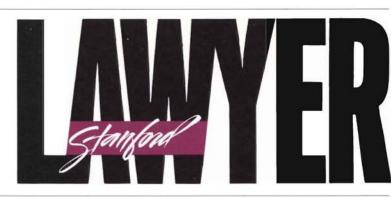
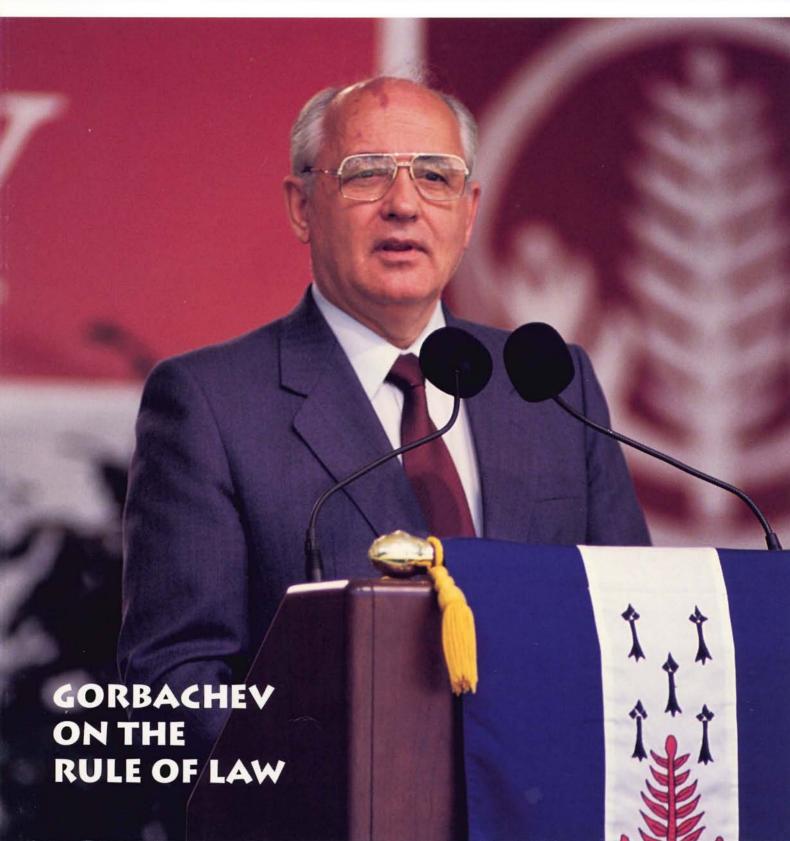
Water — A Special Case Performance Pay? Death and Justice







FALL 1992

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Gorbachev

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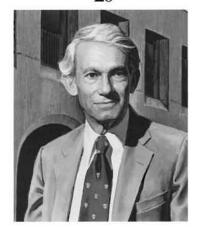
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Reformer, Sta



by Paul Brest Richard E. Lang Professor of Law and Dean

N ROBERT BOLT'S play, A Man for All Seasons, Sir Thomas More's son-in-law William Roper urges him to arrest the man whose deceit will ultimately result in More's downfall. When More responds that the man has broken no law, Roper accuses him of "sophistication."

"No, sheer simplicity," More answers. "I know what's legal and I'll stick to what's legal. If it were the Devil himself I'd let him go until he broke the law." When Roper asserts that he would cut down every law in England to get after the Devil, More responds: "And when the last law was down, and the Devil turned round on you-where would you hide, the laws all being flat? This country's planted thick with laws from coast to coast; and if you cut them down, do you really think you could stand upright in the winds that would blow then? I'd give the Devil the benefit of the law for my own safety's sake."

AFTER THE ATTEMPTED COUP last August, there was widespread concern and anger that its sympathizers were still at large; President Gorbachev was urged to ferret them

esman, and Advocate of the Rule of Law

out and arrest them. He responded: "I do not think that after all of this we should do any witch-hunting. We must act within our democratic framework and the framework of our glasnost and on the basis of our laws. Political revenge would ultimately mean defeat for the forces of democracy; it would mean carrying out the intentions of the plotters. There has to be rule of law.'

I shall not strain the analogy between the Lord Chancellor of England and the recent President of the U.S.S.R.—two enormously complex individuals, separated by almost four centuries and vastly different cultures. Nonetheless, the comparisons go beyond each man's refusal to deal lawlessly with those who themselves subverted the law.

Both King Henry VIII and the coup plotters last August desperately sought the cloak of legality. Henry (you may recall) was frustrated by More's refusal to acknowledge the lawfulness of his marriage to Anne Boleyn, More was imprisoned in the Tower of London, where he was threatened, bullied, and tormented. Yet he did not yield. The playwright describes him as "a man with an adamantine sense of his own self. He knew where he began and left off, what area of himself he could yield to the encroachments of his enemies, and what to the encroachments of those he loved. Since he was a clever man and a great lawyer, he was able to retire from those areas in wonderfully good order; but at length he was asked to retreat from that final area where he located his self. And there, this supple, humorous, unassuming, and sophisticated person set like metal, was overtaken by an absolutely primitive rigor, and could no more be budged than a cliff."

When the plotters pounded on President Gorbachev's door in his home in the Crimea, he told his family: "If the worst happens, I will stand for my position and will not yield to

blackmail." The plotters pushed into his office and demanded that he declare a state of emergency. He refused. Then they demanded that he sign over the presidential powers. Again he refused, charging that "You and those who sent you are reckless adventurers." Finally, they demanded that he resign; and he responded: "You'll never live that long." Instead, he offered a legal alternative: The

> Gorbachev gave his country's peoples the great freedom of democracy

Soviet Parliament could address the emergency in democratic debate. The plotters were deaf to this suggestion. They tightened the guard around his home and left without responding.

What is so striking about the plotters' demands on the President is that even in the midst of their utterly lawless action, they felt it essential to clothe themselves in the trappings of constitutionalism. This in itself was the product of the transformation President Gorbachev had wrought in Soviet society. In any event, the plotters were not prepared for a man whose commitment to the law, to his nation, and to his own integrity, would not allow him to yield to their threats.

YEARS BEFORE he became Chancellor, Thomas More wrote a biting critique of fifteenth-century England that also set out his vision of the good society. In More's Utopia, property was owned in common—for moral rather than economic ends. He saw human greed and pride as the fundamental barriers to a just and productive society and to a personally fulfilling life.

It was, I believe, a vision of this sort that underlay President Gorbachev's commitment to socialism and his program of glasnost. And if his most ambitious hopes for his country have not yet been realized, he nonetheless gave its peoples the great freedom of democracy: the freedom to create the society of their own choice. This freedom carries a heavy responsibility, which no nation, our own included, has consistently lived

Harnessing self-interest for the common good is the never-finished task of every society. Surely, it is a crucial task for the new societies that are struggling to emerge in the former Soviet Union and Eastern Europe. And the rule of law—in the personal security it offers its citizens, and the stability it affords property rights—is an indispensable element of that enterprise. (If the tragic events following the verdict in the Rodney King beating case have cast a shadow over the rule of law in our own land, we should treat those events as an urgent call to assure that the law rests on

IT IS A GREAT HONOR to have with us at Stanford University, as the Herman Phleger Visiting Professor of Law, the man who has made the democratic rule of law and the aspirations for justice a real possibility for hundreds of millions of people.

strong foundations of justice.)

Ladies and gentlemen, let me introduce my newest Stanford Law School colleague—a man who received his own law degree from Moscow State University—Professor Mikhail Sergeyevich Gorbachev.

Delivered May 9 at Frost Amphitheater as the introduction to the 1992 Herman Phleger Lecture. (Some of the Bolt passages depart slightly from the original.)

G O R B



H

Progress toward this ideal is halting but vital, says the Russian reformer

RIENDS! I am here among you for the second time at your world-famous university, whose achievements and whose graduates play such a prominent role in scientific research and in the humanities. I was happy to accept your invitation to speak before you here today.

My friend, Mr. [George] Shultz, advised me to take as my theme the rule of law1-in the context, of course, of the political changes that have occurred in the world and, above all, in my own country, since 1985.

Watershed periods in history may not be very comfortable for those who live in them, but they do, as a rule, at least stimulate deeper reflection and self-awareness. The Russian philosopher Nikolay Berdyayev once observed, "A division or split must take place in historical life and in the human consciousness to make possible an opposition between the historical object and the subject; reflection is needed for this historical awareness to emerge."

It seems that we are today passing through just such a period of reflection—a period of acute sensitivity to human rights, to the rights of the individual—a period in which we rethink fundamental values.

One of these values is the supremacy of law in a governmental system. This is an essential premise of the new world order, about which views have greatly differed but whose idea has become unquestionably rel-

The principles of the rule of law were proclaimed more than two centuries ago. Thomas Jefferson and the other Founding Fathers of the United States were among the first who tried

by Mikhail Sergeyevich Gorbachev Herman Phleger Visiting Professor of Law

to give them living embodiment. The "Spirit of '76" fathered American democracy. The Declaration of Independence, and then the French Declaration of the Rights of Man, gave the initial impetus that, despite all deviations and setbacks, led ultimately to the emergence of the Western democracies and of states based on the rule of law.

THE SITUATION in Russia was quite different. For various historical reasons, and despite the profound and original insights of Russian philosophers, historians and jurists of the nineteenth century, no rule of law emerged in our country. Only in 1861 was serfdom abolished; our autocracy survived until 1917. "My will is law! My fist is the police!"this, according to the nineteenth century critical literature, was the level of our legality.

Therefore, one can hardly be surprised that the political struggle was dominated by extremist positions, which were fiercely, at times mercilessly, at odds. Progressive and democratic ideas were monopolized by the most radical factions. The stormy process of democratization following the overthrow of the autocracy rapidly led to the dictatorship of the

What Alexis de Tocqueville most

feared in writing Democracy in America, and which America itself fortunately avoided, actually came to pass in Russia: the conversion of democracy into a democratic despotism. The law became pure decoration and, at times, nothing more than an arbitrary tool of the authorities. And the de facto lawlessness was justified by class expediency and as the "revolutionary legal conscious-ness of the masses."

From there it was a short step to the emergence of the one-party police state. This occurred under Stalin, who brought the totalitarian state to its, so to speak, "peak of perfection." And this regime, in its fundamental features, endured until 1985.

After the death of Stalin, even the top leadership more than once indicated an awareness that all was not well with the system. Partial reforms were attempted, but they did not affect the country's political structure; they did not touch the Party's monopoly of power. Hence, they were doomed from the outset.

What was needed was not isolated measures, on however large a scale, but an altogether different policy, a new political course. But for this, the necessary premises had to exist, both in society and in the governing levels of the state.

At this point, I must mention the dissident movement, whose influence extended to a substantial part of our society, especially to the creative intelligentsia, to the students, and even to some areas of the economic and Party governmental apparatus. The outside world also played an increasingly powerful role in the promotion of human rights and of a humanistic



The audience of 9,500 listening to Gorbachev at Frost Amphitheater

"THERE WERE
FAILURES,
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BUT THE
IMPULSE TO
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dimension as major components of normal international relations although this was done also with ideological aims.

"WE CAN'T GO ON like this." This sentence was first pronounced on the evening before the March 1985 plenum of the Party Central Committee, which after the death of Chernenko was supposed to elect a new Secretary-General, meaning, in our conditions, a new chief of state. This was actually the beginning of the new policy that later became known throughout the world as *perestroika*. Its purpose was to end the totalitarian system.

Did the people who took this decision know what awaited them? Did they realize the scale of the task and its consequences? Inasmuch as this question is directed first and foremost at me, I will say: Yes, we knew the system—we knew it inside out. We realized full well how mighty and monolithic this monster was, welding together as it did the party machine and the state structures. One had to

have this knowledge to have any hope of success.

I am asked many questions about my motives, about the reasons for my various positions and decisions. As you evidently know from reading the press, I am now working on my memoirs, where I will also try to answer these questions. I'm going to tell you how I made my choice and what I had to live through and think through; how my views evolved during the very process of *perestroika*. I hope that when this book appears, you'll be willing to expend a certain sum of money to acquire it!

For now, though, let me just say that the philosophy and politics of *perestroika*, the policies of *perestroika*, went through several stages of development.

It was a difficult process, even a painful one. After all, those at the summit of power who had taken the initiative were themselves shaped by the very system that had to be changed. We wanted change, even radical change, but we remained part of this system. Therefore, our actions and our decision-making processes could

not help but be affected for a while by the habits learned in our previous experience. And we had, after all, to take the realities into consideration. Politics is the art of the possible—the discovery of concordant interests in a framework of choice. Any other approach would be bossism or adventurism.

In any case, the choice was made in principle. That was the main thing. There were failures, errors, illusions, but the impulse to change things kicked in, and things started to move. From the very outset I saw the task as being one of unfettering the democratic process. Hence, we set our sights on respect for democratic rules, on getting people involved in genuine political activity. Hence the proclamation of *glasnost* and the struggle for its implementation.

But under our conditions, this was possible only through the Party and with the Party's help. This paradox, as things turned out, contained a major threat to the cause of *perestroika*.

The incipient economic and democratic transformations disclosed such defects in our society that we soon found ourselves in an all-encompassing systemic social crisis. The reforms engendered opposition, and a political struggle commenced. But, at the same time, life demanded a more precise definition of our goals: the rule of law, separation of powers, freedom of speech and religion, a multiparty system, a variety of forms of property -including private property-market relationships, and reformation of the multinational state.

NINETEEN-EIGHTY-EIGHT was a major milestone, that being the year we embarked on radical political reform. By that time, it had become clear that a partial reform of one or another piece of the administrative system would yield nothing. Everything hinged on the political system and on the de facto omnipotence of

the Party apparatus.

The political reform affected the interests of many, and here I want to stress one point of principle that explains much that happened afterward. I am referring to the relationship between politics and morality. From the very onset of the crisis, I tried to avoid the violent, the explosive resolution of contradictions. I swore to myself as I stated in public more than once —that I would do everything possible to ensure that, for the first time in my country's history, cardinal transformations would take place in more or less peaceful forms-without bloodshed, without the fragmentation of society, without civil war.

Therefore, I tried, by means of tactical moves, to give the democratic process time to get stronger. As President of the country I had many powers, including emergency ones. And more than once people tried to make me use them, tried to push me into an extremist position. As is known, this is something the self-styled Special Committee on the State of Emergency demanded of me during the August coup, but I simply could not betray myself.

Let me make a short historical digression. The policies of Alexander I in the beginning of his reign were considered rather liberal. He brought in the enlightened legal scholar Speranskii, who proposed a reform program. But who was at the side of Alexander I by the end of his reign? The brass-face Arakcheyev! The Arakcheyev regime and its methods of rule became synonyms for the most crude and arbitrary kind of despotism. Reformers throughout history have often passed through this sort of evolution. Probably the hardest thing to do is to keep the process of reform on its track. But I was firmly resolved not to deviate from my political choice, and my moral one.

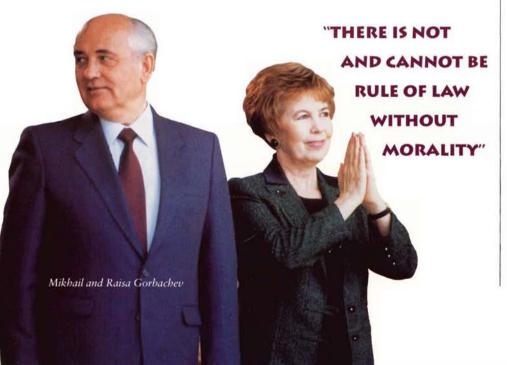
Even today, my opponents, and even some of my supporters, like to call me irresolute. Many would like to be, or to seem, or at least to present themselves as, decisive politicians. But when put to the test, such decisiveness is only a flouting of the realities, violence against the people. And this is no longer politics at all. To me, decisiveness means sticking to my guns, pursuing profound transformations, at the center of which lie the rights and liberties of the individual.

My approach, ultimately, allowed us to gain time—a very small amount of time when measured by historical standards, but still enough to build up sufficient democratic potential in society to act as a basis for further transformations.

THERE IS NOT and cannot be rule of law without morality. It is no accident that in both Russian and English the words "right" and "righteousness" have the same root.2 While a student of legal history at the university, I encountered the thinking of the religious philosopher Vladimir Soloviëv, who said, "Law is the lowest limit or a certain minimum of morality," and demanded that this minimum be realized. This is indeed how it is.

The function of the state authority is to ensure that legal standards are binding. In its ideal development the state must act only according to the law and according to justice, and any act of the state authority must have a basis in law. That is how I see the essence of the rule of law.

The idea of the rule of law finds support in international law. Here the problem is that many of the norms of international law do not provide precise guidance for their domestic application. Hence, there arises the task of establishing sensible, practi-



cal ties between these two systems of law. And today this is simply a vital necessity in view of the interdependence and increasing integration of the world.

The second point of support is, of course, justice. Sometimes justice is viewed as the equivalent of the general principles of international law. The term is also used to mean the impartiality and judiciousness needed for the healthy application of accepted legal standards. I favor the fusion of law and justice in international affairs, just as this is done in states that are based on the rule of law. This is precisely how I visualize the new world order.

Authoritative mechanisms of international law whose decisions would be binding are needed to implement legal principles in international life. I have in mind first and foremost the International Court of Justice. I once proposed an agreement whereby states would recognize the compulsory jurisdiction of the International Court in cases involving the interpretation

of international agreements. Respect for international law is inseparable from respect for its institutions. It should cease being optional. The views of legal scholars should count for much here.

