

Stanford

LAWYER

Fall 1999

Set for a New Century

Dean Kathleen M. Sullivan

Photograph by Annie Leibovitz



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SET FOR A NEW CENTURY

With pioneer nerve and clarity of purpose, new dean Kathleen Sullivan has taken a forward-looking approach.



ABOUT THE COVER

Shortly after Kathleen Sullivan's appointment to the deanship last February, photographer Annie Leibovitz visited the Law School to conduct a portrait session with Sullivan, who appears in Leibovitz's recently published book *Women* (see page 8). That session produced the photos used on the cover and in the feature article about Sullivan in this issue of the *Lawyer*, compliments of Leibovitz. Special thanks to Arline Wyler, assistant to the dean, and Jeffrey Smith of Contact Press Images, for their help in obtaining the photographs. © Photograph courtesy of Annie Leibovitz/Contact Press Images.

A tradition of innovation, a time of opportunity

BY KATHLEEN M. SULLIVAN



I AM DEEPLY HONORED and extraordinarily excited to have become the 11th Dean of Stanford Law School this fall. I am grateful for President Gerhard Casper's confidence in appointing me; privileged to succeed Paul Brest, whose vision and tireless efforts over the last 12 years have done so much for the Law School; and proud to inherit the legacies of the illustrious John Hart Ely, Bayless Manning, Tom Ehrlich, and the School's other deans now gone.

Stanford Law School enters the 21st century exceptionally strong, poised to capitalize on a moment of great opportunity. As I recently wrote to applicants for places in the class of 2003, those of us who teach here believe that Stanford already is the most exciting place to study among the nation's top law schools. There are several reasons this is so.

The first is that we offer a unique combination of the classic and the cutting edge in legal education. This is a law school whose pro-

fessors' casebooks dominate law teaching in this generation as they did in the last and that takes seriously the way in which the Socratic method teaches the analytic rigor and the creative power of legal argument. But it is also a law school that integrates legal analysis with the newest developments in other disciplines, from economics and finance to history and psychology. And it is a law school that teaches from case studies, simulated litigation and negotiation exercises, and clinical experience, including the provision of direct legal services to indigent clients at the East Palo Alto Community Law Project. Our faculty is filled with many of the best theorists in the nation. But it is also a faculty steeped in attention to practical reality and institutional detail. This is a law school where facts and empirical evidence matter, and where theories are judged by their relation to the practical world.

Such a balancing act between old and new is typical at Stanford. Our greatest tradition is a tradition of innovation. At the University's opening day exercises in October 1891, inaugural President David Starr Jordan said, "Our University has no history to fall back upon....

No tender associations cling ivy-like to its fresh new walls. It is hallowed by no traditions; it is hampered by none. Traditions and associations are ours to make.” Since then, Stanford has developed many fine traditions, but we continue to pride ourselves on being hampered by none.

Another reason this is such an exciting moment in the Law School’s history is that a second bridge between past and present is now so strong—that between the School and its over 7,000 alumni. Thanks to your generosity and hard work, we have raised over \$107 million in the five-year capital campaign whose culmination we celebrate this fall. We have more than doubled our number of Stanford Law School alumni volunteers.

useful reflection of and contribution to the real world. In short, you have allowed us to project ourselves into the future with the kind of hard-nosed pragmatism that the Stanfords, Jane and Leland, wanted their university always to pursue. Leland Stanford’s advice to the first class on opening day in October 1891 was that they “Remember that life is, above all, practical; that you are here to fit yourselves for a useful career.”

I am committed as Dean, with your help, to making Stanford Law School the best that it can be. The School is exceptionally well positioned to be a leader in responding to the legal, business, and public policy challenges of rapid technological change and an increasingly glob-

tion to research and teaching about international law, trade, business and human rights. It enables us to benefit from exchanges with scholars and practitioners in Asia and Latin America, as well as the global legal world beyond.

And our position as Stanford University’s law school gives us unparalleled advantages over our counterpart schools. The University is in a period of extraordinary vibrancy and momentum. Opportunities abound for interdisciplinary work with world-class scholars in business, engineering, medicine, economics, and the humanities and sciences, and for increased ties between the Law School and the Business School, the Hoover Institution and the Institute for

“Stanford Law School is home to great scholarship. It is a home to great ideas. But it is nothing without the human energy and potential that pulse through our classrooms and corridors.”

We have increased alumni participation in annual giving—an all-important indicator of the School’s financial health—from 28 to 40 percent, placing us in realistic shooting distance of our peers on the East Coast, where alumni commonly give at rates upward of 50 percent.

In addition to financial support, you have contributed your ideas. You have helped us to understand the changes now affecting our profession, from the global economy to the information revolution to the competitive pressures that have challenged old structures of practice. You have helped us to understand that law, business, and public policy exist in a seamless web. You have enabled us to better research, interpret, and improve our understanding of law and legal institutions, and to make our teaching of the law a

al economy. Our location in Silicon Valley, the modern engine room of the economy, gives us an increasing edge in attracting the most energetic and entrepreneurial law students in the nation. It enables us to be at the forefront of research and teaching about electronic commerce, intellectual property in cyberspace, and the legal and ethical issues posed by advances in genetic knowledge. It allows us to think about new applications of information technology to the way that law is taught and practiced. And it places us at the center of new and emerging forms of business organization and law firm governance that may well predict the future of the profession nationwide.

Our position as the leading law school on the Pacific Rim gives us a valuable vantage point from which to increase at-

International Studies. And the rich diversity of Stanford’s students and faculty fits us for a future in an increasingly heterogeneous society and global world.

The robust and generous support of our alumni and friends is the lifeblood of the Law School. Stanford Law School is home to great scholarship. It is a home to great ideas. It is located in paradise. But it is nothing without the human energy and potential that pulse through our classrooms and corridors; it is nothing unless it is a conduit for that energy and potential to make a contribution to our economy, our society, and the larger world; in short, it is nothing without you, our alumni and friends. I look forward to working closely with you in the years to come, and am counting upon your continued energy and support. ■

EDITOR

Kevin Cool
jkcool@law.stanford.edu

COMMUNICATIONS DIRECTOR

Ann Dethlefsen
annd@stanford.edu

ART DIRECTOR/ DESIGN & PRODUCTION

Amparo del Rio
amparo@ix.netcom.com

COPY EDITOR

Deborah Fife

CONTRIBUTING EDITORS

Nina Nowak
Erika Wayne

CLASS CORRESPONDENTS

57 estimable alumni

EDITORIAL INTERNS

Michael Finney (AB '00)
Gloria Huang (AB '01)

PRODUCTION ASSOCIATES

Joanna McClean
Linda Wilson

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Correspondence
and information should be sent to
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Stanford Law School,
Crown Quadrangle,
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e-mail law.alumni.pubs@
forsythe.stanford.edu

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Letters

Stick to the facts

Although I enjoyed your article on Cheryl Mills, I would like to share a comment and a criticism with you.

First, I suspect you overestimate the effect on the country as a whole of Mills's presentation. It was very good, and very helpful to the President's case. However, fame is fleeting and the national attention span is very limited.

Second, while I assume your comment that "Mills's words... applied a cauterizing iron to the rotting skin of the proceedings, and Americans suddenly recognized the smell" accurately portrays your opinion of the proceedings, I believe they are misplaced in a profile. Your opinion of the impeachment proceedings might be appropriate political commentary on an editorial page, but it doesn't belong in a profile.

While I continue to disagree with the position Mills argued, I appreciate her skill in making the argument and defending that position. I'm glad to have read your article and learned more about this talented Stanford lawyer.

Gregg Davis '82

A moral quandary

I just have to comment on the cover of the Summer 1999 *Stanford Lawyer*: The cover advertises your article "The Moral Force of Cheryl Mills: The deputy White House counsel makes a case for the country." The basic impression of this title is that Cheryl's stance was moral, her conduct was moral, and that she was on the side of the country. While I respect her accomplishment as an almost-classmate, I think that your title (unlike your article) is a one-sided endorsement of her defense of the President.

It may shock you that some of us consider perjury in federal court immoral

and the defense of the President merely partisan. If this administration has shown anything, it is that lawyerly skill and morality are not the same thing. Maybe the next cover will feature a House impeachment prosecutor?

Jan van Eck '91

Good job, bad result

What a wonderful story about Cheryl Mills, and at the same time how ironic that her considerable moral virtues and legal talent should be used in the defense of a Presidency that has done so much to corrupt the institutions of our government.

Fred Caspersen '71

What happened to fairness?

I eagerly await the day when Stanford Law School at last attains its proclaimed ideal of equality among and fairness toward all segments of our community. A harbinger of such might be, for example, a cover story in *Stanford Lawyer* depicting and celebrating the exploits of a former law student who participated in the defense of, say, Clarence Thomas, Bob Packwood, or Richard Nixon. (If I remember correctly, none of those guys ever lied to a grand jury.)

As for the latter two, against whom there was admittedly some evidence of wrongdoing, these gentlemen actually showed considerable remorse (quick, somebody grab the Prez a dictionary), and took subsequent action based on what they perceived would be best for the country, not necessarily themselves.





It is further interesting to discover that our heroine of the present tale, Cheryl Mills, got her start with the Clinton bunch "helping craft ethics policies." Which brings up the obvious question: were they rotten policies or, more likely, did the Liar-in-Chief and his corrupt associates

merely ignore them?

The only Stanford hero to emerge from the Clinton mess is Professor Tom Campbell. There's your cover boy. He had the courage to do that which was honest, decent, and appropriate, placing his integrity above personal, political, and professional considerations.

Mark Williams, JD/MBA '93

Profile ignored Clinton's conduct

Although I am as supportive (and vicariously proud) as other alumni of the success of fellow Law School graduates, and certainly expect *Stanford Lawyer* to profile prominent alumni in a positive light, I was offended by the profile of Deputy White House Counsel Cheryl Mills in the Summer 1999 issue of the magazine.

In short, the Lawyer championed Mills's "moral force," but completely omitted any mention of the actions of the man who—Mills "defended" in her "virtuoso

performance" before the Senate. Rather than "strengthening an executive branch bloodied by months of scandal and sordid testimony," I would argue that Mills contributed to the weakening morals of this country by apologizing for an adulterer, philanderer, liar, etc. Her willingness to go to bat for an elected official who had oral sex with a subordinate less than half his age while on the telephone with members of Congress is especially surprising considering the fact that she was raised in a military family that seems to have a very strong sense of ethics and family values.

Let's just call Mills what she is: an intelligent, articulate, hard-working defense attorney, who aggressively represented her client, but who should not be held up as a bastion of morality.

James R. Sutton '88

The country wasn't the client

I very much enjoyed your cover story on Deputy White House Counsel Cheryl Mills. However, I take issue with its tone and selective recounting of events.

As a lifelong Democrat and patriotic American (and, yes, a person may be both), it pains me to say that, with all due respect to the office he occupies, in my humble opinion, the President of the United States is a shameless scoundrel and an unrepentant scoundrel.

I do not criticize Mills for representing a scoundrel. As someone who has



FOLLOW-UP

Cheryl Mills '90, whom the Lawyer profiled in the Summer '99 issue, turned down President Bill Clinton's offer to be chief White House counsel and in October joined Oxygen Media as senior vice president for corporate policy and public programming.

In her new post, according to the company, Mills will oversee Oxygen's philanthropic activities and help develop its legal and political programming.

Founded in 1998 by an investor group including Oprah Winfrey, Oxygen Media consists of a network of websites and a 24-hour cable network that will launch in February 2000.

and does, I believe that representing scoundrels is a noble profession with an honored history, but the fact that the scoundrel's business and home address is 1600 Pennsylvania Avenue does not make the representation of that scoundrel any more or less noble or "moral."

Despite her and your claims to the contrary, Mills did not make a "case for the country." She made an eloquent and passionate argument on behalf of her client, William Jefferson Clinton. As even Mills acknowledges in the article, attempting to draw a distinction between representing the President and representing the Presidency is a meaningless exercise.

I understand that a primary purpose of *Stanford Lawyer* magazine is to promote Stanford lawyers. However, an article trumpeting the "moral force" of

"I believe that representing scoundrels is a noble profession with an honored history, but the fact that the scoundrel's business and home address is 1600 Pennsylvania Avenue does not make the representation of that scoundrel any more or less noble or 'moral.'"

Mills should have been more candid in chronicling her tenure as Deputy White House Counsel. Mills has never explained her role in the removal of documents from the office of Vince Foster after his suicide; the disappearance of important documents purportedly pertaining to Whitewater and other matters that she maintains were stolen from her car; her role in advising the White House and Democratic National Committee on the now-infamous fund-raising "coffees"; and her involvement in the merging of the White House and DNC computer databases. I believe that a plausible explanation is possible with regard to all of these events. Unfortunately, Mills has simply never given any explanation, plausible or otherwise.

