hing received a special award last December from the Immigrant Legal Resource Center, a San Francisco-based group that provides training and consultation statewide to community agencies serving immigrants and refugees. Hing founded the center and

has served as its director (on a pro bono basis) since 1982.

J. Myron Jacobstein, the School's Librarian Emeritus, has an article with an intriguing title—"Congressional Intent and Legislative Histories: Analysis or Psychoanalysis?"—in the *Law Library Journal* (82:297). With co-author R. M. Mersky of the University of Texas, he has also produced a fifth edition of their now-classic *Fundamentals of Legal Research*.

Mark Kelman presented the Dunwoody Lecture at the University of Florida Law School, in March. His subject: "Emerging Centrist Liberalism." Later that month, at George Washington University, he raised the provocative question—"Antidiscrimination and Antimaterialism: Can Feminists Evade the Critique of Socialism?"—in a faculty seminar and public address.

Also this year, Kelman had an article published in the *Harvard Law Review* (104:1157), titled "Concepts of Discrimination in 'General Ability' Job Testing."

Charles R. Lawrence III spent the past year deep in research and writing as a Fellow of the Center for the Study of Behavioral Sciences. He is serving during 1991-92 as a visiting professor at the University of Southern California.

Gerald P. López, in addition to his teaching activities, has been serving on the Stanford University Provost's Special Committee on Faculty Recruitment and Retention.

Miguel A. Méndez is back on campus after a stint as visiting professor at the University of San Diego School of Law.

John Henry Merryman, the School's Sweitzer Professor Emeritus, received a rare tribute last year: a festschrift. Titled *Comparative and Private International Law: Essays in Honor of John Henry Merryman on his Seventieth Birthday*, the volume contains 26 articles by scholars, some of them former students, from thirteen countries on four continents. "Professor Merryman is one of his generation's great comparative law scholars," says David S. Clark, the University of Tulsa law professor who edited the volume. "For over 30 years he has, through his teaching and his writings, widely influenced this field in Europe, Latin America and Asia." The festschrift was presented to Professor Merryman August 19, 1990, in Montreal during the annual meeting of the American Academy of Foreign Law, of which he is president.

Merryman has also recently traveled to Mexico City, to lecture on cultural property at the University of Mexico, and to Scotland, for an International Bar Association meeting in Glasgow. Though officially emeritus since 1986, he has continued to co-teach Art and the Law and, resuming in 1991-92, the broad subject for which he was so impressively celebrated by his festschrift colleagues: Comparative Law.

Robert Mnookin was away last year as a visiting professor at Harvard. Before heading East, how-

ever, he delivered an invited lecture in Los Angeles at the June 23 Stanford Centennial Volunteer Conference. His topic: the work of the Stanford Center on Conflict and Negotiation, which he directs.

A. Mitchell Polinsky lectured in April at both UCLA and Harvard on the subject, "Decoupling Liability: Optimal Incentives for Care and Litigation." In May he participated in the American Law and Economics Association's first annual meeting and was elected secretary-treasurer of the organization. Also during the meeting, he chaired a session on the Economics of Enforcement and presented a paper (coauthored with Steven Shavell of Harvard) on the question, "Should Employees be Subject to Fines and Imprisonment Given the Existence of Corporate Liability?" In June, Polinsky published (also with Shavell) "A Note on Optimal Fines When Wealth Varies Among Individuals," in the *American Economic Review*.

Robert Rabin co-directed an interdisciplinary faculty seminar and research project during the spring semester on tobacco litigation and regulation. He also recently gave a talk at the annual meeting of AFL-CIO lawyers, on current asbestos litigation. Rabin continues his work, involving a number of presentations to lawyers' groups, on the American Law Institute tort reform study.

Deborah Rhode is the author of three recently published articles: "The No-Problem Problem: Feminist Challenges and

Cultural Change," in the *Yale Law Review*; "The Delivery of Legal Services by Non-Lawyers," in the *Georgetown Journal of Legal Ethics*; and "Women's Rights and Social Wrongs," in the *Harvard Journal of Law and Public Policy*. Her recent presentations include "Feminism in the 1990s: Bridging the Gap Between Theory and Practice," given at an event cosponsored by the Yale Women of Color Collective and the *Yale Journal of Law and Feminism*.

