The covers of the *Law Forum* this issue feature candid photos of construction on the addition to Armstrong Hall. On the front cover, iron workers form an artistic composition within the structural frame.

Handworking groundbreakers take a rest from their labors.

The frame rises as construction workers become silhouetted.

The addition is joined to the existing building.

The walls and windows take shape.

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**Staff**

Margaret Bender, Editor
Betty Andre, Kay Carlson, Rhonda Kirkkide, Christine Smith
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Dear Alumni and Other Friends of the College of Law:

As this issue of the Forum goes to press the new addition to the law school's building is taking final shape. Extensive renovations to the rotunda and contiguous area of the "old" Armstrong Hall are also being completed. Pictures of the construction appear on the covers and elsewhere in this issue. Plans now call for construction and renovation to be finished in mid-December. We will move into the new and remodeled areas over the Christmas vacation, in time for the beginning of the January, 1986 semester.

As detailed elsewhere in this issue, new and renovated areas will provide greatly needed space for faculty, students and staff, and for our educational programs. The new structure is shaping up as a very handsome one. Except for our still inadequate physical library facility, our new physical plant will rival the best in the country in function and appearance. The new structure preserves the informality and good student-faculty interchange of Armstrong Hall and also provides excellent new lounge and study facilities for students. The interior design is distinctive and comfortable. We expect to hold a dedication ceremony fairly early in the spring semester, to which you will all be invited. I hope you will be able to come and share this wonderful event with us.

Associate Dean Richard Morgan's departure for the Deanship at the University of Wyoming Law School occasioned a substantial reorganization of the law school administration. Replacing Dean Morgan are two new Associate Deans: Prof. Michael Berch as Associate Dean for Academic Matters and Prof. Jonathan Rose as Associate Dean for Administrative Matters. Christine Smith, who has been the law school's Registrar for several years, has become Assistant Dean. She is replaced as Registrar by Christine Hoffman, who has been Assistant to the Director of Admissions. We are also fortunate to have secured the services of Kathryn Machiab as our new Placement Director. She formerly worked as a placement officer at New York University Law School and at ASU's undergraduate placement office.

Rhonda Kerkhoffs has assumed new large duties as our Business Manager, with responsibility for administering the budget and the building construction project.

As the new academic year starts we are delighted to welcome another outstanding entering class. The academic quality and diversity of the student body continues to improve dramatically. The entering class is composed of equal numbers of men and women; almost 30% of its members are members of minority racial or ethnic groups. Entry into the school through the competitive admissions process gets increasingly difficult: this year the median student required a grade point average of almost 3.5 and an LSAT score near the top 10% of all those tested in the country.

The first year class will be introduced to a significantly revised curriculum this year. As detailed elsewhere in this issue, each first year student will take one of a number of new "perspectives" courses open (also a limited number of second and third year students) designed to focus on discussions about the law rather than legal issues themselves. The faculty continues to be engaged in a process of broadening and modernizing the curriculum.

During this Bicentennial year of the U.S. Constitution we expect to have a number of programs at the school discussing important current constitutional issues. I very much hope that you will be able to find time to attend one or more of these events, to look over the expanding facility and get a sense of the life and breadth of the student body and faculty.

With Very Best Regards,

Paul Bender
Dean and Professor of Law

Associate Dean for Academic Matters Michael Berch is a superbly qualified professor and scholar. After receiving his B.A. and J.D. from Columbia University, Mike had varied trial practice experiences before he accepted the call to ASU in 1983. He has written important books and articles. It is fair to say, however, that next to his family, Mike's consuming love is teaching. His great success as a practitioner of that art was recognized on December 10, 1986, when the Law Alumni Board of Directors selected him to receive the Outstanding Faculty Award. Mike's deep concern for faculty and students is a strong creative force at the law school. His boisterous enthusiasm infects all with the sort of excitement that makes a great law school greater. Fortunately, his new appointment will not take him away from the classroom; he will, however, be spending less time there.

Associate Dean for Administrative Matters Jonathan Rose was lured to ASU in 1988. A graduate of the University of Pennsylvania and the University of Minnesota Law School, Jon's list of activities and publications would fill several Forum pages. His new role involves him in the budget, the building, dealings with the University administration and the legal community, and the day-to-day operation of the Dean's office. Jon has already demonstrated his vast ability to attend to endless details as Chairman of the College of Law Building Committee, a monumental task he has undertaken with grace and, as you will see, great success. Teaching is perhaps Jon's greatest asset, and ASU recognized his excellence in the classroom last June by awarding him a Burlington Northern Foundation Faculty Achievement award. He regrets that he will now have a reduced teaching load, but is looking forward to the challenges of his new job with characteristic intensity, humor and enthusiasm.

Assistant Dean Christine Smith is in charge of student-related matters, academic scheduling, administration of curriculum, scholarships, and financial aid, and is in over-all charge of admissions, placement, and the activities of the registrar. Chris came to the College of Law in 1976, her duties changing and expanding through various positions of increasing responsibility. A caring, enthusiastic, awesome person, Chris makes everything work — with a smile. She also knows by name every student and graduate of the school who attended since she came to work here. An ASU graduate, Chris serves on campus-wide committees, and continues to take courses at the University and perform community service.
Proceedings of the Groundbreaking Ceremony for

ASU College of Law Building Addition
May 5, 1987

Dean Paul Bender: I would like to bring these proceedings to order, if those of you sheltering in the shade would like to sit down. First of all, I would like to apologize for our wonderful planning of this event. We came out here in February and this area was entirely in shade at this time of the morning, we moved it to the right place to have it. Obviously, we did something wrong, but I'm not quite sure what. We do have a Center for the Study of Law, Science & Technology, but we are still lawyers rather than astronomers, and so I apologize. You will notice, however, that we carefully arranged to have the sun at the speakers' backs and in your faces. You will also notice there are very few students here, and that's because today is the second day of the exam period and they're right in there taking exams. So keep your laughter down to a low roar, because we wouldn't want to interfere with the educational process.

I am Paul Bender, and I am here to welcome you to this groundbreaking ceremony. This is the second groundbreaking in the history of the law school. The first one was more than twenty years ago, in November, 1966, and that was for this wonderful structure that you see on your right. The third groundbreaking in the law school's history will be in about three years, when we start work on our new library building, which is going to the south of the addition to the present Armstrong Building. People, especially around law schools, have a way of criticizing things, and I've heard two kinds of criticism about this event aside from the position of the sun and lack of shade.

One was that people said, "Why are you having a groundbreaking now? You broke ground two months ago." Other malcontents say, "Why are you having a groundbreaking, since you're not breaking ground at all?" In a sense, they're both right. Construction started on this building in February, and we really didn't break ground, and it's not clear that the present structure is being built on top of foundations that were put in place at the time the present building was built. The present building was built with the need for expansion in mind, and we are now doing some of that very expanded need.

Let me just outline for you why we need this building addition, because the size of the school in terms of the student body has not grown since the beginning of the school. Why in the world do we need this project, which will be about 17,000 square feet of new space? The reason is that despite the planning for the original building, some things were not thought out too well. I was looking at the plans for the original building last night and found that there were sixteen faculty offices. We not only need more about twice that many. Now you can ask questions about why it takes twice as many faculty to teach about the same number of law students now as twenty years ago, and I'm not about to answer that. But I assure you it has to do with the high quality of the education and variety of the programs.

Dean Paul Bender: in the absence of the building, new offices for the vastly increased number of faculty, new spaces for student lounges, and places for students to be. Many of our students sometimes spend twenty-four hours a day in the school and need places to stay. There's even a study room for students. There are places for the Development Office and the Placement Office and Student Services. Except for the shortage of library space, which is what we will remedy with the new building, this building will take care of some of our immediate space needs.

Groundbreakings, I think, are times for optimism, and this is really an optimistic time in the school's history. Not only are we getting an increasing number of very high quality applicants from all over the country — applications this year are up about 30% at a time when applications nationwide are down about 10% — but we are getting an increasing number of very talented young faculty. We are developing new programs. We have a new clinical program, funded by the State Bar Foundation, which started last year. We're developing new programs in the area of Law, Science & Technology, and in the area of Indian Law. We had a wonderful Native American Law conference here about a month ago. And a week before that the AALS Department of English and the law school had a conference on "Official English" as part of our efforts to increase our relationship with the Hispanic community.

The whole thing is really blossoming, and it is a wonderful time to mark that fact with a groundbreaking.

I did go back and look at the text of the ceremonies for the original groundbreaking to see whether things had changed very much, and I was delighted to see that some things never change. First of all, Pedrick's jokes never change. Pedrick remarked at that time, "One of the attractions of this assignment as the founding dean of the law school is that no one else can compete for it with my predecessor." They have compared him with his followers, however, and he still manages to bear up very well, as you will see in a moment when he speaks to you. I should also recognize the presence in the audience of Alan Matheson, who was my predecessor. Alan has as much to do with this new building as anyone. Alan, thank you very much for your contribution to this school's well-being.

Dean Paul Bender: Pedrick also said at that time, and this may sound familiar, "Our profession is in a turbulent period in its history. Only this morning the paper carried a report of an attorney who had been arrested for some very mean things about the legal profession and the fashion in which it falls short of really bringing a system of justice to the country." The world has not changed enormously in the intern, I didn't look at this morning's paper — well, I didn't, but I saw things about presidential candidates and their families, and not about the legal profession. But it is really hard to find a significant issue in the legal profession is not beaten somewhere in the press.

On the other hand, lots of other things have changed.

This structure, which contains 80,000 square feet, was built at a cost of $2,400,000. The addition to the building, which will contain 17,000 square feet, will be built at a cost of $2,000,000. And so the price has gone down, although I think the price is also going to go down. The old structure took a year and three months to complete. The new structure will take ten months to complete. The funding for this building came from bond authority created by the Arizona legislature, and we are lucky enough to have with us this morning a member of the board, Herman Chen, who is also the chairman of the board of the Regents, and I would like to recognize Herman and thank him for all his efforts on our behalf. There are some other people whom I would like to recognize. In the audience is Jack Kinsinger, the Academic Vice-President of the University, who has been enormously supportive of this project since I came to the school. Really, without his help we would not be here today. Jack, thank you very much. We also have present, in addition to Alan Matheson, one other member of the founding faculty of the law school, Professor Ed Cleary. I see Ed came prepared for the occasion with a wonderful straw hat to shade him from the sun, Ed, thank you very much for coming. I would also like to recognize two members of the law school staff, Jon Rose and Rhonda Kirkeide. Jon has been the chairman of the faculty committee which oversaw the building, and Jon is responsible for all the mistakes that have taken place and, especially, for those that are about to take place. Rhonda does her best to save him from them, but is not always successful. Jon and Rhonda, thank you very much for your efforts.

Diane Schwan is responsible for today's ceremony. She is our development coordinator, and she has not only put together this wonderful ceremony but has also needed to raise the funds to put us together. Thank you, Diane. The money for the ceremony comes from the offices of the architect, the construction manager and the construction company working on the project. Some of them are here today and I would like to recognize them. First of all, all the architects for this structure are the firm of Dean and Hunt. Hal Dean was the principal architect and Roy Burgin, who is primarily working on the project. Our fate is in their hands and we feel very well served by them.

The construction manager on this project is 3D International, and the chairman of the construction company working on it, John, would you take a bow? John's job is to make sure that we don't overspend our budget and he's a little overbearing about that. I don't know. The wonderful construction company that has been working on the building is Tillotson Construction Company, which has really been marvelous in cooperating with us. We are running a school building, but this building, and they have managed to work around so that we can have exams and so that we can have our clinical program.
continue, and we really appreciate that. From Territo Construction are John Territo and Nick Territo and Jerry Baxter. Would you stand up and take a bow? We have a brief program today. It is not as brief as we originally thought it would be, because there are so many people who we thought should say a word at this momentous occasion. The first of those is J.J. Russell Nelson, the President of Arizona State University. I think the first time I met President Nelson and he asked me what the law school needed, I said "is a building." He has been enormously supportive of this project from that time, and his support continues to be important. It was only a week or so ago that we finally realized we would have enough money to furnish the building. We were thinking the faculty would have to sit on orange crates. The first person to speak to you is President Nelson.

President J. Russell Nelson: Thank you very much, Paul. I was taken by the comments in your preamble, where you were talking about all of the things that were not anticipated when the building was originally planned, and it reminded me of the statement by that wonderful American philosopher, Yogi Berra, who said it’s really difficult to make predictions, especially about the future. However, with your training as a physicist, Paul, I think you should have been able to anticipate the sun angles. Prediction is easier in physics.

Dean Paul Bender: That’s why I went to law school.

President J. Russell Nelson: Well I thought that might be the explanation of your choice of becoming a lawyer rather than continuing as a physicist. I’m also charmed by the fact that we’re breaking ground at the wrong end of the building, and I’m not sure what the significance of that is. Let me simply say that I believe we have an outstanding young law school. The first class came here only twenty years ago, and we are today recognized as one of the outstanding young law schools in the country. That’s a credit to the faculty. It’s a credit to the leadership that the college has had under the succeeding deans, and it is reflected in the quality of the students who come to school here. I’m delighted that now we’re going to have a facility that will more adequately house the College.

Dean Paul Bender: Thank you, Russ, very much. I really hate to disagree with the president, but we are not only one of the outstanding young law schools in the country—we are one of the outstanding law schools in the country. And that is judged by the quality of our student body, the quality of our faculty, the quality of our physical facilities, and the quality of our leadership, including the president. Russ, I’m being absolutely sincere. Russ has been as supportive as one could hope a university president would be to a school like this, and we really do appreciate it.

Our next speaker will be, I’m afraid, not be quite that brief. He is never that brief. But he has been warned. He is the person who is responsible for all of us being here today. Willard Pedrick was the founding dean of this law school, and will always be the heart and soul of this law school. This was his conception. The fact that it is such a good school now is due to the fact that he started it as a marvelous school. He picked wonderful faculty and had the highest aspirations for the school from the very beginning. He is also a master after-dinner speaker, and that’s why we didn’t have this after dinner — to try to hold him down. He will be extremely brief, but we thought it was absolutely essential to have some words on this occasion from Dean Pedrick.

Dean Willard Pedrick: Thank you, Paul — I think. To the charges that I did not anticipate many of the problems, many of the needs, I plead guilty and throw myself on the mercy of the court. And now I launch upon my carefully prepared and extended remarks. One score and one year ago we launched forth on this campus a new law school. Well, actually the groundbreaking, as indicated, was November of ’66. I can report it was a successful groundbreaking. Now in fact, I’ve never heard of a failure at a groundbreaking. I’ve heard of difficulties in launching a ship — you know, they can’t break the bottle of champagne or something — but the ground can always be broken. I would not be disturbed about the fact that we are going up instead of down because, when it comes to groundbreaking, Dean Bender should recall the equity maxim that Equity regards that as done which ought to be done, so we’ve had a constructive groundbreaking in any case. When we broke ground I had a few comments, remarkably brief. We recognize — speaking about the legal profession, which is popular almost to the extent of morticians — we recognize that we have things to do, but we do believe we have a profession that is committed to an ideal of service and is committed to doing all that can be done to make this a system where we do, in fact, have justice for all.