Like most who watched her performance on the Senate floor, I was impressed by her poise and eloquence. I also respect how passionately she believes what she believes, even though I totally disagree. Let's hold off on the canonization, at least for now, though, shall we?

I look forward to reading (and perhaps disagreeing with) more provocative and interesting articles from you in the future.

David P. Harris '91

The other side of a sentence

As a public defender, also in Washington, D.C., I read with interest Adam Rosman's article 'The Sentence Goes Like This.' A sentencing hearing looks very different from the other side of the aisle.

Let me use as an example a recent client of mine, convicted of the same crime described in Rosman's article, possession with intent to distribute cocaine.

My client was 22 years old and the father of six children, all with the same

woman. He lived with the woman and their children and tried to support them. He dropped out of school to get a job when the first baby was born, and has worked for the same moving company for four years, making minimum wage.

He had one prior conviction for the same offense, but had never been locked up until he spent four months incarcerated awaiting sentencing in our case. During that time, he volunteered for the jail's work detail and took and passed a life skills course.

The Presentence Investigator, a court employee, recommended that he be sentenced to supervised probation.

When I addressed the court at the sentencing hearing, I emphasized my client's youth, and his attempts to be a responsible partner and parent while supporting six children with a minimum wage job. He had turned to selling drugs only out of desperation. I tried to convey the impact that a few months at the D.C. Jail—a dangerous, degrading, and lonely place—makes on such a young man. I told the judge that my client would be able to go back to his job, and that the social worker at my office had arranged for GED classes and a parenting course.

Although the Presentence Investigator had suggested probation, the prosecutor wasn't satisfied with the four months in jail my client already had served. She recommended three to nine years. She didn't know, and probably had never considered, what a prison term of that length would do to my client and his family. It's abstract to her.

To my client, a prison sentence means squalid living conditions, constant threats from other inmates, and no opportunity for education or job training. It means being sent far from home—the closest

prison is more than 30 miles away, and his family does not have the resources to travel for visits. To my client's family, a prison sentence means the loss of a partner, father, and provider, and a struggle to feed, house, and clothe themselves alone.

The judge sentenced my client to one to three years, to be followed by a two-year period of probation, with the programming we had suggested.

I left the courtroom with my client's family and explained the sentence to them. The reality that my client would not be coming home for at least a year pierced our hearts.

Back in the courtroom, the prosecutor and the marshal were joking with each other. The clerk was humming a tune as he wrote. I made my way downstairs to the central cellblock, called out my new client's name and number, sat on a cold, metal stool and greeted him through the mesh screen between us. But even as I introduced myself, I carried with me the pain of the morning's proceedings. The world would be a different place if prosecutors did the same.

Sarah Gannett '96

CORRECTIONS

Hon. David Tatel was incorrectly described in the Summer issue of the *Lawyer*. He is a judge on the United States Court of Appeals for the District of Columbia Circuit.

Two members of the Class of 1997 featured in a profile of Supreme Court clerks were misidentified in a photograph accompanying the article. Pictured were (left to right) Ara Lovitt, Allison Marston, Jay Wexler, and Cara Robertson.



STANFORD LAWYER welcomes letters from readers. Letters may be edited for length and clarity. Send submissions to Editor, Stanford Lawyer, Stanford Law School, Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305-8610 or by e-mail to jkcool@law.stanford.edu

A Startling Revelation

Study linking abortion to crime rate ignites controversy

VISUAL ARTS SERVICES



John Donohue

JOHN DONOHUE had never been so popular. When he arrived at his office on August 16, Donohue, Professor of Law and John A. Wilson Faculty Scholar, had 17 voice mail messages on his telephone from reporters and editors. By the end of the day, that number had grown to more than 50, and by week's end, topped 200. In the days that followed, Donohue appeared on MSNBC, CNN, NPR, and several local television stations, and was interviewed by scores of U.S. and European newspapers. The besieged professor wistfully confided to the *Washington Post* that "usually what I write languishes in obscurity."

The source of all the fuss was a study conducted by Donohue and a University of Chicago colleague, Professor Stephen Levitt, that linked the 1973 *Roe v. Wade* decision legalizing abortion to the dramatic 1990s drop in crime in the United States. Their findings—that the availability of abortion reduced the number of unwanted children in populations most at risk for becoming criminals—became the subject of intense scrutiny. And the study hadn't even been published yet.

Donohue and Levitt had been circulating the study for comment before finalizing it for publication, when a *Chicago Tribune* reporter learned about it and interviewed the two scholars. A subsequent front page article in the *Tribune* on August 15 touched off a media deluge.

Essentially, the study sought to answer a question that has perplexed criminologists for the past several years: why has the crime rate fallen so precipitously? The murder rate is down by more than one-third since 1990, and rates for all violent crime and property crime during the same time period have dropped by about 25 percent. "While many explanations for this decline have been offered, each of them has difficulty explaining the timing, large magnitude, persistence, and

widespread nature of the drop," wrote Donohue and Levitt.

The scholars point to three pieces of evidence to make their case. First, they say, the aborted pregnancies in the years following *Roe v. Wade* were disproportionately high among groups of women—typically poor and undereducated—whose children have a greater statistical probability of becoming criminals. Had those pregnancies produced children, those children would have reached the peak ages for criminal activity, 18-24, in the early 1990s, when crime rates began to drop. Second, states that legalized abortion before the rest of the nation were the first to experience this decrease in crime. Third, states with high abortion rates have seen a greater fall in crime since 1985 than those with low abortion rates, even accounting for other factors such as the booming economy.

The scholars estimate that for every 10 percent of total pregnancies aborted, a concomitant 1 percent reduction in crime results. This correlation drew the most criticism, although the authors took pains to emphasize that their findings were empirical, not ideological. "We did not set out to show that aborting children was a good method of crime prevention," Donohue said.

Most critics focused on the implications of the research rather than the findings themselves. But other commentators—including Stanford Law professor Richard Banks, whose op-ed article appeared in the *Los Angeles Times*—pointed

out that Donohue and Levitt merely followed the data to its logical conclusion, and should not be pilloried for an alleged racist or socioeconomic bias. "This study does not purport to explain, much less justify, racial inequality. Rather, it emphasizes one of the consequences of inequality: increased risk of criminality," Banks wrote.

Syndicated columnist Ellen Goodman noted that the study "has the whiff of common sense," and USC law professor Susan Estrich, writing in the *Los Angeles Times*, said, "There is much to be learned not only from the results, but also from our reaction to them."

The paper is now undergoing peer review at an economics journal. The study is available online at www.ssrn.com.

"We merely are saying that unwanted children are more likely to commit crimes than children who are not unwanted."

PICTURE THIS

Leibovitz Book Includes Sullivan

ANNIE LEIBOVITZ'S powerful portraits have been appearing on magazine covers for more than 25 years. Starting with her legendary work for *Rolling Stone*, and continuing through her longtime affiliation with *Vanity Fair* and *Vogue*, she has established herself as an astute observer of American culture. Her latest project, *Women* (Random House, 1999, 239 p., \$75) is a celebration of women at the end of the millennium.

Among the subjects in the book is Stanford Law School Dean Kathleen Sullivan. Sullivan appears on page 188, one of many portraits Leibovitz made of the new dean shortly after Sullivan's appointment last February.

Women includes 170 portraits, featuring both well-known subjects and an array of women from a broad spectrum of society. Factory workers, girl gangs, a choir in Harlem, cheerleaders, and show-girls appear alongside celebrities such as Hillary Clinton, Justices Sandra Day O'Connor '52 (AB '50) and Ruth Bader Ginsburg, Maya Lin, Oprah Winfrey, Susan Sarandon, Toni Morrison, and Elizabeth Taylor.

The book also contains the first major essay from Susan Sontag in 10 years. Sontag discusses how much the idea of what a woman is has changed since the first photographs of women were made. "Each of these pictures must stand on its own," she writes. "But the ensemble says, so this is what women are now—as different, as varied, as heroic, as forlorn, as conventional, as unconventional as this."

"I'm moved by the sense of dignity these women have," Leibovitz said. "That's what I want to convey in this book."



HOLLYWOOD screenwriters Karen Lutz and Kirsten Smith visited the Law School in September to conduct research for a script they are adapting from the novel *Legally Blonde*, written by former Stanford Law student Amanda Brown. The writing duo, which last spring scored a hit with their screenplay for *Ten Things I Hate About You*, observed several classes and attended a number of first-year orientation events. The film project is in development at MGM.

TOP 100

STANFORD LAW SCHOOL Dean Kathleen Sullivan and Professor Joseph Grundfest were named to the *California Law Business Top 100*, a compilation of the most influential lawyers in California, according to the magazine.



Joseph Grundfest

Compiled from votes by lawyers throughout the state,

the Top 100 also included Stanford Law alumni Donald Chisum '68, Warren Christopher '49, Mary Cranston '64, Gordon Davidson '74, Ronald George '64, Melvin Goldman '63, Beth Jay '72, Craig Johnson '74, Terence O'Malley '75, John Place, Jr. '78, and Richard Welch '77.

Christopher and Grundfest were among the top 10 vote getters.

Professors Barbara Babcock and Deborah Rhode were among 50 lawyers given special recognition for having received "significant mention from their colleagues in the bar."

Fighting Hate Crimes

Former U.S. Secretary of State Warren Christopher '49 is co-chairing a panel studying laws to fight hate groups in California. The panel also includes Dean Kathleen Sullivan. California Governor Gray Davis formed the panel following a shooting spree last summer by an avowed white supremacist at a Jewish day care center in Granada Hills. The panel will conduct a comprehensive study and prepare a report about laws relating to possible criminal or civil liability of hate groups, their leaders, and members.

Stanford Law School in the 20th Century

1900 Stanford one of 27 charter members of Association of American Law Schools



1901 First professional degree, LL.B., conferred upon James Taylor Burcham



1908 Trustees adopt resolution turning Law Department into Law School



Stanford Law School chapter of Order of the Coif established

1912

LEGAL EASE

Polinsky, Gilson, Black promote information sharing online

STANFORD LAW SCHOOL faculty have taken the entrepreneurial mindset indigenous to Silicon Valley and applied it to an initiative aimed at increasing access to legal research. The Legal Scholarship Network, consists of 37 electronic journals, including the working papers of such schools as Yale, Stanford, Chicago, Michigan, and Penn. LSN was conceived, developed and maintained at the Law School, and has become an influential resource, according to users of the service.

Founded by Charles J. Meyers Professor of Law and Business Ronald Gilson, Josephine Scott Crocker Professor of Law and Economics A. Mitchell Polinsky and Harvard Business School professor Michael Jensen, the Legal Scholarship Network makes working papers from scholars around the world available via the Internet. Subscribers regularly receive e-mail abstract journals describing new papers, with links to download sites and contact information about the author. The network is fully searchable.

More than 100,000 issues of electronic journals are delivered via e-mail each week, according to Gilson. Site licenses have been sold to 100-plus law schools, business schools, and law firms in the United States and abroad.

Professor of Law Bernard Black is managing director of the LSN, and several other Stanford faculty members—professors Joseph Bankman, Richard Craswell, Janet Halley, Richard Ford—in addition to Black, Gilson and Polinsky edit journals on the network.

LSN offers scholars quick and easy access to research that is fresh, says Black. Published research often doesn't

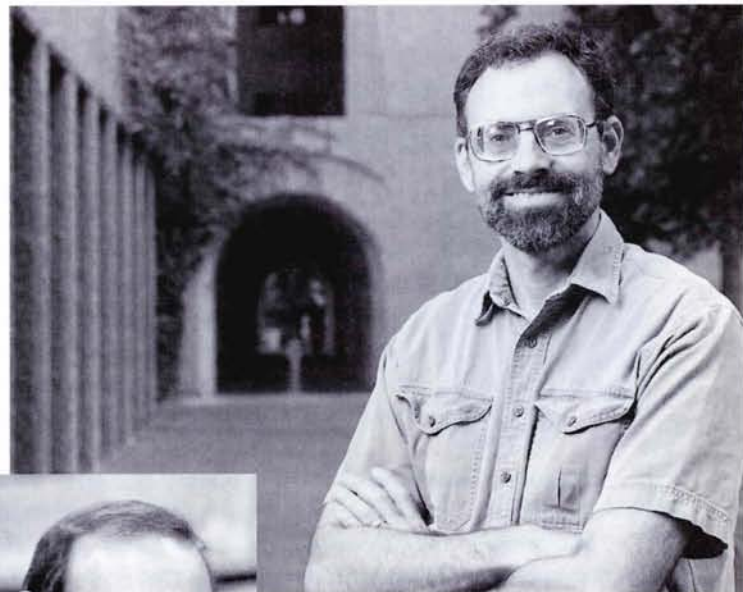
become available until a year or more after the original working paper appears, a lag that inhibits scholars' ability to stay current in their discipline. "A lot of what I read is in the working-paper stage," Black said. "I want to keep track of scholarship on the cutting edge, but if I wait until it's printed in a journal I'm operating with one eye closed."