OUR PROGRESS toward the rule of law has been difficult, as we are burdened by our dark heritage: the distorted attitude of our society toward law, the weakness and even absence of political culture in the overwhelming majority of our people, the historically conditioned disregard for law, our hostility toward those who are professionally responsible for the preservation of order.

Disrespect for legality was even manifested by those who at the end of last year were deciding on the fate of the Soviet Union as a state.

I was the initiator of the Novo-Ogarevo process, which resulted in the production of an agreed-upon draft for a new Union Treaty. The August coup meant that it was never signed. With great difficulty, we were able to restore the Novo-Ogarevo process and develop a new draft Union Treaty that appeared to satisfy the leaders of the majority of republics. All the peoples of the country had before them the possibility of preserving their identity, of developing their national statehood—all this without violating historical continuity.

But a strange and unexpected thing happened. Behind the back of the President of the country and the heads of the other sovereign republics, behind the backs of the Supreme Soviets, three leaders announced that the union state had ceased to exist, and instead of it was created a Commonwealth of Independent States. The country was confronted with a fait accompli.

The events of December 1991 are described in detail in my soon-to-be-published book. I was concerned only about the fate of the country, the state. I was convinced that a new era in the country's history must be be-



gun with dignity and with the observance of legal norms. At this dramatic moment, I strove to do everything incumbent upon me to legalize and legitimize the emergence of the Commonwealth of Independent States. Once the formation of the Commonwealth had been sanctioned post-factum by the parliaments of the adhering states, I accepted this as a reality and announced my resignation from the presidency. My opinion

be retained, and that it will ultimately adopt a genuinely democratic constitution, within which framework the enormous problems now confronting Russia—including its position as successor state to the Soviet Union—may more easily be solved.

Adoption of the constitution of the Russian Federation can become an important step in the transformation of Russia into a modern law-based state. But we should not flatter our-

"I...HOPE...

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WEALTH ...

program of international economic and financial assistance for Russia and the other countries of the Commonwealth that has been announced by President Bush. I am sure that everyone has a vested interest in the success of the present Russian leadership and its reform program.

I would like to conclude with an expression of hope and faith that Russia and the other countries of the Commonwealth—with the support of the world community—will preserve their democratic gains; will overcome their difficulties; will succeed in defusing hotbeds of conflict; will institute cooperation among themselves and with other countries, and especially with those major partners who, together with us, turned a major corner in world history during these past several years; and, I hope, will be able to enter the twenty-first century as

civilized nations capable of making their own distinguished contributions

to peace and the progress of human-

ity. Thank you.

President Gorbachev delivered this address on May 9, l992, in Stanford's Frost Amphitheater. He spoke in Russian while an English translation was simultaneously broadcast.

For publication, we began with the advance translation provided by Gorbachev's staff. That text was then compared—by Eugene Ostashevsky of Stanford's Department of Slavic Languages and Literatures to the Russian audiotape of the actual Frost speech, and amended and updated accordingly.



Gorbachev receiving Phleger certificate from Dean Brest

of what occurred has not changed, but I am not urging a return to the past.

Unfortunately, the collapse of the Union has entailed terrible consequences confirming my own worst fears and warnings. New foci of interethnic conflict and contradictions have appeared. There have been flareups of cruelty and violence in areas that had hitherto been quiet. We are now in an extremely serious crisis of legality.

But there are encouraging signs and tendencies.

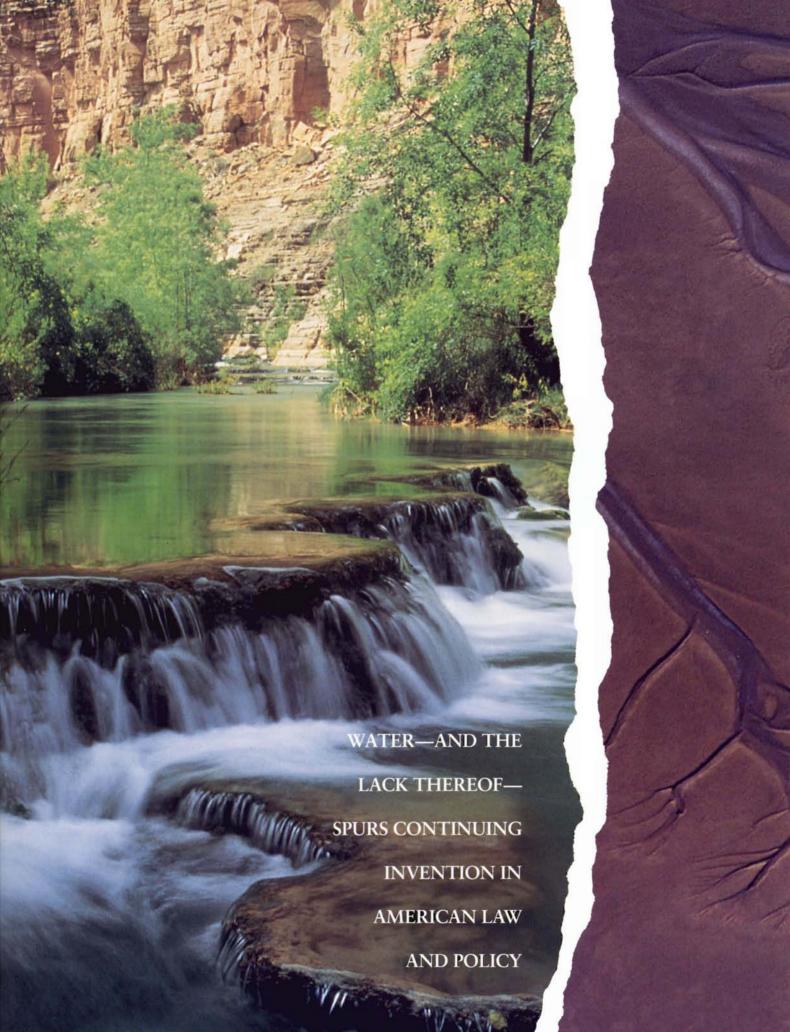
I welcome the Russian Federative Treaty that was signed at the end of March. I hope that the integrity of the multi-ethnic Russian Federation will selves. We are still far from that goal.

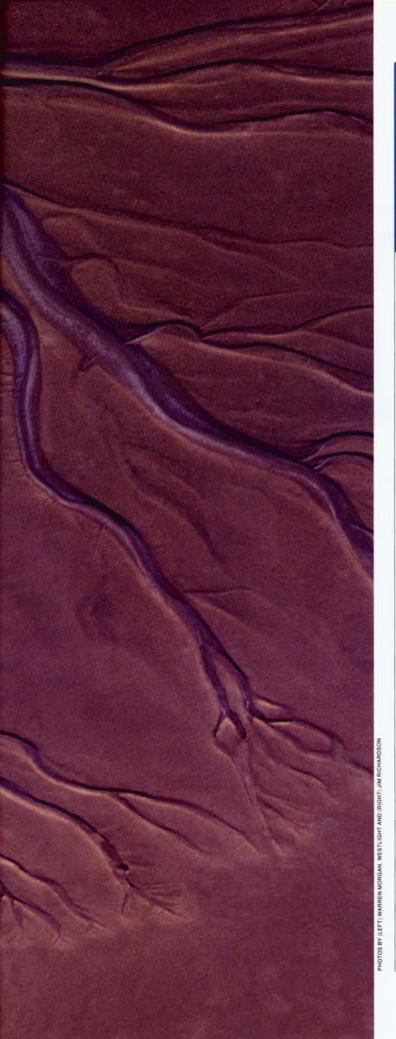
It must also be stated that the concept of a "social rule of law" is more in keeping with Russian traditions. This means the sort of interpretation of the individual's constitutional rights that would include certain social guarantees. Such an approach would correspond to the expectations of the greater part of our society, and to the outlook of the majority of our citizens. Furthermore, it would psychologically lighten the task of becoming accustomed to living under the rule of law.

Ladies and gentlemen! Russia is experiencing difficult times, and is therefore in particular need of understanding and support. I welcome the

¹ This translation uses the phrase "the rule of law" to represent Gorbachev's *pravovoie gosudarstvo*—that is, a state grounded in law and the preservation of its citizens' rights.

² In Russian, the words are *pravo*, which means both right and legality, and *spravedlivost*, which means justice.





NECESSITY

An interview with Barton H. Thompson, Jr., JD/MBA'76 Associate Professor of Law



"WHEN THE WELL'S DRY," said Ben Franklin, "we know the worth of water." Scarcity can be equally edifying, as Californians and other Southwesterners have recently been reminded. Periodic droughts aside,

water is in fact a scarce resource most of the time in much of the United States. The miners and pioneers of the "Great American Desert" west of the 100th meridian quickly recognized that the traditional water law of the verdant East was of little use. Novel conditions mandated novel policies and rules. Today, the mounting pressures of population, groundwater depletion, and pollution, coupled with a growing environmental consciousness, portend further invention throughout the nation.

Barton H. (Buzz) Thompson, Ir., is a leading authority in this challenging area of law and a coauthor (with Joseph Sax and Robert Abrams '71) of a newly revised casebook, Legal Control of Water Resources (West Publishing, 1991). The Los Angeles Daily Journal recently listed Thompson among the "movers and shakers" in the field of water law. A former Rehnquist clerk (1977-78), Thompson joined the faculty in 1986 after eight years with O'Melveny & Myers of Los Angeles, the last three as a partner. In addition to water law, he teaches environmental law, natural resources law, and property, as well as heading the School's Environmental and Natural Resources Law curriculum group (see box). He is here interviewed by editor Constance Hellyer.

How did you become interested in water law?

Charlie Meyers. I took first-year Property from Charlie, found he was absolutely terrific, and looked to see what else he taught. One course was called "Water Law." I had no idea what that was-probably something to do with admiralty. When I discovered what the course was truly about, I was fascinated. Although few people know much about water law, it has played the key role in the West's development and will continue to mold our future.

Is water a form of property? A controversial question. Perhaps the best answer is that water rights are a unique form of property. Water is

immensely different from other more traditional types

of property.

There's also a different degree of interdependence. The use of any property involves some interdependence—when I have a loud party at my house, that obviously affects the people who own land around me. But water involves more interrelationships than any other type of property.

Because it moves?

Partly. The major difference is that, more than any other property, water can be reused. Consider water flowing down a river: A farmer draws some out to use on her crops; the crops consume maybe half the water; the remainder either flows back into the river or a different waterway, or drains down into an underground aqui-

fer; and the water then becomes available for reuse.

Water that remains in the river can also be used over and over again—for generating power, for transportation, recreation and fishing, or just for the joy of looking at the river.

Not to mention refuse disposal.

Another good example. How each person uses water is of great relevance to other people.

What are the legal implications of these differences?

First, there is an underlying view that water-unlike land, oil, gas, hard minerals, or timber—is a public resource. This concept is, in fact, imbedded in a number of western constitutions. Colorado, Wyoming, and Montana have provisions specifically stating that the public owns the

The second difference has to do with the nature of water rights. With real property and resources other than water,

we give people exclusive rights. With water, however, one gets only a usufructuary right.

"Usufructuary" right?

That's a form of property right that allows you to use something, but not spoil it or prevent others from using what you don't need.

Water rights, as understood in the western United States, entitle you to use certain waters for a reasonable

> and beneficial purpose—say, raising crops. But when you get through using the water, it is no longer yours, and the right passes to the next user.

> Interestingly, Native Americans had a usufructuary notion of land. They more as we do water.



treat water have any other implications?

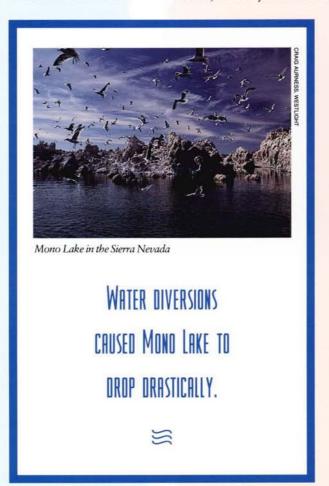
The high interdependence between water and other property means that marketing water is a lot more difficult than marketing real property. When you move a water right from one party

to another, it can affect all the other people relying on the same water. As a result, the law closely regulates water sales.

Has water law changed much since you studied with Charlie Meyers in the mid-1970s?

Yes. For one thing, environmental concerns now have much greater impact. A major example is the application of the Public Trust Doctrine to water allocation in California.

This doctrine originated to help protect tidelands and the beds of significant navigable waterways. The most famous case was Illinois Central Railroad Co. v. Illinois [146 U.S. 387 (1892)]. The Supreme Court upheld the Illinois legislature's recision of the notorious "lakefront steal" perpetrated when an earlier legislature "sold" Illinois Central a prime square mile of Lake Michigan bordering Chicago for a scandalously low price. The principle at issue, according to the Court, was the state's



trust obligation to maintain control over "lands under the navigable waters" for the benefit of the public.

For decades, the doctrine was thought to prevent the state from giving up control of such lands, but not of the waters themselves. A state could permit water users to drain a lake dry so long as it protected the land underneath.

What happened to change that?

The Mono Lake case. It dealt with the right of Los Angeles to take water out of the streams that feed the lake. which is more than 200 miles northeast of L.A., near Yosemite. The city's diversions were causing the water level in the lake to drop drastically. That concerned environmentalists partly for aesthetic reasons, but also because islands important as bird-nesting sites were becoming connected to the mainland. Covotes and other predators could get across, and the bird population was declining precipitously.

Several environmental groups sued Los Angeles. One of them, the National Audubon Society, proposed an expanded interpretation of the Public Trust Doctrine. The California Supreme Court was persuaded, and in 1983 ruled that the state must, in allocating water, balance the value of the water to the users against the public trust values of keeping the water in the waterway, such as aesthetics and wildlife preservation [National Audubon Society v. Superior Court of Alpine County, 33 Cal. 3d 419]. As a result, Los Angeles has had

to reduce the water it takes from Mono Lake tributaries.

So wildlife have standing.

Not by themselves. But people with a direct interest in their preservation can often sue today to protect them. The Endangered Species Act, for example, provides important protection for species whose existence is threatened.

Under the Act, federal agencies cannot take any action that threatens an endangered species. This was the provision that led the Supreme Court in the infamous "snail darter" case [Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978)] to enjoin construction of the Tellico Dam; it threatened the snail darter's habitat. The law also

forbids anyone from "taking" an endangered species except in limited pre-approved settings. A taking is defined quite broadly, so that if you were to build a housing development that would kill an endangered species, you would be regarded as taking that species, and could be committing both a civil and-if you act knowinglycriminal offense under federal law.

The Endangered Species Act plays an important role today in water development, because almost any major

> water project can be found to threaten an endangered species.

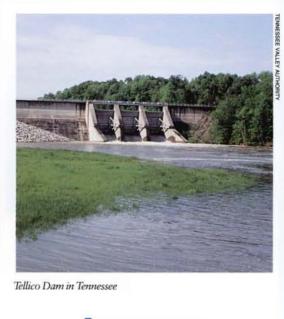
> The snail darter case struck a lot of people as sillyblocking "progress" to save an obscure little fish. Same with the spotted owl and now, perhaps, the Sacramento Delta smelt.

> The lessons of the snail darter are not what they seem. For one thing, TVA ultimately completed the Tellico Dam; the snail darter didn't stop it.

That's news to me.

It is to a lot of people. I like to use the case in my water law course because it demonstrates at least two things. First, the law frequently forces environmental groups to oppose projects on secondary or peripheral grounds. And second, no matter what the law says, if the political will favors something else, it happens.

The reason to oppose Tellico Dam was not, in my opinion, the snail darter.



THE LESSONS OF THE SNAIL DARTER ARE NOT WHAT MOST PEOPLE PRESUME



The beleaguered snail darter

Many environmentalists would disagree on the grounds that biological diversity must always be preserved. While I sympathize, our desire to protect endangered species can be taken to an extreme.

There were many better reasons to oppose the Tellico Dam. It would block the last high-quality stretch of free-flowing river in the Tennessee Valley. It would flood some beautiful country that included prime agricultural land and important Indian historical sites. And economically, the dam made no sense—the costs far outweighed the expected benefits.

But there are no laws that prevent a dam from being built for such reasons. And there is a law that says that you can't harm an endangered species. So when a probing ichthyologist found the snail darter, that became the focus. The decision in TVA v. Hill was good; the dam should not have been built. But the rationale seemed silly to many people, and it's what they remember.

How did the dam supporters get around the Supreme Court?

Congress, spearheaded by Senator [Howard] Bakerwho is from Tennessee and wanted the Tellico Damset up a Cabinet level review committee. It was nicknamed the "God Committee" and had the power to exempt any federal project from the Endangered Species Act. After considering the poor economics of the project, however, the committee refused to exempt Tellico.

The dam seemed to be doomed-that is, until Senator Baker proposed an exemption as a rider to an appropriations bill. The rider passed, and President Carter, who didn't want to veto the bill for other reasons, signed it. So in the end, the Tellico Dam was completed and the fish's habitat destroyed.

From the standpoint of the snail darter, however, the story has a happy ending; the species was discov-

ered in other waterways in the region and lives on. From the standpoint of the American pocketbook, Native Americans, local farmers, and the aesthetics of the Tennessee Valley, the story ends sadly.

A revealing case study.

Very. Among other things, it sheds light on political reality. I am afraid that law students often graduate with a naive belief that the law is sacrosanct and that political realities don't play as serious a role as they do.

Contrary to what the Tellico Dam might suggest, however, environmental laws are blocking or slowing many water projects today. The Endangered Species Act is just one of many environmental laws—including the National Environmental Policy Act, Clean Water Act, and federal Wild and Scenic Rivers Act—that, along with the expanded Public Trust Doctrine, are being felt in the field of water law. They are actually forcing cutbacks in water diversion and changing the way we think about water in the western United States.