Prof. Rhode was also the guest of honor at the first Deborah L. Rhode Annual Lecture, presented May 21 by Stanford's Institute for Research on Women and Gender. The lectureship recognizes women and men who have made "significant contributions to the status of women through their scholarship," with the first Rhode Lecturer being UC-Berkeley professor Evelyn Fox Keller. Honoree Rhode's own considerable contributions include two books—*Justice and Gender* (Harvard, 1989) and *Theoretical Perspectives on Sexual Difference* (editor; Yale, 1990)—and service as the immediate past director (1986–90) of the Institute.

Kenneth E. Scott, though on sabbatical last spring, continued to do his bit for the University by chairing the Stanford Judicial Council. His article on the savings and loan bailout, "Never Again," was recently republished in a revised edition by the Hoover Institution Press.

Byron Sher has opted for emeritus status after some 35 years of Stanford teaching. Happily, he is

continuing in public service where, as a California assemblyman for the past decade, he has brought his legal expertise to bear on such issues as consumer rights, prison reform, and environmental protection.

William Simon has been working on a variety of topics related to the legal situation of workers in the business enterprise. In June he crossed the Atlantic to give a talk on "Worker Ownership" at the Law and Society Association meeting in Amsterdam, and on "Pension Fund Socialism" at a conference on Corporate Governance at the University of Warwick.

Simon is currently developing a new unit on "workers as stakeholders in the firm" for the introductory Business Associations course. Last year (1990–91) he introduced an advanced course devoted to this theme, called Labor and Capital. A related article, "Social-Republican Property," is scheduled to appear in the August *UCLA Law Review*.

Barton H. (Buzz) Thompson is celebrating the publication this summer of his casebook, *Legal Control of Water Resources* (West Publishing, 1991). Joseph Sax of Boalt Hall and Robert Abrams ('71) of Wayne State are the coauthors. Thompson also has an article, "Judicial Takings," in the November 1990 *Virginia Law Review* (76:1449).

His recent appearances include a lecture on negotiation and court-supervised settlements, at a conference of the Association of Business Trial Lawyers, in Hawaii last October. That same

month, he presented comments on the constitutional takings protections at a conference, Constitutional Law and Economics, sponsored by the Stanford Law and Economics program. And in March, he gave a presentation—"Interstate Transfers: *Sporhase*, Compacts, and Free Markets"—at a Tucson, Arizona, conference on Western Water Law in the Age of Reallocation, sponsored by the American Law Institute and the American Bar Association.

Thompson is currently part of an interdisciplinary research team at Stanford that is looking at the economic effects of reallocating water in California.

Robert Weisberg gave a lecture at Amherst College last December provocatively titled "Private Violence as Moral Action: The Law as Inspiration and Example." Asked to explain, he replied: "Much crime, rather than offering a moral counterclaim to society's vision of the good, is a directly parallel and purportedly supplementary form of moral claiming and indeed law enforcement. Some of the most apparently irrational and pathological criminals view themselves sincerely (if unjustifiably) as executors of the moral law and preservers of the social order—as ordained assigners of collective blame and prophets of collective meaning."

Weisberg's biggest publishing event is the appearance in February of the second edition of his durable volume with John Kaplan, *Criminal Law: Cases and Materials* (Little, Brown, 1991).

James Whitman delivered papers at the American Society for Legal History meeting in October; at Harvard Law School in February; and at the Second International Confer-

ence on Continental Influences on Anglo-American Law in the 19th Century, held in January in Lancaster, England. He also co-taught a seminar at Boalt Hall last year on

the Law of Feudalism. Whitman holds a doctorate in history in addition to a law degree (J.D.).

Howard Williams, Paradise Professor emeritus, is

preparing a new edition and supplement to *Oil and Gas Law*, his magnum opus with Charles J. Meyers. He also continues to consult and testify in the field. □

FROM THE DEAN

Continued from page 3

cannot freely advance, experiment with, consider, reject, and reconsider their views about the social and political issues that divide the nation.

On retiring as the president of Princeton University in 1972, Robert Goheen wrote: "If an utter stranger to our civilization should ask, 'Where in your society can a person disagree with impunity from accepted practices, dogmas, and doctrines?' the answer should be, 'The universities. That is part of their being. . . . [T]hey are committed to freedom for the individual, the dignity of the human person, and tolerance toward dissent within broad . . . limits.'"

The challenge that faces us twenty years later is to articulate an encompassing vision that honors Lisa's and Jeff's freedom and their personal dignity. The challenge is to create an environment where they can argue with each other and teach and learn from one another. Because the intellectual stakes are so high, we must lower the personal dangers. This means that Lisa and Jeff must learn to trust one another. And that requires the school to earn their trust as an institution genuinely concerned with the needs of both.

You know firsthand from the past three years at Stanford how challenging the task is. I truly believe it is possible, however—and I know it is essential.