Papers that otherwise would receive extremely limited circulation within academe now have a much broader audience, according to Gilson. "Working papers typically were passed around among a very small group of people, and if you weren't part of the group you didn't receive them," he said.

Scholars outside of that informal network now have a resource that levels the playing field, says Vic Goldberg, professor at Columbia Law School and a regular user of LSN. "This is tremendously important at small schools and particularly foreign schools," Goldberg said. "All of a sudden they have access to stuff they ordinarily would not be in the loop to see. Whereas previously they would have had to write for a copy, pay ten bucks, and wait several weeks for it to arrive, now they can simply download it from the network at a very low or

perhaps no cost and get it immediately."

Although Gilson sees electronic journals proliferating, he says they are not yet a substitute for print journals. The working papers on LSN are lightly refereed, but do not undergo the rigorous peer review that printed journals require. Plans are under way to develop a refereed electronic journal, and to broaden the reach of LSN. "Distribution of the LSN journals already is dramatically larger than any print journal," Gilson said.



Clockwise from left to right:
Professors Ronald Gilson, Bernard Black, and Mitchell Polinsky

1932

Depression forces faculty salary cut of 10 percent.

1943

World War II enlistments drop enrollment to 30 students.

1948

Law Review established, headed by future Secretary of State Warren Christopher '49



1950

University administration building remodeled to house Law School

ONWARD, UPWARD

Elias '72, named New Zealand chief justice



SIAN ELIAS, JSM '72, has become only the second woman in the world to ascend to the position of chief justice, named to New Zealand's highest judicial post in May.

Elias was a member of the Law Commission for five years, and has been involved in several of the country's most important cases. In 1988 she became one of the first two New Zealand women to be appointed Queen's Counsel. She joined the High Court in 1995, the second New Zealand woman to do so.

"Sian has had a spectacular legal career by any measure and her recent appointment represents a significant change in the character of the New Zealand judiciary," said Robert K. Paterson, JSM '72, a classmate and friend of Elias.

The Dominion, a leading New Zealand newspaper, applauded the appointment "... not because Justice Elias is a woman, though that is a milestone in itself, but because she is uniquely fitted to assume the role at this point in our history."

Noble '82 first American to head Interpol

RONALD K. NOBLE '82 has been appointed secretary general of Interpol, the international police organization, effective October 2000. A former federal prosecutor and currently a law professor at NYU, Noble will be the first American to hold the top Interpol post. He served as Undersecretary of the Treasury from 1993 to 1996, a turbulent period that included a lethal confrontation between federal agents and members of the Branch Davidian religious sect in Waco, Texas, and the bombing of the federal building in Oklahoma City. Noble's report on the agency's handling of the Waco event led to the departure of several high-ranking Treasury officials.



Downing '79 is new publisher of L.A. Times



KATHRYN M. DOWNING '79 in June was named publisher of the *Los Angeles Times*, the first woman to head the publication in its 118-year history.

Downing's appointment, a little more than a year after she was named president and chief executive officer of the *Times*, makes her one of the most powerful women in the newspaper industry. At age 46, she joins a handful of women to hold the top post at a major U.S. newspaper; others include Katharine Graham, former publisher of *The Washington Post*, and Cathleen Black, former publisher of *USA Today*.

The *Times*, with a circulation of more than one million, is the nation's largest metropolitan daily and has the fourth-largest subscriber base among all newspapers. It has won three Pulitzer Prizes in the past two years.

Craswell, Karlan, Kelman in New Posts

DEAN KATHLEEN SULLIVAN announced the appointment of three faculty members as academic associate deans this fall.

Professor of Law Richard Craswell will focus on supporting and promoting faculty research, Professor of Law Pamela Karlan will work with student affairs and help develop programs to enrich the intellectual life of students at the Law School, and William Nelson Cromwell Professor of Law Mark Kelman will help plan and review curriculum.

Craswell, who joined the Stanford faculty in 1998, has taught at the University of Chicago, University of Southern California, Georgetown, and Yale. He teaches contracts and secured transactions.

Karlan has been at Stanford since 1998. A visiting professor at both Harvard and Yale during her 10-year tenure at the University of Virginia, she formerly was assistant counsel for the NAACP Legal Defense and Educational Fund. Her principal teaching subjects are civil procedure, civil rights litigation, and criminal procedure.

Kelman, who earlier served for three years as academic coordinator at Stanford Law School, has been a member of the Stanford faculty since 1977. He teaches criminal law, property, and antidiscrimination law.

NICOLE BENVENUTO/NY TIMES

Stanford Law School in the 20th Century

1952

Graduating class includes future Supreme Court justices Rehnquist and Day O'Connor



Barbara Babcock first woman faculty member; William Gould first faculty member of color

1972

1975

President Gerald Ford dedicates opening of Crown Quadrangle



Sandra Day O'Connor becomes first woman named to U.S. Supreme Court

1981

1986

William H. Rehnquist appointed Chief Justice of the U.S.



Law School graduation was held May 16, several weeks before University commencement.

A GRADUATION ALL THEIR OWN

For the first time in its history, the Law School last May conducted formal graduation exercises prior to the University-wide event in June.

The decision to move Law School graduation to the weekend following final exams was authorized by Stanford President Gerhard Casper in response to students' requests. The schedule change ensured that law students no longer had to wait several weeks for commencement because of the differing academic calendars of the Law School, which ends classes in mid-May, and the University, which concludes study in mid-June.

Professor George Fisher, selected by the Class of '99 to receive the John Bingham Hurlbut Award for Excellence in Teaching, gave the commencement address.

STEVE GLADFELTER

NEWS & NOTES

DEBORAH RHODE,
ERNEST W. MCFARLAND

Professor of Law and immediate past president of the Association of American Law Schools, received a Pro Bono Publico Award from the American Bar Association for her pro bono and public service efforts. Rhode made pro bono a priority during her term as AALS president, writing and speaking often about the need for law schools to focus on their public service commitment. She appointed a commission to study and recommend ways that law schools could expand pro bono activities, and helped obtain grants to provide funding for implementing the panel's suggestions. As a result of those initiatives, AALS created a new section on public service and established two new staff positions as a resource for law schools that are creating or expanding pro bono programs.

JOHN MERRYMAN, NELSON BOWMAN SWEITZER AND MARIE B. SWEITZER Professor of Law, Emeritus, was awarded an honorary doctorate on October 15 by the University of Rome Tor Vergata in recognition of his contribution to Italian legal thought. Merryman's treatise "The Italian Style," written 35 years ago, in-

fluenced a generation of legal scholars in Italy.

Merryman, who also translated the Italian civil code into English, taught at Tor Vergata in 1963-64. The university earlier had hosted a scholarly conference in Merryman's honor.

ADELBERT H. SWEET PROFESSOR OF LAW MIGUEL MÉNDEZ was named a distinguished alumnus by Texas Southmost College and the University of Texas at Brownsville in recognition of his scholarly contributions in the fields of evidence and criminal law, and for his commitment to public interest law. Méndez worked as a lawyer for the Mexican American Legal and Education Fund, the California Rural Legal Assistance, and the office of the Monterey County Public Defender, and wrote an amendment to the Equal Rights Amendment while serving as a legislative assistant to California Sen. Alan Cranston. He will give the address at winter commencement exercises later this year at the university, his undergraduate alma mater.

Associate Deans Named—DEAN KATHLEEN SULLIVAN this fall announced the promotions of three

administrators to associate dean.

FAYE DEAL was named associate dean for admissions and financial aid. A 1982 graduate of Occidental College, Deal has been director of admissions and financial aid at the Law School since 1994. Prior to that she was assistant registrar and associate registrar at SLS, and worked three years as a preschool teacher.

SUSAN LIAUTAUD was promoted to associate dean of graduate and international studies. Since February 1998 Liautaud had been director of the Law School's Transnational Business Law Program. She holds bachelor's and master's degrees from Stanford and a J.D. from Columbia School of Law. From 1989 to 1997, Liautaud was a lawyer with Sullivan & Cromwell, working primarily in Paris.

SUSAN C. ROBINSON is now associate dean of career services, after working since 1997 as associate director in that office. Before coming to Stanford Law School, Robinson was an associate for Heller Ehrman White & McAuliffe in Palo Alto and at Farella, Braun & Martel in San Francisco. She earned her undergraduate degree at Wellesley College and a J.D. from Columbia School of Law.

1989 Loma Prieta earthquake damages Law School

1992 Mikhail Gorbachev delivers "Rule of Law" lecture

Five-year, \$50-million fund drive launched; raises more than \$100 million



Kathleen Sullivan, first woman to head Law School, succeeds Paul Brest as dean

1995

1999

“We Are Just G

With pioneer nerve and clarity of purpose, Kathleen Sullivan began her deanship at full speed and hasn't slowed since.

KATHLEEN SULLIVAN'S OFFICE chair is getting one heck of a workout. As she considers a question, the chair's occupant swivels 180 degrees and back, her fingers fashioned into a steeple, head slightly askew. She scans the landscape like a sentry on duty, antenna deployed. When the chair stops moving, listen up.

"I want Stanford Law School to be the place where law faculty most want to teach and the place where law students most want to study," she says finally, leaning forward for punctuation. And the chair begins to dance again.

Kathleen Sullivan is all about movement. Installed as dean of Stanford Law School on September 1, 12 days after her 44th birthday, Sullivan has blasted through the first few treacherous, twisty miles with hardly a skid mark. The first woman to lead the Law School—or any of Stanford's seven schools—has embraced her pioneer status with a pioneer spirit, and demonstrated a restless intensity. She has big plans, and like the moderate earthquake that shuddered through the Bay Area just before she took office, she's ready to rumble.

"We're poised right now to become the most exciting place in the country for legal education," Sullivan said. "We have only just begun to realize the true potential of Stanford Law School. This is no time to sit back and rest on what we've accomplished."

PHOTOGRAPH BY ANNIE LEIBOVITZ



etting Started”

BY KEVIN COOL



Anybody who thought Sullivan would enter her deanship timidly doesn't know her very well. "Unlike some other people I've seen on the verge of a deanship, filled mostly with trepidation, self-doubt, and anxiety, she does not seem to be plagued by any of that," said mentor and friend Laurence Tribe, professor at Harvard Law School. "Kathleen is not a person who toots her own horn or who has an exaggerated sense of what she can accomplish; she has a great deal of humility where it is appropriate. But she has a real sense of mission."

Central to that mission, according to Sullivan, is seeing to it that Stanford produces lawyers who love the law. "Part of our job, beginning on the first day of their first year of law school, is to make students feel they are part of a noble profession; that when they come in they're learning how to speak a new language and think in new ways," she said.

She is unabashedly proud of the law and of being a lawyer. You won't find her apologizing for the profession or shrinking from a scornful public conditioned to think of all lawyers as predators. "Lawyers do heroic work," she told 1L students in an expansive and impassioned address during orientation week. She lauded lawyers as public servants, essential producers of agreements without which society would collapse. "If we didn't have lawyers," she said, "we'd have to invent them."

Her lack of ambivalence sends an important message to students, says Pam Karlan, professor of law and academic associate dean. "If you can convey to students that being a lawyer is a great thing, then you can get them to stop focusing on the idea that they are going to leave law school and make lots of money but be miserable the entire time they're doing it," she said.

Sullivan's philosophical position also can serve as an antidote to the dreary acclamations heard from outside the Law School about the profession, says Tribe. "In the many instances when professors, and sometimes deans, have a barely concealed contempt or at least a readily discernible disinterest in the practice of law, there is a very serious disconnect between the professor and/or the dean and the mission of the institution," he said. "Students are smart enough to detect when the person who is teaching them couldn't imagine spending a satisfying life doing what it is that they are going to do."

In short, Sullivan has the capacity to move people, to shape agendas. "When I think of the people who have influenced my career, Kathleen is right at

the top of the list," said Julie Lythcott-Haims, associate dean for student affairs at SLS and a former student of Sullivan's at Harvard. "She makes you want to be better than you are, to stretch beyond your potential. Having a person like that leading the Law School transforms the experience from one of drudgery into one that is incredibly rewarding. She makes you feel like it matters."