The West in particular?

There is a magic line in water law—the 100th meridian, which runs north and south of Dodge City, Kansas. East of this line, most areas get enough water to farm without irrigation; west of the meridian, the rainfall drops off drastically, and irrigation is normally a necessity.

> There are 17 states (not counting Alaska and Hawaii) that either border or are wholly west of the 100th meridian. Historically, this is where the action has been, legally speaking, because here we have had the problem of a vital resource that is scarce and unevenly distributed.

Today, though, as a result of population growth, droughts, and overtapped aquifers, we're also seeing growing water debates in the East.

What else is new in water law since the 1970s?

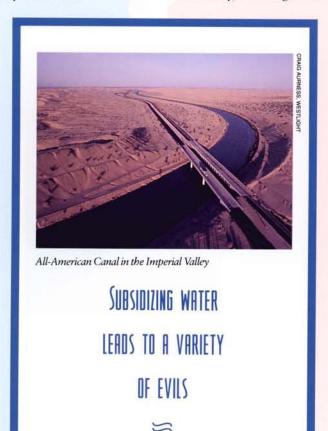
The beginning of interregional water markets. When I took Charlie Meyers's class, he emphasized the need to bring the marketplace into water allocation.

You see, there is more than one way for a city to get additional water. The traditional way is to build a huge water project—dam up a river, store the water, and then transport it through scores, if not hundreds, of miles of aqueduct. That is

very expensive and, at least equally important, likely to damage the environment.

An alternative is to buy water from somebody who values it less than the city residents. Charlie saw market solutions as a way to reduce the pressure to build costly and environmentally damaging new projects.

Charlie was pretty much a lonely prophet in the mid-1970s. But in the past decade, state governments, and to some degree the federal government, have taken steps to enable and even promote water markets. As a result, we are beginning to see major water trades. For example, the Metropolitan Water District of Southern California has contracted with the Imperial Irrigation District in return for which Met will get the saved water for 35 years—a win-win solution.



Continued on page 41

Environmental and Natural Resources Law Studies

STANFORD LAW SCHOOL has developed an innovative program of teaching and research on legal issues involving the vital relationship between humans and their physical environment.

Faculty

John Barton Henry T. Greely Robert Rabin Barton H. Thompson, Jr.

Curriculum (1990-93)

Core courses Energy Law and Policy **Environmental Processes** International Environmental Law Land Use Natural Resources Law and Policy* Oil and Gas Law Water Law

Advanced or specialized courses Environmental Enforcement **Environmental Protection** Environmental Workshop* Global Environmental Change Global Warming Native American Law Problems of Tobacco Toxic Harms

Student organization

The Environmental Law Society, founded in 1969, sponsors programs and panels, consults for various governmental and citizen groups, and helps students find environmentally oriented internships.

Publications

The Stanford Environmental Law Journal publishes annual analyses of current environmental legal issues and policies. Researched, written and edited by students, the scholarly periodical is now in its tenth vear.

The Environmental Law Society also develops handbooks on current environmental topics, such as the Endangered Species Act. Coming soon: a collection of student essays on environmental protection, edited by Professor Thompson.

Funded research

Faculty members have participated in interdisciplinary research teams looking at such diverse issues as California water allocation and national tobacco policy. Professors are individually researching legal and policy questions ranging from water markets to international biodiversity.

Future activities

Plans include new faculty and courses; empirical research on barriers to environmental progress; joint courses with other Stanford schools and departments; a visiting fellows program featuring representatives from business, government, and environmental groups; and an environmental law clinic-all, of course, subject to funding.

Advisory council

Organized by the Law School to provide guidance on curriculum and research, the Environmental and Natural Resources Advisory Council held its first meeting on March 13, 1992. Its 33 members include informed alumni/ae and other friends of the Law School, with Frank D. Boren '58, former president of the Nature Conservancy, as chair.

For further information

Prof. Thompson would be pleased to hear from readers interested in volunteering their help or thoughts. His number: (415) 723-2518. □



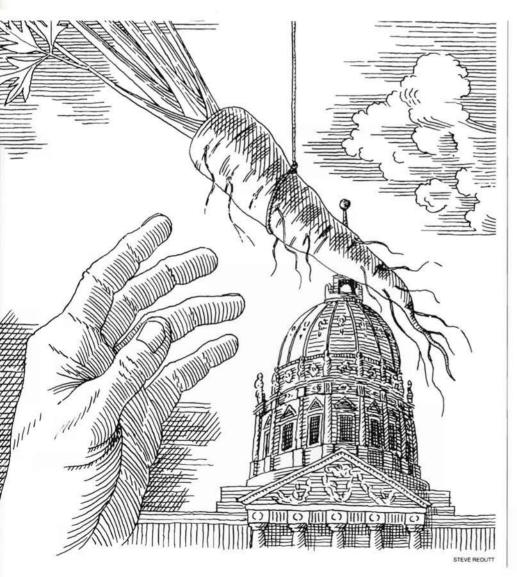
Environmental and Natural Resources Advisory Council meeting, March 13, 1992

^{*}New in 1992-93



A MODEST PROPOSAL

Suppose we paid politicians and corporate executives on the basis of performance?



by Joseph Grundfest '78 Associate Professor of Law

The following article is based on a tongue-in-cheek address presented on January 3 at the annual joint luncheon of the American Economics Association and the American Finance Association. - ED.

N THIS YEAR of discontent, one theme rings loud and clear. People want value for their dollar, and when it comes to corporate executives or politicians, they feel that they are getting rooked.

At some corporations, profits are down, revenues are down, payrolls are down, and stock prices are down. The only things that are up are the CEO's compensation and the stockholders' blood pressure.

Meanwhile, senators and representatives collect six-figure paychecks come hell or high water; they are never penalized for failing to balance a budget or rewarded for reducing unemployment.

The gap between pay and performance is becoming increasingly apparent, and I believe it underscores a connection between what ails us in corporate America and what ails us in

political America: tenure and compensation have become uncoupled from successful governance. The challenge is to reintroduce a rational incentive structure that provides decision makers in both the public and private spheres with a motive to keep their eye on the ball, to compete, to innovate, and to deliver on promised benefits for the greater social goodrather than to focus on petty strategies designed primarily to enhance their job security and increase their compensation, regardless of the consequences for society at large.

If the problem in corporate America were merely that CEOs are overcompensated for poor performance, that would be bad enough. Unfortunately, executives respond to perverse incentive schemes by mismanaging their enterprises in pursuit of larger salaries and bonuses. In particular, executives respond to compensation that is often determined by the size rather than the profitability of the company. They also respond to accounting yardsticks that are calculated over relatively short terms and that can be easily manipulated.

Intriguingly, many of the factors that account for failure in corporate America can also explain governmental failures at the federal, state, and local levels.

In political and corporate America alike, incumbents who want to remain in office have an overwhelming advantage. In 99.7 percent of all elections for boards of directors, management's slate is unopposed. In the remaining three-tenths of 1 percent of elections, management prevails over challengers 75 percent of time. In Congress, 96.9 percent of incumbents who stood for reelection in 1990 were successful. Almost threequarters of the House members either ran unopposed or won more than 60 percent of the votes cast. Lower down the ranks, the civil service system protects government employees against many forms of favoritism and bias, but also makes it virtually impossible to pay for performance or to dismiss poorly performing employees.

Although the remarkable number of resignations from Congress this year will sharply reduce these incumbency statistics, the fact remains that, once elected, American politicians encounter financial incentives as per-

verse as those of the corporate sector. Politicians are paid fixed salaries and generally forbidden to accept fees other than those provided by law. Performance-related incentives provided by private parties are called "bribes."

That does not mean, however, that financial incentives are absent in the public sector, or that all elected officials of equal rank receive equal reward. A politician's performance affects campaign contributions, as well as payments in kind in the form of

> People want value for their dollar, and they feel they're getting rooked

junkets, luncheons, and a host of small favors that can assume significance disproportionate to their dollar cost. Political behavior can also affect the availability of employment opportunities in the private sector after the official's retirement from public life.

In addition, corporate and political systems share intrinsic biases toward myopic incentives. In corporate America, myopia can result from the formulas used to determine compensation. In political America, the problem manifests itself every time an election looms on the horizon and politicians focus on measures designed to influence voters on or before election day—with far less attention given to the post-election consequences of these same initiatives.

These problems—and a potential solution-were analyzed quite succinctly by comedian Jackie Mason in his one-man show called "The World According to Me." Mason's advice is simple, if radical: "Put the politicians on commission. Pay them a percentage, and you'll see this country's economy expand like Elizabeth Taylor in a bakery."

Now there's an interesting thought. Suppose that, instead of paying politicians and bureaucrats flat-fee salaries and protecting them from competition, we paid on the basis of performance, with bonuses for success and penalties for failure.

Obviously, incentive compensation will not work equally well in every nook and cranny of federal, state, and local government. Paying prosecutors on the basis of the number of convictions they obtain, for example, would pose serious moral hazard problems and raise deep questions about the integrity of the criminal justice system. Defining "success" or "failure" for a public official can also be more difficult than for a corporate executive. Even when the objectives of a public service program can be specified, it is not a simple matter to develop a social consensus about the priorities and weightings that would have to enter compensation calculations.

Thus for present purposes, the notion of incentive compensation for public officials is perhaps best considered as a form of gedankenexperiment-a theoretical exercise that can teach us a great deal about the real world, even if the exercise cannot be carried out in any practical manner. But even with these and other limitations fixed firmly in mind, there is, I think, a rather remarkable range of situations in the public sector where incentive compensation just might work. Consider four examples:

Schools. Why is it that American colleges and universities are generally recognized as the finest in the world, while our primary and secondary schooling is widely condemned? I believe that a large part of the answer lies in the difference between the incentive structures that drive the two kinds of institutions. Colleges and universities compete. If a college or university falls behind in the quality of its programs, it suffers a decline in revenue and reputation as students shift to schools that do a better job.

Continued on page 44



THE ULTIMATE PENALTY

Is justice being served? A former public defender thinks not.

by Kim A. Taylor Associate Professor of Law

N JANUARY 15, 1953, a man came home drunk. He accused his wife of being unfaithful, threw her down to the ground and kicked her in the stomach. His wife was six and one-half months pregnant at the time. A few hours later, she gave birth to her baby, Robert Alton Harris.

Robert Alton Harris entered a world of violence. His father never believed that Robert was his child and continued to beat Robert's mother regularly. Instead of directing her anger toward her abuser, his mother turned against Robert. She blamed the child for her beatings and stood by in silence when his father abused him. This was how Robert Alton Harris spent his formative years without love, without gentleness, without an affectionate touch from either parent.

The world outside of his home offered the boy little comfort. As a teenager, he began to commit crimes and was sent away from his home to youth detention facilities in California. While there, he was raped several times. It was no wonder that as a young man he slashed his wrists twice trying to commit suicide.

Years later, he turned the violence of his life outward, killing two young men during the theft of their car. For those offenses, Mr. Harris was sentenced to death. At 6:21 a.m. on April 21, 1992, after the United States Supreme Court's rejection of his appeals, Robert Alton Harris was strapped in the gas chamber and killed by the state of California.

As we think about his execution. and as we look at the cases across this country where the death penalty has been imposed, certain distinguishing characteristics emerge: the abject poverty of the defendant, the debilitating mental impairments of the defendant, and the inexperience of—or actual harm caused by-the defendant's counsel. Let me share a few examples of how this penalty has been imposed:

Georgia employs a fee bidding system as a means of assigning defense counsel to death penalty trials. The lowest bidder receives the appoint-

In one case, trial counsel slept through portions of a trial. On appeal, the Supreme Court of Georgia found that he had not slept through the important parts of the trial. The death penalty was upheld.

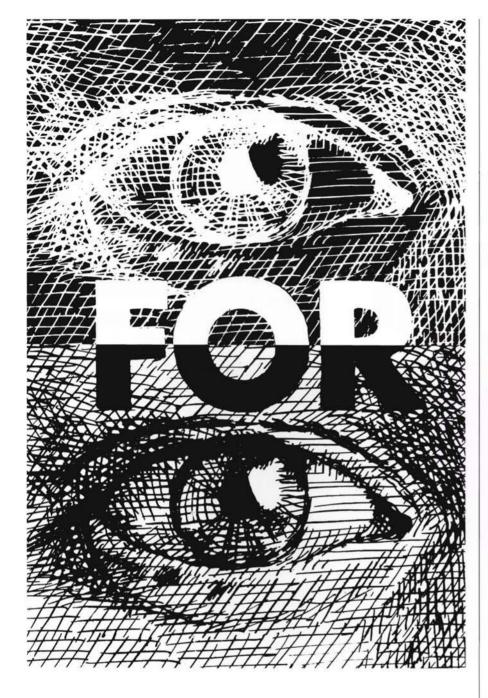
In four separate trials in Georgia, defense attorneys referred to their clients repeatedly as "nigger." The death penalty was imposed in all four cases.

In a death penalty trial in the South that lasted only seventeen hours (including jury deliberations), the verdict was death. At one point, the jury had been deadlocked eleven to one. One juror was holding out for acquittal. The defendant's attorney joined with the prosecution in a request that the one dissenting juror be replaced with an alternate. Three minutes later, the jury returned the verdict of death.

In the 1988 case of James Messer, his defense counsel failed to make an opening statement, failed to present any evidence and never made an objection during the guilt phase of the trial. During the penalty phase, his counsel failed to offer any mitigating evidence even though Messer was mentally retarded. Mr. Messer was executed.

In the case of John Young in Georgia, his trial counsel admitted being under the influence of amphetamines during the course of the trial. This same attorney was arrested and later disbarred. Mr. Young was executed on March 20, 1985.

Here in California, we have the case of Melvin Wade. At trial, his defense was insanity. Mr. Wade suffers from schizophrenia, and was a victim of repeated childhood sexual abuse. As a young boy, he was locked in a closet and only pulled out to be physically abused. Yet a psychiatrist



The people who suffer the irrevocable penalty of death are mostly poor, mentally disabled, and inadequately defended

called in by the state testified at the trial that Wade was not insane. The psychiatrist claimed that it was "typical" of black people in this country to exhibit two personalities: a compliant "Uncle Tom" personality, and an aggressive, militant "Black Muslim" personality. Although this testimony was completely improper and clearly appealed to the biases of the jury, his trial counsel failed to object. In his closing argument, Wade's attorney stated, in essence, that he had not wanted to represent his client, but believed he was obligated to do so.

Mr. Wade is currently on death row.

These are the people who suffer the irrevocable penalty of death. They are poor and generally poorly represented. Justice Brennan remarked in his dissent in the 1987 case, McCleskey v. Kemp, that "the way in which we choose those who will die reveals the depth of moral commitment among the living." As we pause to consider the execution of Robert Alton Harris, I believe we must finally admit that the use of this ultimate penalty is fundamentally abhorrent, unjust, and reveals only our moral bankruptcy.



Professor Taylor is the former director of the Public Defender Service of Washington, D.C. She joined the Law School faculty in the fall of 1991 and teaches

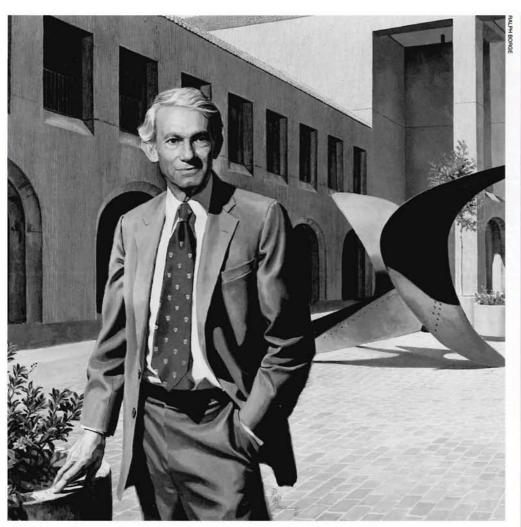
criminal law and procedure.

This text was adapted from Taylor's remarks at a Law School panel, April 23, 1992, following the death of Robert Alton Harris-California's first execution in 25 years.



New Professorship Honors Meyers

Ronald Gilson chosen as first recipient



Charles Meyers was "a once-in-a-lifetime experience," recalls one former student. The School's first Richard E. Lang Professor and Dean is depicted here with Le Faucon, a noted Alexander Calder sculpture and one of several Lang benefactions to the School and University. Ralph Borge painted this portrait in 1971.

A PROFESSORSHIP in law and business in honor of former dean Charles J. Meyers was created last fall. Ronald J. Gilson, director of the School's program in law and business, was named the first holder of the newly endowed chair.

The Meyers professorship is unusual in being funded not by a single donor, but by some 145 graduates and friends who wished to pay tribute to the late dean. "This outpouring of gifts is testament to the great affection Charlie Meyers inspired, both as a leader and a person," said Dean Brest at the inaugural celebration in November. "We are delighted to be able to create this named professorship as a permanent memorial to him."

Charlie Meyers was a member of the Stanford Law School faculty for twenty years, beginning in 1962, and dean for the last five of those years, from 1976 to 1981. Under his leadership, the School instituted a program in environmental studies and expanded its

programs in business law, law and economics, and clinical teaching.

Meyers was a noted legal scholar and educator who served in many national positions, including the presidency in 1975-76 of the Association of American Law Schools. His research and writings were focused in the fields of oil and gas law and environmental law. Meyers left academia in 1981 for private practice as a partner in the Denver office of Gibson, Dunn & Crutcher.