We are here today not just to start a building but, I would suggest, a building place — that is to say, a place where we will build people, an institution, an enterprise. And we will be producing lawyers, counselors — I hope inspiring those people to help us build a better legal system which, in turn, means a better society. Brick and mortar are important. The building has a new addition, demonstrating to the people of Arizona, the faculty of this school, and the students that this institution is committed to the importance of law as the civilizing element in our society.

And as we add to the brick and mortar, it seems to me it’s an appropriate time for all of us who are engaged in this enterprise to reevaluate ourselves, because brick and mortar alone don’t it. In the future we must work together, all of us joining to make this an effective instrument for bringing justice to all. Thank you.

Dean Paul Bender: It is not true that all of the students at the law school are inside taking exams. We did give one of them an exemption from that so he could appear here at the groundbreaking. Tom Stillwell has been the president of the Student Bar Association, which is our student organization to which all students belong, for the past year, and Tom Stillwell will give a few remarks on behalf of the student body.

Tom Stillwell: Thank you. I had the honor of enjoying dinner at President Nelson’s house last week. Some of you may have read in the State Press that there was some controversy with the student government elections on campus, and I was introduced to President Nelson as the student who was responsible for having the student elections thrown out, at which he looked at me with a puzzled look as though he was thinking, “Why would you do something like that?” And I didn’t think of it at the time. I should have just said, “Well I’m a law student and I’m going to be a lawyer,” and that would have explained the trouble that I was making. But instead we got it all worked out, and I think the student government is going to continue despite any of our efforts.

I wanted to make a couple of comments concerning, not necessarily the building that’s going up today, but rather the building that each of you, and even we as students, can do to help the law school be a better place. While it’s important, on occasions like this, that we look back at the things we’ve accomplished and maybe even recognize things that we haven’t accomplished, and while it’s important also for us to look to the future to see what our goals are and what our challenges are, nonetheless my challenge to each of you today would be that rather than looking too long to the past and too long to the future, we each of us, grab our own shovels, as it were, and look right here at what it is we can do for the law school.

For those of you who are alumni or friends of the school, I would point out to you that the College of Law and ASU and our entire educational system is facing unprecedented challenges to our plans for increasing the quality and the availability of our education. And you can all help build the security of this institution and others by persuading our state government that the value of higher education can provide an even greater return than any investment that it can create in T-bills or stocks or bonds, or any sort of financial investment.

To those of you who are members of the legal profession, speaking for students I can tell you that you can make the law school a much more humane experience by realizing that professors do not give grades based solely on potential for success in law firms. In fact,
that correlation is sometimes a negative one. By helping to eliminate the pressure of equaling grades with dollars to be earned afterwards, I believe the legal profession will actually see more students graduating with more positive attitudes and a broader academic background, having realized that their ability to practice law goes far beyond the ability to take an essay examination.

To the faculty and the administration I would challenge that we build even better relationships with the student body by recognizing students as colleagues in academic endeavors. We can build stronger, better policies that will satisfy the needs of the College and of the students by encouraging student input to an even greater extent in the law school’s decision-making process. We can also build the quality of our graduates by offering more practical courses—courses that teach people what the real practice of law is all about. And finally, the faculty and administration can help students by building recognition of students as whole people through support of wellness programs, personal counseling, academic support, financial advice and help with home problems — for example, students with children have a difficult time with their studies and classes because of the cost or the unavailability of day care facilities.

Students — and I see we do have a couple here; I’m glad to see that because I wanted to be able to address someone besides myself — I think we have a responsibility to build ourselves into lawyers of quality and integrity, and to remember that the goal of becoming an outstanding lawyer is superior to the goal of making partner or a million dollars in five years. We as students must build a pattern of communication and cooperation with our faculty and administration. Our college has an unusually large number of open doors and it’s our responsibility to walk through them and share the responsibility for change.

Seven months from now we will have a new addition to this building but we will not have a new College, because our College is not made of concrete and steel; it’s made of people. And we don’t have to wait for the workers to finish their tasks in order to start building an even better youth of this law school. I also think it’s an obvious tribute to the law school and its faculty, present and past, and I’d like to acknowledge at least three of the judges who are present today. I’ve met Judge Peterman, Judge Barry Silverman, and Judge Rebecca Albrecht — standing over in the shade, of course. Now about this judges’ sitting room that no longer exists. Dean. Upon my return to the office I will enter an appointment and we will start the work to replace the new site of the judges’ sitting room. However, the new, permanent, chairs will be swivel chairs so that in the morning we can face that direction and in the afternoon this direction. I’m glad your chairs are not swivel; nevertheless, I’ll be behind you all the way. Thank you very much for permitting me to share in this celebration.

Dean Paul Bender: Thank you, Judge Dann. I meant to say in introducing Judge Dann, and will say so now, that in addition to the moral support that we get from the judiciary in attending occasions like this, we get an enormous amount of tangible support from them. The school has a number of trial practice, moot court, and other programs that demand some judges. And although lots of us try to act as judges, and some of us think we do quite well at it, we know we’re not perfect and we call upon the members of the judiciary to participate in our programs almost every week. You can usually find more judges hanging around here than down at the courthouse, I do, although I do my usual census last week. They really help us a tremendous amount and we are very appreciative of that.

Due to Tom’s many remarks I was looking around the audience and saw at least one other person whom I had meant to recognize, and will do so now. From the beginning of this school, when we had no alumni, Dean Pedrick, in his characteristically inventive fashion, invented an alumni group for the school which he called the Law Society of Arizona State University. This group has been extremely active in raising funds and other kinds of support for the school, and it is still enormous and very active in doing that. The president of that group, Gary Kelmer, is here, and Gary, I would like you to stand and be recognized. Gary has served in this position for two years now, and they have been two extremely productive years. Gary, I’ve enjoyed personally working with you as well as the results of your work, which have been a great increase in private contributions to the school.

Our next speaker is Gordon Alley, who is the President of the State Bar of Arizona. We produce lawyers here, and we think it is useful to have some members of the Working Bar here. I’m sure in the state of Arizona is really not a member of the Working Bar. As President of the State Bar he doesn’t have time to do any work. What he does is go to meetings like this and introducing you. I have a prescital note. This is a chance to thank a lot of people whom I really want to thank, and high on that list are the members of the Board of Governors of the State Bar of Arizona. Additionally, the people here welcomed me with open arms and have been as helpful as supportive and as friendly to me and to my wife as anyone could have been. Gordon, you have been somebody who has been more active in that direction than anybody else, and I really appreciate it and I appreciate your willingness to come up from Tucson to be here today and to represent the State Bar of Arizona. Gordon Alley.

Gordon Alley: But in a greater sense we cannot dedicate, we cannot consecrate, we cannot hallow this ground, for those brave men both living and dead have consecrated it far above our poor power to add or detract. Oh my God — it’s the wrong speech. I have to go to Gettysburg next week.

Thank you for letting me be a part of this program today, and thank you, Dean. In the brief time that I’ve been President we’ve participated in some things that have really been a lot of fun and I think kind of important, such as the swearing-in ceremonies for some of our appellate judges, for a new Supreme Court Justice, for a new Chief and a new Vice-Chief Justice, but when you really put those things in perspective you know they will come and go. But when we get involved in education, in learning, in putting a facility together which will in turn carry on what we’re doing here and facilitate education in the future, we’re doing something that’s not only important — it’s permanent. You know, now that Paul said something really nice about me I hate to get into a mutual admiration society. I remember Joey Bishop. That’s why he’s not on television anymore; he did that too much. I like to take points of personal privilege, though, and I’d like to say something about your Dean. I met him when he came on this campus, and during the pleasure of working with him during the last two and a half years or so. I think you are so fortunate not only to have somebody who works so effectively on the campus, but also works in the community — who gets out there and gets contributions for the law school and makes such a tremendous contribution to the law in general in the State of Arizona. It’s my pleasure to be here today, in addition, with the work of Paul Bender, with the great support that you have from President Nelson, and hopefully in three years that new library, this law school, which started on a very high plane and just keeps moving up, has a great, rosy future. Thank you very much.

Dean Paul Bender: Thank you, Gordon. Our next speaker is here representing the Maricopa County Bar. He is the president-elect; the president was too busy with other important things to come. He is John Crum, the chair of the Criminal Law Program in Montana, actually. But it is delightful to have Mike Hawkins here. Mike is a graduate of this law school and he has been working in the special area of criminal law practice in Phoenix. And Mike, it is a great pleasure to have you with us. You, along with the entire Association, have been, as has the State Bar, enormously supportive and helpful. For many programs did we not exist without the financial support we get from the Maricopa County Bar. Mike Hawkins.

Mike Hawkins: This is a real point of personal pleasure for me. I’m happy to be here. President Nelson, and President Victor Zafra, Regent Charen, a good friend, my good
friend Burton Barr. I noticed the program says “Honorable”... oh, for what would have been! This is a special moment for me. I was here at the first groundbreaking. The corner which is literally a stone’s throw from where we are right now was a street years ago, McAllister and Orange. My grandmother, who graduated from what was then the Territorial Normal School in the class of 1906, lived for 35 years right at that corner over there. As a small kid I used to walk up McAllister and buy popscicles at the store that was at the end of the street. I think it’s a woman’s dorm now. It’s improved in the passing years. Sixty-one years after she graduated, I entered the school with its first class, carved my name in the wet cement out back (which Alan Matheson tells me is now gone), and started studying here. I had the privilege of learning from great teachers like Jon Rose and Mike Berch and Ed Cleary, who has written his name indelibly on the law of evidence of the nation, something that will go on forever after him. The one thing that Dean Pedrick and the other fine people who have been associated with this law school taught us all was that our responsibility was not just to ourselves and to this fine university, but to our community, and that our measure would be, after we had passed from the scene, whether the community was a better place to live. As we turn this ground here today, we do it in that spirit—that our ultimate responsibility is to make this Valley, this community, a better place for all of its citizens to live. I’m just happy to be a part of it. Thank you for having me here.

Dean Paul Bender: Thank you very much, Mike.

Shortly after I came to Phoenix I had the privilege of being taken by colleague Jon Rose downtown to the State Capitol to be introduced to the man who was then Honorable (that’s a title like Colonel, I think), which stays with you for the rest of your life, despite what you do to deserve or dis-deserve it, and Jon introduced me to the leader of the State Legislature, a man by the name of Burton Barr. He was nice enough to sit down with me and say, “What can I do for the law school?” And I said, “Do you really want me to answer that?” He said, “Yes.” And I said, “Well, the thing we need most of all is a new building.” And Burton Barr took that very seriously and worked very hard to help us achieve what we have achieved today in recognizing the start of this building addition. That is one of a list that must number in the many thousands of Burton Barr’s achievements in the State of Arizona, making this a better place to live. And the list has not ended yet because, despite the fact that he considers himself no longer “Honorable,” and no longer holds public office, I hear rumors that he continues to do things for the welfare of the State of Arizona, as I think he always will. In addition to all of those things, Mr. Barr is a terrific comedian and a wonderful after-breakfast speaker, and that’s probably the main reason why we asked him to be here—because we thought we needed some entertainment at the end of the program. However, before getting to that I should say that the law school is permitted every once in awhile to bestow awards upon people. They’re called Distinguished Achievement Awards. Mr. Barr refuses to come to our usual meetings of the Law Society because he says he sees enough lawyers in his working day, so he doesn’t need to spend his evenings with them. So I thought we would take the occasion of his being here to do what I’ve wanted to do for a number of years, and that is to present Burton Barr with the law school’s Distinguished Achievement Award in recognition of the enormous achievements that he has made on behalf of the State of Arizona in his long career of public service. Mr. Barr, on behalf of the law school I present you with this medal, the law school’s Distinguished Achievement Award, and ask you to make the concluding remarks at this morning’s ceremony.

Burton Barr: Oh, my God. Holy Toledo.

Dean Paul Bender: No one could better deserve this.

Burton Barr: My speech will be short because I have to return this suit by eleven. I want to pay homage to President Nelson and all the other distinguished people here, and to the Dean. I would start off by saying that I do appreciate this honor tremendously, but I also hope that there is validated parking. I mean, when they invite you out, you gotta pay two and a half bucks! This is a rotten parking program. I also want to tell you that the Dean would have lasted about thirteen seconds in the outfit that I joined in 1940 as a second lieutenant. My battalion commander was Dwight David Eisenhower, when he was a lieutenant colonel, and in 1940, when I was a second lieutenant, he told me two things. One, he was in charge. I really didn’t need to be told that. Secondly, the troops are in the shade and the officers are in the sun. I want to tell you, the Dean would be gone. Gone!

I’d like to make this short but I would like to make a couple of serious remarks, if I may. First of all, this is a great institution, ASU is striving to be a nationally-recognized institution, and it is achieving that. It’s doing that because there’s an extraordinary number of people who want to see it happen and who are fighting every day, including today, to see to it that we will have quality education throughout this great state, starting at the very first grade and going all the way through the doctorates. To achieve that it takes an extraordinary amount of effort and courage, and to President Nelson and to Herman Chunen and to the thousands who are out there fighting for it, I am grateful. All people must really appreciate that effort because, in my judgment, the one difference between greatness of a nation and second class status is the educational system. Today, in our time, it is more important than ever that every single person in this great nation gets an opportunity to have the very, very best education that can be offered and the opportunity to go as far as they can go, and that will make the difference in America. And it isn’t going to be done with mirrors; it’s going to be done with hard work and money. I say to you that you’ve got to continue to fight if we’re going to build the nation that we believe in so greatly.

Let me talk a minute about today. Today is symbolic of what the law really is in our nation. You who represent that law are so vital to what happens to America. Today
we are granting amnesty to millions and millions of those who had not had the opportunity to be what I consider the greatest single treasure in the world, a citizen of the United States of America. Now individuals throughout this great nation have an opportunity to present themselves and to try to qualify to become citizens. It is a great moment in our history that we are willing as a nation to do it, and I’ve joined with Alfredo Gutierrez here in Arizona to start supporting, with everything I have, that great effort. It’s going to take lawyers. It’s going to take volunteers to see to it that we do it with dignity; that these people are treated with all the respect in the world, and that we give them every chance to become citizens. Today, Cinco de Mayo— which means liberty, not only in Mexico but here in this country, for all of those who believe in this great tradition today is a vital day.