SULLIVAN always has had an eye out for underdogs. She is the product of an Irish Catholic family, which for generations helped supply New York City with police officers and priests. From a very early age, she demonstrated giftedness and a willingness to challenge convention. She was such a good reader in kindergarten that teachers passed her straight to the second grade. In catechism class at age 8, she inferred that if the Father was a "He" and the Son was a "He," the Holy Ghost must be a "She," and said as much, drawing a reprimand. It wasn't the last time gender became an issue between her and the Church. Later that year Sullivan learned that women were excluded from the priesthood, a disappointment insofar as she thought she might want to join it. "That's one reason I became a lawyer," she said.

Sullivan's talent and ambition were matched by a willingness to outwork everybody around her, perhaps payment for the sacrifices her parents, grandparents, and others made on her behalf, she says. "The people in the family who came before me made it possible for me to have opportunities. They were the

LINDA CICERO



Central to her mission, Sullivan says, is seeing to it that Stanford produces lawyers who love the law.



Why **LAWYERS** are good, and other subjects

LAWYER: Why are good lawyers important to society?

Society will always have conflict, what Madison called “factions of passion” and “factions of interest.” American society is particularly prone to conflicts because we are deliberately, since the framing, very heterogeneous. You need somebody in society to anticipate conflicts, to come up with processes and structures of institutional design to prevent and manage the conflicts. That’s what lawyers do at every level. You could say that every lawyer who is handling a divorce or child custody arrangement or a start-up of a new company is also serving that public role of making sure that private interactions are handled in a way that minimizes social conflict.

I think one of the reasons lawyers are so undervalued is that when they do that well, it’s invisible. If you write a contract so that the shareholders and creditors and employees are all taken care of in the event of bankruptcy, nobody is going to stand up to applaud. If you do a good job and things go well, your work is somewhat invisible.

LAWYER: Do you think students today are going to law school for the right reasons?

Many students today have the same motivations as I had when I went to law school. They are very interested in public service and the social good—they’re idealistic about using the law to help society. But a lot more students than in my generation are going to law school with the desire to enter exciting areas of business and finance and the development of new enterprises. Certainly a lot of students coming to Stanford are excited about

the opportunities in Silicon Valley. It’s a much more sophisticated group of students than in my generation. They are much savvier and better informed.

LAWYER: Are they different in other ways?

Students are more conservative. When I was a student, law schools tended to attract liberals, and conservatives went to business school. I think the classes now are much more intellectually diverse, and that’s a healthy thing. When I started out in teaching you couldn’t get a good class discussion going about the death penalty or abortion because everybody was on the same side. It’s very important for people to be exposed to a diversity of views because no view is worth having if it can’t stand up to a challenge.

LAWYER: Fundamentally, what’s the most important thing the Law School should be teaching?

Students need rigorous analytical skills; that is at the core of what we teach. In life, problems do not come to you packaged under headlines the way they do in a syllabus. The more we introduce rigorous hypotheticals and problem sets and case studies into our teaching, as my colleagues and I have been doing at Stanford for several years, the more we will help to simulate life.

Law school study is a form of practice, just like baseball practice or piano lessons. We’re not trying to teach the theory of pitching, we’re teaching how to throw the ball. We’re not trying to get students to understand the theory of composition, we’re showing them how to play a solo.

LAWYER: In what ways is a Stanford legal education distinctive?

We excel at all the traditional aspects of legal education. Stanford Law School has been, you might say, “the capital of casebooks” over the last generation. Gerry Gunther wrote the casebook on constitutional law for a generation. Marc Franklin and Bob Rabin wrote the casebook on torts and accident law for a generation. Paul Goldstein wrote the casebook and treatise on copyright law that changed a generation of intellectual property practice. We still have that great traditional strength of teaching through the case method, with a faculty that is permeated with superb traditional legal teaching skills. But in addition to those traditional teaching strengths, this is a place that is very devoted to pedagogical innovation. We’re trying a lot of things that aren’t traditional. We’re getting students to think on paper as well as to think on their feet.

LAWYER: How important is the involvement of alumni to the future of the Law School?

Very important. Throughout the campaign, there was a level of engagement and excitement with our alumni that I think was historical, and we need to sustain that momentum. We can’t look at the campaign as something that has passed and now we can rest on our laurels; quite the opposite. The campaign opened up new possibilities. I want to try to tap that tremendous energy to take us to greater heights. The generosity of alumni toward the school has been remarkable.

Even more important, the engagement of alumni in ideas about legal education and about the profession and how the two connect has been vital to the school. Also, having distinguished attor-



a conversation

neys from practice coming to the Law School from time to time serves as inspiration for students.

LAWYER: What improvements will you emphasize?

We devoted much of the campaign to building our human capital; making sure that our faculty was the best that it could be. We need to turn our attention now to physical capital. We need to modernize our facility. It's a sturdy piece of 1970s architecture that will serve us for a long time, but the interior needs to move into the 21st century. We need classrooms that are state-of-the-art technologically. We should have students conferencing on the Internet during class from their laptops; faculty should be able to teach from spreadsheets projected on a screen from a laptop. We have early 20th-century classrooms for a 21st-century world. It's time to pay attention to the physical and technological infrastructure of the Law School.

LAWYER: How do you expect curricula will change?

One place we have to grow is in the empirical study of law. We also need to build Stanford's international profile. Law practice is globalizing just as business has. We need to make this a law school with an international legal education strong enough to produce more Warren Christophers.

We ought to be the premier institution for the study of law related to technology. We're set in the very center of the digital world here in Silicon Valley. We need to study it, write about it, and research it. We need to implement it in our classrooms, and we need to predict how

it's going to change legal practice.

LAWYER: You mentioned our proximity to Silicon Valley. How important is Stanford's location in attracting students and faculty?

I think students are just beginning to catch on to the fact that we are located in the most exciting place in the country, and the most innovative place for both business and law practice. I expect location to be an increasing advantage as people discover that Silicon Valley is not just a place but a state of mind.

LAWYER: Our location also presents certain challenges, doesn't it?

To remain competitive with our peers for the best faculty and best staff, we're going to need the resources to deal with the very high cost of living here. Recruiting top-notch faculty and staff is one of my biggest challenges.

LAWYER: How do you respond to the suggestion that the temperate climate promotes a laissez-faire attitude?

(*Laughing*) I don't believe that you can only be serious in terrible weather. If I thought that, I wouldn't be here.

LAWYER: Are you having fun?

Yes. It's incredibly challenging and humbling, but it's incredibly fun. Taking this job taught me that the Law School that I thought I understood is a great big complicated prism with many facets that I'm only beginning to understand. The interaction with colleagues, staff, and students has been enjoyable. Ask me again in a few months.

ones who crossed the ocean. I don't give myself that much credit," she said.

She thought literature might be her calling, but discovered the law as an undergraduate at Cornell, moved by her admiration for lawyers who repaired the country following the Watergate scandal. She spent two years as a Marshall Scholar at Oxford studying philosophy, politics, and economics, then headed to Harvard Law School.

Although she distinguished herself academically, graduating with honors and helping her team win the moot court competition, Sullivan was not fanatical about her studies. She maintained balance, combining an abundant social life with a scholarly mindset, says friend and moot court partner Eric Havian, an attorney at Phillips & Cohen in San Francisco. "Her focus was not particularly narrow, which is not typical of law students. She was curious about many different areas of life," Havian said. "She was a tremendously engaging, vibrant person to be around."

And her court skills weren't confined to rooms with paneled walls. "When we played tennis I seemed to always spend a lot of time running down balls," Havian said. "She had a downright vicious forehand."

She flourished under the guidance of Tribe, with whom she collaborated on a Supreme Court brief as a 3L, and of Professor Susan Estrich, whose "ferocious brilliance" was a source of inspiration, says Sullivan. She emerged from law school hungry for the courtroom.

After a year clerking for Judge James L.



Former students speak of her reverently. Said one, “She’s the Michael Jordan of the legal world.”

Oakes of the Second Circuit Court of Appeals and two years of litigation work in Boston, Sullivan began to receive offers from leading law schools in the East, and was hired by Harvard in 1984. In 1992, the year in which she won Harvard’s top teaching award, Sullivan spent the spring semester as a visiting professor at Stanford Law School. Teri Little ’94, an attorney at Wilson Sonsini Goodrich & Rosati in Palo Alto and a former research assistant for Sullivan, recalls the buzz among students created by Sullivan’s visit. “We knew she was this famous lawyer, and we were excited to have her there, but I don’t think we realized just how amazing she was,” Little said. “She’s the Michael Jordan of the legal world.”

Near the end of the semester, “in a panic” that Sullivan was about to leave and never return, Little, a 1L at the time, organized a grassroots effort to pluck Sullivan from Harvard. Law students petitioned Stanford President Gerhard Casper and Dean Paul Brest to pursue Sullivan despite a University-wide cap on faculty hiring. “We worked on her, too,” Little said. One particular episode has passed into legend. During one of her final class sessions, Sullivan was writing furiously on a chalkboard, ran out of space, and pulled down another board to resume. But before she commenced writing, she was stunned into silence by what already had been written there by her students, predicting this moment. Scrawled on the board were the words “Defect to Stanford.”

One year later, she did just that.

SULLIVAN BRINGS to the deanship a cache of media and courtroom experience that may be useful in her role as the Law School’s leading advocate. Acknowledged as a superb scholar and teacher, Sullivan is perhaps first and foremost a great lawyer. Her reputation was established by her performances as a litigator in a handful of Supreme Court cases, on her own and in collaboration with Tribe. She won some and lost some, but always impressed with her rhetorical skills and what one writer called “a Zen-like ability to make the complex clear.” Many of those cases involved civil rights issues, about which Sullivan is particularly passionate. “What drives me is the conviction that the courts are the only place where people who are politically powerless can get a fair shake,” she once told a reporter. “You can never underestimate how important it is to have lawyers and courts to defend people whom lots of people don’t like.”

She is accustomed to participating in public debate. Her articles have appeared in *The New York Times*, *Washington Post*, *New York Times Review of Books*, and *New Republic*, among other publications. She has provided commentary on a range of issues about the law on programs like *Nightline* and *The NewsHour with Jim Lehrer*; and once sparred with former Supreme Court nominee Robert Bork on CNN’s *Crossfire*.

“I don’t think that a great law school can have a dean whose only special strengths are administrative and diplomatic,” said Tribe. “The dean is, among other things, an ambassador for the school. It’s not nearly as easy for somebody who is purely a theoretician and who really doesn’t have a clue about law practice at the highest levels to be as effective a spokesperson for the school.”

Karlan says Sullivan’s advocacy skills not only will help the Law School, they will help the profession. “The same thing she can convey to students she can convey to the public, which is that being a lawyer is a great thing and training lawyers is a great thing. She speaks in a language that smart people who aren’t lawyers can understand,” she said.

At a speech to the Commonwealth Club of California late last summer, Sullivan offered a counterpoint to an earlier address to the group by former Vice President Dan Quayle, who characterized the legal profession as bloated, greedy, and motivated by self-interest. “A lot of what lawyers do is help people avoid conflicts,” she said. “They play a huge role in the normative ordering of society that has no clear substitute. It can’t be done by organized religion by itself, it can’t be done by social custom by itself, it can’t be done by markets by themselves. . . . If you could suddenly eliminate the lawyers from the world in one fell swoop, there would be a lot of conflict and calamity that would come to pass and somebody would have to pick up the pieces. It’s that invisible preventive and preemptive role that is worth thinking about quite carefully.”

Whether Sullivan can maintain a pace to accommodate regular decanal duties and *Nightline* appearances remains to be seen. She acknowledges that the job has many demands, but she hopes “to do it all.” She is teaching constitutional law to first-year students next spring and hopes to continue teaching at least one course each year throughout her tenure as dean.

Although Sullivan figures to be an effective advocate for the Law School with outside audiences, she emphasizes that her primary focus will be internal, being attentive to institutional needs. Faculty believe that, too. “I think she has a sense of pri-

Continued on page 72

Where Does Justice Come in?

In the debate about legal reform, important questions are often overlooked

By Deborah L. Rhode

IN 1770, GRAFTON COUNTY, N.H. provided the following census report to George III: "Your Royal Majesty, Grafton County ... contains 6,489 souls, most of whom are engaged in agriculture, but included in that number are 69 wheelwrights, 8 doctors, 29 blacksmiths, 87 preachers, 20 slaves, and 90 students at the new college. There is not one lawyer, for which fact we take no personal credit, but thank an Almighty and Merciful God."