His death on July 17, 1988 at the age of 62 (STANFORD LAWYER, Fall 1988) sparked the effort at Stanford Law School to honor his memory with a professorship in his name. Meyers's widow, Pamela Meyers, a close partner in the former dean's service to the School, participated in the creation of the chair. Mrs. Meyers currently lives in Denver, Colorado.

A "HAPPY MATCH"

The first Charles J. Meyers Professor of Law and Business, Ronald J. Gilson, was recruited personally by Dean Meyers, making this, in Dean Brest's words, "a happy match between chair and chairholder." Gilson is a nationally known expert in corporate and securities law, particularly corporate acquisitions and corporate governance.

He spent the past year in New York City as the Henley Visiting Professor of Law and Finance at Columbia University's Law School and Business School. Gilson has also been a visiting professor at Yale Law School and a visiting scholar at the Hoover Institution. A member of the Stanford

Law School faculty since 1979, he was granted tenure in 1983. From 1990 until his appointment to the Meyers chair, Gilson also served as the School's first Helen L. Crocker Faculty Scholar. He has long been a core member of the School's law and business program, which he now heads.

Outside the University, he is active in the American Law Institute's Corporate Governance Project, serving as a reporter with special responsibility for standards governing securities transactions. He also serves on the California Senate Commission on Corporate Governance, Shareholder Rights and Securities Transactions.

A widely published scholar, Gilson is the author of *The Law and Finance of Corporate Acquisitions* (Foundation Press, 1986). He has written numerous articles on corporate and securities law for scholarly reviews and for the business and popular press.

Gilson's other research interest concerns the economics of law practice, specifically the application of economic and financial analysis to understanding the organization of the legal profession, especially the corporate law firm. He was a partner and associate in such a firm-Steinhart, Goldberg, Feigenbaum & Lader of San Francisco—for more than six years before joining the Stanford law faculty. He is currently of counsel to Marron, Reid & Sheehy of San Francisco.

A native of Chicago, Gilson attended Washington University (AB, 1968) and Yale Law



Pamela Meyers
(above) was an
honored guest at a
dinner last November
celebrating the
establishment of the
Meyers chair.
Speakers included its
inaugural holder,
Professor Ronald
Gilson (right).



School (JD, 1971), where he served as note and comment editor of the *Yale Law Journal*.

After graduation, he clerked for Chief Judge David L. Bazelon of the U.S. Court of Appeals for the District of Columbia Circuit, joining the Steinhart, Goldberg firm in 1972.

THE DONORS

The 145 donors to the new Meyers chair include graduates of the School, past and present members of the Stanford law faculty and staff, attorney colleagues of Meyers, and family and friends. John E. Finney '68, Russell L. Johnson '58, and a third (anonymous) alumnus made particularly generous new gifts.

The single largest institutional gift came from the William Randolph Hearst Foundation of San Francisco. Contributions were also made by various other foundations, corporations, law firms, and Stanford University benefactors, commonly in the form of matching funds.

Greely Earns Tenure

HENRY T. (HANK) GREELY, a widely recognized authority in health law, was recently granted tenure and promoted to the rank of professor. A member of the faculty since 1985, Greely's primary focus has been the troubled system for delivering health care in the United States. "Our health care system is unstable in three crucial attributes-access, quality, and cost," he said in a recent interview.

"Whether major reforms are coming is not a realistic issue," he continued. "The key questions are when and how. With Stanford University's great strengths in medicine, business, economics, and other relevant fields, this is the dream location for a lawyer interested in those questions."

As techniques for calculating a person's health risk have advanced, so have the potential problems, according to Greely. "Individuals face the threat of discrimination in insurance, in employment, and in health benefits because of the revolution in our understanding of genetics and the increase in information sources such as statistical analysis of past use of health service," he noted.

This issue is the focus of a chapter he contributed to a recent book on the Human Genome Project, an international effort to map and decipher all human genes within fifteen years. The book, titled The Code of

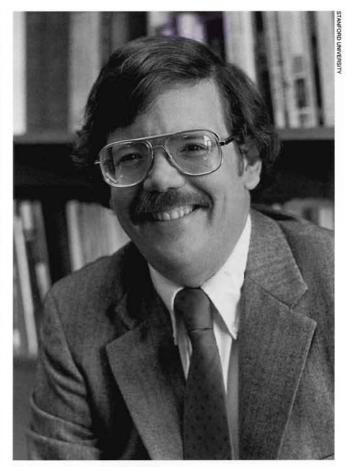
Codes and edited by D. Kevles and L. Hood, was published by Harvard University Press this spring.

Greely's interest in the social effects of advances in health risk analysis grew out of his concern over our health care system's response to the HIV epidemic. He has served on the California AIDS Leadership Commission's Subcommittee on Finance and Delivery of Health Services, and has written and spoken widely on the subject.

Also an active participant in the Stanford University Center for Biomedical Ethics, Greely was the lead author of "The Ethical Use of Human Fetal Tissue in Medicine," published in the New England Journal of Medicine (April 20, 1989). He has also addressed other healthrelated topics, such as medical malpractice litigation and litigators, the use of practice guidelines in medicine, continuous quality improvement, and the drug regulatory system in relation to the abortifacient RU-486.

Born in Columbus, Ohio, Greely grew up in Orange County, California. He received a bachelor's degree in political science from Stanford in 1974 and a J.D. from Yale in 1977.

He became a law clerk for Judge John Minor Wisdom of the U.S. Court of Appeals for the Fifth Circuit in New Orleans in 1977. The following year, he clerked for Justice



Professor Henry T. (Hank) Greely

Potter Stewart at the U.S. Supreme Court in Washington, D.C.

Greely developed expertise in the field of energy law and the related areas of natural resources and environmental law through work with the U.S. Department of Energy, where he was staff assistant to the Secretary of Energy, Charles W. Duncan, Jr., from 1979 to 1981. He gained experience in private practice as a litigation attorney with the Los Angeles law firm of Tuttle & Taylor, becoming a partner in 1984.

An innovative teacher, Greely seeks to make his students aware of "real world" factors, as well as the letter of the law. He often utilizes simulations in which students take

on the roles of various parties to a dispute. Such exercises, he explained, "force law students to see legal issues from perspectives beyond those of a judge. They reveal that there are aspects of situations besides the abstract rules, such as the personalities and motivations of the individuals involved."

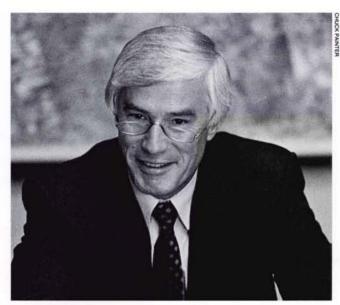
Greely is married to Laura Butcher, M.D., a specialist in pulmonary medicine with the Kaiser Permanente Medical Group in San Jose. The couple lives in Los Altos with their two children, John Wisdom Greely, 4, and Eleanor Rose Greely, 1. □

Gerhard Casper, Professor of Law

STANFORD Law School has gained an illustrious new faculty member: Gerhard Casper. The new Stanford University president became one of the School's professors on September 1, concurrently with his assumption of the University post.

"We could not be more delighted," said Dean Brest. "Gerhard Casper is not only an outstanding university administrator, but also a distinguished scholar. We are privileged to have him as a colleague."

Casper was dean of the University of Chicago Law School from 1979 to 1987 and provost of the entire university from 1987 until his recruitment to Stanford. A member of the Chicago faculty since 1966, he became



Casper, President and Professor

its Max Pam Professor of American and Foreign Law in 1976 and left in 1992 with the title of William B. Graham Distinguished Service

Professor of Law.

Casper's chief fields of study are constitutional and comparative law, and he was coeditor from 1977 to 1991 of *The*

Supreme Court Review.

His many writings include books and law review articles in German and English, studies conducted with then-Chicago scholar Richard Posner, and op-ed pieces in the popular press.

"He is by no means a narrow, technical lawyer," observes Stanford professor Gerald Gunther, a longtime friend of the new president. "He's the closest thing to a Renaissance person one can find in a legal scholar."

Casper is not expected to teach during his first years in the Stanford presidency. But he was welcomed by his Law School confreres at a faculty seminar last spring during one of his first visits to the campus.

Resources

Susan Bell Energizes Development Effort



Associate Dean Bell

FUND-RAISING for the financially strapped School has been stepped up since the arrival in March of Susan S. Bell as Associate Dean for Development.

Dean Brest, in announcing the appointment, noted that "Bell was recruited after a nationwide search and was the top choice of all who interviewed her." Pointing to her experi-

ence in developing support for non-profit institutions, he said: "Her talent and energy will help Stanford Law School to move strongly into its second century."

Bell formerly directed the development program of Northwestern Law School. During her six years at the prestigious Chicago school, she increased participation by volunteers and donors and oversaw marked increases both in new major gifts and in the levels of regular annual giving.

Bell accepted the Stanford post after a year in San Francisco as director of the Sierra Club's major gifts program and centennial campaign. During 1991, she also served as vice president of the Association of American Law Schools's Section on Institutional

Advancement and currently is its treasurer.

One of Bell's priorities at Stanford is to organize a capital fund-raising drive as the Law School passes a major milestone: the 100th year since its start in 1893 as a department of the fledgling University.

"This is an exciting time to be at Stanford Law School," Bell says. "The Dean and faculty have dynamic plans for addressing the difficulties that the legal profession and society face today and will face in the 21st century. The challengewhich I welcome-is to

build the financial support needed for such progress."

Bell is a native of Milwaukee and graduate of Duke University, where she received a bachelor's degree with honors in 1984. An outdoors enthusiast, she enjoys hiking, tennis, biking, and golf, as well as reading and the theater. She and her husband-Steven Bell, director of banking for Northern Trust of California—have settled in Burlingame.

Susan Bell's Stanford bhone number is (415) 723-6123.

Students

Cooper Heads Law Review



Casey Cooper (3L)

FOR THE THIRD straight year, the members of Stanford Law Review have elected an African American as president. The 1992-93 leader is Christopher Cooper, 25, of Orlando, Florida.

Popularly known as Casey, Cooper graduated from Yale in 1988 summa cum laude and Phi Beta Kappa. He spent the next two years as a research analyst with Strategic Planning Associates, a

management consulting firm in Washington, D.C.

Since entering Stanford in the fall of 1990, Cooper has volunteered for the East Palo Alto Community Law Project, serving as co-chair of the student steering committee and as a member of the clinic's board of directors. He has also been an elementary school tutor, a member and political chair for the Law School's Black Law Students Association, and the Law School's senator to the Stanford University student government senate.

After graduation in 1993, Cooper will clerk for Judge Abner Mikva, Chief Judge of the U.S. Court of Appeals, District of Columbia Circuit.

Cooper split the summer of 1991 between an internship with the NAACP Legal Defense

Wordplay

A Puzzling Proposal



Crossword devotees Nathanson '92 and mate

NEIL NATHANSON (3L) wanted to surprise his girlfriend, Leslie Hamilton (BA '90), with a marriage proposal reminiscent of their first meeting—over the Sunday crossword at a Palo Alto cafe. He telephoned San Francisco Examiner's puzzlemeister, Merl Reagle, for assistance.

The result: a special crossword titled "Terms of Engagement" in the November 17, 1991 Sunday supplement, Image. The puzzle was strewn with references to Hamilton's interests and personal history, such as "cello" (which she used to play), "dachshund"

(her favorite dog), and "Montana" (her home state). The clue for her first name was Actress Caron; for her surname, Face on a ten. Nathanson's first name was Astronaut Armstrong. Wedding references, such as "chapel," "cake," ring," and "honeymoon" were also plentiful.

When completed, the center lines of the crossword read, "Dear Leslie/ Will you marry me/Neil." Hamilton's reply? "Opposite of no." The erudite couple were married on September 6 in Great Falls, Montana. Matchmaker Reagle attended the ceremony. \square

and Educational Fund, Inc. in Washington, D.C., and a summer associate position with Heller, Ehrman, White & McAuliffe in San Francisco, That summer he also wrote a one-act play, The Trial of Salieri, for the San Francisco Symphony's Mozart Festival. He returned to Washington this summer as a Miller, Cassidy, Larroca, & Lewin associate.

What does Cooper see for the School's august journal? "Stanford Law Review has the potential to make a direct and immediate impact on legal thought and practice," he says. "It should seek out novel ideas, new approaches, provocative arguments, and controversial topics, no matter their source or ideological bent."

Much to Celebrate



THE FIRST student to receive a diploma at the School's 1992 Commencement was surnamed Zink and the last Abudu—the reverse of the usual alphabetical order. This break with tradition was, Dean Brest quipped, "a small gesture to remedy centuries of discrimination against the alphabetically challenged!"

Otherwise, tradition reigned as 168 J.D. degrees and 8 other advanced law degrees were conferred in the annual ceremony Sunday, June 14. Held on the lawn between Crown Quad and Meyer Library, the event began and ended with an academic procession led by flagbearers and including faculty and students in full regalia. A record crowd

of more than 1,000 relatives and friends witnessed the pageant.

In his welcome, Dean Brest noted that the Class of 1992 was "as excellent and diverse as any that has graduated from this Law School." He then called for a minute of silence to honor an absent classmate, Vivian Gorey, who died in an accident during her first year.

There followed the announcement of the top academic awards for the class. Miles Ehrlich was named the Nathan Abbott Scholar for earning the highest cumulative grade point average—a surprise to no one, since he had been first in the class for the previous two years. The Urban A. Sontheimer Third-Year Honor for the second-



highest cumulative GPA was won by Dennis Herman. These and other awards by members of the Class of 1992 appear on page 28.

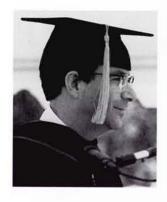
Class president Christy
Haubegger gave the first
speech. Pleased at having
mounted the platform
steps unaided despite
recent knee surgery, the
irrepressible Texan urged
her fellow graduates to

The annual degrees
ceremony drew a
happy throng of
graduating students
and well-wishers.
They were greeted by
Dean Brest (top,
podium), who also
(above, left) presented
the diplomas.
Michael Taylor (right)
was among
the recipients.

make a point of taking "a few more risks" in their daily lives. She cited two good reasons. First, the 'investment return theory"-that the higher the risk, the higher the potential return. And second. "it usually results in the right thing being done."

GOOD TEACHING

This year's John Bingham Hurlbut Award for excellence in teaching went to Joseph A. Grundfest, a 1978 graduate of the School who joined the faculty in 1990 as an associate professor of law. Formerly a commissioner of the Securities



and Exchange Commission, Grundfest was chosen by a vote of the graduating class.

In the keynote speech of the day, Grundfest praised the members of the class for their "wisdom and judgment" following an incident where a first-year law student had shouted homophobic epithets. The response adopted by fellow students-a temperate statement upholding reasoned discourse—represented a constructive use of the same right of free speech that had been abused by the offender.



This episode, Grundfest observed, also serves to illustrate "law's inherent limits." There are, of course, some tasks for which the law is "absolutely essential," he said. "Properly applied, the law can play a valuable role in addressing many discriminatory inequities that unfortunately continue to plague contemporary American society." But, he noted, "For other tasks, even the best-crafted and most carefully honed jurisprudence will inevitably fall short of the mark." Likening the instrument of law to a sledgehammer, he said, "It is often a big, blunt, heavy, hard-to-swing, difficult-to-aim, challenging-to-control, lower-lumbar-straining sledgehammer.

"Obviously, there is no bright-line test that determines when we should rely on the rule of law... and when we should respect the limits of the law and look for other



Keynote speaker Joseph Grundfest (left) struck a responsive chord with the graduates (top). Earlier, Laurel Finch, Peter Wulsin, and Christina Bark (above) were snapped perusing the program.

tools that might be better suited to the task at hand," he continued. "To make that distinction requires common sense-a common sense that incorporates an understanding of individuals, of societies, of cultures, and of relationships. In other words, it requires a bit of life experience that is tough to teach but vital to learn."

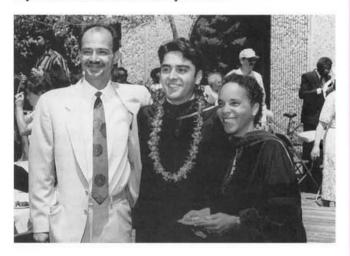
SKILLS AND VIRTUES

The last word went to Dean Brest, who delivered his charge to the Class. His theme was succinctly expressed in a Chinese proverb: Let your skills not exceed vour virtues.

"The virtues of lawvers are tested in two kinds of situations: in deciding on whose behalf you will exercise your



The celebrants included (above) Supreme Court Justice Anthony Kennedy, wife Mary, and their graduating son, Gregory. Rodolfo Ruiz (below) is shown with Prof. Gerald Lopez and Associate Dean Sally Dickson.



professional skills; and in deciding how to exercise those skills," said the Dean. With respect to the first, he expressed the hope "that you supplement your daily work with pro bono practice," particularly "to assisting a community of color in your area." On the second point, he observed, "The skills you have learned are morally neutral. They

can be used creatively to solve problems, or destructively to create problems or make them worse."

Brest called on the graduates to serve their clients in such a way that "at the end of the day, you can look them in the face, and look your opposing counsel, their clients, and society in the face, without embarrassment, with a sense that





Also seen were (top, l-r)
Bart Decrem, Nathan
Abbott scholar Miles
Ehrlich, Roy Swan, class
president Christy
Haubegger, Dawn Chirwa,
and Maya Harris; (center)
Ehrlich and standard
bearer Stephen Wong; and
(below) Jeffrey Malkan,
JSM, and Len-Yu Liu, JSD.

you have lived up to the highest aspirations of the profession."

The happy throng then adjourned to Crown Quad for a celebratory reception. Hours later, the murmur of voices and click of cameras could still be heard amid the arches and courtyards of the School. Clearly, a day to savor.