Today start the Conra hearings, and those of you who had a chance to see them this morning saw America at its greatest, an America that is willing to bring to the court the things that it doesn’t do so well. And why are we doing it? Because it’s the law; because we are a country of law. This is the 200th year of our Constitution. Events are all coming together in 1987 to make every American aware that the greatness of this nation exists because we worked under the umbrella of law. Here we have a fine, fine school, one that will be known as a great law school. Above all, our charge is to preserve this nation under the banner of law. I say to all of you today it’s a great moment for you, and it’s a great moment for this school, expanding these educational facilities sends a message that says the fight never ends for a great America. Thank you very much.

Dean Paul Bender: Thank you, Mr. Bar.

We now come to the culmination of these ceremonies. Dean Pedrick, in another of his well-known remarks, has said that America is not only a country where people can rise from being ditch diggers to become judges or professors of law, but is also a country where you can go from those elevated positions to being a ditch digger. And we are about to demonstrate that that is true. That may not look like a ditch to you, and it is a little bit misplaced, but it’s not, it’s orderly; it exemplifies the main principles of American law. We have a number of shovels and we also have a number of hard hats. Those people want to know if they can take them with them, and the answer is no. You may not take them with you but you can wear them now and, indeed, I think you’re required to wear them now. So if we will all don our hard hats and pick up a shovel, you will see a mass groundbreaking. After that is over I urge you to enjoy the coffee and donuts and to walk around the other side of the building, where the construction has actually started. You will see steel beams which have just been erected in the last few days and which, at the beginning of December, will have matured into a wonderful new law school building. Drawings and elevations of which are on the table and plans of which are on the easels over there. Once again, thank you for coming. This is a great day, not only for the law school, but for the city, and for the school, and we appreciate the participation of you gentlemen very much.

Building Additions Update:

Prof. Jon Rose, Building Committee Chair, reports that the work is right on schedule, with construction to be completed in time to permit us to move into the new space before the spring semester begins.

The main uses of the new addition include law school administration and faculty offices on the second floor of both wings, all student services and a student lounge on the ground level of the west side, and library technical services on the ground level of the east side. The remodeled spaces of the existing building will include a seminar room, new and increased space for the law school clinic staff, and student organizations, a student study lounge, and an improved reproduction and materials center. The new building and the remodeled areas will also include expanded restroom facilities for both men and women, including showers.

We are excited about what has already been accomplished. Watch for your invitation to our dedication of the new addition.

Jay Adelman and Catherine O’Grady as the outstanding law graduates. They were selected by the faculty on the basis of academic performance and contribution to the law school.

The Hugh M. Caldwell Award, provided each year to a graduating student who has excelled in Procedure, was received by Mary Ruth Crawford.

The Prestige Hall Tax Award was given to John R. Becker. He received a plaque from the publishing company for having received the highest grade in the second year tax class.

The Sandra Day O’Connor Award, a cash award given in Justice O’Connor’s name, was presented to Jean Ida Updike for excellence in Constitutional Law. The award is provided by Jacqueline Norton (Vh) and Barry G. Silverman (76).

The United States Law Week Award is provided by the Bureau of National Affairs, Inc., which will supply a one-year subscription to the United States Law Week to Jill Susan Goldsmith. She was judged by the faculty to have made the most satisfactory scholastic progress after the first year.

The International Academy of Trial Lawyers Award was given to Mary Ellen Dieken and Bernie Chase Smith, who were nominated by the faculty to receive a certificate from the International Academy of Trial Lawyers as outstanding students in trial advocacy.

Summa Cum Laude: Daniel Jay Adelman, Magna Cum Laude: Christopher Barrett, John R. Beckman, Mary Ruth Crawford, Karen Ruta Dickson, Patti Lynn Dikes, John C. Lemaster, Catherine O’Grady and Jeffrey Lloyd Weiss.


LAW FORUM
by Judge A. Leon Higginbotham Jr.

Dean and Mrs. Bender, distinguished faculty, graduates and parents, I must come up with a confession immediately before I come here, as I get lots of invitations to speak for commencement. We wanted to see if Paul Bender’s tennis game had improved. The other thing is that Sheldon Hackney is the president of the University of Pennsylvania, is still astonished. He says, "Look, I’ve got a university here, founded by Benjamin Franklin, with an extraordinary history. What is going on out in Arizona that you can pull two of our most prized scholars, Bender and Spitrier, and get them to leave the university?" I’m going to send back a report and tell him that if you make an offer I’ll come here and leave Penn.

It is a coveted honor to come here. Probably you cannot recognize as students what a superb advocate and brilliant dean Paul Bender is. I’ve seen him in Philadelphia take the tough issues and argue them before our court, always concerned about expanding the scope of liberty and justice for the weak, the poor, and the dispossessed. That is the type of commitment he has made — to make America a better place. Of course, I had to say yes.

During the last 15 years I have probably given 50 commencement addresses, and each year becomes a more sobering experience, as I increasingly recognize the perhaps absolute unimportance, or at least the modest relevance, of a commencement speech to the audience. It took me a long while to recognize this, but now I know that when parents, grandparents, relatives, and friends are smiling, it is not in anticipation of my commencement speech.

They smile because they see an end to tuition bills, and because they shared the frustrations and joys leading up to this crowning event. And I know that the faculty never contemplated a commencement speech, because if anyone is that good they’d be on their faculty. But they smile because their faith, sacrifices, and dreams have once again been vindicated by the excellence of this year’s graduating class. And I now know that there are concerned faces in every audience — faces of individuals who may be asking very appropriate questions: First, "Why should I care about a commencement speaker?" Second, "How long will he talk?" Third, "Does he recognize that today’s triumph is ours, not his?" And they go on to think about more important questions, like will the picture I take of Joe or Joanne come out? And I’ve got a confession to make; I love it to my wife, and I will give it now. I really recognize how important taking pictures can be.

When our daughter was graduating from college, I had two Nikons and my wife said, "Leon, why don’t you take the Polaroid?" I said, "Please, Jean, please. I’ve got a 135 mm lens, I’ve got one zoom which zooms from 70-135, I’ve got a 28 wide angle, and I have a standard 50." So we went up to the college. I had two huge Nikons, a huge camera bag filled with film, speeds of 400 on some, others which could be boosted to 1000, and that would be my shining hour. I took 72 pictures with the best film, the best camera, and obviously used a superb photographer. I hate to tell you: not one came out. And at that moment my daughter said, "Look, Dad, I’ve got to go and get a doctorate," which she did, just so I could get vindication.

The other thing I would really like to say is that faculties must be given a very special tribute. Another reason why I was very delighted to come to this city was because when I was struggling at Yale, there was a professor of John P. Frank who was kind enough to take me on as a research assistant. He paid me $1.50 an hour, which seemed like all the money in the world, and having the opportunity to do research for him, having his encouragement, I think, made a very, very significant difference. As I look at the faculty, I know that there will be students who will be much better than they otherwise would have been because of the special excellence of the contribution the faculty made. And all of us should acknowledge that one of the great tragedies in the American legal academies is that professors are not being paid what they should be, considering that their contributions are of extraordinary importance. So I want to salute the faculties and the John Franks who have made such a difference.

I want to make one other personal reference. This has to be an event of great emotional impact. I can still remember my graduation from Yale 35 years ago. I can remember my mother embracing me, literally with tears streaming down her face and trembling. My father stood back quietly. I said to my mother, "Why are you crying at such a happy moment?" She said, "That’s why." And what she had in those tears was the memory of the thousands of other people’s dishes she had washed and the other people’s faces she had scrubbed. My father had worked in a factory as a laborer for 45 years, and, unknown to me, needed a serious operation, but he kept going in to that plant at 6:30 every morning so that he could send $25 a month to his son at Yale. That is what America is all about — parents who care, who have made the sacrifices. So I want to salute, above all, the parents. And when they handed out the degrees today they were all deserved, but I’ve always felt that my diploma should have not only my name, but also my mother’s and my father’s. Those diplomas will hang on walls which will some day be in judges’ chambers, maybe governors’ offices and senators’ offices, and many other places. We recognize today that there are additional names that should be on those — those of the parents, the grandparents, the teachers, and so many others who care. I congratulate you on survival. You’ve gotten past three years of the Socratic method; you’ve read many unlearned opinions by purportedly learned judges; you’ve been forced to find logic in decisions which defy rationality, and in your classes, when your answers were clear and crisp and precise you were cut off but when you were confused you were questioned unmercifully. When you were thoroughly prepared the professors were oblivious to your presence, but when you had not read the last case, or the next to the last footnote, they spotted you instantly, as if you were one of the Christians of centuries ago, in the Coliseum to be beheaded by the lions. But despite it all, you’ve overcome these frustrations, frustrations that at times prompt any sane person to ask, "Is all of the trauma really worth it?" "Are the goals ultimately attainable?" "Why do I persevere in this struggle?" You did persevere, despite emotional drain and personal sacrifices. The hour of exhilaration has arrived. And with pride I welcome you to our profession. I have no doubt it’s now better than it otherwise would have been.

My mother, who had only gone as far as the eighth grade, was a woman of extraordinary insight, and she used to say to me, "College makes a good man a better man, and a big fool a bigger fool." And I ask you whether that maxim is also applicable to law school. You are a better person, a more responsible person, a more moral individual, than you would have been if you had not gone to law school. Having earned your degree, are you now a better, a wiser, and a more sensitive person, or are you less committed, arrogant, or a hopeless cynic? The fundamental question has to be, what are your values? How do you see your role as a lawyer in our society in the
decades to come? Do you have any sense of commitment to help those who may need your talents most? To identify your values and test your commitment, an understanding of the historically dual role that lawyers have played in our nation is essential.

The Power of Lawyers

I found it fascinating when the president of your alumni association mentioned the dialogue between the politician and a possible contributor. Yet it should come to us as no surprise. In their extraordinary book, Professors Elyau and Sprague call lawyers the "pied pipers of politics." We look at the Declaration of Independence: it was signed by 52 men, 25 of whom were lawyers. We've had forty American presidents, of whom 25 were lawyers. Thirty-one of the 56 members of the Continental Congress were lawyers, and between 1877 and 1934, 70% of American presidents, vice presidents, and cabinet members were lawyers. Of the 435 members of the U.S. House of Representatives during the last session of Congress, 192 were lawyers. Of 100 senators, 61 were lawyers. And of the original 17 persons appointed to President Reagan's cabinet, nine were lawyers. I have cited these statistics on lawyers and public office because it reflects the lawyer's role in shaping public policy. And yet I have often wondered, when I think of the people who have been excluded in our society so often, particularly blacks and women, why is it that so often lawyers believe that the president of our lifetime whom I have known, those who gave the most in opening the doors for blacks and women, and our history was Henry Truman, John Fitzgerald Kennedy, Lyndon Baines Johnson, and Jimmy Carter, none of whom were lawyers?

Craftsmanship and Values

The issues I've raised today are therefore of importance because of the noble mission you must carry out. What should be the role of the lawyer? I submit to you that lawyers must be the visionaries in our society. They must be the legal architects who aid in renovating the palace of justice and in redesigning the landscape of opportunity in our nation. One must ask how we as lawyers will use our talent. Will we use our talent, our laws, to construct better schools, to cultivate the potential of all of our children, to build safe and humane housing for all of our citizens, to build better employment opportunities for all of our citizens, or will we use our laws to maintain and exploit the ghetto? Will we use our laws to perpetuate inequity and deficiencies, whether they're in our schools or in our prisons?

The policy roles that lawyers value and promote will have far more significance for our children and grandchildren than the type of credentials we have in dealing with the red tape and intricacies of government. Your perception of the type of society we should have and your views of the dignity of individuals will ultimately have as much to do with the quality of life in our society as any technical skill in drafting a document, writing a brief, or constructing a statute. If we are to play that important role, we should, we must, begin by recognizing that our nation's basic human problems do not exist today, and I submit that we have never existed, because of a lack of craftsmanship in the legal profession. Poverty, hatred, malnutrition, inadequate health care and housing, corruption in government, and the failures of our public law system have never existed because too few lawyers understood Blackstone. They have not existed because not enough lawyers have mastered the Uniform Commercial Code or the Federal Rules of Evidence. The major problems of our nation, and in many ways of our world, have not been, because those in power have limited moral and human values or have lacked the commitment to make real the values they profess in the abstract. To paraphrase Mr. Justice Holmes, the life of the law has not been logic, it has been values. Each of us, whether lawyer or administrator, judge or politician, law professor or entrepreneur, must make a personal judgment. The most moral and human values cannot be acquired by the most meticulous reading of the bankruptcy code or the most in-depth analysis of the securities and exchange code.

The tension between the technical understanding and application of the rule of law and the quest for social justice has existed since the memory of man. Perhaps graduation is a time when above all else we should consciously assess what our values and our goals in forging the rules of law. It is a day for us to evaluate how successfully we are moving toward social and legal justice for all, and whether we are striving as valiantly as possible to achieve the kind of world Martin Luther King envisioned when he said:

"I have the audacity to believe that people everywhere can have three meals a day for their children, clothing in which to protect their minds, and dignity, equality, and freedom for their spirit."

Where Will You Stand?

In some ways I've always felt that no one should get a diploma when they graduate. There should be another graduation, in which they would walk down the line and you would look at what kind of life the person has led. It would be important to know whether you've done what Martin Luther King talks about, seeing that people everywhere can have three meals a day for their body. That may be more important than anything else. Education and culture for their minds. Dignity, equality, and freedom for their spirit. Therefore we must ask, where will each of you stand? Will you be aligned with those forces that expand the horizon of opportunity for the weak, the poor, and the powerless, the many who haven't had our options? Or will you be a part of the indigent new majority in our society which says to society, "Now that I have made it, now that my family has made it, I don't care whether anyone else does." All of us are the beneficiaries of someone else's caring. You would not have had this law school for your education if other individuals had had a narrow view. But there were individuals who preceded you in the corridor of history who could see and who said there should be another great law school in Arizona, and they gave their effort, their time, and their sweat. They got beyond the chauvinism of me, me, me, me. And therefore I would like to suggest to you that there's a fundamental philosophy which we must have if we want to make America the nation it someday can be. I will not quote to you from a jurist or lawyer or even from the very pinnacle of wisdom — a law professor. Instead I submit to you the philosophy of a former slave, Frederick Douglass. In March of 1852, he was asked as an abolitionist what should be the role of a free Negro, and he replied that his mission was "to stand up for the downtrodden, to open my mouth for the dumb, to embrace those in bonds as if bound with them." I submit to you, '55 years later, that Douglass' theme is still a relevant mission for us as lawyers today, as we witness the decline in some of our cities, as we feel the increased polarization.