Although you are done with school for now, you will continue to be involved with institutions of higher education as trustees, alumni, parents, and some of you, I hope, as faculty members. Wherever you will spend the coming years, you will face similar issues in your workplace and community. I invite you to help develop and pursue a vision of higher education, and of our society at large, where both Lisa and Jeff can flourish. □

JUSTICE O'CONNOR

Continued from page 23

E.B. White said that democracy is based on the recurrent suspicion that more than half of the people are right more than half of the time. In the narrow view, the Supreme Court is based on the suspicion that five Justices are similarly correct. In the broader view, I think the Justices do contribute, in a sense, to the wider democracy. We struggle with national issues and we try to define from a national perspective what it is that the federal laws and the Constitution say.

If you don't agree with all the Court's holdings you are certainly not alone, but I think you can be confident that the members of the Court never stop trying in our writings on each case to contribute appropriately to the fragile balances of our national republic.

I will leave you with one final hypothetical. On March 12, 1930, just a few days before my birth—while the fight over the nomination of Charles Evans Hughes was ongoing in the Senate and as President Hoover considered a nominee to replace Justice Sanford—an editorial appeared in the *Christian Science Monitor* entitled, "A Woman on the Supreme Bench?" It began with the following words of wisdom: "In all the lists of eminent jurists thus far suggested for the vacant place on the Supreme Court there has been a missing element. Not once has any newspaper or individual commentator mentioned the name of a woman. We suggest that the time has come when the presence of a woman jurist upon the supreme bench must be recognized as an altogether normal and likely event."

What if President Hoover had a

subscription to the *Monitor* and found its editorial persuasive? We will never know.

I am deeply appreciative of this award that I have received tonight [September 22]. Stanford and Stanford Law School have provided me with the background to carve out a career in the legal profession. When I enrolled in law school, I certainly had no preconceived ideas about where that might lead. Never for a moment did I think it would lead to a seat on the nation's highest court nor to the very wonderful award which you have just bestowed on me. But the start was right here, and my heart still is; and I thank you from the bottom of it for letting me have this weekend with you. □

Excerpted from Justice O'Connor's talk with students, September 21, 1990, and from her address at the Alumni Banquet, September 22.

Alumni/ae GATHERINGS



PHOTOS BY ELISA RUZ

Top: The New York City reception.
Right: Master of ceremonies Kendyl Monroe '60.
Below: A bicoastal group including Peter Cannon '82 and John Gilliland.



ACTIVITIES for graduates of the School continued in full swing these past months. On November 1, New York City alums got together for a twilight reception at the elegant Crystal Pavilion in Manhattan. Dean Paul Brest was on hand for the affair, as were Development officers John Gilliland and Elizabeth Lucchesi. Kendyl Monroe '60, who had chosen the location, provided welcoming remarks, and the Dean gave an update on the School. That ended the formal program, but not the party, which—thanks to the fine setting, live piano music, and good company—lasted well into the evening.

The Stanford Law Society of Southern California met on November 19 for a Century City lunch at Jade West in the ABC Entertainment Center. Professor Hank Greely, the featured speaker, discussed health law and doctor-lawyer relations.

On December 6, the San Francisco Law Society held a luncheon for Bay Area graduates. The event took place at the lofty Bankers' Club. Associate Professor Joseph Grundfest '78 gave a talk—"The S&L Crisis: Are the Banks Next?"—that inspired many comments and questions from the audience.

The following month, Dean Brest traveled to Washington, D.C. for the annual meeting of the American Association of Law Schools. The Stanford Law reception on January 5 at the Washington Hilton was well attended. Held yearly in conjunction with the AALS meetings, the event brings together the widespread members of the School's academic family, that is, Stanford Law School professors (present and former) and Stanford law graduates who have themselves entered teaching.

The Stanford Law Society of Southern California reconvened on

March 8 at its traditional Los Angeles locale, The Dragon, for the annual luncheon honoring graduates recently admitted to the California Bar. President Frank Melton '80 introduced Professor Deborah Rhode, who gave a talk entitled "The 'No Problem' Problem: Gender and Law."

Alums in the Seattle area gathered for a reception on April 9 at the Sheraton Seattle. Paul Brest flew up to report on School doings. The Dean was introduced by the indispensable George Willoughby '58.