A nation without lawyers is a state of nature that many Americans undoubtedly would find appealing. About three-quarters of surveyed individuals believe that the United States has too many lawyers and over half believe that lawyers file too many lawsuits. In short, the conventional wisdom is that we have too much law and too little justice, and that the legal profession contributes more to the problem than the solution. Yet underlying this apparent consensus are contested assumptions and

competing values. Problems in the distribution of legal services remain unsolved partly because there is no agreement, except at the rhetorical level, about what the problems are. Efforts to pin down these difficulties raise more questions than they resolve. By what criteria do we conclude that America has too many lawyers? Too many in comparison to what? Other countries? Other eras? Why do we care? Why should our concern center on the number of lawyers? Why shouldn't we instead focus on the cost and quality of what lawyers do?

This essay suggests that America's litigation rates are neither exceptional nor excessive; that our difficulties look different than popular discussion implies. Rather, our most significant problems involve not too much, but too little: too little access to justice and too few choices about the legal services and processes that should be available.

Illustration

by

DAVE CUTLER





Whether or not America has too much law or too many lawsuits, it clearly has too much posturing that is uninformed by data and unreflective of the competing values at issue.

The reasons have much to do with how readily folklore passes for fact in discussions about our perennial litigation “crisis.” Judging from mainstream media and political rhetoric, America suffers from a perpetual crisis of legal hypochondria. Among its symptoms is an unseemly outbreak of mixed metaphors. The nation reportedly endures “avalanches,” “bloodbaths,” and “epidemics” of litigation rising to “bubonic plague proportions.” The basis for this diagnosis is largely anecdotal. It draws heavily on what commentators label “news as vaudeville”—on the aberrant, amusing “fuzz and wuzz” of judicial dockets.

The public hears endless accounts of cases that are too big for courts, cases that are too small, and cases that never should have been cases at all. A 25-year-old victim of “improper parenting” seeks damages from his mother and father. A suitor, who is fed up when stood up, sues his date. A customer having a “bad hair day” wants the beautician to pay. A woman tries to dry her poodle in a microwave following a shampoo and demands compensation from the manufacturer for the unhappy outcome. Such cases receive disproportionate media attention—and for obvious reasons. In an increasingly competitive market, the line between news and entertainment increasingly blurs. Serious coverage of the legal system struggles to survive among livelier rivals: talk radio, tabloid trash, and docudramas. As a result, factual content often is dumbed down and spruced up in ways that preempt informed debate. The public gets anecdotal glimpses of atypical cases without a sense of their overall significance.

Moreover, what qualifies as a frivolous claim depends on the eye of the beholder. While a few commonly cited examples meet almost anyone’s definition, the line between vindictiveness and vindication is often difficult to draw. A textbook illustration involves a highly publicized multimillion-dollar punitive damages award against McDonald’s for serving coffee at scalding temperatures. To most journalists, this case served as an all purpose indictment of the legal profession and legal process; an avaricious lawyer parades a petty incident before an out-of-control jury and extracts an absurd recovery.

On closer examination, the case looks far less frivolous. The plaintiff, a 79-year-old woman, suffered acutely painful third degree burns from 180-degree coffee. She spent eight

days in the hospital and returned again for skin grafts. Only after McDonald’s refused to reimburse her medical expenses did she bring suit. At trial, jurors learned of 700 other burn cases involving McDonald’s coffee during the preceding decade. While evaluations of the final jury award may vary, the case was not the patently “ridiculous” travesty that media critics described.

Not only does popular debate exaggerate the frequency of excessive verdicts, it also exaggerates their consequences. For example, John Leo’s *U.S. News and World Report* column reported as an uncontested fact one medical association’s claim that more than 12 percent of New York doctors “have stopped delivering babies because of the cost of litigation.” Yet a systematic review of malpractice research by the Federal Government’s Office of Technology Assessment found no relation between insurance

premium increases and withdrawals from obstetrics practice in New York.

Exaggerated portraits of liability expenses also can compound the problem critics claim to describe. Systematic overestimation of the risks of litigation encourages unnecessary medical procedures or product removals. Overrepresentation of runaway verdicts can skew behavior by lawyers and litigants. Highly publicized recoveries in aberrant cases can produce

By focusing excessive attention on excessive litigation, critics bypass an equal if not greater problem: large numbers of Americans

unappealing offspring. Particularly when media profiles are as distorted as the McDonald’s litigation, they often encourage ludicrous claims.

Moreover, by focusing excessive attention on excessive litigation, critics bypass an equal if not greater problem: large numbers of Americans lack information or resources to assert legitimate claims. Surveys of specific legal problems reveal high levels of unaddressed needs. For example, the most systematic research finds that only about ten percent of accident victims make any claims for compensation and only two to three percent file lawsuits. So too, a review of some 30,000 New York hospital records disclosed that only about 12 percent of patients who sustained injuries from negligent medical care brought malpractice actions and only half of those received compensation.

In short, the problems most individuals experience with legal processes involve too little access to professional services, not too much. The vast majority of legal needs among low-income households are unmet, and many middle income families are priced out of the market for an attorney’s assistance.

Rutgers Law School Dean Roger Abrams makes a similar point that the problem for most Americans is not that there are too many lawyers, but rather that “there are just too many lawyers trying to serve the same clients.” Corporations and individuals with deep pockets or large potential damage claims may encounter a glut of would-be advocates. Ordinary Americans with ordinary needs do not.

Barriers to the justice system impose enormous hardships on vulnerable groups: domestic violence victims in need of restraining orders; impoverished families improperly denied medical benefits; and elderly claimants with unresolved social security or pension problems. Yet these garden-variety needs remain unacknowledged in public debate and unaddressed in public policy. Our folklore fixates on the loony litigant with a rapacious lawyer. The far more common plight—inadequate access to any lawyer, rapacious or otherwise—remains out of sight and out of mind.

In short, the American legal system has fundamental problems, but not the ones that popular discussion targets. Our concern should focus less on the amount of law, and more on its distribution. Too many consumers cannot meet their legal needs at a price they can afford. Too few consumers have a voice in policy processes that might promote more effective alternatives. The bar has had too much control over decisions affecting access to the legal system, and has too often made trade-offs that serve its own interest at the expense of the public's.

abstract, but they should be more explicitly confronted in the context of specific policy choices. For example, increased competition between lawyers and nonlawyers would likely result in lower prices, greater efficiency, and more consumer satisfaction. Regulating the activities of lay practitioners should help curb abuses that currently go unremedied, while encouraging innovative partnerships between lawyer and non-lawyer specialists.

Previous collaborative efforts have bumped up against the bar's prohibitions on fee splitting between lawyers and non-lawyers and its restrictions on commercial marketing of routine services. These rules require rethinking. The legal profession's interest in curtailing competition too often has trumped the public's interest in maximizing choices.

More assistance for self-representation would serve similar objectives. A few courthouses are now pioneering interactive computer self-help systems. Users obtain basic information and assistance in completion of routine forms. Such initiatives are steps in the right direction, but further efforts are necessary to make them effective for those whose unmet needs are greatest.

Although the organized bar has endorsed procedural simplification and self-help services in principle, it generally has failed to do so in practice. Countless commissions, committees, and task forces have recommended such initiatives with striking regularity and few results. The resistance comes largely

Lack information or resources to assert legitimate claims.

What Americans need is a broader range of procedural choices and the information necessary to make them.

First, we must minimize the distortions that now preempt thoughtful policy debate. One possibility is to make the press a more sophisticated consumer of claims about the legal system and the legal profession. We could support more legal education for journalists by both law and journalism schools. The profession also could establish organizations, like Fairness and Accuracy in Reporting, that would attempt to counteract distorted coverage on legal profession issues. A related strategy would be to help legal experts become more adept at presenting material to the general public, and to create nonpartisan institutes that could make responsible research more accessible.

Popular debate needs both a broader set of questions and a more informed basis for addressing them. How effectively is the legal profession meeting the nation's legal needs? Could some legal problems be addressed adequately by non-lawyer specialists at a lower cost? Would greater competition from such practitioners offer a better array of consumer choices?

These are not questions that can be resolved in the

from lawyers who doubt that these reforms would be good for business. They would, however, be good for the public—and for the profession's public image.

If the bar is unwilling or unable to provide such services efficiently, then critics may well be right: we do have too many lawyers. We surely do have too little justice, at least for middle- and low-income Americans, and the bar's traditional solutions have fallen far short. Its preferred responses, like government-subsidized legal aid and voluntary pro bono contributions, deserve greater support, but realistically cannot come close to meeting current needs. Fundamental restructuring is necessary for legal services and legal processes.

If we are seriously concerned about America's balance of law and justice, then we need to translate more of our rhetorical commitments into realistic policy priorities. ■

Ernest W. McFarland Professor of Law **Deborah Rhode** is past president of the American Association of Law Schools and director of the Keck Center on Legal Ethics. This article was adapted from Rhode's “Too Much Law, Too Little Justice” that earlier appeared in the Georgetown Journal of Legal Ethics, Vol. 11, 1998

BY PAUL ELIAS

STARTED LATE, GOING GREAT

Hon. Fern Smith '75 didn't join the bar until age 42, but she has made up for lost time.

IN 1951, 18-YEAR-OLD FERN SMITH '75 went to work as a bookkeeping clerk at the Acme Brewing Co. in San Francisco. She needed the full-time job to care for her ill mother. College was out of the question.

The Acme Brewing Co. is long gone. So too are Smith's days as an anonymous clerk working for minimum wage. Today, Smith is director of The Federal Judicial Center, a research and education resource for federal judges in Washington, D.C.

Before U.S. Supreme Court Chief Justice William Rehnquist '52 announced Smith's appointment as head of the center, she had served 11 years as a district court judge in San Francisco. Prior to that, she sat for two years on the San Francisco Superior Court bench.

Not bad for a woman who started college at an age—35—when most people had established career paths.

Back in 1951, Smith could not have foreseen how her career would play out.

"Did I ever envision becoming a judge?" she said. "I couldn't even envision going to college."

But in 1968, at age 35 and the mother of two children, Smith was encouraged by a friend to take a few classes at Foothill Community College in Los Altos. A literature class, perhaps. Maybe sociology. Instead she enrolled full-time and two years later graduated at the top of her class. She transferred to Stanford University, where she majored in psychology, and decided that her next goal was law school. She applied to but one: Stanford Law School.

"Based on my undergraduate record, I thought I had



a pretty good chance of getting in," Smith said of her decision to eschew the more cautious route of applying to several schools. In fact, she didn't have much choice. She and her family were rooted on the San Francisco Peninsula and leaving the area to attend school was not an option. "I felt that the worst they could do was say no," she said.

But they didn't, and Smith entered Stanford Law School in the fall of 1972. But even then, she didn't get a chance to enjoy much of her three years at school. She participated in few extracurricular activities. "That was the one downside," she recalled. "I couldn't take any more time away from my family."

As a 39-year-old law student, her experience was considerably different from the average student's. "The fact that I was older than some of my professors, that changes your outlook a bit," she said. That, and the fact that she had two children to look after.

By 1975, a Stanford Law School graduate looking for work, Smith faced two daunting obstacles: She was a woman in an overwhelmingly male-dominated profession, and she was 42 years old. "Nobody was willing to hire a 42-year-old associate," she said.

But the partners at venerable Bronson, Bronson & McKinnon, which went the way of Acme Brewing Co. earlier this year, gave her a chance. There she toiled long hours on tort defense cases, making partner in 1981 at an age when most lawyers are starting to contemplate retirement. Four years later, at 52, she was elected to the firm's management committee. "I was so proud of Bronson," she said, "and always remained very fond of the firm."

In 1986, Gov. George Deukmejian appointed Smith to the San Francisco Superior Court bench. Two years later, President Ronald Reagan made her the second Bronson partner to join the Northern District. As a testament to her charisma, she was one of the few Reagan nominees to receive Senate approval during the president's last year in office. She hit the ground running, confronted almost immediately with a multimillion-dollar patent case pitting Nintendo against Atari in a battle for video game supremacy. She sided with Nintendo and was upheld on appeal. Nintendo now dominates the market.

Her incredibly late start in professional life, particularly with two kids to care for, has given Smith a remarkably down-to-earth outlook, her fans say. "She never got robe-itis," said Wilson Sonsini Goodrich & Rosati partner Boris Feldman.

Those who know her say nothing about the strong-willed Smith surprises them. Her departure for Washington is "a terrific loss for us," said San Francisco Federal Public Defender Barry Portman, echoing the sentiments of nearly every lawyer who has appeared before her.

**Smith can now joke
about the partner
at a prestigious
San Francisco firm
who told her**



FIONA McDOUGALL/THE RECORDER

**flat out that she was
too old to be hired
as an associate.
"I've been waiting
for eleven years
for him to appear in
my courtroom,"
she said.**

"I can't remember ever winning anything—not one thing—in her courtroom," said Emeryville defense attorney Cristina Arguedas. "But I just love Judge Smith."