Honors and Awards

To have earned a degree from Stanford Law School is in itself a reason for celebration. More than one-fourth of this year's graduating students also received the following awards and honors.

Nathan Abbott Scholar, for the highest cumulative grade point average in the graduating class: Miles Frederick Ehrlich, who also won 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: Dennis Jeremy Herman.

Order of the Coif, the national law honor society, to which were elected: Ehrlich and Herman, plus Michelle Loren Alexander, Brian David Bloom, Christopher Fletcher Boyd, Pamela Marie Charles, Laurel H. Finch, Matthew J. Jacobs, Kelly Max Klaus, Joan Heather Krause, Erica Lynn Minkoff, Neil Nathanson, Ronald Eric Phillips, Maury David Shenk, Max Stier, Alison Margaret Tucher, and Mary Leyden Williamson.

Hilmer Oehlmann, Jr. Prizes, for outstanding work in the first-year Research and Legal Writing Program: Charles, Ehrlich, Jacobs, Klaus, Krause, Shenk, Tucher, and Williamson, plus Michael Anthony Alvarado, Christina



All were winners and all received the prizea Stanford law degree. Here Dawn Chirwa and Brian Bloom share congratulations.

Marie Bark, Daniel R. Brown, Nicole Ernsberger Cook, Kim Ellen Dettelbach, Leslie Griffin, Jamie Anne Grodsky, Gregory Davis Kennedy, Joanna Swärd Lowry, Nancy K. Ota, Chong S. Park, Daniel Lawrence Rabago, Mark Robert Salamon, Thomas David Warren, Steven C. Weaver, and Steven Bennett Weisburd.

Frank Baker Belcher Award, for the best academic work in Evidence: Craig Vernon Richardson. Miles Ehrlich earned second-place recognition in 1990-91.

Steven M. Block Civil Liberties Awards, for distinguished written work on issues relating to personal freedom: Brian H. Levin, Stephanie Nichols Simonds, Max Stier, and Alison Tucher.

Carl Mason Franklin Prize, for the best paper in international law: Stephanie Simonds (1991-92 winner and 1990-91 co-winner); Mary Williamson (1990-91 co-winner).

Richard S. Goldsmith Award, for the best research paper concerning dispute resolution: Honorable mentions to Susan D. Brienza (1990-91 competition) and Maury Shenk (1991-92 competition).

Olaus and Adolph Murie Award, for the most thoughtful written work in environmental law: Susan Gail Jordan (first place) and Jamie Grodsky (second-place co-recipient).

Board of Editors' Award, for outstanding editorial contributions to the Stanford Law Review: Edith Lathrop Morris.

Irving Hellman, Jr. Special Award, for the outstanding student note published by the Review: Edward Kwaku Andoh.

Johnson & Gibbs Law Review Award, for the greatest overall contribution to the Review during her second year: Lisa Rae Brooks.

Jay M. Spears Award, for outstanding service to the Review during his second year of law school: Ignacio E. Salceda.

Stanford Law Review Special Service Award, recognizing exceptional contributions to Volume 44 of the Review: Gary F. Brainin and Steven Weaver.

United States Law Week Award, for outstanding service to the Review: Ignacio Salceda.

Mr. and Mrs. Duncan L. Matteson, Sr. Awards, for the two teams of finalists in the 1992 Marion Rice Kirkwood Moot Court competition: Cary Susan Robnett and Beth Collins McClain as best team; Kelly Klaus and Thomas Warren as runner-up team. (More on pages 29-30.)

Walter J. Cummings Awards, also in the Moot Court finals. For best oral advocate: Robnett, For best brief: McClain and Robnett.

Fellowship Opportunities Expand

LAW SCHOOL graduates interested in public service often get frustrated at the paucity of paid work in that field. So it is always good news when new opportunities are created.

Stanford Law School this year established a two-year postgraduate fellowship of \$25,000 per year in Public Interest Law and Administration. This unique fellowship allows a recipient to pursue his or her own public interest project while also serving as the School's public interest coordinator.

The first to receive the award, Carol Potter, earned her J.D. in 1971 from Boalt Hall, holds a 1983 Master of Divinity degree from Harvard, and has extensive experience in counseling. In her fellowship-supported research, Potter is exploring how attorneys can increase their job satisfaction through public service and pro bono work. Drawing upon psychology, anthropology, and sociology, she seeks to develop a system to help lawyers figure out what type of public service would be most fulfilling for them. Her goal: matching individual attorneys with prospective public interest clients, to the benefit of all.

Potter also works three days a week counseling students in career planning and placement. Her other duties as the Law School's public interest coordinator include representing the School at national job fairs, and



Carol Potter, adviser

helping organize talks, symposia, and conferences. She invites Law School graduates who would like to share their experiences in pro bono or public interest work to call. Her Stanford number: (415) 725-6756.

ANOTHER KIND of public service fellowship, this time for law students, has just been established by the Foundation of the State Bar of California. Stanford second-year student Kenneth Bobroff received a \$2,500 grant. A Rhodes scholar, Bobroff has earned praise from the faculty for helping improve the curriculum in Native American Law. Also a founder of the School's Public Interest Law Students Association, he served this past summer as a law clerk for the Navajo Nation Supreme Court. Nanci Clinch, chair of the Bar Foundation's scholarship committee, explains that the purpose of the scholarship is "to encourage students to enter law careers that serve the public." She also notes that the students chosen

"demonstrate a commitment to public service throughout their lives, as well as during their time in law school."

Stanford graduates are also well represented among current Skadden, Arps, Slate, Meagher & Flom fellows. These fellowships, established four years ago by the prominent New York City law firm, allow recent law school graduates to provide legal assistance to the disadvantaged. Recipients are paid an annual salary of \$32,500 for two years. This year's Stanford winners are José Sánchez '92, Benjamin

Quinones '90, and Frances Leos '90.

Through the Legal Aid Society of San Francisco's Employment Law Center, Sánchez aids Hispanic high-school students and day laborers. Quinones provides backup assistance for legal services attorneys working to combat poverty through the National Economic Development and Law Center in Oakland. And Leos works for Texas Rural Aid, Inc., representing migrant farm workers living in substandard housing.

Moot Court

John Minor Wisdom, Presiding

THE STUDENT ADVOCATES "didn't miss a beat," said Procter Hug, Jr. of the Ninth Circuit Court of Appeals in Reno. Judge Hug, a 1958 Stanford Law graduate, was speaking as a member of the "Supreme Court" bench for the 1992 Marion Rice Kirkwood Moot Court Competition finals May 8.

A second volunteer justice, Betty Binns Fletcher (AB '43) of the Ninth Circuit, Seattle, declared that she was impressed most by "the capacity of the arguers—much as we tried to distract them—to respond to questions and get back to the main point."

The venerable John

Minor Wisdom of the Fifth Circuit, New Orleans, who served as "Chief Justice" for the mock appellate proceeding, expressed sympathy with the student advocates in their struggle to interpret the intent of the real U.S. Supreme Court on the issues at hand.

He was reminded, he said, of an incident in the early career of Robert Menzies, who later became prime minister of Australia. Appearing before the High Court of that country, Menzies was arguing a case which had a long line of previous decisions going against it. One of the justices interrupted, saying,



The Moot Court principals were (left to right) Judge Fletcher, runner-up team Klaus and Warren, Judge Wisdom, winners McClain and Robnett, and Judge Hug.

"That's nonsense." Menzies had, in all honesty, to agree. Then why, the justice asked, did Menzies argue what he knew to be nonsense? Menzies replied: "I am compelled to do so by previous decisions

of the Court!"

That note of levity ended one of the more rigorous Stanford moot court finals in memory. In the hypothetical case of Katherine Prvde v. State of Kirkwood, the "defendant" was charged with

violating the state's newly enacted "Fetal Protection Act." The case raised two knotty constitutional questions: whether a state can criminalize a pregnant woman's use of illegal drugs and abuse of alcohol; and whether a

state prosecutor can use peremptory challenges to strike from a jury women who have been or are pregnant.

The four moot court contestants, all members of the class of 1992, had survived a series of elimination rounds for the honor of competing in the Kirkwood finals—a full-dress appearance in Kresge Auditorium before three distinguished federal justices. As finalists, they also receive Mr. and Mrs. Duncan L. Matteson, Sr. Awards.

The team of Beth McClain and Cary Robnett ultimately earned first-place honors, for both their written brief and oral arguments. The two women received Walter J. Cummings Awards for this achievement. Robnett was also the top oralist.

The title of runner-up team went to Kelly Klaus and Thomas Warren. Pleased at the outcome, Robnett said: "It was the best of academic competition—aggressive but goodwilled."

Board of Visitors

Toward a Curriculum for A.D. 2010

STANFORD Law School aims to graduate lawyers who will "add value to society," declared Paul Brest in the closing address of the 1992 meeting of the Board of Visitors. "We must produce technically good lawyers who approach their work with high ethical principles, a problem-solving attitude, and a commitment to public service."

The Board—a distinguished group of practicing attorneys, businessmen and -women, and community leadershad just spent two days considering how the School could best educate students for legal careers in the fast-changing world of the coming century. This question concluded the three-year long-range planning



Miles Rubin '52, Chair



Paul Brest, Dean







process—"Stanford Law School in the Year 2010" -conceived in 1989 and launched at the Board's annual meeting in 1990 to help the dean and faculty anticipate and prepare for the future.

Under the leadership of Board of Visitors Chair Miles L. Rubin '52, Dean Paul Brest, and 2010 project Co-director Kendyl K. Monroe '60, this year's meeting focused on the implications for the School's curriculum of major trends identified in previous 2010 sessions (reported in the Spring/ Summer 1989, Fall 1990, and Fall 1991 issues of STANFORD LAWYER).

The faculty were very



Visitors, faculty, and students all contributed to the twoday deliberations. Shown are (left) Ronald Rosen '57; (top left) Susan Illston '73, Rob Edwards '90, and James Bass '87; (top right) then-1L students Jaime Areizaga and Roger Edwards, with Henry Wheeler '50; and (immediately above), then-2L Jonathan Franklin, with visitors Albert Moorman and Alma Robinson '75.

much involved in the 1992 curriculum deliberations, giving presentations, participating in discussions, and mingling with Board members at meals and breaks.

Students, too, were involved. Second- and third-year students met with the Visitors during an informal working lunch, and first-year students were guests at a Board-sponsored dinner featuring an address by Nancy Hicks Maynard

'87, then deputy publisher of the Oakland Tribune (see page 81).

BUILDING **FROM STRENGTH**

Stanford, Dean Brest noted in a report on "the state of the School," is widely regarded as among the best law schools in the country—"at the pinnacle," according to the most recent American Bar Association accrediting team.

The Dean cited current

strengths of the School, which include top faculty (despite salaries that are not fully competitive), a small and intimate learning environment, and the diversity and excellence of its students. He also pointed out that the Law School is renowned not only for the scholarly work of the faculty, but for superior teaching as well.

The Visitors, in their working sessions on a curriculum for the future, considered seven major subject areas, plus the graduate degree program and career preparation assistance. Faculty presentations for each area were given in a general session the first morning. A general practice perspective was provided by a panel of recent graduates. The Visitors and participants then formed small discussion groups for each subject area. The conclusions of each of these groups were reported in a plenary session the following day. Some highlights:

 Dispute resolution. "The civil legal system is in deep crisis; it is not working for either rich or poor," declared Professor Robert Mnookin. "The Law School should be on the leading edge of

FACULTY PERSPECTIVES: SPEAKERS



Janet Cooper Alexander



John Barton



Paul Goldstein



Joseph Grundfest



Bill Ong Hing



Robert Mnookin



Margaret Jane Radin



Deborah Rhode



Kim Taylor



Barton (Buzz) Thompson

changing this." Professor Janet Cooper Alexander reported that the faculty has been "rethinking" how best to teach students about alternative methods of dispute resolution in civil procedure and other subject areas. The Visitors expressed support for this trend.

Dean Brest returned to this theme in his closing speech, saying, "The ultimate importance of litigation will not decline—our rights depend upon access to the courts—but lawsuits can be very costly. Stanford has a role in fostering efficiency and fairness."

- International and comparative law. Even lawyers with ostensibly non-international practices are spending about 15 percent of their time in this area, according to Professor John Barton. This implies a need for increased attention in the curriculum to international law. Board members made several recommendations, including a shift in the core international course to focus more on private transactions than on governments. The Visitors also suggested that to assist students in analyzing problems, general principles should predominate over legal specifics. They also urged that students should develop a basic familiarity with world trading blocs and with at least one major international institution.
- Environmental and natural resources law. The School is building a good program in environmental and natural resources law despite limited resources, reported

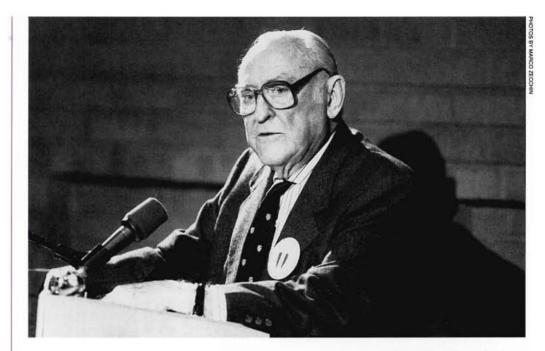
Professor Barton (Buzz) Thompson. Members of the Board agreed that the program should relate environmental to other areas of law, including corporate law, and assist students in seeing all sides of environmental issues. There was general support for an environmental and natural resources curriculum that challenges students to create incentives for businesses to conserve resources and be environmentally conscious.

- · Business law. The School is among the top schools in the field of law and business, and is known for outstanding research by its faculty and for its innovative academic program, declared Professor Joseph Grundfest. "Stanford could easily become the best in business law as we develop more synergistic relationships with the Graduate School of Business and the Hoover Institution." While recognizing that many of the School's current courses offer a holistic approach to law, the Visitors advised more collaboration with others around the University. In another vein, Dean Brest noted that the business curriculum now has changed its emphasis from appellate litigation to the study of how lawyers help create organizations and ventures.
- Legal ethics. Professor Deborah Rhode advocated integrating ethics into substantive courses, rather than teaching it as a separate, required course. "Students resent taking an extra course that seems like Sunday school," she noted. She

reported that course materials are being developed for teaching ethics by the so-called "pervasive" method. In the group discussion, Visitors identified some common ethical problems confronting practicing lawvers. Dean Brest noted that the curriculum is increasingly being infused with such issues, including the use of discovery, the limits of good faith in negotiations, and alternative dispute resolution.

· Lawyering for Social Change. "The uprising after the Rodney King verdict raises important questions about the role of lawyers in the underlying causes of such outbreaks," Professor Bill Ong Hing observed. He explained that the innovative Lawyering for Social Change program addresses such questions by broadening legal education to include social theory and political economy. LSC is distinct from traditional poverty law in its focus on community empowerment through community economic development and other means. "LSC courses have been popular," reported Associate Dean Ellen Borgersen. "Students are coming to Stanford especially because we offer this concentration." Later discussion emphasized the program's funding needs for staff, library materials, and outside lawyer supervision.

• Legal theory. "Jurisprudence is not a fringe area," said Professor Margaret Jane Radin. "It is an integral part of the Law School's mission." Board members agreed that perspective courses



Judg (abor for finer, we spot)
M. ar

Judge John Minor Wisdom (above) joined the Visitors for their concluding dinner. Also there (left) were Prof. Greely's spouse Laura Butcher, M.D., Prof. Janet Halley and Mrs. Wisdom.

such as legal theory are valuable to future practitioners and critical in fostering the next generation of legal educators.

• Graduate education.
The features of the Law
School's graduate program were described by
Professor Paul Goldstein.
The School offers the
J.S.M., M.L.S., and J.S.D.
degrees, as well as such
innovations as the "aspir-

ing law teacher" program for minority lawyers who want to enter the teaching field. It was suggested in the general discussion that graduate students be given more opportunities to teach, especially in seminars on environmental law and intellectual property.

• Career preparation. Professor Kim Taylor moderated a panel that addressed how law schools can most effectively assist students in career preparation. The panelists urged the Law School to stress the importance of quantitative skills and increase the amount of feedback on students' progress. They agreed that the School does an outstanding job in teaching critical analysis, as well as in teaching how legal institutions operate.

"HIGH HOPES"

At the conclusion of the proceedings, Board Chair Miles Rubin praised the participants for their hard



Visitor Kenneth Montgomery (right) and his wife Harle shown here with Jim Gaither '64, then-president of the Stanford Board of Trustees—stayed on for Gorbachev's Phleger Lecture.

work and excellent advice. He pointed out that the curriculum suggestions proposed by the Visitors corresponded with the Dean's broad vision for the School, and were "worthy of the Law School's past and hold high hopes for its future."

Thanks were also expressed to the 2010 Task Force, which included—besides Dean Brest, Kendyl Monroe, and Miles Rubin-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, and Edward D. (Ned) Spurgeon '64.

After the official business was completed, Board members were treated to an impressive display of advocacy by students competing in the Kirkwood Moot Court Finals (see page 29).

The annual Visitors conclave ended that evening with a banquet at the Faculty Club, where Professor John Hart Ely delivered a witty impromptu monologue. Another honored guest, Judge John Minor Wisdom, spoke in a more serious vein on the diminished role of the federal government in ensuring civil rights. Many of the Visitors also took advantage of the rare opportunity the next day to hear Mikhail S. Gorbachev, the School's 1992 Herman Phleger Professor (pages 2–9ff), give a major address at Frost Amphitheater.