Lawyers as Dreamers

We must all recognize our obligations to stand up for the downtrodden, to open our mouths for the disad- daged, to remember those in bonds. We need you to be more than craftsmen. You must be the dreamers for America, the policymakers who have a vision that this nation and world can be better than it has ever been before. We need dreamers who believe and will prove that the most affluent nation in the world can make certain that every child in the nation, whether in the slum or in the rural tenant farm, will get adequate health care, live in a decent home and receive a quality education. And in that process you must think not only of what is good for Phoenix or what is good for Arizona; you must be concerned about the weak and the poor whose boundaries go far beyond this state.

Therefore let us go forward together to implement that broader theme of Frederick Douglass for all of us, from law school graduates to dropouts, from black to white and all shades in between, from rich to poor, from the weak to the strong. The challenge we face in this nation is whether we will have the ability to join hands together as technicians, as citizens, and as policymakers, to build a better society by improving the quality of social justice and life for all of our citizens. That will be the most significant thing that anyone will say about you: whether you have made a contribution to improve the quality of justice.

I will close with a poem, because occasionally the poets, more than anyone else, capture the essence of what a great nation should be. A black poet by the name of Langston Hughes wrote a poem called "Dream of Freedom." He said:

There is a dream in the land With a voice that can't be stilled.
By muddled names and strange
Sometimes the dream is called.
There are those who claim
This dream for theirs alone —
A sin for which, we know,
They must atone.
Unless shared in common
Like sunlight and like air,
The dream will die for lack
Of substance anywhere.
The dream knows no frontier or tongue,
The dream no class or race.
The dream cannot be kept secure
In any one locked place.
This dream today embattled,
With its back against the wall —
To save the dream for one,
It must be saved for all.
Wake Up — You’re There Already!

Frank X. Gordon Jr.

As a litigator, I used to have nightmares about being unprepared for trial. I experienced similar feelings of panic about being unprepared when I became a trial judge in 1962 and again when I became a member of the Arizona Supreme Court in 1975. Those feelings of panic have recently returned upon my elevation to Chief Justice. These past and present feelings of panic have resulted because I have only recently learned "to pay close attention to what others' responsibilities have been in the same proceeding. I have quickly realized, after assuming the roles of trial judge, Associate Justice, and Chief Justice how little I knew about their roles. For example, as a trial lawyer I paid little attention to how or when a trial judge assembled the necessary staff for trial, called jurors into the courtroom, conducted voir dire, managed the courtroom during trial, prepared or obtained basic jury instructions, threatened witnesses or attorneys with sanctions, and managed jurors during their deliberations. After I began to perform these functions, I again found that I had paid too little attention to how, or on what basis, the Arizona Supreme Court made its decisions. In my mind, the Supreme Court existed only to correct errors in Arizona's judicial system. I quickly realized after being appointed to the Supreme Court how little attention I had paid to appellate procedure. I then became so busy with appellate decision-making that I failed to develop a real understanding of the roles performed by the Chief Justice, Clerk of the Court, and the Court's Administrative Department. Now that I have assumed the duties of Chief Justice, and is a member of the State Criminal Justice Commission and the statewide conference of Chief Justices, I have under served three different Chief Justices during my tenure as a member of Arizona's highest tribunal. Each has had a different leadership style, and as different a view of what judges do. All of them I now agree that the responsibilities of the Chief Justice, as well as of the Court, are increasing at a great pace. Methods used previously by these Chief Justices will inadequately address the growing administrative matters. New approaches are necessary. For Arizona's judiciary to continue to function efficiently, the following four points must be addressed. First, a fifth full-time department of Division One of the Court of Appeals must be created. Second, a joint committee of judges and legislators needs to investigate new methods of financing trial courts. Third, a building needs to be constructed in Phoenix which can house under one roof the Arizona Supreme Court, Division One of the Court of Appeals, the Arizona Law Library, the Administrative Office of the Courts, the Judicial Qualifications Commission, and the Foster Care Review Board. And fourth, salaries for Arizona judges must be periodically adjusted to levels that will not only attract quality attorneys to the bench, but also will keep them on the bench.

After having learned about other states' judicial systems, I believe that Arizona has one of the best and most respected judicial systems in the country. A principal reason for this is the existence in Arizona of the Council on Judicial Education and Training (COJET). COJET, established by the Arizona Supreme Court in 1983, has developed standards for mandatory education for all judicial personnel, and orientation and annual update training for all judges, court personnel and probation officers. The mandatory education requirements have been phased in over a three-year period; thus, 1987 marks the first year that all judicial personnel will receive the required initial orientation and varying hours of annual judicial training. COJET is developing a cadre of people within each community to provide much of the training at the local level. This method of training will greatly reduce the travel expenses normally associated with continuing education. In my view, COJET will do much to maintain and increase the level of excellence, interest and dedication that Arizona's judiciary enjoys today.

Now, two long years into my five-year tenure as Chief Justice, are to blend all levels of the Arizona judiciary together into a more cohesive and cooperative partnership and to improve the public perception and image of the Arizona judiciary. In my view, the vehicles I intend to create to accomplish these goals are a Judicial Advisory Council and a Commission on the Courts. The Judicial Advisory Council will be comprised of one or two members of the Supreme Court, the Judges of the Court of Appeals and Superior Courts and Court of Appeals, and a representative from the Presiding Juvenile Court judges Commission. The Judicial Advisory Council will be to address and draft guidelines for resolving problems in the judiciary system that exist system-wide. The Commission on the Courts will be a broad-based committee comprised of members from the judiciary, legislature, bar association, and public. The Commission's purpose will be to draft and implement guidelines for the modernization of the Arizona judiciary by the end of term. Over the past few years I have sensed an increasing friction between the judicial and legislative branches of government in Arizona. It is the duty of the Commission to work to avert this kind of independence in the next few years. Each year it becomes more difficult to convince the legislature that the principle of "less government is better" does not apply to the judiciary. You do not need to improve the quality of life in Arizona by reducing judicial services. Moreover, in times of revenue, it is difficult to persuade the legislature that funding of the judiciary cannot be reduced if such reductions affect its substantive functions. Our founding fathers established a free and independent judiciary to perform three very important functions: to redress grievances between citizens, to protect individual citizens from executive and legislative exercise of unauthorized powers, and to act as the ultimate referees in disputes over the exercise of power between branches of government. We as judges did not ask for these responsibilities, especially the second one; they were imposed upon us by our federal and state constitutions.

Yet legislators have difficulty understanding why members of the judiciary become so alarmed when budgetary cutbacks threaten the courts' ability to carry out their constitutionally imposed functions. Historically, the Arizona State Supreme Court has maintained a strict separation-of-powers balance, when other branches of government, particularly the legislative branch. We have consistently told them, in essence, "You have no authority over the judiciary, so we are not obligated to be accountable to you. We will give you only the information we believe you need to know about us and no more."

In return, we all too frequently hear legislators say, "We never see you people unless you want a new division of the court of appeals or a pay raise." These attitudes have built a wall between the legislative and judicial branches in Arizona which grows higher each year. It will continue to grow even higher because, in my opinion, knows surprisingly little about what judges are required to do and why they are required to do it. Lack of information breeds suspicion and disrespect. To alleviate this problem, I have recently opened avenues of communication with key members of the legislature.

In my lifetime I have seen many changes in public attitudes toward government. The change that I most hope to see during the next five years is a reversal of the growing distrust by the public for what I believe are the three most important bulwarks in our democratic form of government: the courts. This distrust, in my opinion, exists principally because most of the American public know very little about the judicial branch of government. Even those who have had some exposure to the judiciary as litigants, witnesses, or jurors have grave
misconceptions about the role of courts.

Some of the most startling findings of a recent survey sponsored by The Heart Corporation and conducted by Research & Forecasts, Inc. indicate the following:

- fifty percent of the public believe that a defendant has to prove his innocence in a criminal trial;
- forty-five percent of the public believe that a district attorney is responsible for representing an accused criminal who cannot afford a lawyer;
- thirty percent of the public believe that a jury decision is final and can never be overruled by a judge;
- and thirty-five percent of the public believe that the state can appeal a decision finding an accused criminal innocent.

A survey prepared for The National Center for State Courts conducted by Yankelovich, Skelly and White, Inc., indicates that only 22% of the American public has extreme confidence in state and local courts. This percentage placed state and local courts even below the five percent of Americans interested in such institutions as the medical profession (28%), local police (40%), and American business (29%).

The State Budgets and the Role of State Courts

In 1983 I wrote an article discussing a survey of state courts that I had conducted in 1988 and 1984. This survey indicated that about fifteen percent of the state's courts were doing virtually nothing to educate the public about the judicial function. It stated that all of the state courts simultaneously placed public education at the top of their list of judicial priorities, much could be done to improve the image of the judiciary.

We black-robed public officials need to discard the idea that we reside in a castle removed from society by distance, elitism, foreign-sounding language, and circuitous paths, moats, and legal pitfalls. We must open up the castle, let down the drawbridge, make easy the path, and communicate with the public in simple language just exactly who judges are, what we do, and how and why we do it. It is time our branch of government became as well-known as the other two.

I cannot think of a better time to begin a program aimed at increasing public awareness of the judiciary. This year marks the bicentennial celebration of the United States Constitution. In studying, appreciating and celebrating this great document and what it has meant to this country, citizens of America cannot help but come to know more about the judiciary and its importance to everyday society. Hopefully, with this greater knowledge will come a reversal of the trend to discredit law, lawyers, and the courts, and an enhanced respect for one of this country's greatest resources — a free and independent judiciary. ■
Symposium: March 27 and 28, 1987

Official English and the Border States

In a climate of international awareness, a series of events on behalf of making English the official language, Professor Karen Adams and Daniel Brink of ASU's English Department organized a symposium to explore issues pertinent to this effort. Just as the磥ssible English-language presentations with Dean Paul Bender, an alumnus of ASU College of Law, Antonio Zuniga, gave a very generous grant to the law school to support a conference on the same topic. It was decided to merge the two efforts, and an important symposium, whose proceedings will be published in book form, was the result. Papers were presented and discussed in sessions at the Memorial Union on the Tempe campus, and then the sessions were moved to Armstrong Hall, where the final session on Friday explored the question, "Is Language Choice a Fundamental Right?" Portions of that session are summarized here. Dean Bender served as moderator.

Professor James Weinstein of ASU College of Law spoke about the general framework under the U.S. Constitution that is relevant to the proposed law and the language-related provisions. He then summarized some relevant cases and the constitutional principles upon which they relied. First Amendment, due process, and equal protection arguments have sometimes succeeded, but, as Prof. Weinstein pointed out, "... we are seeing laws that single out non-English, English-only laws, for instance, are not per se bad or unconstitutional; they are only bad if they can be seen as part of a pattern of anti-immigrant discrimination or if they impinge on some other fundamental liberty, such as freedom of speech." Prof. Weinstein went on to consider what difference we would find if ... the court were to find within the due process clause of the First Amendment an express, fundamental constitutional right of linguistic choice.

Professor Rachel Moran of the University of California at Berkeley Law School, Boalt Hall, addressed issues of bilingual education. Stating that "in the field of bilingual education, most of the debate has been over the statutory protections that will be afforded to linguistic minority children," Professor Moran's presentation focused on the history of these statutes. She also gave consideration to perceived motivations for English-only and similar movements in the United States, including court challenges. In her concluding remarks she stated: "... the challenge is not how best to constitutionalize language choices. The challenge is to create structures that are possible in the classroom to implement programs that they, in good faith, believe will be pedagogically sound and to be flexible in responding to the feedback that they get on while, at the same time, making continuing to believe that the school that is down the street is really their school." Addressing issues related to voting, John Trasvina, counsel to the Subcommittee on the Constitution for the U.S. Senate Judiciary Committee, also pointed out that language is not a fundamental right in the area of voting; voting is the fundamental right. He said, of language, "... it protects the fundamental right, but it is not a fundamental right in and of itself. Nevertheless that protective role has been judicially recognized and so, said Mr. Trasvina as part of his concluding remarks, "... because they [the English-only movement] seek to circumscribe the federal constitutional amendment and state constitutional amendments, I see in that, at least, an implicit admission that the English-only doctrine violates the constitution. That is why they need an amendment to advance their cause.

Professor Joe Magnat, Professor of Law at the University of Ottawa Law School in Canada, is the leading expert, in both Canada and the United States, on language rights. Beginning his remarks in French (it is common, in Canada, to hear presentations in which the speaker uses both English and French interminently, almost randomly), Professor Magnat gave a comparative perspective in considering the way other countries view language rights. He said, at the outset, that language "... implies a sense of community, not just the language of the minority, but the community's identity, its culture, its collective experience. Language rights, therefore, means protecting that linguistic community, that community of speakers and hearers, vis-a-vis the larger community which would impinge upon it somehow, not so much as a right as a group to exist." After discussing the ways in which countries like Belgium, Switzerland, and Canada have protected collective or community rights, Prof. Magnat asked, "is the goal of American bilingualism efforts language maintenance or maintenance of the Hispanic communities, which are of sufficient size to be maintained as monolingual enclaves within the larger English community, or is the goal of American bilingualism efforts to ease the pain of the Hispanic or other linguistic minorities as they are assimilated, as they disappear? ... If the goal is maintenance, then the key to success will be building an economic base, such as school boards, media, bureaucratic structures and the like, that are the lifeblood of linguistic communities, And, of course, economic development in the minority language would be crucial to this effort. After pointing out that (Continued on bottom page 26)

Symposium: April 10,1987

Tribal Government in Arizona: Emerging Legal Issues and Tribal-State Relations

The opening reception for an important art show at The Heard Museum celebrated Native American law students at ASU and Native American lawyers and judges in Arizona. This great tribute was the idea of the principal organizer, Dean Renard Strickland of the University of Southern Illinois University School of Law, and of Michael Duck, Director of The Heard Museum, and The Heard's Deputy Director, Peter Walsh. What made this celebration extra special was the reception held the evening before the symposium, which was co-sponsored by the College of Law and the Inter Tribal Council of Arizona. Both the reception and the symposium attracted representatives of tribes, tribal lawyers, tribal judges, and attorneys, state judges, lawyers, Arizona's two senators, and other who is interested in this important subject.

The symposium, organized by Visiting Professor Leigh Perle, provided a forum for Donald Anthony, Governor of the Gila River Indian Community and President of the Inter Tribal Council of Arizona, and from Donald Paul, Jr.