Smith has won her solid reputation by, among other things, having what Portman called, "a disarming way of talking." She has issued significant rulings in several cases, including a challenge to California's medical marijuana initiative and an early battle over the Private Securities Litigation Reform Act of 1995.

The only criticism criminal defense attorneys make of Smith is that she is a tough sentencer. But she has received almost universal praise for her handling of the fraud case against Marin County con man Donald Bickerstaff. Convicted of swindling a mostly elderly clientele out of \$15 million, Smith slapped Bickerstaff with the maximum penalty of ten years in prison.

Another ruling Smith takes pride in—and gets kudos for—is her decision in a Proposition 215-related case. In April 1997, Smith ruled in *Conant v. McCaffrey*, that doctors have a First Amendment right to discuss the medical benefits of marijuana with their patients, blocking an effort by federal drug czar Barry McCaffrey to thwart the medical marijuana movement.

She also issued a ruling in one of the first major tests of the controversial 1995 Private Securities Litigation Reform Act, which was designed to make it more difficult for plaintiffs' attorneys to bring stock fraud cases. In *In re Silicon Graphics*, Smith offered a strict interpretation of the law, knocking out the fraud case against the Mountain View-based workstation manufacturer. A divided Ninth Circuit panel upheld Smith's decision, and the U.S. Supreme Court is expected to weigh in on the issue.

During her four-year stint as director at the Federal Judicial Center, which has a \$17 million budget and 137 employees, Smith hopes to emphasize and expand the use of technology in courtrooms. By the end of her term, Smith will be 69. But she may not be done. Unwilling to call it quits, Smith says she plans to return to the Northern District as a senior judge. ■

Paul Elias writes about legal affairs in the Bay Area.

FEASTING ON SUCCESS

Alumni attend reunions, Law School
fetes historic capital campaign



A CELEBRATORY EVENT is hardly novel on the eve of a new millennium, but even given the current climate of festive expectation, Celebration '99 Alumni Weekend at Stanford Law School was worthy of an end-of-the-century party.

Among the highlights were three major events—the Convocation on Business, with a panel of Internet heavyweights (*see story on page 28*); a policy address by California Governor Gray Davis (AB '64); and the Convocation on Law, with U.S. Supreme Court Justices Sandra Day O'Connor '52 (AB '50), Anthony Kennedy (AB '58), and Stephen Breyer (AB '59), moderated by Dean Kathleen Sullivan (*see story on page 26*).

The three-plus days of activities were part of the University's reunion weekend. The Law School celebration also toasted the culmination of one of the most successful fund-raising campaigns in the history of U.S. legal education. On October 14, those who had been instrumental in the success of the campaign gathered for tributes at a "celebration gala" held in a pavilion adjacent to Crown Quadrangle's Cooley Courtyard. The campaign, which had long ago blasted through its original five-year goal of \$50 million, that night stood at \$106 million, the sixth highest fund drive total among U.S. law schools and the second most successful ever when accounting for Stanford Law's relatively small alumni body. "We met every goal and exceeded almost everyone's expecta-

tions," said James Gaither '64, chair of the Campaign for Stanford Law School.

Among those whose expectations were exceeded was Stanford University President Gerhard Casper, who poked fun at his own skepticism about the campaign's ambitious goals. "This campaign will go down as one of my greatest failures," Casper said. "When Jim Gaither and Paul Brest came to me and proposed a fifty million dollar campaign, I told them that that was wholly unrealistic. Of course, I am delighted that I was wrong." Gaither presented Casper with a Stanford cap that appeared to have a bite out of it, to which Casper remarked: "I have to eat my hat, but Gaither already has taken care of that for me."

Gaither's own role in the campaign's success was applauded by, among others, former U.S. Secretary of State and campaign co-chair Warren Christopher '49. "I have marveled at Jim's dedication," Christopher said. "He represents the very best of Stanford leadership." To honor Gaither's work, Christopher announced that he, fellow

co-chairs Stephen Neal '73, Robert Keller '58, and John Levin '73, and the Campaign Steering Committee had established a Dean's Discretionary Fund to "allow the dean to grasp special opportunities."

Gaither and past Dean Paul Brest made a formidable tandem, Christopher said. "When they showed up on my doorstep three days after I left the State Department, I said yes when I was telling everybody else no," he said.

Brest was the subject of an often-emotional evening of tributes. Spoofing the Academy Awards presentations, Sullivan and Gaither presented Brest and his wife, Iris, with a "lifetime achievement award in deaning" and introduced a video that included numerous testimonials about



the Brests' extraordinary 12-year deanship. Raucous laughter erupted when Justice Sandra Day O'Connor described how Brest had once sent her a bouquet, to which Chief Justice William Rehnquist



Several thousand law school, business school and undergraduate alumni gathered at Frost Amphitheater (*left*) to hear California Governor Gray Davis (AB '64), who stayed afterward to greet classmates and well-wishers (*below*). Davis's speech was one of three major events during Celebration '99, which also featured a convocation with three Supreme Court justices, including Justice Sandra Day O'Connor '52 (AB '50) (*pictured opposite page with Dean Kathleen Sullivan*), and a panel of Internet leaders moderated by Charles Schwab (AB '59, MBA '61).



'52 responded, deadpan, "I'm afraid he never sent me a bouquet."

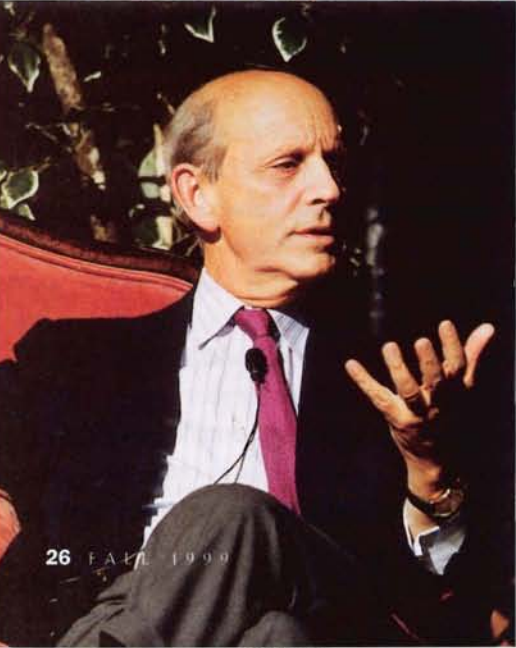
"The privilege of being dean is exceeded only by the fun it's been," Brest said after being greeted with a standing ovation. "My sense is that Kathleen will have been a very hard act to precede."

The following evening, a dinner audience that included Justices O'Connor and Kennedy gathered on the University's Main Quad in front of Memorial Church for a "Celebration Under the Stars."

Casper, again praising the work of the campaign leadership, singled out Charles Koob '69 and Michael Kahn '73 (AM '73), who spearheaded the annual fund drives during the campaign that increased alumni giving from 28 percent to 40 percent. "This is perhaps even more extraordinary" than the dollar amount raised since 1995, Casper said. Also receiving kudos was Levin, Celebration '99 chair, who oversaw the conception and execu-

tion of the three-day event.

After introductory remarks by Justice O'Connor and President Casper that Sullivan later described as "deeply moving," Sullivan was formally installed as Dean. Sullivan then gave an address, thanking the alumni, "not just for your support, but for your wisdom, your time, and your energy. You have participated in a re-founding of Stanford Law School." ■



A DAY IN THE SUN

Justices shine during discussion of U.S., foreign courts



BATHED IN BRILLIANT sunshine, an American flag fluttering about her shoulders, U.S. Supreme Court Associate Justice Sandra Day O'Connor '52 (AB '50) seemed appropriately positioned at center stage for an event celebrating the American judiciary. The first woman named to the U.S. Supreme Court shared the stage with Associate Justices Anthony Kennedy (AB '58) and Stephen Breyer (AB '59) for the Convocation on Law and Judiciary Atrium Dedication, on October 16. The justices, during a panel discussion moderated by Dean Kathleen Sullivan, provided the 3,700 spectators gathered in Kennedy Grove with a lively civics lesson.

O'Connor, Kennedy, and Breyer—engaging, articulate, and often amusing—related their views on constitutional constructs in emerging democracies, the struggle to establish and defend judicial independence, and the need to improve the American system of justice.

Sullivan asked the justices to comment on their impressions of foreign courts, including the European Court of Justice in Luxembourg, which is playing a central role in the integration of member nations of the European Union. "One of the important things to ask is whether you can have a political dialogue among all of the citizens of Europe," Kennedy said. "You have to have a political dialogue to sustain

a constitutional dynamic. They have to see if they can develop a critical, cultural, ethical dialogue, and that's difficult to do in eleven languages."

Kennedy is troubled by the far-reaching jurisdiction given to the Court of Justice, and worries that the sovereignty of EU nations may be jeopardized. "What's happening now is that all of the weight in developing this consensus is being put on the court, and this is dangerous for courts. You cannot overload a judicial structure with basic economic and social decisions."

"This is a profound observation, that law may be leading politics in some sense in the integration of Europe," Sullivan said.

The justices said that the U.S. system of judicial independence is difficult to export, but that it is essential for protecting individual rights. Particularly in countries without established constitutional traditions, they said, judicial independence is the bulwark of developing a rule of law.

"The judiciary has a role to protect individuals from arbitrary action by the state," O'Connor said. "It's so difficult to achieve in a newly forming country where the tradition has been that judges are told by the executive branch what the outcome should be when the state is involved, and where the state determines the selection and tenure of a judge and the privileges of the office."

"The law is as important to a society in a free and progressive economy as the infrastructure of the economy. It's as important as roads and bridges and schools," Kennedy said. "A society does not work well if it is directed simply by executive officials. There has to be freedom. That means there will be conflict. Somebody has to resolve those conflicts."

Breyer said that the rule of law could be established incrementally in countries where totalitarian regimes have historically hampered judicial independence. He

From top to bottom:

Justice Sandra Day O'Connor '52 (AB '50),
Dean Kathleen Sullivan,
Justice Anthony Kennedy (AB '58),
Justice Stephen Breyer (AB '59)

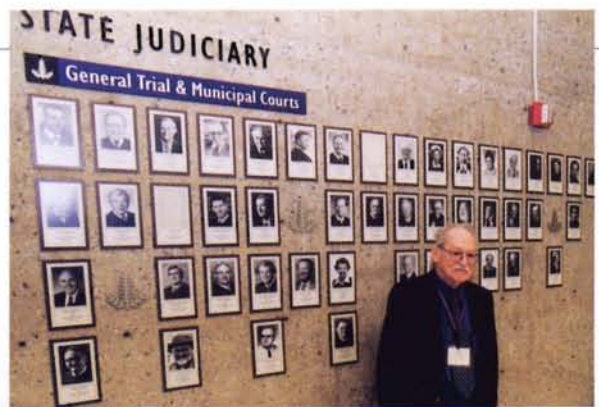
described a judge in one country who traveled to remote villages to rule on disputes among people who had never seen a judge nor had any knowledge of legal structures. Despite attempts by the judge's superiors to suppress his activism, Breyer said, the judge was not fired or threatened as might have been the case years earlier. "That presents to me how they are struggling, without overwhelming success but with ever more success, to create a rule of law," he said.

"There are some heroes out there," Kennedy said. "I have talked to judges in small courts in Russia who say they can't call to get witnesses and attorneys because the phone bill hasn't been paid for six months, who themselves haven't been paid for six months."

Sullivan pointed out that the key to judicial independence is "the acquiescence of the citizens to the legitimacy of the court," not merely words on paper. Kennedy noted that Americans have as part of their heritage a respect for the court and its decisions. "Look in the Declaration of Independence—we defined our national identity in legal terms. That's why Americans always have had a reverence for the Constitution."

The justices said the U.S. can advise other nations that want to develop a strong and independent court system, but that the cultural currency necessary to sustain such a system needs time to grow. "There has never been a time, I think, when so many nation states are trying to form themselves into democratic societies over such a short span of time," O'Connor said. "Because we have had a longer tradition

Charles Crookham '50, senior judge for the 4th District of the Oregon Circuit Court, was among the 50-plus judges who returned for the dedication of the Judiciary Atrium. The atrium, located in the first floor of the classroom building, honors Stanford Law School alumni who have graced the bench.



Professor of Law George Fisher (far left) moderated a panel discussion on the judiciary's changing relationship with the public, with U.S. District Court Judge David Levi '80, U.S. Court of Appeals Judge Pamela Rymer '64, California Chief Justice Ronald George '64, and U.S. District Court Judge Susan Illston '73.

than most countries of a judicial system that has functioned reasonably well, we are in an especially good position in this country to try to help these people in emerging countries."