Faculty Notes

Janet Cooper Alexander, a former clerk to Thurgood Marshall, wrote a tribute to the retired Supreme Court Justice for the July 1992 issue of Stanford Law Review. She has also seen her much-cited previous Stan. Law Rev. article, "Do the Merits Matter? A Study of Settlements in Securities Class Actions," reprinted in Securities Law Review.

Ian Avres had five articles and a book published this spring. He also gave papers at Denver, George Mason, and Iowa universities and at meetings of the American Law and Economics Association

and the Law and Society Association. On the pro bono side, he presented an oral argument to the supreme court of Illinois in a collateral attack of a murder conviction.

Ayres's book, Responsive Regulation: Transcending the Deregulation Debate, was written with John Braithwaite and published by Oxford University Press. A related article by the pair, "Partial Industry Regulation: A Monopsony Standard for Consumer Protection," appeared in California Law Review (80:13). Ayres was also published twice in Volume 60 of Cincinnati Law Review, with articles on "The Possibility of Inefficient Corporate Contracts" and "Three Approaches to Modeling Corporate Games: Some Observations." Another article, "Judging Close Corporations in the Age of Statutes," appeared in Washington University Law Quarterly (70). His fifth article of the season. coauthored by Rob Gertner, appeared in Yale Law Journal (101) as "Strategic Contractual Inefficiency and the Optimal Choice of Legal Rules."

Ayres is currently studying race and gender discrimination in the setting of criminal bail—a project for which he won a grant from Stanford's

Office of Technology and Licensing research incentive fund.

Barbara Babcock, Stanford's Ernest W. McFarland Professor of Law, traveled last April to Cincinnati Law School to deliver the 1992 Marks Lecture, entitled "Clara Shortridge Foltz, Jury Lawyer." Babcock also witnessed the official unveiling of a portrait of the pioneering woman attorney. She is delighted to have custody of the painting (rendered by Foltz's grandson from an old photograph) for the duration of her work on a biography of its indomitable subject.

In June, Babcock spoke on "Community Representation and the Civic Jury" at a conference held by the Brookings Institution and the American Bar Association in Charlottesville. Also this spring, she was honored by the Associated Students of Stanford University with one of its annual teaching awards. Already a two-time Law School Hurlbut Award winner, she was elected to the University-wide honor in the category for large graduate-school courses.

Joseph Bankman is in the middle of a threeyear appointment as the School's Helen L. Crocker Faculty Scholar. He presented a paper last August at a Tax Policy Conference sponsored by Harvard Law School and served as commentator at a University of Southern California Law Center program. He has recently completed a new edition for Little, Brown of his casebook with William Klein of UCLA: Federal Income Taxation.

John Barton, the School's George E. Osborne Professor, has been appointed a fellow of the prestigious American Association for the Advancement of Science. The engineerturned-attorney addressed the question of whether intellectual property law can keep up with technical change at a recent National Academy of Sciences program. He was also an invited speaker at the Taiwan Institute of Economic Research, where he discussed the transfer of technology from developed to developing nations. He presented a paper on intellectual property

rights in agricultural transfers at the First International Crop Science Congress, held this July at Iowa State University. And in an opinion piece published in the January Bio/Technology magazine, he raised ethical questions concerning the fieldtesting in developing countries of genetically engineered organisms. and discussed some options for advising and protecting such countries.

Also an expert in international trade, Barton is serving as a panelist for the resolution of antidumping and countervailing-duty disputes under the U.S.—Canada Free Trade Agreement.

William F. Baxter, the Wm. Benjamin Scott and Luna M. Scott Professor of Law, delivered the opening presentation at an American Bar Association conference on Competition and High-Technology Industries, held in February at Stanford. He also co-chaired the annual "Cutting Edge" seminar of the ABA's Antitrust Section in Washington, D.C., last November. The topic of the two-day confab was Market Power.

Professor Baxter served, pro bono, as counsel for Stanford University with respect to the Justice Department's "tuition" antitrust investigation, and continues to serve with respect to private tag-along treble damage litigation pending against Stanford and the Ivy League institutions.

Paul Brest, the Richard E. Lang Professor and Dean, was an honored guest of the University of Utah Law School, where he delivered the annual William H. Leary Lecture November 7. His topic: "Affirmative Action in Faculty Hiring: A Non-Polemical Guide." The Dean is one of three Stanford law faculty members (the others being Ely and Mnookin) who wrote articles for the Yale Law *Iournal* that are among the most cited in the magazine's 100-year history. Ranked eighth in number of citations for the most recent time period tallied, Brest's piece appeared in 1981 under the title, "The Fundamental Rights Controversy: The **Essential Contradictions** of Normative Constitutional Scholarship."

Tom Campbell plans to resume teaching full time after his term in the House of Representatives ends in January 1993. He continues in the meantime to offer a course, Issues of Law and Public Policy, on Sundays at his campus home. A "new conservative," Campbell gave up his congressional seat to run for the Senate and was narrowly defeated this June in a three-way primary race with Los Angeles radio commentator Bruce Herschensohn and former entertainer Sonny Bono. "California's and America's loss is the Law School's gain," says Dean Paul Brest. "We couldn't be more fortunate than to have Tom back in residence."

Mauro Cappelletti, the Lewis Talbot and Nadine Hearn Shelton Professor of International Legal Studies, has had a peripatetic year, including several weeks in Sweden this spring as a visiting

professor at the University of Uppsala. Portugal was the scene of his reelection last fall to a third four-year term as president of the International Association of Procedural Law, then holding its ninth world congress. He traveled to South Africa shortly thereafter to deliver the opening speech to a multiracial congress in Pretoria on "The Future of Legal Education," and to lecture at eight universities in Johannesburg, Durban and Capetown. November found him in Brazil, where he lectured in Rio de Janeiro and gave the opening speech, "Improving the Administration of Justice: Lessons from Comparative Analysis," and closing report for a congress in Curitiba of 800 judges, lawyers, and law professors. He opened another major gathering-an industrial conference in China sponsored by the Ford Foundation—in April at the University of Peking.

Professor Cappelletti also continues to publish widely, with articles in South African Journal on Human Rights, South African Law Journal, Tydskif vir die Suid-Afrikaanse Reg, and the Italian journal, I diritti dell'uomo. Early this year he was awarded a golden medal by his native land's Trentino-Alto Adige Region.

William Cohen, the C. Wendell and Edith M. Carlsmith Professor of Law, presented a lecture on the First Amendment and hate speech, for an American Bar Association judges' seminar in Salt Lake City in March. The next month he spoke on unconstitutional conditions, for a University

of Minnesota Law School faculty colloquium. Cohen and UCLA's Jon Varat are currently preparing the 9th edition of Constitutional Law Cases & Materials.

Lance Dickson contributed a chapter, "Legal Translation: a Literal Interpretation," to Bibliothek und Recht-International, edited by Jürgen Gödan and Holger Knudsen and published last year in Hamburg. The School's Law Librarian has also produced, with coeditor Win-Shin Chiang, the twelfth and final volume of their Legal Bibliography Index.

John Hart Elv, the Robert E. Paradise Professor of Law, is spending a wanderjahr as visiting professor at IIT Chicago-Kent and then the University of Virginia.

Marc Franklin, the Frederic I. Richman Professor of Law, and Robert Rabin (see below) have brought out a fifth edition of their widely used Foundation Press text, Cases and Materials on Tort Law and Alternatives.

Barbara Fried is the author of an article, "Fairness and the Consumption Tax," in the May issue of Stanford Law Review. She was invited to discuss this topic at a University of Southern California workshop last fall and a Harvard tax workshop this summer. Fried is, as of January 1992, an Associate Professor.

Lawrence Friedman, the Marion Rice Kirkwood Professor of Law, has been awarded the Law

and Society Association's Harry Kalven Prize for "distinguished research on law and society." The prize was presented on May 30 in Philadelphia at the Association's annual meeting.

Ronald Gilson is the inaugural holder of the new Charles J. Meyers Professorship in Law and Business (see page 20). Last year he also became one of the first speakers to be featured in Fordham Law School's new John M. Olin Lecture Series. "The Political Ecology of Takeovers" was the topic of his February 24 presentation.

Robert Gordon spent last year as a visiting professor at Harvard and Yale, and as a visiting fellow at the European University Institute in Florence. He also was invited to Cornell to deliver the 1991 Frank Irvine Lecture. "Is Law Policy? Can Law Schools be Policy Schools?" was his subiect. A Cornell observer reported that the Stanford professor "answered the first question affirmatively and the second question equivocally." Gordon is quoted as saying: "All law is policy, and we are better off if we recognize it."

The Legacy of Oliver Wendell Holmes, Jr. (Stanford University Press), a collection of essays edited by Gordon on the celebrated Supreme Court justice, hit bookstore shelves in July.

William B. Gould IV, the Charles A. Beardsley Professor of Law, made his sixth trip to South Africa in August to observe efforts to move that nation toward representative government.

The constitution-making process there was the subject of a talk he gave in April at Johns Hopkins. He spoke at Yale in March on international labor standards, and gave talks at the University of Iowa in May and the University of Western Australia in July on collective bargaining and professional sports. Gould acted as an impartial arbitrator in baseball salary dispute hearings held in Los Angeles in February involving the California Angels' Luis Polonia and the Philadelphia Phillies' Dale Swain.

Henry T. (Hank) Greely has been granted tenure (see page 22). An expert in health law, he often participates in Stanford University Medical Center programs. One example: the January 25 conference, "A Healthy Response to AIDS: Policy Priorities for Medicine," where Greely shared the platform with a physician and an ethicist in a discussion of "screening for the public good."

Thomas Grev. Nelson Bowman Sweitzer and Marie B. Sweitzer Professor of Law, testified at the Clarence Thomas confirmation hearings last fall on questions pertaining to "natural law" theory. This April, the professor presented the University of Oregon's fifth annual Colin O'Fallon Memorial Lecture in American Studies. His topic: "Holmes, Pragmatism, and Democracy."

Grey's cross-disciplinary study, The Wallace Stevens Case: Law and the Practice of Poetry (Harvard, 1991), has attracted the attention of

such general-circulation publications as the New York Times, Boston Globe, and Washington Post (where the reviewer called it "a notable book"). Stevens, though not prone to write about law per se, was in fact a law school graduate (New York Law School) and long-time insurance lawyer. Asked by NYT columnist David Margolick '77 what a lawyer might learn from the modernist poet, Grey suggested: "Lawyers tend to be absolutists or disappointed absolutists, and Stevens represents something in-between. He reminds us that there's more in the middle of the road than yellow lines and dead animals."

Joseph Grundfest was the Class of 1992's choice for the Hurlbut Award in teaching (see page 26). The former SEC commissioner delivered a thought-provoking luncheon address to the 1991 ioint annual meeting of the American Economics Association and American Finance Association. earning himself a place on the editorial pages of the January 21 Wall Street Journal and in this magazine (page 16). He has also had articles accepted by the Yale Law Journal and the Stanford Law Review; an op-ed, "Smoked Salomon," in the New York Times (August 23, 1991); and "Schools for Scandal? A Comparison of Recent Securities Frauds in Japan and in the United States," in American Enterprise (May 1992). Grundfest is a 1992-93 National Fellow at the Hoover Institution.

Continued on page 38

A Company of Scholars

DEAN BREST called the faculty together on November 22, 1991, for an all-day retreat to consider directions for the School's curriculum as it approaches the 21st century.

The meeting was part of a comprehensive long-range planning effort, which included the Board of Visitors meeting reported on pages 30–34, to ensure that the School remains at the forefront of legal education.

This photo was taken in Crown Quad's Cooley Courtyard just before the first session of the retreat. Most of the 1991–92 members of the faculty were present. Numbered according to the diagram below, they are:

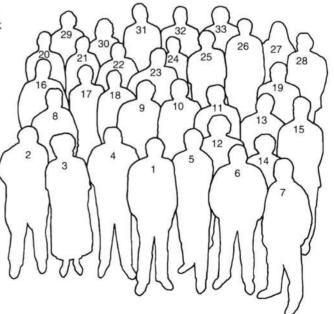
- 1. Paul Brest, Dean
- 2. Gerald Gunther
- 3. Barbara H. Fried
- 4. William F. Baxter
- 5. Miguel A. Méndez
- 6. David L. Rosenhan
- 7. Bill Ong Hing
- 8. Michael S. Wald
- 9. Thomas C. Heller
- 10. Robert L. Rabin
- 11. Mark G. Kelman
- 12. Kim A. Taylor
- 13. Joseph A. Grundfest
- 14. Joseph M. Bankman
- 15. Robert H. Mnookin
- 16. Ronald J. Gilson
- 17. Deborah M. Weiss
- 18. James Q. Whitman
- 19. William B. Gould IV
- 20. Marc A. Franklin
- 21. Janet E. Halley
- 22. John H. Barton
- 23. William Cohen
- 24. Lawrence M. Friedman
- 25. Robert Weisberg
- 26. Barton H. Thompson, Jr.



- 27. Margaret Jane Radin
- 28. Paul Goldstein
- 29. Thomas C. Grey
- 30. Barbara A. Babcock
- 31. Ian Ayres
- 32. William H. Simon
- 33. Henry T. Greely

Not shown:

Janet Cooper
Alexander, Thomas J.
Campbell (on leave),
Mauro Cappelletti,
Lance E. Dickson,
John Hart Ely,
Robert A. Girard,
Robert W. Gordon,
Charles R. Lawrence
III, Gerald P. López,
A. Mitchell Polinsky,
Deborah L. Rhode,
Kenneth E. Scott, and
Byron D. Sher. □



Gerald Gunther, the William Nelson Cromwell Professor of Law, is in the final editorial stages of his biography of Judge Learned Hand, to be published by Alfred A. Knopf, Inc. Revised editions of two of Gunther's other volumes are now available from Foundation Press: Constitutional Law (12th ed., 1991) and Individual Rights in Constitutional Law (5th ed., 1992). He also has an article, "Another View of Justice Harlan-a Comment on Fried and Ackerman," in Vol. 36 of the New York Law School Review (1991).

Gunther was frequently mentioned in the media last fall in discussions of prospective Supreme Court appointees. Commentators from various points in the political spectrum cited him as the sort of "first-rate centrist" (American Lawyer's term) who ought to be named to the High Court.

On July 1, he appeared on the National Public Radio interview show, "Talk of the Nation," with Harvard's Kathleen Sullivan (a Stanford visiting professor in 1991–92) to discuss the Supreme Court in light of some surprising decisions during the just-concluded term.

Janet Halley was appointed this summer to the board of directors of the Northern California chapter of the American Civil Liberties Union. She is also the recipient of a research incentive grant from Stanford's Office of Technology and Licensing-support that she will devote to a book tentatively titled, "Definitional Acts: The Legal Dynamics of Homo/ Heterosexual Identities."

A related article, "Misreading Sodomy: A Critique of the Classification of 'Homosexuals' in Federal Equal Protection Law," has been published in a volume edited by Julia Epstein and Kristina Straub, Bodyguards: The Cultural Politics of Gender Ambiguity (Routledge, 1991).

Recent presentations by the former English professor include a paper, "Coming Out Under the First Amendment," at the annual convention last December of the Modern Language Association. Another paper, "The Construction of Heterosexuality," was given this spring at Duke University and (as the plenary address) at a Critical Networks Conference held at Harvard and Northeastern law schools in Boston. Halley also served as commentator for a panel, "Deviant Voices: Orthodoxy and Subversion," at a February conference at Yale University on "Iustice and its Discontents: Dissent in the Renaissance."

Thomas Heller cochaired the second "Stanford Berlin Symposium on Transition in Europe." Held on May 23 at the University's Berlin campus, the symposium brought together Stanford scholars and their European counterparts to discuss the economic and political implications of the breakup of the Soviet Union.

Bill Ong Hing has been named by the San Francisco Bar to the newly created Equal Access Committee, formed in the wake of the Los Angeles outbreak to increase involvement by lawyers in promoting legal and economic justice in minority communities. He is also undertaking a study of Korean-American/ African-American conflict, with the help of a grant from the Stanford Office of Technology and Licensing. Last November the U.S.—Asia Society in Los Angeles invited him to deliver a talk on political participation by Asian Americans.

Mark Kelman's 1991 Dunwody Lecture at the University of Florida, "Emerging Centrist Liberalism," has been published in the Florida Law Review (Vol. 43). Stanford Law and Policy Review included his article, "Health Care Rights: Distinct Claims, Distinct Justifications," in its symposium last fall on health care in America. This spring Kelman gave presentations at a New York University faculty workshop, on "The Transformation of Egalitarian Discourse," and at a University of Chicago Centennial Conference, on "Questions of Evidence." The latter concerned the relationship between battered wives' self-defense cases and the Goetz "subway vigilante" case.

Charles Lawrence III was among the African-American citizens to testify before Congress last fall in opposition to the confirmation of Clarence Thomas. Lawrence, an expert in constitutional law, is spending the 1992–93 academic year in Washington, D.C., as a visiting professor at Georgetown University.

Gerald P. López, the Kenneth and Harle Montgomery Professor of Public Interest Law, is author of a new book, Rebellious Lawvering: One Chicano's Vision of Progressive Law Practice (Westview Press, 1992). Last year he delivered the keynote address, "Latino Political Visions," at the Hispanic National Bar Association Conference in San Antonio. At the University of Maryland School of Law, he gave the 1992 Gerber Memorial Lecture. His speech, "I'll Tell You What's Pathological," examined the rhetoric surrounding the issue of the "urban underclass."