The initial session was entitled Future Directions in Indian Law. The first panelist, Dean Renard Strickland, alluding to recent conflicting decisions in cases affecting Native Americans, pointed out, "Young nations, like young children, change their minds; and when they do, strike out those who are most different from themselves, and who thus remind them of their own immaturity, their defects, and their uncertainties." Looking to the future, Dr. Strickland said, "There is no question that the next decade Indian law will be increasingly more professional and increasingly in the hands of Indians peoples themselves." He spoke of the responsibilities that flow therefrom — strengthening of the tribal courts through training programs and through principles of separation of powers. He commended the cooperation between tribes and states, saying "indian tribes are increasingly finding that litigation . . . is not always the best answer," considering the high costs and murky decisions. The need for planning a strategy for legal action was stressed, citing the example of the Black Civil Rights movement. Dr. Strickland closed with a list of "the types of legal questions which are at the heart of American Indian policy."

The Honorable William C. Canby, of the U.S. Court of Appeals for the Ninth Circuit, reminding the audience that he was not speaking for the Court, discussed some of the separation of powers issues affecting Indians and remarked upon their inconsistency. Tracing the history of decisions in such cases, Judge Canby commented, "Indian sovereignty . . . it's going to get chipped away . . ." if present trends in court decisions continue. Illustrating his concerns with recent Supreme Court decisions, Judge Canby concluded, "I can't say that, at least for litigation purposes, the future is very rosy for the tribes, and that's one reason why I think . . . the golden age of litigation may well be coming to an end. They are no longer what we were accustomed to come to have to the fore."" Saying that he thought tribal courts should be allowed to develop jurisdication and power, Vice Chief Justice Stanley Feldman, of the Arizona Supreme Court, discussed both some cases he thought hopeful and the Smith Plumbing Supply case, an Arizona case he characterized as "very encouraging," from which he dissented. Discussion of the conflicting messages of several recent cases closed the formal presentations.

Commenting on the presentations, The Honorable Ray Austin, Justice of the Navajo Supreme Court, said their court would like to have jurisdiction over non-Indians in criminal and civil cases. He suggested that strong tribal judicial systems might persuade the Supreme Court to resolve their conflicting approaches in favor of tribal court jurisdiction. Justice Austin also urged cooperation between states and tribal governments.

Joe Sims, an attorney who has represented a number of Arizona tribes, discussed issues of sovereignty and jurisdiction. He also discussed problems experienced by Native peoples in their efforts to preserve their sacred sites and ancestral burials.

The second section of the symposium, Future Directions in Tribal-State Coordination, began with comments by Attorney General Robert Corbin. Stating a personal preference to avoid litigation, he cited an instance where, through discussion, an agreement was reached in a dispute with the White Mountain Apache Tribe as a model of the way he would prefer to resolve problems between the tribes and the state. The states of Nevada, New Mexico and Arizona have agreements with the Navajo Nation to talk before bringing a lawsuit. Recently stating his openness to talk, Mr. Corbin expressed the hope that all tribes would seek that route, at least as the first step.

Navajo Nation Attorney General Michael Upshaw urged effective means of communication between the tribes and the state. Conceding that this is difficult because of widely differing traditions and points of view, he urged all to share information so that these factors can be clear to everyone. Chief Justice Judson Taylor discussed Indian rights, Mr. Upshaw pointed out that "... we have no established, meaningful mechanism or institution for the free and full discussion of these competing needs. . . . It is of little value..." (Continued on page 26)
Annual Report of Giving
Arizona State University
College of Law 1986-87

for the non-Indian user to blindly cry that Indians simply don’t need much water. Let’s find out our needs and try to reach an amicable resolution.”

The Honorable Hilda Manuel, Chief Judge of the Tohono O’Odham Tribal Court, described the process through which her nation developed a strong working relationship with the state in several areas. The Nation has taken over all aspects of law enforcement on the reservation, and all its police officers are certified as state police officers, able to enforce state and tribal laws on the reservation. Their court system communicates with state courts and has developed cooperative agreements between probation departments and informal agreements to give full faith and credit, and she expects the council to formalize an extradition agreement with the State in the near future.

Arizona Superior Court Judge Jay Abbey and Hopi Tribal Court Judge Delfred Leslie discussed aspects of the informal cooperative efforts that are in place among the jurisdictions of the courts of Navajo County, the Hopi Nation courts, the courts of the Apache Nation, and the Navajo Nation judiciary. The judges occasionally have luncheon meetings; Judge Abbey has served as judge pro tem in both the Hopi and Apache courts; they confer with each other by telephone. Other state judges from Northern Arizona also participate. This working relationship has resulted in the informal resolution of serious impasses, some of which were discussed by Judge Leslie and Judge Abbey.

These, and other, examples of cooperation between state and tribal courts aroused great interest among those who attended the symposium, and the law school was
Report of Private Gifts to the College of Law
July 1, 1986 - June 30, 1987

As indicated by the following report, the College of Law has experienced a tremendous growth of private support over the past three years. During the 1986-87 period, growth was particularly significant. The College of Law has experienced a qualitative increase in the programs it offers, suggesting that it can now offer its student body and faculty as a result of this year's gifts. We would like to extend a very special thank you to alumni and friends of the College for their generous and continuing support.

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The Law Forum welcomes comments, news, and photos. Please let us know about a new job or a promotion, honors or awards publications, family events, travels, etc.

Description of position(s)

Requirements
asked to facilitate a meeting between state and tribal judges where, aided by Judges Abbey, Leslie, and Samuel, similar arrangements may be set up in other parts of the state. This meeting was scheduled for October 21, 1967.

The final portion of the symposium, Future Directions for Legislation in the 100th Congress, gave the audience an opportunity to discuss issues of special concern to Native Americans. Arizona Senator Dennis DeConcini and John McCain, Senator DeConcini spoke of pending water rights settlements with Arizona tribes, economic development, Indian education, and pending legislation. Senator McCain also commented upon the gambling issue, as well as concerns about health care services and water rights. He discussed in some detail the economic development being considered, the Indian Economic Development Act of 1987, which

(Continued from page 22)

international law and covenants pay ... very high regard to the right of linguistic minorities to maintain themselves and to use their own language. Mora argued, during his concluding remarks, "Linguistic difference is a new phenomenon that Americans have come to deal with because it requires a specific formulation of the rules of integration, which requires a protection clause, and a specific formulation of the total rejection of the separate-but-equal doctrine."

The final speaker was School Fidel of the Arizona Court of Appeals, who began his remarks by reading the Robert Frost poem "Mending Wall." Repeating the lines "Before I'd build a wall, I'd ask to see what I was walling in or walling out, and whom I'd have to give offense," Judge Fidel remarked, "That's a question that we struggle with here — a practical question that courts have to face." Discussing the difficulties facing judges who must interpret legislation such as the proposed Official English Amendment to the Arizona Constitution, he said "... I start to think, how would we work with a right to a separate language, or how would we work with official English? What would it mean in terms of who wins and who loses cases? ... It's very difficult to know, and one reason is that it's frustrating to see a political fight develop over symbols. Symbolic important political argument, and yet clunky and difficult legal significance." He spoke of the many practical problems raised by the proposed amendment, concluding that "... the work of the courts could become quite difficult if we were to confront that issue."

The following morning a roundtable discussion of issues raised throughout the Official English Symposium was held in the law school’s Great Hall. Participants were Jose Trevino, from the League of United Latin American Citizens (LULAC); Tom Espinoza, past president of the Arizona Board of Education; JoAnn Garcia, ASU law student and student representative to the Arizona State Senate; and Morgan, director of the Southwestern Voter Registration Education League; Stanley Diamond, Western States Director of the U.S. English; Prof. Leslie Linkage, ASU Visiting Professor of Education, to leave from UNISOC; Joe Raybould, Arizona Bank and Lander.

Senator McCain introduced last year. This act proposes an economic enterprise zone approach to development. Two participants, lawyers Kevin Govek and Rodney Lewis, discussed their concerns with the Senate — issues such as care for the chronically mentally ill, maintaining sufficient funding for necessary services and housing needs; video game gambling, protection of sacred sites, provision of legal services to the poor, Indian health services, education, and the need for better communication were discussed in response to questions from the floor. Several lawyers urged people with questions and ideas to write to them.

Transcripts of the entire proceedings of this symposium are available. Please contact Prof. Leigh Price at the College of Law.

Is Banning of Cigarette Advertising Constitutional?

Professor Ralph Splinter: Let me introduce our speakers. Dr. Glyn Caldwell is currently the Director of Arizona’s Department of Health Services. Dr. Caldwell has had experience in public health for many years, particularly since the ‘50s, and we are able to show that this is the leading cause of death. In fact, in the United States it is estimated that there will be 430,000 new cases of lung cancer in 1987 and 360,000 deaths of people who have that disease. That translates to about 1,500 new cases in Arizona, with 700 deaths — all from lung cancer, all from a cancer that is indeed totally preventable. I know that there are people concerned about AIDS, when over the last 6 years we have had only 30 cases, 180 in Arizona.

The known risk factors for lung cancer, of course, include exposure to industrial chemicals. You are aware of the asbestos problem; you may not be aware of some chemicals. You are aware that there is some need for minimizing radiation. And I think, in each of these circumstances, cigarette smoking compounds the issue. There are two kinds of smoking: there is the smoking, if you will, that's direct — I light that cigarette and I have people exposed to my lungs as smoke. If I smoke in this room, there is indirect risk to the room from my cigarette smoke.

I think the evidence is fairly clear, from studies beginning in the 1950's, that if you smoke, your risk of lung cancer is markedly higher than if you don't smoke. There are a number of case-comparison studies where you compare cancer to people or to people with other diseases, and it's clear that, as far as lung cancer is concerned, there are more smokers, there are more cigarette smokers, there are more heavy smokers, and more women started at an earlier age. It's not so clear right now, because the data is pretty well balanced, as to whether or not passive smoking, the kind of smoke that you might get from my cigarette, is hazardous. But we do know that the majority of the current lung cancer cases are likely to be prevented if people don’t smoke.

There are other effects of cigarette smoking — cancer of the larynx, oral cancer, sinus cancer, the urinary bladder, chronic lung disease, particularly emphysema, chronic bronchitis, and coronary artery disease, where it is a primary risk factor although not the only one.

If you look at a chart or a series of curves on the frequency of cancer, you will notice that the only one going up markedly is lung cancer. The rate for males is 68.3 per 100,000 males, 17.2. The interesting thing is, in 1986 lung cancer outstripped breast cancer as a leading cause of death in females, which brings me to the point that women who smoke are starting to die like mad of lung cancer. And I think that is an important thing to think about, because it is a cancer for a number of years, particularly since the ‘50s, and we are able to show that this is the leading cause of cancer death. In fact, in the United States it is estimated that there will be 430,000 new cases of lung cancer in 1987 and 360,000 deaths of people who have that disease. That translates to about 1,500 new cases in Arizona, with 700 deaths — all from lung cancer, all from a cancer that is indeed totally preventable. I know that there are people concerned about AIDS, when over the last 6 years we have had only 30 cases, 180 in Arizona.

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smoker will have an adverse health response. Can I exercise my freedoms and put you all at risk for a very severe disease?

We're here today to talk about whether or not you can take that one step further. Advertising is something that the medical world, at least, considers hazardous. Should cigarettes be advertised? And what harm do we by doing it? I won't argue that point. I will only end by saying that tobacco-related cancers are preventable. If you don't smoke, don't start; if you smoke, stop, because your risk will decrease over time. I would leave you with another question. Do other substance or activity that kills the users at the rate of 136,000 persons per year and is still not prevented — still is permitted?

Professor Spitzer: Our next speaker has told me privately that he is not really in favor of the transmission of disease, but he thinks that there are limits to what we should do to protect people from themselves. I think he has in mind something to do with the First Amendment and constitutional issues.

Paul Eckshtein: As Ralph Spitzer has suggested, the issue before us today is not whether smoking is detrimental to our health. Rather, the issue is whether the banning of tobacco products would be constitutional, and, even if it were somehow constitutional, whether such a ban would be good public policy.

At the outset, I will stipulate that there is an overwhelming amount of evidence in support of the proposition that heavy smoking is detrimental to one's health. I also will acknowledge that a good case can be made for banning tobacco products altogether for the purpose of limiting governmental subsidization of tobacco products.

On a more personal note, I ought to add that I am not very tolerant of smokers. As one of the senior members of Brown & Bain, I played a substantial role in limiting smoking in our offices. Indeed, had it been up to me, I would have banned smoking in our offices altogether.

Moreover, my wife, No, who is here today, will tell you that I was relentless in my campaign to persuade her to stop smoking, which she did only after the became pregnant with our first son. I can't say that it was very romantic, but my wife is now a copy of the Surgeon General's 1964 report on smoking. Finally, as co-owners of a newspaper that is hungry for more advertising (what newspaper isn't?), No and I have determined as a matter of convenience that we will not accept advertising of tobacco products. We do not that because we are compelled to do so, but because we want to do so. Having established my credentials on the use of tobacco products, I want to turn to the constitutional and public policy issues that must be addressed in considering any proposal to ban advertising of tobacco products.

The discussion about the constitutionality of a ban on the advertising of tobacco products must begin with an examination of the question of whether "commercial speech" is entitled to the First Amendment. In 1976, in a case known as Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, the Supreme Court struck down a Virginia law that prohibited licensed pharmacies from advertising the prices of prescription drugs, and in doing so announced the principle that truthful and non-deceptive commercial speech is protected by the First Amendment. Since the Virginia State Board of Pharmacy case, the Supreme Court has held in a number of cases — including one that was argued by Professor Spitzer, the professor of this law school involving a ban on lawyers' advertising — that commercial speech is entitled to a considerable amount of First Amendment protection.

The test of the constitutionality of a restriction on commercial speech is judged today was set forth by the United States Supreme Court in 1980 in Central Hudson Gas & Electric Corp. v. PSC. In that case, the Supreme Court unambiguously held that commercial speech that concerns lawful activities and is not misleading is protected by the First Amendment and that governmental restriction of such speech would be sustained if, and only if:

1. The government's interest in doing so was substantial;
2. The restriction at issue directly advanced the government's asserted interest; and
3. The restriction at issue was no more extensive than is necessary to serve that interest.

Let us see how restrictions on advertising of tobacco products stand up under the Central Hudson test.

We begin with recognition of the fact that it is not illegal to sell tobacco products to adults in our society; as I noted earlier, we even go so far as to tax it. Nor would it be illegal, in any way, to do so. Since many people smoke because they enjoy it, showing people smoking in positions where they are enjoying themselves is not misleading, particularly where the advertisement that is called misleading carries a warning that cigarette smoking is dangerous to one's health. Schizophrenic, maybe; misleading, no.

Going to the three prongs of the Central Hudson test, in my view a ban on the advertising of tobacco products would not directly advance the government's asserted interest. That is so today and will continue to be so as long as we continue to subsidize tobacco. Therefore, our government ceases to subsidize tobacco products, I, for one, will be willing to listen to those who say that the government has some interest in banning the advertising of tobacco products.