The inaugural luncheon of the San Jose Law Society was held on May 22 at the Silicon Valley Fairmont Hotel. Dean Brest was there to welcome local graduates and celebrate the establishment of an alumni/æ group in the burgeoning high-tech community. "Stanford Law School now has a presence in the South Bay," the Dean declared. Richard Wylie '58 presided over the landmark affair, which featured a talk by Judge James Ware '72 of the U.S. District Court in San Jose (see page 71). Ware's topic: "A New Definition of Thinking like a Lawyer." Credit is due Anthony (Tony) Anastasi '40 for helping to launch the new law society and serving as its first president. Interested alums are encouraged to call him at (408) 294-9700 or Margie Savoye of the School's Alumni/æ Relations office at (415) 723-2730.

Closing the season, the Washington, D.C. Law Society met on June 26 for a wine tasting on Capitol Hill. Former Associate Dean Jack Friedenthal, currently Dean of the George Washington University Law Center, was on hand to talk with alums. Many thanks to Neil Golden '73 for all his hard work as president, and a warm welcome to his successor, Anne Bingaman '68. □



VAL FLECH



PHOTOS BY BRIAN GARDENY



Top: San Francisco luncheon with Professor Joseph Grundfest '78 at the podium.
Center: Angelenos Terry Hughes '84, Debra Roth '81, Bill Weinberger '81, and Doug Post '78 at the Century City lunch.
Left: Prof. Hank Greely, the L.A. speaker.

LETTERS

TORT THOUGHT



PROFESSOR RABIN, in "Thinking About Tort Law" (Fall 1990), doesn't mention punitive damages awarded in tort cases. I suggest that any reform of tort litigation provide that punitive damages, like fines in a criminal case, be made payable to the state and not to the plaintiff. Money extracted from an offending defendant to teach him and others a lesson should benefit society in general, rather than be the basis of personal enrichment to an individual plaintiff.

William Knapp '39
Greenbrae, California

Robert Rabin replies: There is a strong argument for having a portion of any punitive damage award set aside for public purposes. However, some portion of the award probably must go to the plaintiff if there is to be an incentive to seek the damages in the first place.

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.



White House Fellowships

The Fellowship Program

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

Who Is Eligible

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

What Fellows Do

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

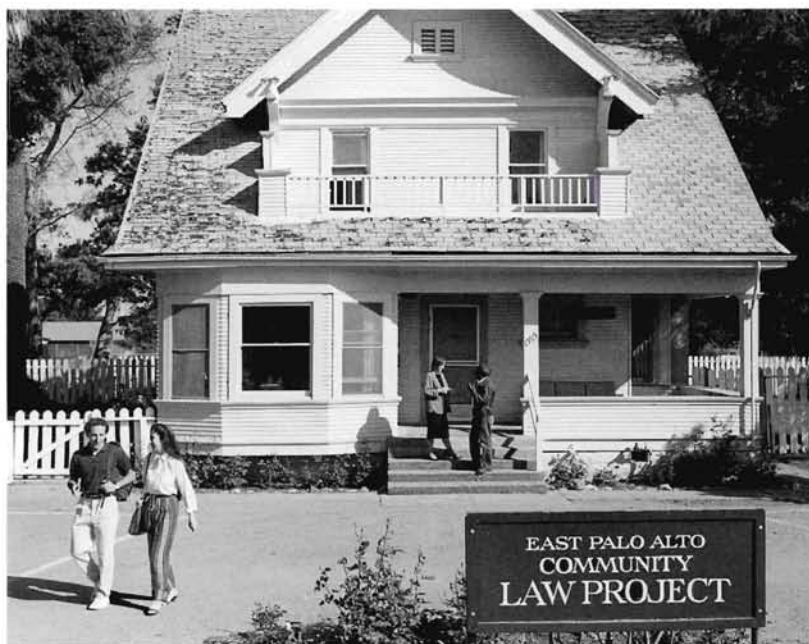
How to Apply

Application forms and additional information can be obtained from:

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The application deadline is
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*Donations of \$2,000 or more in the past year.

East Palo Alto Community Law Project
1395 Bay Road
East Palo Alto, CA 94303
Telephone: 415/853-1600

Coming **EVENTS**

1991	September 16	California State Bar annual meeting Stanford Law School luncheon 12:30 PM, Anaheim Hilton <i>In Anaheim, California</i>
	September 26-28	Alumni/æ Weekend 1991 With reunions for the Half-Century Club and Classes of 1941, 1951, 1956, 1961, 1966, 1971, 1976, 1981, and 1986 <i>At Stanford</i>
1992	May 7-8	Board of Visitors annual meeting <i>At Stanford</i>

For information on these and other events, call
Margery Savoye, Alumni/æ Relations, 415/723-2730

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