López delivered a presentation on racial tensions among groups of color in the United States at an international conference, "Global Economies/Local Ethnicities: Culture and Crisis of the National." He also spoke at a Legal Services Conference on the structure of programs providing legal services to the poor, and at the national Critical Network Conference on "Progressive Lawyering." He participated in a Rockefeller-funded humanities conference assessing the progress of the Law School's Lawyering for Social Change concentration.

Professor López continues to work with various grassroots groups in the Bay Area on projects that range from tutoring low-income students of color in San Francisco's Mission District, to addressing issues of development and redevelopment in low-income communities across the state. López is also acting as lead appellate counsel in a San Diego civil rights suit involving police brutality and a claimwon at the trial levelthat the policies and practices of the County Sheriff's Department were unconstitutional.

Miguel Méndez has been examining the fallout from California's controversial Proposition 8 ("The Victims' Bill of Rights"). One of his articles, "Diminished Capacity in California: Premature Reports of its Demise," appeared in the Fall 1991 issue of Stanford Law & Policy Review. Another piece, concerning the current admissibility of character evidence, was part of a symposium on the 1982 proposition in the April 1992 Pacific Law Journal.

John Henry Merryman, emeritus Nelson Bowman Sweitzer and Marie B. Sweitzer Professor of Law, was invited to address the 1992 meeting of the Association of Art Museum Directors, held February 6 in Fort Worth, Texas. Later, in Madrid, Spain, he presided over a symposium on Legal Aspects of International Trade in Art. Merryman's biggest news, however, is the debut of a new scholarly periodical, International Journal of Cultural Property, for which he chairs the multinational editorial board. Volume 1, Number 1 includes two contributions by Merryman: an article on "Counterfeit Art" and a case note, "Limits on State Recovery of Stolen Artifacts: Peru v. Johnson." Published in May, the English-language journal is printed in Berlin for the International Cultural Property Society, of which Merryman is founding president.

Robert Mnookin, the Adelbert H. Sweet Professor of Law, delivered the keynote address at the American Arbitration Association Convention, December 6 in Los Angeles. The topic: "The Barriers to the Negotiated Resolution of Conflict Through Arbitration: How Neutrals Can Help Create Value."

In his role as director of the Stanford Center on Conflict and Negotiation, he organized an international conference on barriers to the negotiated resolution of conflict, held February 14–15 at Stanford.

As part of Stanford's new Continuing Legal Education Program, Mnookin and his SCCN team conducted a two-day, 14-unit, Negotiation Workshop in May.

On the publishing front, Mnookin coauthored "Puzzling over Children's Rights" in the 1991 Brigham Young Law Review (307) and "Saddam's Folly: Playing Chicken with George Bush" in the January 1992 Negotiation Journal. His latest book (with psychologist Eleanor Maccoby), Dividing the Child: Social and Legal Dilemmas of Custody, was recently published by Harvard University Press.

In April, the Los
Angeles Times reported
that Mnookin successfully mediated the resolution
of a dispute between the
Bank of America and ten
international banks over
the allocation of hundreds
of millions of dollars of
losses arising from defaulted student loans.

A. Mitchell Polinsky, the Josephine Scott Crocker Professor of Law and Economics, delivered January lectures in Washington, D.C., at George Mason University Law School and Georgetown University Law Center, on the question, "Should Employees be Subject to Fines and Imprisonment Given the Existence of Corporate Liability?" In April he attended a University of Chicago Centennial Conference on Law and Economics as a discussant of Steven Shavell's paper on "The Economic Theory of Law Enforcement." And in May at Yale, he chaired a panel, Theoretical Issues Regarding Litigation and Settlement, at the second annual meeting of the American Law and Economics Association. Also at that meeting, he was elected vice-president and president-elect of the Association.

Polinsky's recent articles include "A Model of Optimal Fines for Repeat Offenders" (with Daniel L. Rubinfeld), Journal of Public Economics 46:291 (1991) and "Decoupling Liability: Optimal Incentives for Care and Litigation" (with Yeon-Koo Che), Rand Journal of Economics 22:562 (1991).

Robert Rabin, the A. Calder Mackay Professor of Law, was invited this past year to present the Monsanto Lecture at Valparaiso Law School in Indiana, and to serve as E.S. Gallon Scholar in Residence at Dayton University Law School in Ohio. He published articles on tort reform in the Winter 1991 Valparaiso Law Review, tobacco tort litigation in the April 1992 Stanford Law Review, and intentional torts in the current Wisconsin Law Review. He and Marc Franklin

have also completed the fifth edition of their Cases and Materials on Tort Law and Alternatives (Foundation Press, 1992).

Margaret Jane Radin had three articles published last year: "Presumptive Positivism and Trivial Cases" in the Harvard Journal of Law and Public Policy (vol. 14); "Reflections on Objectification" in the Southern California Law Review (vol. 65); and—with Frank Michelman of Harvard as coauthor— "Pragmatist and Poststructuralist Critical Legal Practice" in University of Pennsylvania Law Review (Vol. 139). She also gave invited presentations at legal theory workshops at Pennsylvania, the University of Toronto, and McGill University, and at an Albany Law School conference, "Compelling Government Interests in Constitutional Law." And at Arizona State University, she lectured on "Commodification and Objectification"that is, the treatment of people or parts of people as commodities that can be given a price and sold (as in babies for adoption or organs for transplant).

Deborah Rhode delivered the keynote address. "Professional Ethics and Professional Education," at the 1992 Conference on Professional Ethics at Florida State University. Her message: that ethics should be taught not only as a distinct subject, but also pervasively, as an integral part of law school courses in various areas of practice. She has received a substantial pair of grants from the Walter and Elise Haas and

Evelyn and Walter Haas, Ir. Funds to develop relevant teaching materials.

Rhode participated in the national discussion of issues raised by the Anita Hill phase of the Clarence Thomas hearings. Among other things, she chaired the plenary session on sexual harassment at the Conference for Women Legislators held in San Diego last November by Rutgers's Center for the American Woman in Politics. Rhode's remarks appeared under the title "Sexual Harassment" in the March 1992 Southern California Law Review as part of that journal's symposium on the Thomas hearings.

The second Deborah L. Rhode Annual Lecture of Stanford's Institute for Research on Women and Gender featured Nan Keohane, president of Wellesley College.

David Rosenhan presented a paper at the American Psychological Association's 1991 annual meeting that attracted the interest of the New York Times (September 10, 1991). His conclusion—based on surveys of more than 2,500 Stanford undergraduates—is that religious commitment may be a stronger force than psychologists have traditionally credited. The School's Professor of Law and Psychology found that fully 57 percent of respondents surveyed believed in a personal god. Such faith, reports the professor, appears to "improve your mental health, especially in resisting temptation and organizing your life in terms of what matters and what does not."

Kenneth Scott, the Ralph M. Parsons Professor of Law and Business, has sounded a tocsin over proposals to extend federal government funds to shaky but still-solvent savings-and-loan institutions. His warning appeared in the April 3 Wall Street Journal under the title, "Yet Another 'Ouick Fix' for the S&L Mess." The difficulties of achieving a more permanent fix were discussed by Scott and R. Dan Brumbaugh, Jr., in a March-April Challenge magazine article, "A Political Logjam Still Blocks Banking Reform."

Kim Taylor, in her first year on the Law School faculty, has won an Associated Students of Stanford University teaching award. The honor, given in the category for graduate-level classes with an enrollment of less than 30, was bestowed by vote this spring.

Barton (Buzz) Thompson, Ir. and two colleagues from other law schools (Joseph Sax of Boalt Hall and Robert Abrams of Wayne State) have prepared an extensively revised second edition of Legal Control of Water Resources: Cases and Materials (West Publishing, 1991). An interview with Thompson on this general subject begins on page 10. Thompson gave a related speech in February at the tenth annual ABA Water Law Conference. His title: "Judicial Takings of Private Property: Limitation on State Water Regulation?" The former O'Melveny & Myers partner also has an article in the July Stanford Law Review titled "A History

of the 'Iudicial Impairment Doctrine' and Its Lessons for the Contract Clause."

Michael Wald, the Jackson Eli Reynolds Professor of Law, has been appointed to two policymaking groups: the California Judicial Council's 40-member Commission on the Future of the Courts, and the Carnegie Foundation's 26-member Task Force on Meeting the Needs of Young Children. His concern for children was also evident in an article, "Defining Psychological Maltreatment: the Relationship Between Questions and Answers," in Development and Psychopathology 3:111 (1991).

Wald's most newsworthy accomplishment this year was a timely study analyzing the impact that a November 3 ballot measure, California's Proposition 165, would have on children dependent upon AFDC or welfare. Released on September 1 by the Stanford Center for the Study of Families, Children, and Youth, the analysis is titled "Welfare Reform and Children's Well-Being." Wald concluded that the impact of the measure would be largely detrimental. Among the opinionmakers who took note was the Los Angeles Times, which made the study the subject of a Sept. 10 editorial.

Robert Weisberg presented a paper at a University of Colorado Law Review symposium in February on the future of legal scholarship. His topic: "Criminal Law, Criminology, and the Small World of Legal Scholars."

Deborah Weiss has been promoted to the rank of Associate Professor. A specialist in taxation and law and economics, she is the author of an article in the Fall 1991 University of Chicago Law Review entitled "Paternalistic Pension Policy: Psychological Evidence and Economic Theory."

James Q. Whitman also had an article in the Fall 1991 University of Chicago Law Review in his case on American constitutional history: "Why did the Revolutionary Lawyers Confuse Custom and Reason?" An article on a more ancient issue, the eclipse of Roman law by Lombard, or "barbarian," law, appeared in the Fall 1991 Law and History Review as "The Lawyers Discover the Fall of Rome." In a third Whitman article, "A Note on the Medieval Division of the Digest," Whitman investigates an unsolved mystery: how the Digest of Justinian became divided into three parts. This was published in a trilingual European journal called Legal History Review (the English title) and published in Amsterdam.

Whitman, who holds a Ph.D. in intellectual history from the University of Chicago as well as a J.D. from Yale, joined the ranks of Stanford associate professors this fall. □

NECESSITY OF LIFE

Continued from page 14

Terrific. Then why is water marketing controversial?

Some people oppose it on the ground that the environment is likely to be the loser in a water policy driven by money. In their view, water that farmers can conserve should go back to the rivers, not to metropolitan areas.

Opponents also point to the disruption that water sales can have on farming communities. Almost half the farmers in the Arizona county of La Paz, for example, have sold their water rights since 1985 to cities and other entities. The ultimate impact on the local community—banks, support economy, tax revenue, and selfimage-may be severe. There is growing pressure in state legislatures to devise some sort of protection for local communities.

The water that farmers are sellingisn't it already subsidized by the taxpayer?

The water subsidies that the nation provides western farmers are a huge problem, although the subsidies are lower now than when I studied with Charlie. Since 1902, the federal government has built massive irrigation projects in the West, given farmers decades to pay back the costs interest free, and provided millions of dollars in more direct subsidies.

To give you an idea, the Department of Interior estimated that in 1986 alone, its subsidies for irrigation water came to \$534 million. The total since subsidies began was almost \$10 billion—and these figures are probably understated.

We're talking big bucks.

Very big bucks. The subsidies have led to a variety of problems. First, farmers have had an incentive to press the federal government to build project after project, even when a project makes no economic sense. Another major problem has been that because the water costs so little, farmers have had little incentive to conserve.

Do the subsidies affect what crops are grown?

Definitely. For instance, a farmer may

have a choice between two different types of crops. One type, like rice and cotton, requires a lot of water but little labor. The other, like fruit and nut trees, requires less water but more labor. If you supply cheap water, the farmers are going to grow the crops that don't require a lot of laborwhich is relatively costly—but consume lots of water-which they get for a song. This, of course, reduces employment for farm workers.

So you can see that subsidization of water leads to a variety of different evils, some of which, like lower employment, are not ones we would immediately suspect.

The law of unforeseen consequences...

Exactly. Another interesting sidelight to this problem involves surplus crops—crops that the federal government pays many farmers not to grow because we have too much. Some of the land irrigated by federal water in the early 1980s it was almost half the land—is being used for such crops. So, in effect, we are paying some people not to grow crops that we are subsidizing other farmers to grow.

That seems crazy.

I think most people would consider the subsidies outrageous. Unfortunately, even when you recognize a bad policy, you still have the problem of how to back out equitably. The subsidies have been in effect for many years, and land has changed hands at a price that reflects the expectation of subsidized water. If today we eliminate that subsidy, we devalue the land and impose a serious loss on current owners.

Is sentimentality about farm life part of the problem?

I don't have a great deal of sympathy for the argument that farming is an important way of life that we should subsidize merely to preserve it. If economically we need fewer farms, the best thing would be to face the realities and help make the change easier for the marginal farmers.

But you're right that this has political dimensions. Changes in the subsidy policy have implications not just for individual farmers but for the financial life of whole communities. Politically, it's less controversial to keep the subsidies flowing.

Yet we express moral outrage over government supports to farmers in Japan and France.

Of course. Countries always attack foreign subsidies and trade protections, while arguing that their own are somehow justified.

But we are making progress in at least reducing our water subsidies. In the 1982 Reclamation Reform Act, Congress increased the price that most western farmers must pay for federal water.

Groundwater seems to be another new issue. Aren't we cutting into "capital" by pumping it too fast?

Definitely. Rivers are a renewable resource: We can use all the water each year—with unfortunate consequences for fish and wildlife-but the river itself will return the next year. We have not destroyed the long-term potential of that water resource.

Groundwater, on the other hand, has taken millenniums to accumulate. There is generally some inflow to most aquifers, but when we use more than that—which is known as the safe yield-we are slowly but surely depleting a capital resource just as we are depleting oil, gas, and a variety of other minerals. The only problem is that we have substitutes for those other resources but not for water.

We're actually quite dependent upon groundwater in the United States. People who don't grow up in rural areas typically think that our water comes from rivers and lakes. In fact, about one-quarter comes from underground aquifers. And of the water we use for domestic purposes, about half is from aquifers.

Currently, about two-thirds of all aquifers in this country are being overpumped, at a rate about one and a quarter times their natural recharge.

Are people taking this seriously enough?

Not really. The problem is that in the past we've bailed people out. Take the Central Valley in California: For many years, residents depleted the groundwater rapidly, to the extent that many portions of the valley were subsiding several feet each year. When the farmers became concerned, the answer was to replenish the groundwater by importing federal and state water!

Until people believe that they have to live within their resources, we're going to have sizable groundwater problems. In fact, there are already areas of Texas, Oklahoma and Nebraska where the groundwater is running out, and farmers are having to resort to drought farming.

Libva was once the "breadbasket of the Roman Empire"...

It happens. There was an advanced civilization in this country that may have died out because it misused its water resources-the Hohokam Indians of Arizona. Starting around 300 B.C., they developed an impressive irrigation system involving more than 125 miles of canals. And then, sometime in the 13th or 14th century, they suddenly disappeared. One explanation is over-irrigation.

How does that happen?

When you irrigate, salts and other minerals in the water accumulate in the soil, eventually making farming impossible except for the most saltresistant plants. This is already happening in large portions of the United States. We are trying to resolve that by installing drainage systems to carry away the salt-laden return flows. But the problem then becomes: What do you do with that drainage water?

When irrigation drainage from a portion of the Central Valley was routed into the Kesterson Reservoirpart of the Kesterson National Wildlife Refuge—fish began to disappear, and many birds were born deformed or dead. The water was found to contain extremely hazardous concentrations of selenium.

I could use some good news about

Sure. The Clean Water Act has done a pretty good job of cleaning up the surface waters of the country. The Great Lakes are no longer dying. We don't have rivers that catch fire anymore. Fish are returning to waterways where virtually nothing lived 15 or 20 years ago.

However, we still have a long way to go. Two remaining pollution problems are toxic effluents, which we haven't addressed successfully, and, much more important, what are called "non-point sources" of pollution. Point pollution—effluent that comes out of pipes-is relatively easy to control, and that's where we've put our focus. But non-point sources, such as farm runoff, are a more intractable problem.

Farmers today use an amazing array of chemicals-fumigants, fertilizers, pesticides, herbicides, and antibiotics—that can get washed into our rivers. This is in addition to natural pollutants like salt and selenium. The agricultural industry and other sources of non-point pollution, however, happen to be politically quite powerful. Combine this with the regulatory problems of addressing pollution that doesn't enter water from a single point, and you'll understand why there hasn't been much in the way of corrective legislation.

A technological fix doesn't seem likely. No. It's more a matter of backing up and requiring people to change their practices. You want to encourage farmers to reduce their use of pesticides and herbicides. That's much more difficult than imposing an endof-the-pipe fix.

Is quality a problem with groundwater, too?

Even more than with surface water, because we ignored it for much longer. One reason is that groundwater is relatively invisible. Another is that we used to entertain the happy theory that the process by which tainted water percolates down through the soil would naturally filter out impurities. Now, of course, we know that contamination of underground aquifers is a real problem. And once an aquifer is contaminated, it is very difficult and expensive to clean up.

Many people don't know that underground aquifers can be more than simply a source of water; they can also be a good place to store water to save water during wet periods to use in dry periods. The problem with a contaminated aquifer is not only that we can't use the water already down there, but that we have also lost its potential storage capacity. Los Angeles would love to store water in the San Gabriel aquifer, but can't because of contamination. It will take years and millions-if not billionsof dollars to clean up.

If you had the power to make one change for the better, what would that be?

Compel people to pay the full cost of the water they receive. There are really two parts to that. The first is to eliminate subsidization, so that we recognize once and for all that water is a scarce resource and are forced to consider its cost in our decision making. The second is to make sure that the price of water includes the environmental harm—from the impact of the water projects to the cleanup of any pollution that the water use creates.