One prong of the Central Hudson test requires proponents of bans on tobacco advertising to demonstrate that such bans would directly advance the goal of reducing tobacco product consumption. As data demonstrate, widespread smoking is in fact on the rise, and 99% local circulation would be permitted under the proposed advertising regulations so long as it was addressed to tourists and not residents. Given the inherent inefficaciousness of the markets rather than at the brand level, as M. J. Waterston demonstrated in his 1983 work Advertising and Cigarette Consumption, the avowed purpose and demonstrated effect of tobacco advertising is to prompt people who already smoke to shift brands or to remain loyal to the brand being advertised rather than to attract new smokers.

That view was supported by Judge Skelly Wright who, after reviewing the literature, wrote in 1979: "While cigarette advertising is apparently quite effective in inducing brand loyalty, it seems to have little impact on whether people in fact smoke." The Surgeon General himself made a similar finding in 1979. Indeed, in the face of what Waterston has called a "surprising increase in tobacco product consumption has actually increased in most countries in which advertising of those products has been banned." I'm not sure that the tobacco industry has demonstrated that tobacco and advertising cause someone to take up smoking, but I do believe that those who are opposed to the advertising of tobacco products have not demonstrated (as they are required to do as a matter of constitutional independence) that tobacco and advertising would substantially limit smoking in our society.

With respect to the final prong of the Central Hudson test, I would submit that any limitation on advertising of tobacco products is more restrictive than is necessary to serve the government's interest. That is so because the least restrictive means is to provide more, rather than less, information.

That the First Amendment demands; more information regarding tar and nicotine content and the harmful effects of smoking, displayed conspicuously on all forms of advertising, is not only a public policy argument. The Supreme Court has unambiguously argued to you that the Posadas case, decided by the United States Supreme Court last year by a 5-4 vote, has changed the legal landscape with respect to commercial advertising. At issue in the Posadas case was a Puerto Rican law that purported to restrict advertising of commercial gambling in Puerto Rico to non-residents of Puerto Rico. Stated otherwise, under the law, Puerto Rican citizens were allowed to advertise to those who were not residents of Puerto Rico, but it could not advertise to those who were residents of Puerto Rico. Totally ignoring the Posadas case, a bare majority of the Supreme Court found that statute constitutional.

While only time will tell, I believe that the Posadas case is a harbinger. The clock has not been turned back to 1976 for several reasons. First, casino gambling is unique. It is illegal in virtually every state of the United States, other than Nevada and New Jersey. Second, the Court went out of its way to observe that the statute under review should also be justified under Puerto Rico's unique cultural and legal history. Third, and most persuasively, the Court noted that the Puerto Rican statute really was not effective, in that it was not effective to reach the audience to which the advertising was directed in the way the Puerto Rican statute commanded. Indeed, in the oral argument of the Posadas case, counsel for Puerto Rico stated that casino advertising in a New York daily newspaper with 99% local circulation would be permitted under the Puerto Rican statute so long as it was addressed to tourists and not to residents. Given the inherent inefficaciousness of the.

Paul Eckshtein: statute, it is easy to understand how a majority of the Supreme Court came to the conclusion that the Puerto Rican law did not substantially infringe on First Amendment interests.

We live in a society that does not tolerate information rationing of any kind. Whether speech is considered "commercial" or "non-commercial" is immaterial. The First Amendment condemns any kind of paternalistic efforts by government to advance our welfare by keeping us in the dark or shielding us from viewpoints with which it may disagree or from information it does not like.

As the Supreme Court noted in the Virginia State Board of Pharmacy case, "[i]t is precisely this kind of choice, between the dangers of suppressing information and the dangers of its misuse if it is freely available, that the First Amendment makes for." That is, a choice that we as individuals ought to be free to make, whether we are newspaper publishers or consumers or readers.

Thank you.

Professor Spitzer: As Paul Eckshtein was speaking I kept thinking of a picture that I used to see in a store as I drove to work. This was a photograph of a lotus-eaters. It was a picture of a tall, rangy, good-looking, weather-beaten, southwestern man with a ten-gallon hat, a drawing deep, and with great satisfaction, upon a Marlin. And I suppose one way of framing it is to say that the issue we are talking about today is whether picture can be wiped off the face of the map — erased from our high school yearbook board, our golf magazines, even from our friendly TV screen. And, remarkably, Dean Bender takes that view.

Dean Paul Bender: You really disappoint me. I thought you were going to say that I was the model for that good-looking fellow except that I smoke cigars, not Marblors.

I find myself in a very uncomfortable position here today. I never thought that I would arise in public, if you can call this public, to attack the First Amendment and say that the First Amendment doesn't protect something, or say that the First Amendment gives less than the fullest kind of protection to speech. But that is exactly the position I'm in, and it has required some rethinking on
my part, I think I’ve learned something in the process.

The one comfortable part about this, however, is that I am really cheered by the fact that on the other side of this debate is also somebody whom I’ve always thought of as a paragon of First Amendment principles. In this particular case he is representing the interests of two of my favorite institutions in society, the advertising industry and the tobacco industry, but in both cases a little better. After all, it is really the financial interests that are at stake here. I don’t think anybody who smokes cigarettes is going to be seriously interfered with by a ban on cigarette advertising, at least not that I’m about to say I think is permissible. People will still be able to smoke and they will still be able to get their cigarettes. The people who will be hurt are in the advertising industry, which makes a fortune every year. The tobacco industry, depending on whether Paul’s prediction comes true and cutting down on advertising will not cut down on cigarette consumption, may or may not be hurt. Those who think their advice is likely to come from other brands of poison will be hurt. I guess it’s also the media that are hurt, and I am really glad that the Ecksteins have enlightened attitudes toward cigarette advertising in their newspaper, but it is clear to anybody who looks at any newspaper in general that their enlightened attitude is not shared very widely.

Maybe I should start by telling you what my position is.

I do not think that a total ban on all information about cigarettes would be constitutional. I think that is going too far. I would like to think that Paul is correct in thinking that I think is permissible to the kind of treatment that the law has given to advertisements for securities since the mid-1930s. You don’t see securities advertised in the way cigarettes are advertised. Here is a picture of the smoker buying a bond from 100 shares of Eureka Corporation to the smiling widow, who is — they can’t do that. They’re restricted to the kind of tombstone-style ads which tell you the price and where they can be bought. The purpose of advertising of a product is constitutionally protected, because I think that is essential information to have. The kind of ads that I think can be banned are the ads that Paul Eckstein was describing, namely the people in the sailboat, sailing and smoking away. You could ban them on the ground that they are misleading ads. I think they are fundamentally misleading ads. They are a picture of the kind of ad, which nobody bothers to read, which says cigarette smoking can be dangerous to your health, it has carbon monoxide, the fumes will not grow as much, and other things like that, I think that the purpose of the picture because the picture that is presented by the ad is of smoking, happy, healthy people. As Dr. Caldwell has indicated, that just isn’t what happens to most people who smoke cigarettes.

But that’s not the ground on which I primarily put my position. I primarily put my position on the following ground: I think there is a sensible document. I think if it is given a sensible interpretation, you come out with sensible answers. In this instance, I think it is not sensible to put the legislature to the choice between doing nothing — permitting advertising — and banning cigarettes. I don’t think that is a fair choice to put to the legislature, and I think there are lots of reasons of good, wise governmental policy not to put them to that choice. Paul Eckstein values, I think, that a good case can be made for banning tobacco products altogether. When a lawyer tells you that a good case can be made for banning products altogether, I think he is conceding that, if Congress banned tobacco products altogether, that legislation would be upheld. I have some doubts about that, but for the purposes of this presentation I am going to assume, as I think most people are assuming who don’t take as strong a view of the right of privacy as I do, that legislation prohibiting cigarettes would be constitutional just as most people assume that the legislation prohibiting marijuana and other kinds of drugs that are harmful to you, like cocaine, is constitutional. If that’s true, then it seems to me the following situation should be considered: There are lots of reasons why a legislator or legislature really needs advertising about cigarettes. They would like to get rid of them in society for the health reasons that you’ve heard about — they really kill people. There is a certain amount of paternalism that’s permitted in our law — probably too much. But if there is any amount of paternalism permitted, I think it probably would permit the banning of a product that is just that deadly. There is no doubt about that deadliness. Do you have to permit Congress the choice of banning cigarettes altogether or doing nothing? I don’t think you do, because I think there are very sound reasons why a well-meaning, clear-thinking, rational person in the legislature would not want to ban cigarettes by law even though that person would not like people to smoke cigarettes. The reasons, I think, are fairly obvious. There are a large number of people in this country who are addicted to cigarettes. If you ban them altogether, what do you expect those people to do? Suffer withdrawal symptoms, perhaps? That’s a problem right away. That’s the beginning of a kind of pain? And the pain may last, and it’s psychological as well as physical pain, for a long time. But even more importantly, you must consider what you are clearly going to do if you ban cigarettes. It’s not as though it is the first time we have thought about doing this sort of thing in our society; we tried it with liquor, and it was a terrible experience. You create a black market, you create a haven for organized crime — you do a lot of harm to a society by banning a product that is widely used and to which a lot of people are addicted, and with which a lot of people, even if they are not addicted to it, are absolutely going to want to experiment if you ban it. That creates, it seems to me, a lot of unnatural, harmful pressures in the society. So if I am going into Congress and somebody says “Yes, ban cigarettes,” my reaction is going to be “That’s a lousy idea. I don’t want to do prohibition again. I don’t want to have a black market. I don’t want to make addicted smokers out of the smoking of them.” Does that mean that I can’t do anything at all?

I don’t think it does, and I don’t understand how a sensible reading of the First Amendment can tell you that

Dr. Glyn Caldwell
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it does. By banning the product altogether, we could ban the ads. I take it everybody assumes that’s true. And constitutionally we could ban the product altogether, but we don’t want to ban the product altogether for the reasons I just gave. I fail to see what strong constitutional interest is being invaded by banning the ads for the product, as long as you permit people to know where to get the product and what the price of the product is. But to ban the ads that show smoking in a smiley, smoking — I just don’t see what harm is done when you could ban the product altogether. Who is worse off because of that? I know the advertising industry is worse off because of that, but I don’t think the fact that they are worse off financially provides a constitutional reason for holding that you can’t do it.

I also find myself the uncomfortable position of agreeing with Justice Brennan. That is probably the most serious difficulty that I am faced with. I mean, there is just something inherently improbable about that. But I have lineally solved that dilemma, because I really don’t agree with him. The test that he proposes in the Puerto Rico case that Paul Eckstein mentioned is more or less mechanical: If you could ban the whole thing, and if banning the whole thing will let you ban the ads, then you can go part way and ban the ads. That’s not what I’m suggesting. I’m suggesting that banning the ads is OK only if there is a good reason for doing it. If there are good reasons for being reluctant to go the whole way and ban the product (the kinds of reasons I mentioned before — not wanting to create a black market, not wanting to do the prohibition exponentially), then those reasons, then legislation that would ban the ads without banning the product ought to be constitutional because it is a sensible solution to a very difficult health problem.

We are guessing whether Paul is right in saying that cigarette advertising doesn’t encourage the use of cigarettes. Sure, if cigarette advertising doesn’t encourage the use of cigarettes there would be no need to ban it. It seems to me that a sensible legislature could well conclude that, in the short run, banning cigarette advertising won’t reduce the incidence of cigarette smoking. But it is hard for me to believe that, over a 50-year period, it doesn’t have some influence on people’s desire to use cigarettes when they see cigarette ads all around them. It just seems to be intuitively that there must be the effect of saying to people that this is a legitimate product. I think the kind of regulation we have today on smoking in public places has begun to have an effect on people smoking cigarettes, and they are rethinking whether they would continue to smoke in public places. Similarly, I think that if you didn’t see any ads at all it would probably, over time, have some effect. That’s a risk that I am willing to take. I’m willing to let Congress speculate that this law taboos are too high. Hundreds of thousands of lives are at stake if Congress is able to make the right choice. I just don’t think that the First Amendment necessarily stands in the way of Congress saying that many lives without intruding at all into the freedom of people, except the freedom of advertisers to make a lot of money.

Professor Spitzer: Are there any questions from the audience?

Judge Irving Hill: I have some problems when I am addressing this need to distinguish between advertising and the conveying of information. I put to you that the tobacco industry wants to distribute widely, maybe with a picture of smoking children on the cover, maybe not. Those articles which discuss cigarette smoking and come to the conclusion that its dangers have been exaggerated. And then the last, the paragraph of that article, with some ringing language about this conclusion, are up on a billboard, maybe with smoking children. Maybe not. What is the academic question: yes or no? Is it constitutional to ban it?

Paul Eckstein: To ban that article?

Judge Hill: To ban, first, this wide dissemination of the article in an attractive format and, second, the selective billboard feature with the concluding advantageous paragraph.

Dean Bender: The first question is very difficult, I thought of it, also, and I’m really glad that we don’t have to wrestle with that because I don’t think anybody’s property issue, and even an article in the Reader’s Digest, if you like, which makes the case that cigarette smoking is not bad for you — that it is good for you. I haven’t seen any particular pieces of legislation; maybe Paul has.

Paul Eckstein: The bill the State of New York endorsed is a total ban of all cigarette advertising or advertising of any tobacco products whatsoever, which is broad enough, I would think, to ban a billboard such as a Virginia Slims’ billboard that is right there on the wall at a tennis match sponsored by Virginia Slims, whether it has smoking tennis players or not.

Dean Bender: I agree with that, but probably it would not be construed to prohibit an article in the Reader’s Digest saying that smoking is good for you. Anyway, I am assuming that. If the legislation says “advertising,” I agree that there is a line-drawing problem, it may be void

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Meeting with Senator Barry Goldwater

Dean Paul Bender: It's a great pleasure today to introduce you to Senator Barry Goldwater. You know, you can say that people need no introduction, but Barry Goldwater is really a public service body of the United States. He has been a service body of the people in Arizona, but to people in the entire United States. Nevertheless, I will give you a brief history of his life. First of all, I call him Senator. "Senator" is like "Colorful," I take it; that you're entitled to keep after you stop being senator. But in fact we need to call him General, because that's even better than colonel, and one of his many accomplishments is being a major general in the Air Force Reserve. Senator Goldwater was elected to the United States Senate from Arizona five different times — we start off with the good news. The bad news, of course, is that he ran as a candidate in the Republican party. Now, let's get the most important question of all here in the House of Representatives, where people want to make it come to terms with the office of the president. The reason I don't like that is that if we elect a congresswoman every four years, we do away with the only device we have of telling the president what we like your doing or don't like what you're doing. Now, if they make the president's term six years, we might talk about a little longer for the House. But I'd like to see the House stay two years because it is one good indication of what the American people think of what the president is doing.