In the U.S., Breyer said, the courts are the instruments of an organic system of laws. "It depends upon forces of habit and expectations among not 9 judges or 9,000 judges or 990,000 lawyers, but rather among 280 million Americans," he said.

Despite other countries' eagerness to emulate our system, Kennedy said, the time horizon for doing so is not easily shortened. "Your first temptation is to tell people in a newly emerging democracy who ask how to develop a system like ours, 'Well, you have a Magna Carta, then you wait four hundred fifty years, then you have a glorious revolution, then you

have a Constitution written by brilliant people in Philadelphia. You can't say that. People want democracy, they want it now. There's an urgency that doesn't easily lend itself to the maturation of the ethical substructure."

O'Connor noted that while the strength and influence of the U.S. court system is undeniable, that system, too, is flawed. "I see a great many legal problems in need of solutions for people who can't afford lawyers," she said. "We have a good many citizens who think that justice is for 'just us,' the privileged few at Stanford, the upper class. There are many African-American citizens who think the system operates unfairly for them. I think we would be remiss if we didn't acknowledge that we have some work to do in our own system." ■

NOT SO FAST

High-tech panel offers old-fashioned advice



THE STANDING-ROOM-ONLY crowd in Memorial Auditorium on October 15 came to see a star-studded panel, moderated by investment icon Charles Schwab (AB '59, MBA '61), discuss high technology. But this was no geek-fest. Instead of stories of arcane computer wizardry, the 2,000-plus spectators were treated to wit, charm, and nuggets of wisdom that sounded positively old-fashioned. The essence of the panelists' message: be careful out there.

The event featured John Morgridge (MBA '57), Chairman of the Board of Cisco Systems; Bill Larson '80, CEO of Network Associates, Inc.; Yahoo! co-founder Jerry Yang (BS/MS '90); Andrew Rachleff (MBA '84), a general partner at Benchmark Capital, a Silicon Valley venture capital firm; and Steve Westly (AB '78, MBA '83), vice president for marketing and business development at eBay Inc.

The panelists expressed confidence that the futures of the Internet and electronic commerce were exciting, but they were forthcoming about the dangers of increased interconnectivity and the need to pick and choose among high-technology stocks.

Privacy is a constant area of concern for companies engaging in electronic commerce, panelists said. "When you visit a website, that website is visiting you," said Larson, whose company is the world's leading supplier of Internet security software.

"The more an Internet company knows about you, the more valuable your eyeballs are," said Schwab.

Yang said Yahoo! requires expressed permission from customers before it shares their personal information with

marketers. "The covenant between a customer and an Internet provider is crucial," said Yang. "We use our privacy policy as a competitive tool. We will not market or sell our lists."

Westly said eBay has spurned overtures from advertisers eager to get their hands on the company's customer database. "We lost potential revenue sources, but we gained loyalty," he said.

"An Internet company has more information on what I've done over the past year than I do, and in a better form," said Morgridge, who admitted that he was uncomfortable with the amount of personal information some websites require.

Internet extortion, hacking, and viruses are problems the industry must continue to address, according to Larson. "We as



"When you visit a website, that website is visiting you."

Bill Larson '80, CEO of Network Associates, Inc.

an industry need to be proactive," he said. "We need to get involved with Washington, and pay attention to legislation."

Responding to Schwab's questions

about whether Internet companies will be profitable soon, Rachleff said that investors were less interested in profitability than in seeing fledgling companies develop strong



James Gaither '64 (foreground) elicits a laugh from **Steve Westly** (AB '78, MBA '83) of eBay, **Charles Schwab** (AB '59, MBA '61), **Penny Pritzker** '85 (JD/MBA), and **Jerry Yang** (BA/MS '90) of Yahoo! prior to the Convocation on Business.

brand identities. "The incentive is to grow quickly," he said.

Investing in e-commerce companies still is a good idea, but "the easy money is over," Larson said. From here on, Rachleff said, investors will need to be savvier in identifying winners and losers among high-tech companies. He added that some traditional companies still resist aggressive online business models because executives fear it will supplant their power base. "The great companies are willing to experiment, take chances, and go for it," Rachleff said. "The weak companies are afraid to lose a bet." ■

GARY WAGNER



Reunion classes including '74 (left) met for dinner and reminiscences. Celebration under the Stars, held under a harvest moon on the University's Main Quad (above), offered an evening of toasts and tributes.



Professor of Law **Richard Ford** leads a session on critical race theory, one of five law "Classes Without Quizzes," held for alumni. Other faculty who led course sessions included professors **Henry Greely**, **Margaret Jane Radin**, **Michael Klausner**, and **William Simon**.



MARCO ZECCHIN

Campaign co-chair **Warren Christopher** '49, chair **James Gaither** '64, Associate Dean for External Relations **Martin Shell**, co-chair **John Levin** '73, and co-chair **Stephen Neal** '73.

professors in print

*Excerpts from faculty publications,
quotations, and commentaries*

"WHEN I WAS IN LAW SCHOOL only three percent of the nation's law students were women. When I defended criminal cases, women were rarities in the courtroom, as lawyers or judges; when I became a professor most law schools had yet to hire a woman on the tenure track—and I could give you many more examples of vast change in my own lifetime.

... It seems that just as women have gained stature as lawyers, the whole profession is falling apart. Lay people complain of greed and inhumanity, needless aggression and soulless lack of concern about societal effects. Lawyers lament the descent of a learned profession into a bottom-line business and sigh that everyone works too hard, leaving little

time for family and communal life, pleasure and pro bono publico.

Yet women lawyers will soon be a numerical force great enough to reverse these trends and return the practice of law to the humane, public-interested, and redemptive work that was once its aspiration. We can do this by placing women at the center of our thought and action—that is, by being feminists. And by forcing the profession for the first time truly to accommodate women's lives. We must have male allies to accomplish our goal: not, in Virginia Woolf's words, "to burn the house down, but to make the windows blaze."

Judge John Crown Professor of Law
BARBARA BABCOCK, commenting on women in the law, during her acceptance speech for the ABA's Margaret Brent Women Lawyers of Achievement Award

THE MIAMI HERALD reported on a course introduced at the University of Miami Law School by **JOHN HART ELY**, former dean of Stanford Law School. The course, titled "Evidentiary Inference and Advocacy: the Assassination of President John F. Kennedy," calls upon Ely's experience as one of 17 staff lawyers on the Warren Commission. Ely told the *Herald* he believes that Lee Harvey Oswald acted alone, but is troubled that the CIA never revealed to the Commission that Fidel Castro knew about Kennedy's exploration of a plot to kill the Cuban leader, known as Operation Mongoose. "If we'd known, we'd have much more seriously investigated the possibility of a Cuban connection," Ely said.

"The central message of this study is that we all benefit when childbearing decisions are made by women rather than by the government. Another implication of this provocative study is the need to improve social conditions of disadvantaged racial minorities, so that children raised in such environments are not at such high risk for criminal activity.

"One wonders whether a substantial segment of American society will overlook the nuances in Donohue's and Levitt's argument and misread this important research as another indictment of disadvantaged blacks and Latinos. If that conclusion is drawn, it will disprove an assumption implicit in their meticulous research: that evidence matters."


Assistant Professor of Law **RICHARD BANKS**, in a *Los Angeles Times* op-ed, commenting on a study by Stanford Law professor John Donohue and University of Chicago professor Stephen Levitt linking abortion to crime rates (see page 7)



"I have to say I'm sympathetic to the plight of movie producers who see the product distributed digitally without any payment. But we are reaching the point where we're creating serious complications for the kind of data flow you need for democracy and scientific inquiry to work. People are commercializing everything and selling it. I'm worried that we're going to patent facts."

George E. Osborne Professor of Law
JOHN BARTON, in *The New York Times*, about the rush to patent databases

"The Russian economy has shrunk steadily since 1991 and suffered a major collapse in 1998, which exposed deep structural flaws in the privatization effort. . . . Rapid mass privatization of medium and large firms is likely to lead to massive self-dealing by managers and controlling shareholders unless (implausibly in the initial transition from central planning to markets) a country has a good infrastructure for controlling self-dealing. Russia accelerated the self-dealing process by selling control of many of its largest enterprises cheaply to crooks, who got the funds to buy the enterprises by skimming from the



government, and transferred their skimming talents to the enterprises they acquired."

Professor of Law **BERNARD BLACK** (with Reinier Kraakman and Anna Tarassova) in "Russian Privatization and Corporate Governance: What Went Wrong," a working paper

"I remember Vietnam like it was yesterday. I remember asking, 'If this is war, where is the Congress?' The thought I carry with me is one of tremendous disappointment that our representatives [in the 1960s] said nothing, and year after year voted the money but never put the question to the people's representatives: 'Is this a war that you wish to declare,

is this a war that you wish to authorize?'

"I thought I would never let that happen if I had the opportunity to stop it in my own lifetime. I am redeeming a pledge, from Vietnam."

Professor of Law, **REP. TOM CAMPBELL**, in *The Hill*, about his decision to force a House vote on the bombing campaign in Kosovo

"It is often said that the ideal penalty (insofar as deterrence is concerned) equals the harm caused by the violation multiplied by one over the probability of punishment. For example, if a violation faces only a 25 percent chance of being punished, on this view the optimal penalty would be four times the harm caused by the violation." What is less widely appreciated, however, is that the multiplier principle is almost never necessary to achieving optimal deterrence. Even when the probability of punishment is less than 100 percent, more recent work in law and economics has identified several other remedies that could also achieve optimal deterrence."

Professor of Law **RICHARD CRASWELL**, in "Deterrence and

Damages: The Multiplier Principal and Its Alternatives," for *Michigan Law Review*

"Critical Race Theory's radicalism is not the insularity of cultural separatism. It is a cosmopolitan radicalism in the tradition of the Harlem Renaissance and the Italian Renaissance, the enlightenment of the civil rights revolution and the Scottish Enlightenment. It is deeply concerned with culture, not to preserve cultural difference, but to transform the culture of our legal and political institutions so that they can more fully transcend racial boundaries."

Professor of Law **RICHARD FORD** in "Race and Recognition: Critical Race Theory Comes of Age," for *Common Quest*

"Baseball has always been a business and it will be ever more so at both the new Comerica Park in Detroit and PacBell Park in San Francisco.

"But on Tiger Stadium's final day, Kansas City outfielder Jermaine Dye made a spectacular, outstretched, diving catch in foul territory, a play not surpassed by anything that I have ever seen. The Giants have Major League Baseball's most charismatic and cerebral manager in Dusty Baker. Detroit, like Cleveland, is trying to build a new downtown with baseball and football as well.

"The essence of the game remains intact and, in our sorrow for what can never be again, that, at least, must be celebrated."

Charles A. Beardsley Professor of Law **WILLIAM GOULD**, in a *San Jose Mercury-News* op-ed, reflecting on the closing of Tiger Stadium in Detroit and (Candlestick) 3Com Park in San Francisco

"The real implications of genetic testing are familial. Is your wife going to divorce you when

she finds out you have the Huntington's disease variation? How will the parent feel who gave it to you? How do you tell your kids you may have given it to them?"

Professor of Law **HENRY GREELY**, in *National Geographic*, about the potential dangers of sharing genetic test results

"Bill Clinton wanted to end discrimination in the Armed Forces, but he has instead presided over the institutionalization of anti-gay animus. Many of the really bad things about 'don't ask, don't tell' come not from the congressional statute but from his implementation of it. A new president can undo his mistakes."

Professor of Law and Robert E. Paradise Faculty Scholar **JANET HALLEY**, in a *Newsday* op-ed, on the administration's "don't ask, don't tell" policy toward gays in the military

FRESH PRINT

The Loneliness of the Comparative Lawyer

IN THE FIRST ESSAY in his latest book, *The Loneliness of the Comparative Lawyer* (Kluwer Law International, 1999), John Henry Merryman describes an encounter he has with two young museum-goers who learn that he is a comparative lawyer. "Then comes the conversational coup de grace: What, they ask, is comparative law? It is a reasonable question, but I know from experience that if I try to answer it, the attractive couple will quickly realize that they have made a dreadful mistake, exchange significant glances, and drift off."

In this collection of 19 essays, Merryman attempts to answer not only what comparative law is, but what it should become. "In my view, scholarship in the field still is dominated by a once-vital but no longer productive 19th-century paradigm," he writes. "I argue for a much more inclusive working conception of the 'law' part of 'comparative law' and for greater attention to the relations between law, culture, and society."

The book contains "the bulk of my published work to date in foreign and comparative law," said Merryman, the Nelson Bowman Sweitzer and Marie B. Sweitzer Professor of Law.

"Whatever the level of fraud going on these days, the law comes up with the wrong remedy. It is either imposing a financial penalty that is too large given the actual economic harm done, or it is imposing a penalty that is too low. If executives recognized that they might be exposed to personal liability in situations where there was clear securities fraud, it would focus their minds wonderfully."