In this sense, are you a law and econ

That's right. Moral persuasion and "command and control" regulations are important—we shouldn't ignore them—but the pocketbook talks much more effectively. Economics is one of the most powerful tools we have for influencing behavior, and we should use it unless it has very inequitable consequences.

I'm amazed at how low my water bills are.

Residential water rates are incredibly low. Many urban and suburban residents regard water as almost a free resource. Unfortunately, most of us do not pay the full cost of the water we use-just like the western farmers we criticize. Many cities, for example, subsidize water rates with property tax revenues, artificially keeping water rates low.

A stealth charge.

Yes. In addition, there are some communities where users still don't pay by the amount they use. Sacramento, California, for example, has no water meters; you pay a flat fee, no matter how much you consume. In a western community where water is scarce, that makes no sense at all. You want people to have to confront the true cost of the water they use.

What are the chief political or economic barriers to such reforms?

Most water is supplied by governmental agencies, and the last thing the government ever wants to do is increase fees of any sort. Things are going to have to get a lot worse before we see fundamental changes.

Look at the history of droughts anywhere in the United States, and you will find that conservation measures are lifted almost immediately after the drought is declared over.

Like the oil crisis a few years ago.

It's very much the same. The notion that we should prepare for crises is not endemic to our societal personality. Even worse than our ability to ignore the past is our willingness to ignore potential problems in the future.

The greenhouse effect—global warming-is a serious threat. However, it is not visible to the public. And until a problem becomes visible, we generally ignore it. Furthermore, once a problem does become visible. we tend to fixate on it. This has led to a misprioritization of our environmental laws.

The priorities issue—haven't I seen articles in Science about this?

Yes. One of the most valuable things that Administrator [William] Reilly is doing at the Environmental Protection Agency is trying to reorder the nation's environmental priorities. Early on, he asked the Science Advisory Board to identify and rank the environmental problems facing the United States. He compared that with surveys of the public's environmental concerns, and found very little correlation. At the top of the scientists' list were such things as global warming, radon, and indoor air pollution—none of which is very high on the public's list.

Reilly is now trying to reeducate the public, Congress, and the rest of the Executive Branch about what our priorities should be and where our money should be going. I wish him luck.

If rich countries like ours have trouble facing reality, imagine what it's like for developing countries.

The environmental problems of the developing countries—and some developed countries, such as those of Eastern Europe—are tremendous in comparison to ours. The world community has just begun to think about how to address these problems, and that's why I'm so pleased we have a course now at Stanford on international environmental law.

Some of the very interesting water questions these days are international. Take the deal I mentioned between the Metropolitan Water District and the Imperial Irrigation District. One way the Imperial people plan to conserve water is by lining their canals, thereby reducing seepage in transit. The problem—and this illustrates my earlier point about the interrelation of water use-is that seepage from those canals isn't lost. It goes into an aquifer that extends under the Mexicali region of Baja California, in Mexico. Not surprisingly, the Mexican farmers who depend on that aquifer are upset.

You mentioned a course in international environmental law. Is there anything else noteworthy about the environmental curriculum?

Absolutely. We now offer a large and broad curriculum in environmental and natural resources law-with far more courses than Harvard or Yale. [see box].

Our program is also quite innovative. A good example is my basic environmental law class. The traditional approach was to march students through the black letter of federal environmental statutes. Not only was that boring, but the information was likely to change. So I focus on the processes-administrative, legislative, judicial, and political—by which environmental policy is formulated in the United States, and on how the students as representatives of environmental groups, government or industry can help influence those processes to help their clients and to promote societal goals.

The students also participate in environmental negotiation games and in at least two major simulations. In one simulation, the students draft statutes addressing current environmental problems. In another, students take the role of lawyers representing various parties to a dispute over the cleanup of a hazardous waste site.

How many professors are involved in this program?

John Barton, Hank Greely, Bob Rabin, and I are all engaged in research and teaching in the environmental and natural resource field. Given the many facets of our program and the growing student interest in this area, however, we're still stretched thin.

Are you linking up with relevant people elsewhere at Stanford?

Yes. There are many faculty members around the University who are interested in environmental issues, including water questions. Stanford's Institute for International Studies has organized an interdisciplinary faculty seminar, which meets once a week, where faculty members share their current research on environmental issues.

In addition, a group of us here at Stanford received a large grant last year to study water allocation issues in California.

For undergraduates, the University has begun offering an undergraduate environmental curriculum taught on an interdisciplinary basis.

You can see why I'm very excited about the future of environmental studies at Stanford and at the Law School in particular.

Are you open to calls from interested alumni?

I'm eager to hear from anyone who is interested in what we're doing. To get more input from practicing lawyers and policy makers, we organized an Advisory Council this year to give us frequent guidance. And many other alumni have volunteered valuable help and advice. In my opinion, the success of our program depends on maintaining close connections with alumni and friends on the "front lines." □

Further Reading

Norris Hundley, Jr., The Great Thirst: Californians and Water, 1770s-1990s (University of California Press, 1992).

Marc Reisner, Cadillac Desert: The American West and Its Disappearing Water (Viking, 1986).

Donald Worster, Rivers of Empire: Water, Aridity, and the Growth of the American West (Pantheon,

FINE PROPOSAL

Continued from page 17

Primary and secondary school educators typically face no such competition. Students are generally assigned to schools, and neither students nor parents can reward superior performance nor penalize inferior performance. Because enrollment, funding, and other resources neither increase nor decrease materially if a school does a good or bad job of educating its captive student body, educators have little incentive to do anything other than take the easy way out.

Is it any wonder that our primary and secondary education system is a bureaucratic backwater and national embarrassment? A dose of competition at the primary and secondary level-whether by a voucher system that allows a choice of schools or by any other competitive means-might not solve all our education woes, but could go a long way toward improv-

ing our school system.

Food and Drug Administration. Incentives at the FDA have been biased for decades. Until recent disputes over the pace of approval for certain AIDS and Alzheimer's drugs, the agency was subject to political risk only if it approved a drug that later proved to have adverse side effects. The FDA was not rewarded, however, if it moved promptly to bring to market pharmaceuticals with expected benefits in excess of risks. It should therefore come as little surprise that the U.S. has a lengthy drug approval process costing industry and consumers billions of dollars a year. The process eats years off valuable patent life, and leads to situations in which useful drugs are available in Western Europe years before they become available in the United States.

Is one solution to this problem to reward the FDA for accelerated approval of safe and effective pharmaceuticals? More boldly, one could explore partial privatization of the drug approval process, while holding constant or modifying the standards for approval. Suppose the government licensed high-quality independent laboratories to assist the FDA in making determinations, and also allowed drug companies to fund this research, subject to appropriate safeguards. Suppose also that these private laboratories were subject to civil liability for side effects of any drugs they might approve, as well as criminal liability for particular forms of misconduct.

Because such laboratories would not be subject to certain bureaucratic restraints, they could hire at pay scales above the government's, and purchase more state-of-the-art equipment and facilities. Given the large number of qualified biomedical research institutions in this country, it is conceivable that a privatized adjunct to the FDA could help the agency do a faster and better job. Indeed, recent FDA scandals involving bribery and falsification in the agency's generic drug approval process underscore the potential for abuse in the current

Predictive agencies. Many government agencies are in the prediction business and vulnerable to the charge that their forecasts are manipulated

for political ends.

The Congressional Budget Office, for example, generates forecasts of the gross national product, inflation, unemployment, interest rates, and a variety of other economic variables. It is, rightly or wrongly, subject to the suspicion that its forecasts are slanted to suit the purposes of the congressional leadership.

The president's Council of Economic Advisers forecasts essentially the same statistics. It is, rightly or wrongly, subject to the suspicion that its forecasts are slanted to suit the

purposes of the president.

The Central Intelligence Agency generates a blinding range of predictions about foreign economic, social and military developments. As the Gates confirmation hearings illustrate, it too is suspected of politicization.

But if an agency's job is to provide accurate predictions, why not tie a portion of each agency's compensation to its success as a prognosticator? If CBO or CEA do a better job than the Blue Chip forecasts, then they could get a bonus. If they perform worse, they would take a cut. Similarly, the more accurate the predictions of the CIA's analysts, the greater their reward.

Indeed, the CIA provides a rich environment in which the efficacy of incentive programs could be empirically tested. Analysts with responsibilities for different countries or regions could be assigned either to flat-rate or to incentive pay scales tied to the accuracy of their predictions. If, at the end of a period of years, analysts with incentive pay have provided more accurate forecasts, then, at a minimum, incentive compensation might warrant greater scrutiny.

Congress. As implausible as the preceding suggestions might seem at first blush, the idea of incentive compensation for members of Congress sounds even more far-fetched. How would we even begin measuring congressional performance? How would we quantify the value of egalitarian goals, of civil justice, of the environment, of foreign aid, of national defense, of health care? And even if we could measure their costs and benefits, how could we develop a consensus about folding these activities into a single incentive compensation plan?

This statement of the problem, however, may make it more complex than need be. Perhaps we should consider a much smaller set of measures for which there is already broad consensus-for example, a healthy gross national product. A growing economy creates jobs and generates revenues that can be used to support social programs. Tying congressional pay to real GNP growth over a suitably long period, adjusted to correct for the effects of deficit financing, could have several benefits.

First, it could create an incentive for cooperation among members of Congress and reduce the energy Congress now devotes to measures that benefit special-interest groups at the expense of society as a whole.

Second, it could cause Congress to pay increased attention to the cost of regulation that it imposes on the economy. Because of deficit politics, the incentive is now overwhelming to fund costly new programs through off-budget requirements that force expenditures onto the private sector.

Third, it could induce Congress to consider more carefully the economic costs of social programs that would otherwise be adopted on the basis of

wishful projections.

The shortcomings of even such a simple plan would be legion. The GNP does not calculate the value of clean air, or quality of life, or a scenic

vista. But the question is not whether we can design a perfect incentive plan. We know that we can't. The question is, instead, whether we can design a plan that works better than the one we now have in place. That is a far easier hurdle to clear.

In sum, it's time we recognized that we get what we pay for in the public as well as private sectors. If elected officials are rewarded by fixed salaries no matter how poor their work, and have a good shot at reelection once they attain incumbent status, then we have little reason to be surprised about the woeful state of government performance at the federal, state, and local level.

Risk and reward have a place in political and corporate America. We should be able to reward government officials who do their jobs well and provide desired services at lower costs. We should also be able to penalize and fire those who don't.

That is, I think, a promising new area of inquiry. As a first step, the challenge is descriptive. To what extent can governmental failures be explained as rational responses to perverse incentives?

As a second step, the challenge is prescriptive. Can we invent a better mousetrap? Can we come up with feasible incentive compensation systems that lead to demonstrable improvements in government service at a wide range of agencies?

I think we can. The forces of inertia will certainly oppose any such innovation. After all, substantial gains accrue to many beneficiaries of current non-incentive compensation structures. But if a demonstration program here or an experimental plan there can get off the ground and prove the value of incentive compensation in the public as well as private sectors, then the potential gains for our nation can be quite substantial indeed. □



Professor Grundfest joined the faculty in 1990 after four years as a commissioner of the United States Securities and Exchange Commission. He teaches

corporate law, securities regulation, and mergers and acquisitions.



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.

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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:

President's Commission on White House Fellowships 712 Jackson Place N.W. Washington, D.C. 20503

(202) 395-4522

The application deadline is December 15.

Alumnitae **GATHERINGS**



Washington D.C.—The Mexican embassy's Jose Luis Bernal (center), minister for congressional relations, hosted a crowd including Joshua Bolten '80 (left) and Montana Senator Max Baucus '67 (right).



D.C.—Trade expert Bolten '80

HE CAMARADERIE of first-year study groups and Crothers Pub parties may be long gone, but graduates of the Law School continue to meet and make friends at events as far-flung as Paris and as near as Frost Amphitheater.

Stanford Business School and Law alumni/æ in Washington, D.C. were welcomed in from the cold at a February 6 gathering at the Mexican Embassy. After Ambassador Gustavo Petricioli delivered his welcome, the group heard a lively discussion on the proposed North American Free Trade Agreement. Joshua Bolten '80, General Counsel to the U.S. Trade Representative, and Manuel Suarez-Mier, Minister of Economic Affairs, were the speakers. A toast to Terry Adlhock, JD/MBA '70, for planning the event.

On the "other coast," a February 28 event in Los Angeles featured "A Close Encounter with the Ninth Circuit." Ellen Borgersen, Associate







Los Angeles—Judges Pamela Rymer '64, Cynthia Hall '54, and William Norris '54 (top, I-r) made a distinguished panel. Carlton Seaver '75 and Rufus Rhoades '59 (left, I-r) were at the luncheon event.

Washington, D.C.—Congressman-Professor Tom Campbell (above) was at a July wine-tasting in the capital city.

Dean for Academic Affairs, moderated a panel made up of Judges Cynthia Holcomb Hall '54, William A. Norris '54, and Pamela A. Rymer '64. The trio discussed the challenges facing our overloaded courts.

Grads in San Jose listened to Professor Robert Mnookin talk about dispute resolution on March 18. Mnookin, who directs the Center on Conflict and Negotiation at the Law School, gave several interesting examples of successful mediation. His lecture was followed by a stimulating question-and-answer period.

The School's Law and Business curriculum was the topic of conversation on April 28, when alumni/æ in New York lunched at the Yale Club with Ronald Gilson. Then on leave from Stanford for a year at Columbia's Schools of Law and Business, Gilson provided a bi-coastal view of

Stanford's law and business program, and discussed its relevance to the legal community.

University of Chicago Professor Douglas Baird '79 welcomed Chicago-area graduates to a luncheon at the University Club on April 29. Also





ABA 1992—The Schools' annual reception was hosted by Dean Brest (left). Stanford denizens (above) included Dan Monaco '50 and Judge Miriam Wolff '40.

San Francisco—Second-years Ariana Wright, Jaime Areizaga, Lisa Hayden and Cynthia King (below, I-r) were snapped at the summer student-alumni/æ gathering.

the speaker of the day, he discussed bankruptcy perils and Chapter 11.

On May 9, Bay Area grads enjoyed a historic opportunity to hear Mikhail S. Gorbachev deliver a School-sponsored lecture at Frost Amphitheater. [See cover story.]

Trader Vic's at the Capitol Hilton was the tropical venue for a May 20 meeting of the Washington, D.C. law society. Senator Tim Wirth (PhD '73), a longtime advocate of the environment, spoke about global warming and the importance of educating people worldwide about its dangers.

Students newly admitted to Stanford Law School, along with current students and graduates, got together for several regional events. A Washington, D.C. wine-tasting on July 22 organized by Randy Smith '75 had Congressman and Professor Tom Campbell on hand to welcome the group. In New York City Marsha Simms '77 hosted a party at her home on July 27. And a stunning sunset helped create a beautiful setting for a similar reception on July 16 at the Bankers' Club of San Francisco, where Professor Kim Taylor spoke.



Even a visit from the Queen of England to France's capital didn't stop alumni/æ in Paris from gathering for a luncheon on June 9. The guest speaker, Professor Kenneth Scott '56, shared his views on the state of the Law School and University. Michael Ledgerwood '64 organized the event.

The 1992 American Bar Association's meeting in San Francisco was the perfect excuse for an alumni/æ reception on August 10 at the Sheraton Palace. Grads mingled in an ornate

room overlooking the hotel's lush Garden Court. Dean Paul Brest addressed the group informally.

In Los Angeles, graduates congregated for their annual picnic at the Hollywood Bowl pops concert. The orchestra played the magnificent melodies of Duke Ellington, Leonard Bernstein, Stephen Sondheim, and John Williams. Geoff Bryan '80 coordinated the August 15 get-together.

-Margery Savoye

LETTERS



Howard Bromberg's historical article on Benjamin Harrison ["Our Professor, the President," Fall 1991] brings back fond memories of my late

grandfather, Aylett Cotton, AB 1894 (not to be confused with my quite active father, Aylett Cotton, Jr., AB 1935, JD '38). Grandpa was a resident of Encina Hall during President Harrison's stay, and Harrison stories are part of our family lore.

Your readers may enjoy the following anecdote, as recounted in my grandfather's unpublished memoirs: "Harrison had with him his grandson, whom we all called 'Baby McKee.' One day he was attempting unsuccessfully to teach his grandson how to fly a kite in a field near Encina, when I happened along. I had flown many kites as a boy in San Francisco, and noticed the tail was too short. I offered my assistance to Harrison, and soon the three of us watched the kite sailing high over Encina. At the time I was thrilled to think that I had achieved friendly terms with a man who had been President of the United States-my mother could have hoped for nothing more."

Grandpa was at Stanford on the opening day in October 1891 and graduated in May 1894 as one of the first two graduates to complete all his undergraduate work at Stanford. He went on to earn his law degree from Hastings. However, he had taken law courses during his last year at Stanford and in later years proudly called himself "Stanford Law School's oldest living alumnus." It would doubtless please him to know that my daughter, Brooksley Spence '91, represents the fourth generation in the Cotton family to study law at Stanford.

> Kristi Cotton Spence '81 Burlingame, California

Letters are welcome. Please direct to: Editor, Stanford Lawyer, Stanford Law School, Stanford, CA 94305-8610.

STANFORD LAW SCHOOL

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Coming soon

The 1993 schedule for the

Stanford Continuing Legal Education Program



For information, call: Joan Gordon, JD (415) 723-5905



1993

January 8

May 6-7

September 24-25

AALS reception In San Francisco

Board of Visitors annual meeting At Stanford

Alumni/æ Weekend 1993 With reunions for the Half-Century Club and for classes from the years ending in -3 and -8 At Stanford

For information on these and other events, call Margery Savoye, Alumni/ae Relations, (415) 723-2730.

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