Question: Would you comment on the possibility of a ten-year term limit for a Senate or House member?

Senator Goldwater: I would do it; and I'll try it to short. Back in 1882, and I wasn't there, the president set aside land that he could call a reservation, but land that was not reached by a treaty. There's a difference. The president can't set aside land for anyone to live on, let's say, Indians, and it can be called a reservation, but it does not mean that that land belongs to the Indians or anyone else. If it's a treaty, where our government has to sit down with a tribe and they wind up with land, that becomes the tribe's land. The land we're talking about was given to the Mogul Indians (that's what the Hopis were named back then), and the big mistake came when they included "other tribes." I don't know how that got in, because there were no other tribes. The Navajo had just began to show themselves to be around, mostly of the Hopi land. This is a treaty where our government has to sit down with a tribe and they wind up with land, that becomes the tribe's land. The land we're talking about was given to the Mogul Indians (that's what the Hopis were named back then), and the big mistake came when they included "other tribes." I don't know how that got in, because there were no other tribes.
years ago that people other than non-blacks started moving into South Africa. The only native black tribe down there are the Hottentots, and they live a bit east of the Cape. Among other groups — some of them are pure black — actually in time originated there, but there are many, many people in that group that came from China, from Japan, and from Asia, and so they're all joined in the group called the economic sanctions. I think economic sanctions have had some effect on the governors down there, the Botha brothers. They have been about it that they would like a different and more intense type of apartheid between the whites, between the Afrikans and what I call the English, than there is between the black and the white, because they don't even speak the same language, and they hate each other.

Is there any way to settle this other than through the political powers of the country? Frankly, today I don't think so. As fast as a United States company closes its doors over there and moves out, somebody else moves in. It's a hard thing for people in the United States to recognize that we are longer under one economic power in the world. We have nations that before World War II didn't have a dime, and now they're economic powers, so I think when people practice sanctions it will have some effect, but it has had no big effect. Do I think it's ever going to happen that we find the end of apartheid in South Africa? Yes, I do, but I think if it's reached without a complete understanding between all the different people, then going to be a lot of trouble. And I think it's true, because South Africa has been a great, great friend to the United States, every war we've been in, they've fought with us. They have some of our most important intelligence gathering facilities in South Africa; they produce about 25% of all the gold in the world. But they still have this thing hanging over their heads, and it's not national, I'm not saying that it would be a problem, apartheid in your lifetime, you're going to see South Africa run by a combination of different people. This might be good, it might not, I have to have a very strong feeling that I think God is going to have a strong hand in seeing this through, and I think the continent of Africa, in about 300 years, will be the leading continent of the world. They have more resources and more people, people that are skilled and that are willing to work. So far they've been held back by the wrong kind of leadership and a lack of sophistication, but when these things are overcome, none of you are going to be here. Some of our great grandchildren will recognize the presenence of the continent of Africa. That's as much as I can say to you about it, because I don't have a glass ball.

In 1989, the United States signed the Comprehensive Nuclear Test-Ban Treaty (CTBT), which aims to ban all nuclear testing in the world. The treaty was signed in 1996 and entered into force in 1998. It bans the testing of nuclear weapons and requires inspections to ensure compliance. Currently, 183 countries have ratified the treaty, including the United States. The treaty is supported by the United Nations (UN) and has been endorsed by the International Atomic Energy Agency (IAEA).

Questions: What is the United States' true position as far as South Africa is concerned? Do you feel economic sanctions against South Africa are going to help that country solve its internal problems?

Senator Goldwater: Well, I think you can say very safely that the position of the United States, and I'm including the whole country, is against apartheid. Now, let me give you just a quick history, because it has some bearing on what I think. As long as South Africa is surrounded by other countries and China during World War II, it just to carry some papers and carry some people, and I've been back to South Africa about six times since then. You have to go back to history to understand this, you can't solve it, but it's good to know these things. It was only about 60
the word communism, because it can be applied to so many things, but the type of government that will take over if we're not successful will be a type of government that doesn't believe in liberty. The next step is Mexico, and the most liberal state in Mexico is Yucatan, which is right on the border. Maybe I spend too much time worrying about this, but I think if we operate down there successfully, the rest of the Western hemisphere will also be very, very trouble. And if we do it right we can wind up helping those people, because as you know if you've ever been there, it's a very beautiful part of the world; very, very productive. They have a lot of natural resources, so that's very, very low on education, I think we can help them and I think we're doing the right thing. 

**Question:** What are your predictions for the upcoming presidential election? 

**Senator Goldwater:** The upcoming presidential election? Well, let me take my party first. Up until yesterday, late last night, I thought George Bush sort of had it all sewed up, and I made up my mind a long time ago to back George. I served with Senator George. I knew George when he sang songs up at Yale. He was a fighter pilot in World War II, head of the CIA, ambassador to the U.N., ambassador to Red China — a hell of a good background. But this guy Paxlact is worth thinking about for the Senate seat. I don't think he's going to run for president. Well, I got Paul into politics and I felt all along, if he started early enough and got an organization together, he could be very well be the next Republican candidate, and that's the way I feel now. We have others, Jack Kemp. I don't think Jack can get the nomination. He has only one thought in his head right now and that's it's time for another economic issue in America is pretty darn hard, even though it's hard to make money here. We have Howard Baker, whom I didn't think a chance until he joined the President's staff. Now if the President comes out of this whole mess looking like a bright rose, Howard Baker is going to have a pretty good chance. 

I look at the Democratic party; and I don't speak the way I'm going to be because I'm a Republican — I look at it in a very pragmatic way. They're in the fix that we Republicans were in back when I first started working in the Republican party, in Chicago, that's back about 1928. We didn't have any money, we didn't have any men, we didn't have any ideas, so we kept getting beaten. And now the Democrats are in that position. I think American political go in a circle. We've been through the liberal phase; that hasn't produced. Now we're trying a conservative phase; that's doing somewhat better. Out of that, I think we don't have any ideas to solve America's problems. I can't guess what it might be. But the Democrats do have two men. One of them — I never can think of his name, and I should because he was born in Phoenix and two others, that you know Charlie Robb, that's it, a former governor of Virginia. A very, very fine man. And the other one would be Sam Nunn. I served with Sam Nunn on the Armed Services Committee. I don't know of a better senator, either. I don't know of a better senator, either. I don't know of a better senator, either. I don't know of a better senator, either.

**Question:** Is there anything you think the government is doing wrong? 

**Senator Goldwater:** I don't believe that the goal of an arms agreement with the Soviet Union at this time can be successful. I don't think what we can do with war might be taken if war broke out on the plains of Europe. Now let me try to tell you why, and I can just as well say why as I can say what, but I hope I can. 

Gorbachev is a relatively young man. I say advisedly, he's 55. That's quite young. He's the first leader of the Politburo who has made the philosophy of Lenin and Stalin as almost as sacred as their flag, and all they have left of that old group are in their 80's and 90's, and there are not many people left in the Soviet Union that remember them or respect them. I think you have to remember, too, that the Soviet Union has 20% of the population of the Moslems. They don't speak the language; they don't have any allegiance to Russia. About 30% of the remaining people are divided up among a number of tribes. Now, let me get this into my thought. I've talked to President Reagan about it. I think that Gorbachev is the first leader of Russia who really understands the problem, and the problem is not the U.S.S.R. It's probably the lack of understanding of the economic system of Russia. When you have a government controlled by a handful of people, that government has to run the economic system, and they can't even waste the economic system to improve without making an adjustment in the political system. I know that the young people who live in Russia, people your age, are kind of tired of having to work two, three, four days for a pair of shoes. They can't buy a car. It's hard to buy a television set, and they know how we live and they also know that Russia has a great background of resources. So I think Gorbachev is more inclined towards changing what he can to make the economy more productive for the young people than he is toward what he can do about. I discussed this with the President; didn't get any place, I just said, "Well, we've got to do something about this, we've got to go down there and explore!" Explore. Just see if he's agreeable to seeing what we might suggest that he could do in a way that's going to destroy the democracy in Russia. 

Now, that's what I'm thinking. As far as signing any agreements that will prevent the use of nuclear weapons, just don't think that's possible. They have in place about seven times as many warheads as we do. We have more in total, but changing a missile in a silo is not like putting a 30 caliber bullet in a rifle; it takes a little time. And there will always be others on either side, or in any country, the demagogues, the politicians, the rabble rousers, the demagogues, who want to use the weapon, not to wipe out cities, but to wipe out a battalion of men. So I don't see much hope of coming to any kind of conclusion with the Soviet Union at any time. I don't know, at my ripe old age, that it's ever going to go to war with Russia. But if we try to help them, and I may be a nut, maybe that will work. 

I remember during World War II when I was stationed in China, every time we got a boat load or two of airplanes, every day I'd fly over with several other pilots and check the Russian pilots out. And I'll swear I couldn't tell the difference between an American and a Russian until we used to do this. I'd say, at night they'd want to drink vodka and we'd want to drink bourbon. We finally got that corrected. I think we can correct this whole thing. I'll like to go to Russia, but I've never been there. I think it's safer, and the State Department says the same thing. So, I'm home in Arizona, and that's where I want to stay. 

**Question:** How important in your time in the Senate there has been a dramatic uprising of anti-Americanism throughout the world. Have you thought about reasons for why that exists and how far that's going to go? 

**Senator Goldwater:** I think that's true, but I think that's ended. Why do I say it's ended? I go to many, many schools and I used to speak to three or four schools a week during the year around, of most of them grammar schools, some high schools, and some colleges, and I find in the young a tremendously better understanding of our constitution and our history and our way of life and a much better feeling of patriotism than I found in their fathers or that generation. Now I'll admit that during the Viet Nam War, understandable anti-Americanism was the feeling of the anti-Americanism in this country, because Viet Nam was not a war that we should have lost, and we lost it. And we lost a lot of men. I think that's become almost a memory, like World War II was. I'm very optimistic about the future of our country. The anti-Americanism that you run into, I have a hunch, you're going to run into for a long, long time and probably forever; I think it's a great many of Americans believe in what we stand for.

**Question:** What was referring to European countries and different countries throughout the world and the perception of America. There are a lot of people bunting American flags throughout the world, and things like that. 

**Senator Goldwater:** Well, I think I can apply that anywhere in the world. There's always been anti-Americanism wherever you go, just as at times there have been anti-German, anti-Italian — almost every country suffers through this "anti" business. America probably has a bigger share of it, because America has been the one place in this whole world that most everybody wants to live. And it's easier to burn the American flag than, I guess, burn somebody else's flag. I hope I'm right. I think I've seen in my life the rise and fall of Americanism; and I don't care what we do in our efforts to help other countries, there's always going to be things that you can find wrong in our own country that somebody can argue about. 

**Question:** I'm from mainland China, and I met one American businessman while I was in China. I asked them why there is no political and economic relationship between some provinces in China and Arizona. The answer was that congressmen in Arizona were not interested. Is this true or not? This is my first question. My second question is, what do you think of the relationship between China and the United States? 

**Senator Goldwater:** Well, let me ask you a question. Are you from the People's Republic of China? 

**Responses:** Yes. 

**Senator Goldwater:** Well, the answer is you will not make you happy. I taught some of the Chinese Air Force how to fly in the early days of World War II and I flew with them while they were in China. Many of those people went to Taiwan, and so I have that to say that the bulk of my friends that are Chinese are in Taiwan, although many of them are still in mainland China. Taiwan does about a $250-500 million a year business with Arizona. I would say the only reason that the People's Republic of China has not created that same situation is that the U.S. is the backbone. I can't recall a delegation of the People's Republic of China coming to Arizona for the sole purpose of promoting trade. I know at this time the People's Republic of China is attempting to create better trade relations with the People's Republic of China and the Republic of China. 

Let me make another little prediction here, I'm full of them today. I have so much faith in the Chinese ability. Now, remember, there's no difference between the Chinese living in Taiwan and the Chinese living on the mainland. I've often said that if mainland China could rid itself completely with my children, China, and then allow the Taiwanese to come back in, that within 20-25 years they would become one of the great economic powers of the world. I have many reasons for saying this. One only has to go to the city of Taipei and see how the Chinese-style fine enterprise works. The first time I landed an airplane in Taipei there was no airport. I landed on a dirt road. Today it has the fourth largest gross national product in the world. So the problem now is just a question of getting the People's Republic of China to become a little more understanding, a little more friendly with us. They still don't exactly trust us. So you tell your friends back home to get over here. 

**Question:** In the future? 

**Senator Goldwater:** Well, in the future, but while you're over here being a student, find out what's wrong, and then tell your governments. That's where we are. That's where China does a terrific business with this country, yet they're the same Chinese that live all across China.
she transferred to the College of Law in 1983, as secretary, became administrative assistant, and is currently program coordinator. In the summer of 1987, Moneta completed writing a Law School Clinic Survival Manual for Interns. Ms. Cotter was employed as a legal secretary and office manager in law office for 1987-88 prior to coming to ASU.

Moneta Alcorn, Reference Librarian in the College of Law Library, was promoted from Associate Librarian to Librarian on July 1, 1987. She finished a two-year term on the Executive Board of the Phoenix Area Association of Law Libraries, and was appointed by the Vice President for Academic Affairs to the Ad Hoc Committee to consider a university-wide review committee for continuing appointment and promotion of librarians. She will be teaching legal research during the spring and fall semesters through the Center for Executive Development on campus.

Monica Tissue was promoted to Printing Services Supervisor I in July of this year, following Dottor Sweeten's retirement. She started working at the Law School in August of 1983 as a duplicating equipment operator. Mona Freeman is taking her position in printout.

Staff News

Marcelle P. Chase, Reference Librarian, was promoted to Associate Librarian to Librarian in the College of Law Library, was promoted from Associate Librarian to Librarian on July 1, 1987. She finished a two-year term on the Executive Board of the Phoenix Area Association of Law Libraries, and was appointed by the Vice President for Academic Affairs to the Ad Hoc Committee to consider a university-wide review committee for continuing appointment and promotion of librarians. She will be teaching legal research during the spring and fall semesters through the Center for Executive Development on campus.

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the Curriculum Committee in 1968, it is hoped that these courses will complement the doctrinal approach of traditional courses with a modest balance of sociological, critical and science approaches. The law school curriculum, like the practice of law as a whole, has continued to be completely transformed. The faculty hopes that the three new courses will send the important signal to our students that the law school must remain in the forefront of the context of the society in which it lives. Even those students with great Analytical skills cannot be expected to be truly effective unless they are prepared to bring a new perspective to the social significance of their profession.

The Perspectives Course will be offered for the first time during the Spring Semester of 1988. Each first year student will choose from a set of "perspectives" possibilities. The courses will also be limited to a number of students and third-year students, providing an opportunity for an interaction across traditional class lines. It is hoped that this opportunity to students to take as many of these new courses while at the law school.