W. A. Franke Professor of Law and Business JOSEPH GRUNDFEST, commenting on securities fraud litigation, in a *House Counsel* cover story about Grundfest's influence in business and policy-making circles

"Judicial independence is under attack. Unpopular judicial decisions meet with cries for resignation or impeachment. Legislative decisions limit judicial discretion. In many jurisdictions, judges must campaign for office, raising the specter of interest group influence on their selection.

"This is a situation made for empirical research. If we identify the causes of the attacks on judicial independence, we can develop a better understanding of how to remedy the problem. If we identify the policies that best protect judicial independence, using sophisticated empirical analytic techniques, we can make the case for adopting these policies to leg-

islators and the public."

Judge John W. Ford Professor of Dispute Resolution DEBORAH HENSLER, in "Do We Need an Empirical Research Agenda on Judicial Independence?" for *Southern California Law Review*

"Electoral reform is a graveyard of well-intentioned plans gone awry. It doesn't take an Einstein to discern a First Law of Political Fluid Dynamics—the desire for political power cannot be destroyed, but at most, channeled into different forms—nor a Newton to identify a Third Law of Political Motion—every reform effort to constrain political actors produces a corresponding series of reactions by those with power to hold onto it."

Professor of Law PAMELA KARLAN (with Samuel Issacharoff), in "The Hydraulics of Campaign Finance Reform," for *Texas Law Review*

"The American public got a terrific education about the criminal process. Many people may not have liked the outcome, they may have disagreed with the jury, but they learned a lot about criminal procedure."

Adelbert H. Sweet Professor of Law MIGUEL MÉNDEZ, in the *San Mateo County Times*, about the effects of the O.J. Simpson case five years after its conclusion

"There's a lot of anger out there, and it's getting translated into jury verdicts. All these cases have a snowball effect as potential jurors read about an industry that appears to have been involved in some cover-up and then gets nailed. They feel empowered to act likewise."

A. Calder Mackay Professor of Law ROBERT RABIN, in *The Washington Post*, about major jury awards for plaintiffs suing product manufactures

"There is one point in *To Kill a Mockingbird* where the novel starts to cross the boundary between romantic and ambitious fiction. The ending is the only point at which Atticus is portrayed as less than perfect.

"Our role model was initially wrong, even now is not certain he's doing the right thing, and is doing something that, though it seems likely to be the right thing, involves violation of the law. This tentative and compromised kind of virtue seems more interesting, and the portrayal of it more valuable, than the iconic virtue Finch has heretofore shown because it seems the only kind possible in many of the most morally compelling situations lawyers face in life."

Kenneth and Harle Montgomery Professor of Public Interest Law WILLIAM SIMON, commenting on "Reconstructing Atticus Finch," for *Michigan Law Review*

Gerald Gunther Remembers Justice Lewis Powell

Gerald Gunther, William Nelson Cromwell Professor of Law, Emeritus, was among a distinguished group of legal scholars and judges who spoke at a Supreme Court memorial service for Justice Lewis F. Powell, Jr., who died in May. Here is an excerpt from Gunther's remarks:

"In our many talks over the years, we hardly ever spoke of pending doctrinal matters; I thought it inappropriate to discuss rulings unless he raised the subject. On only one important case did I ever engage in correspondence with Justice Powell about a recent decision. That case was *United States v. Nixon*, the ruling that required the President to turn over the 'smoking gun' Watergate tapes to the Special Prosecutor. Soon after the President resigned, I wrote an article criticizing the court's action. In part, my objection was the court's haste in taking the case, before judgment in the Court of Appeals. Soon after, Justice Powell sent me a characteristically candid explanation of his vote for expedited review. He wrote: 'I was influenced by a personal conviction that the country was undergoing a prolonged agony which already had diverted attention from present domestic problems and, at least arguably, weakened our capacity to influence the dangerous course of international events.'

"For the Justice, ever the old-fashioned patriot, the stability of the nation seemed at stake when he cast the decisive vote to expedite the Nixon appeal.

"I miss him, for this court was blessed by his presence, as I was by his friendship."

law gatherings

Ron Fung '78 (*left*) and Alfred Murata '00 smile for the camera at a reception for summer associates and incoming students held at Paul, Hastings, Janofsky & Walker in Los Angeles in July. The reception was hosted by Stanford Law Society of Los Angeles downtown chair George Stephens, Jr. '62, Peter Huie '96, John Porter '83 (BS '80), and Tom Wisialowski '85.

MARK FELLMAN



CHERI EISENBERG

Duane Quaini '70 (*left*), Board of Visitors vice chair and member of the Stanford Law Society of Chicago, chats with Professor of Law Pamela Karlan. Karlan was in Chicago in June to present a luncheon program titled "All Over the Map: Voting Rights & Reapportionment," hosted by Quaini at Sonnenschein Nath & Rosenthal.



MARCO ZECCHIN

In June, the Stanford Law Society of Silicon Valley welcomed Bay Area alumni, summer associates, and incoming students to a special reception at the newly renovated Cantor Arts Center on campus. The event, underwritten in part by Heller Ehrman White & McAuliffe and ALZA Corporation, featured an informal tour of the center's Rodin Sculpture Garden and Asia, Oceania, and Africa collections.

Class of 1999 Gift Co-Chair Elizabeth Ybarra (*left*) talks with Campaign for Stanford Law School Co-Chair Warren Christopher '49 (*center*) and Chair James Gaither '64 at a reception for Law School 3Ls held last April in Crocker Garden.



MARCO ZECCHIN



Mary Cranston '75 (AB '69) (*below, right*), Gail Block Harris '77 (AB '74) (*below, left*), and Charles Crockett '92 (*left*), were among members of the Board of Visitors who returned to the Law School in April for their annual meeting.



CHERI EISENBERG



BILL GEIGER

In July, the Stanford Law Society of Washington, D. C., invited Mark Gearan (*right*) to share his experiences as director of the Peace Corps and former White House deputy chief of staff and director of communications with area alumni, summer associates, and incoming students. Held at Arnold & Porter, the talk was hosted by Norman Sinel '66 and Jeffrey Connaughton '94. Here Gearan illustrates a point to C. Scott Hemphill '00 as Peace Corps general counsel Nancy Hendry '75 listens in.



MARCO ZECCHIN

John Freidenrich '63 (AB '59) addresses Silicon Valley alumni and friends assembled at a reception in honor of Kathleen M. Sullivan, the Law School's newly appointed Dean and Richard E. Lang Professor of Law and Stanley Morrison Professor of Law. Freidenrich and his wife, Jill (AB '63), hosted the July event at their Atherton home.

Stanford Law Society of New York chair Claire Silberman '88 (AB '83) (*right*) and committee member Kristen Finney '96 (AB '92) welcomed local alumni, summer associates, and incoming students to a special evening at

JOE PINEIRO



the Whitney Museum of American Art in Manhattan.

The July event featured a reception followed by a docent-led tour of an exhibit called "1930s: Dancing the Blues Away," part of the museum's Art After Hours Summer Series.



Continued from page 17

orities that her role is to facilitate the main mission of the Law School, which is teaching and research. That's what I think she'll focus on," said A. Mitchell Polinsky, Josephine Scott Crocker Professor of Law and Economics.

In the weeks before and after she took over as dean, Sullivan traveled extensively, meeting alumni and broadening her understanding of their role in Law School affairs. Her personal skills, intellectual agility, and abundant energy often were on display, says Martin Shell, associate dean for external relations. He recalls that Sullivan once wrote an opinion article for the

who can reconstruct elegant, perfectly delivered jokes he heard for the first time from Sullivan. "I don't know whether she made them up, but I had never heard them before," he said. She has even been known to crack jokes during Supreme Court arguments.

Sullivan has demonstrated that same humanity in her classroom. Little says Sullivan the teacher empowers students with a sense of worthiness that is critical to their success. "When you are a student at a top-tier law school, you're surrounded by very bright people, and you're insecure," said Little. "Kathleen has this wonderful way of making you feel significant and intelligent. She has such generosity."

Lythcott-Haims recalls a meeting she had with Sullivan as a student at Harvard that decidedly changed her outlook. "I began the conversation with 'I'm Julie, I'm not sure if you know who I am,' et cetera, and Kathleen stopped me and said, 'Of course I know who you are. In class I see your expressions change and know that you want to say something, and I wish you would.'"

"I can't tell you what it meant to me at that time to have somebody who was so smart and so well respected notice me in a crowd of two hundred fifty students. She really gave me my voice. That is the moment I began to enjoy law school."

Particularly for women, Sullivan's presence will help prepare students for work in a legal culture that has yet to assimilate women fully, says Little. "I can't overemphasize the importance of having a woman like Kathleen as dean. She is a wonderful role model," she said.

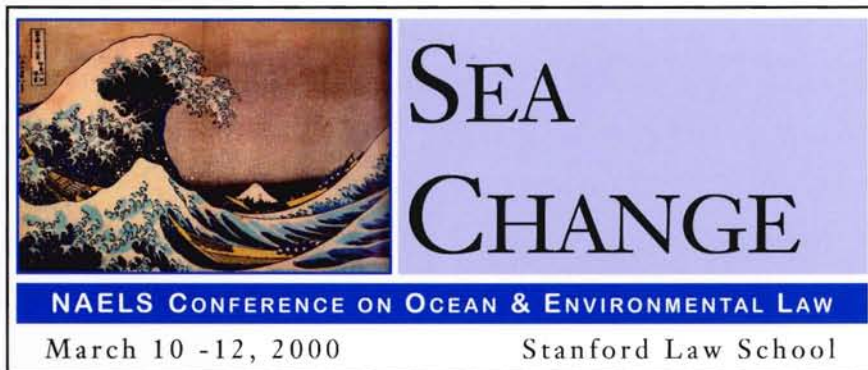
"I believe that lawyers play an extremely important social function and that their work is undervalued. That's what makes me feel like legal education is a great job to be in."

New York Times "in the middle of the night" and followed that with a 14-hour day of travel and meetings, while still delivering the piece for the next day's paper. "Of course, the article read like somebody had spent weeks perfecting it," Shell said. "We're going to learn a lot from her."

Sullivan sets high standards for herself and others, say colleagues, but also is approachable and empathetic. Her intellectual prowess—former student Jay Wexler '97 once called her "scary smart"—might be intimidating if not for her affable charm and warm sense of humor. "One reason she isn't intimidating—aside from the fact that she's incredibly charming—is that she can deal with people on the basis of their ideas," said Karlan. "She's not trying to occupy the whole field and make everything about her idea."

Moreover, she's just plain fun to be around, says Tribe,

Sullivan's remarks at the 1996 Commencement may serve as a talisman for students who will come to know her, and her values, as dean. "When you look back at your life from the other end, you will ask not just how many glittering ornaments adorn your résumé, or how clever your arguments have been," Sullivan told '96 graduates. "You will ask if you were brave and bold and true and just. You will ask whether you sold your great skills and greater talents to the highest bidder, or shared them with some of those in greater need. You'll ask whether you took responsibility for your actions, or blamed them on someone else's snafu. You will ask whether you took a higher road than your enemies, and whether you treated those less powerful than you as you would be treated yourself. Only then will you know that good conscience is the only sure reward. Please try to remember that in the meantime." ■



Robert Minge Brown Lecture with Dr. Sylvia Earle

Internationally renowned ocean explorer and advocate; former chief scientist, NOAA

The Stanford Environmental Law Society is proud to host this year's NAELS conference, which will bring together academics, students, and practitioners from around the country to explore and question the boundaries of ocean law and policy. This event is designed for all who are interested in ocean and environmental law, not just students. All meals, including the gourmet closing dinner, are included in the conference fees in order to facilitate interaction between attendees and speakers. Panels and roundtables will be multidisciplinary, involving experts from academia, private practice, government and business.

For more information and on-line registration, please visit: <http://seachange.stanford.edu>. To be included in the mailing list or to pose specific questions, please send an email to naels@law.stanford.edu.

C O M I N G E V E N T S

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| December 7 | Reception in honor of Kathleen Sullivan—Los Angeles |
| December 16 | Class of 1999 bar swearing-in ceremony—Stanford |
| January 8 | AALS Luncheon for alumni teaching faculty—Washington, D.C. |
| February 10 | Reception in honor of Kathleen Sullivan—Phoenix |
| March 10 | Robert Minge Brown Lecture with Sylvia Earle—Stanford |
| March 20-21 | General Counsel Institute |
| March 20-25 | Receptions in honor of Kathleen Sullivan—Boston, New York, Washington, D.C. |
| Oct. 19-22 | 2000 Alumni Weekend |

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