The Menu of Perspectives Courses for the Spring Semester includes (tentatively): Law and Social Change, taught by John Lewis; Jurisprudence, taught by Bernard Toreno; and Law, Language, and the Humanities, taught by James Weinstein. In future years, we hope to offer a number of other perspectives courses, including the Critical Legal Studies Movement, the Psychology of Law, and Legal History.

Reception for Merriman Professor and Adjunct Professor

On April 29, 1987, Dean and Mrs. Paul Benda held a reception in the Mossman Atrium for Profs. William and Linda Benda, Berkeley Law School, with the theme "The President of the Federal Republic of Germany: His Power and His Powerlessness." The event was held at the University of California, Berkeley Law School, where approximately 100 people attended the event.

Pedrick Scholars

The Willard H. Pedrick Scholars for the Spring 1987 Semesters are as follows:

- Lynn Marie Allen, Daniel G. Roberts, and Robbin Wriggins, University of California, Berkeley
- William D. Blessing, Mark B. Beale, and Crystal Brinton
- Rachel Burdack, Eben B. Bregman, and Jennifer L. Bogen
- Mark Castelli, Duane M. Cavunov, and David J. Chalif
- Corinna C. Cohen, Kathryn Constantine, and Jessica D. Coomber
- David Connolly, Laura D. Conner, and Michael D. Coons
- Cynthia A. Crenshaw, Kathleen Cooney, and Sarah D. Cunningham
- Karen Davis, Cynthia M. Deardorff, and Emily H. DeGue
- Daniel DeLucia, Angela Devlin, and Andrew D. Douglas
- Lawrence Felsoard, Elana L. Fisch, and Matthew S. Fisher
- Jonathan Frierson, Scott Frasier Prentice, and Alice Fremeau
- David Gelb, Joel Gill, and Sarah Keating
- Mark Green, Richard Gubser, and Mark E. Gullickson
- Patrick Hampton, William H. Hansman, and Michael T. Hays
- Erica Hart, Staci Haydock, and Joshua D. Heinze
- Mark Hesselbein, Andrew E. H. Hsu, and Kevin M. H. Klein
- J. Christopher J. Johnson, Ryan S. Johnson, and James D. Joiner
- Jennifer Jost, Andrew K. Kassel, and Julia P. Katzen
- Jonathan Kauder, Rachel A. Karp, and Jeffrey R. Keating
- David Keck, Rachel L. Kehoe, and Rebecca K. Kiesler
- Richard Kim, Geo L. Kim, and John B. King
- Sarah Koenig, Matthew K. Koonce, and David E. Kornblum
- John Kornfield, Sarah J. Kowalski, and Mark J. Koziol
- Jennifer Krueger, Jonathan C. Kunkel, and Patrick L. Kruse
- William L. Kusmich, Jessica A. Lipton, and Elizabeth A. Lisi
- Christopher D. Loomis, Sarah G. Long, and Darin C. Locke
- Christopher E. Lowery, Sarah A. Lowery, and Paul J. Lowery
- Elizabeth MacKenzie, James D. Marlow, and Andrew B. Marshall
- Laura March, Sarah E. Mattingly, and Mark A. Masson
- Natalie May, Michael J. McKeon, and David J. McPherson
- Rachel Meiklejohn, Jeanne A. Kirk, and Monica Lien King
- John Clyde LeMaster, Diane Marie Lucas, Darren J. McHale, and Angela R. Miller
- John D. Miller, Jeanne Simmons, and Mark R. Morgan
- John J. Nigro, Leah P. Polak, Kevin Anthony Park
- Renee Rosado, Lynn M. Roseberry, and Siobhan C. Ruhi
- Debra Lynn Runbeck, Michael Lee Scott, and Pot-Rick Ann Sheehan
- David Earl Smith, Deborah Elaine Solliday, and David Stein
- John Lightner, Todd Robinson, and Ryan Rowland
- iodin L. Smith, Sally Ann Sills, and Jennifer A. Storck
- Dyllon A. Smith, Jennifer Storck, and Rachel S. Storck
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New Faculty

Bonnie P. Tucker joined the faculty this fall as an Associate Professor of Law, coming to us from the Phoenix law firm of Brown & Bain, where she had been since 1981. Bonnie received her J.D. from the University of Colorado in 1980. She was Editor-in-Chief of the Law Review and a member of the Order of the Coif. Following her graduation she clerked for a year for Judge William E. Doyle, 10th Circuit, U.S. Court of Appeals. Ms. Tucker is the mother of three children and grandmother of two.

Joseph Feller comes to ASU from the Environmental Protection Agency, where he was an attorney in the Office of General Counsel, specializing in litigation and regulation under the Clean Air Act. He will be an Associate Professor in the College of Law beginning in the spring semester, 1988.

This will be Professor Feller’s second academic position, although in a different field from his first. Before studying law he was a physicist. He received a Ph.D. in Physics from the University of California at Berkeley and went on to become an Assistant Professor of Physics at Columbia University, where he did experimental research on elementary particles.

He left Columbia, and experimental physics, in 1981 to study law “because I wanted to work in a broader area of public affairs and policy. I felt that as a physicist I had acquired analytic skills, as well as a scientific perspective, that could be put to better use outside the laboratory. Law school seemed the best way to move into that broader arena. I hoped to find work that required both technical skills and legal training.”

Professor Feller received his law degree from Harvard Law School, where he was an editor of the Harvard Law Review. After graduation from law school he was a law clerk to Judge Joseph T. Sneed, of the United States Court of Appeals for the Ninth Circuit, in San Francisco. Professor Feller’s first teaching assignments will be Property and Environmental Law, and he plans eventually to teach in the areas of Law and Science, and Natural Resources. He also hopes to assist state government officials and local citizens’ groups in addressing the unique and challenging environmental problems of Arizona. Last, but not least, he looks forward to returning to the West after a long exile on the East Coast.

Betsy Grey starts work as an Associate Professor for the College of Law in the spring. She will teach an upper class course in administrative law.

Before coming to the law school, Professor Grey practiced for three years (1985-87) with the law firm of Shea & Gardner and for four years (1980-84) as a trial attorney with the Civil Division of the United States Department of Justice. After obtaining her undergraduate degree from Barnard College, Professor Grey attended Georgetown University Law Center, where she was Articles Editor of the Georgetown Law Journal. Professor Grey was a law clerk to the Honorable Frank M. Johnson, Jr., United States Court of Appeals for the Eleventh Circuit.

While at the Justice Department, Professor Grey represented federal agencies and officials in litigation involving constitutional, statutory, and regulatory issues of first impression. Her private practice involved civil litigation including product liability, labor, and commercial matters.

Professor Grey looks forward to the transition from practice to academics. She believes that in her practice she gained both pragmatic tools and a comprehensive academic background in such matters as administrative, procedural, and tort law, and hopes that her experience will aid her in teaching. Her goal is to enhance the students’ ability to apply theory to practice.

Professor Grey also looks forward to pursuing her interest in public law issues in her writing. In particular, she anticipates exploring in depth the courts’ ability to control the broad powers of regulatory agencies.

Professor Jeldie Murphy, former Chair of the Philosophy Department at the University of Arizona and at ASU, has accepted a joint appointment as Professor of Law. Professor Murphy is one of the nation’s most distinguished legal philosophers, with a long list of widely recognized publications. For several years he has taught Law and Philosophy as an adjunct professor at the law school, a course open to philosophy as well as law students. This spring, he will teach a new offering, Law, Literature and Philosophy, a course considering the treatment of law related ethical and social policy issues in prominent works of literature.
Class Notes

Richard D. Dellung has been approved by the Arizona Board of Legal Specialization as a Criminal Law Specialist.

73 Paul S. Harter 3250 N. Third Street, Suite 200 Phoenix, AZ 85004
Lyle O. Reinisch is now resident in San Mateo, California, where he will be taking the Bar Exam in July. He is near completion of an LL.M. in Tax at the University of San Diego and his wife, Denise, is a first year law student at Cal Western.

Alison B. Swan served on the faculty of the State Bar of Arizona’s Continuing Legal Education seminar entitled “Antitrust & Product Distribution.” She serves as Chairman of the Antitrust Section of the State Bar of Arizona, which co-sponsored the seminar, and is a member of the Phoenix firm Fennermen Coograith.

Michael D. Hawkins served on the faculty of trial attorneys during the Maricopa County Bar Association and National Institute for Trial Advocacy’s April 1987 Trial Advocacy Program. He is the Chief Counsel of the Antitrust Division of the Attorney General’s Office. Several members of the Class of ’73 served on the faculty of trial attorneys during the Maricopa County Bar Association and National Institute for Trial Advocacy’s April 1987 Trial Advocacy Program. They are Alice L. Bendheim of Bendheim & Moten; Jerry C. Bonnett of Bonnett, Fairburn & Friedman; Barbara Lee Caldwell of the Maricopa County Attorney’s Office; Richard Gama, sole practitioner in Phoenix; and John W. Phipps, consultant to Woods, Brothers & Oberg.

Stephan W. Myers Myers & Barnes 214 N. Central, Suite 600 Phoenix, AZ 85004
H. Leslie Hall became associated with Community Legal Services in Phoenix in March. She has also agreed to serve on the faculty for the Second Annual Arizona College of Trial Advocacy in August.

Jeffrey B. Smith, Jr., of the law firm of Aspin, Walsin & Dinsel, will also serve on the faculty.

Rush D. McGregor served on the faculty of trial attorneys during the Maricopa County Bar Association and National Institute for Trial Advocacy’s April 1987 Trial Advocacy Program.

Lawrence W. Katz was approved as Criminal Law Specialist by the Board of Legal Specialization.

James W. Ryan is a partner of Ryan, McH aston & Wootten in Phoenix.

Stephen W. Myers is serving as Continuing Legal Education Committee of the Maricopa County Bar Council for 1986-87.

77 Michael Brophy Ryker & Apleywhite 201 N. First Avenue, 26th Floor, Phoenix, AZ 85003
Jane Goldman is the new National Labor Relations Board in Nashville, Tennessee.

Stephen G. Fanning has relocated his office to Tempe, where he is in solo practice emphasizing Domestic Relations, Juvenile and Employment Litigation.

Elliott G. Wolfe, will serve on the faculty for the Second Annual Arizona College of Trial Advocacy in August. He is the former Phoenix firm of Landman, Begum, Lewis & McWhin.

A. Frederick Schiffer, Jr. has been elected to the Bar of the Arizona Supreme Court and the Arizona State Bar of Arizona.

Nancy A. Rogers has opened an office at 5300 N. Central Ave., Suite 310, Phoenix, AZ 85012.

Steven A. Cohen, partner in the law firm of Levenbaum, Cohen & Jeffel, was appointed by Phoenix Mayor Terry Goddard and the City Council to the Central City Village Planning Committee.

Rebecca White Berch College of Law Arizona State University Tempe, AZ 85287

The Honorable Michael D. Ryan has been elected to a two-year term on the Board of Directors for the Maricopa County Bar Association.

Robert Rau, a former member of the faculty for “The Real Estate Estate,” sponsored by the State Bar Continuing Legal Education Department.

Patricia Norris Halstead is a co-author of the publication Arizona Real Estate Manual.

Barbara McConnell Barrett Evans, Kitchel & Jendres 2510 N. Central, 25th Floor Phoenix, AZ 85016

Denise M. Blommer has joined the Legal Division of the International Bank of Arizona. She was formerly counsel to Western Growers Association.

Nancy J. Meritt was a member of the faculty of the Third Annual Immigration Law Conference in El Paso, Texas. The conference was sponsored by the Texas Tech University School of Law, University of New Mexico School of Law and Arizona State University School of Law.

Meritt’s topic was Labor Certifications.

Tom P. Harris served on the faculty of trial attorneys during the Maricopa County Bar Association and National Institute for Trial Advocacy’s April 1987 Trial Advocacy Program. Mr. Harris is with the Maricopa County Attorney’s Office.

Francis G. Robert served as an associate counsel to the National Labor Relations Board in Nashville, Tennessee.

Laurel E. Shanks served on the faculty of trial attorneys during the Maricopa County Bar Association and National Institute for Trial Advocacy’s April 1987 Trial Advocacy Program. She is with the Phoenix firm of Fried & Roberts.

Stephen C. Neuman served on the faculty of the National Business Institute seminar, “Arizona Sales and Use Tax.” In April, Mr. Neuman is a partner in the Phoenix firm of Smith & Willner, where he practices primarily in the field of state and local taxation, including sales, use, income and property taxes.

Janis Fossum-Raynor will serve on the faculty for the Second Annual Arizona College of Trial Advocacy in August. She is with the Phoenix firm of Harris & Palumbo.

Gregory G. Groth announces the opening of his law office located at 1370 E. 16th St., Phoenix, AZ 85006.

Daniel R. Ortega, Jr., P.C., has recently relocated his offices to 682 N. Third Ave., Phoenix, AZ 85004.

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The firm is now known as McConnell & Associates.

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Gary D. Kidd has become associated with Randolph J. Bardett, P.C., in Lake Havasu City, Arizona.

Lance B. Payette has been appointed Counsel Western Operations for Xerox Corporation in Biling, California.

Lenni Benson

Daughton, Hawkins & Bacon
306 N. Central, 11th floor
Phoenix, AZ 85012

Mitchell S. Allen is associated with Constanza, Brooks & Smith, a management labor law firm in Atlanta, Georgia.

Scott Richardson is in private practice in Mesa, Arizona, and is limiting his practice to immigration and nationality cases.

Lenni Benson will be team teaching Immigration Law at ASU College of Law in Spring 1988 with Rosana Bacon.

David J. Rivers has moved his practice from the offices of Lioino, Sawyer & Collins to those of K. Michael Leaert, Charnes.

Jeff Clyman has joined Greyhound Lines, Inc., as assistant director of real estate. He previously served as senior real estate representative for The Greyhound Corporation.

William R. Richardson has joined the law firm of Redenour, Swenson, Cleere & Evans, of Phoenix, Arizona.

David Damore

Campbell, Ivens, & Sroven
422 N. Civic Center Plaza
Scottsdale, AZ 85251

Cindy Hanler Steckland is associated with the Phoenix firm of Trush, Waring & Roush.

Robert Lee Lanwell

P.O. Box 1096
Roseburg, OR 97470

Vicki Riccardo

Feller & Cohen
301 E. Bethany Home Road, Suite A-200
Phoenix, AZ 85012

Susan Ellerhorst served on the 1986-87 Continuing Legal Education Committee for the Maricopa County Bar Association. She is with the Scottsdale, Arizona, firm of Firth, Fisher, Blumine & Mason.

Gary W. Kot has joined the law offices of McCracken & Associates as an associate.