

Arizona State University  
College of Law

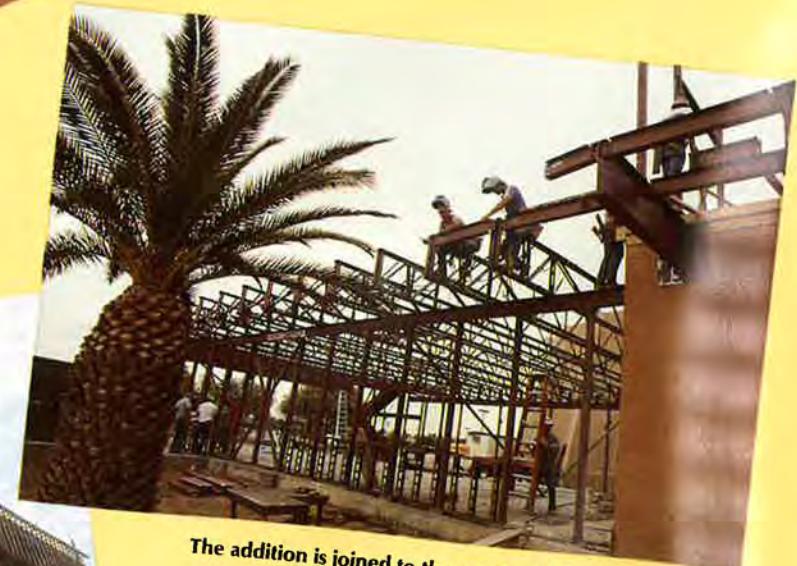
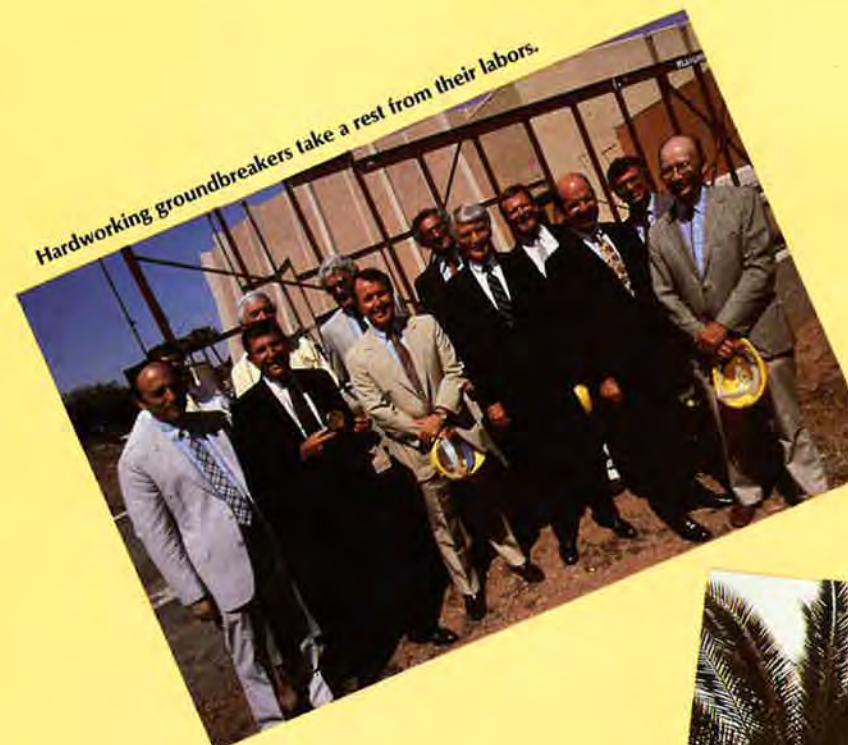
# LAW FORUM



FALL '87

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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.



ARIZONA STATE UNIVERSITY

THE LAW FORUM

COLLEGE OF LAW

FALL 1987 VOL. 12 NO.1



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## Letter From The Dean

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 areas 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 remodelled areas over the Christmas vacation, in time for the beginning of the January, 1988 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 MacNabb** 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 Kirkeide** 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 to a limited number of second and third year students) designed to focus on discussion 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

## New Deans



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 1969. 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 1968. 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 art, 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, awesomely competent 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 the

**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, so we decided this would be 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.

My name is 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 to go to the south of the addition to the present Armstrong Hall. 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 the reason for that is that the new 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 needed expansion.

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 significantly 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 magnificent 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 now have a faculty that numbers 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. But I assure you it has to do with the high quality of the education and variety of the programs



Dean Paul Bender

and the increasingly limited capacities of the faculty members. They're getting older. What can you expect? Other problems: You will look at the original plans and see there was no development office in the building. Obviously the assumption at that time was that there would be no need to raise private funds to keep the law school going. That's an assumption that has turned out not to be entirely accurate. There's also no admissions office, and I think that's because the assumption was that anyone could come to the school if they could walk and perhaps had a college degree, and that assumption has changed dramatically as well. We now have close to 1,500 applicants for the 150 places in the incoming class. Another thing that's missing in the original building is a placement office, and that was obviously on the assumption that all of our students could get jobs on their own without the need of any help, or on the opposite assumption that none of them would get jobs and it was futile to try. As a matter of fact we do have a placement office now and it does a wonderful job, and almost all of our students get jobs very soon after they leave school. You will also notice, if you look at the original plans, that despite all of those failures there was a place for a judges' sitting room. That's now the Placement Office, but in those days we gave more respect to the judiciary than we do today. There is no judges' sitting room in the addition to the building.

# ASU College of Law Building Addition, May 5, 1987

There are, in the addition to 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 shower 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 next building, this building will take care 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 ASU 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 school is really blossoming, and this 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 was the fact that no one will ever compare me with my predecessor." They have compared him with his followers, however, and he still has managed 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 enormous efforts on this school's behalf. 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 address made by a newspaper editor saying some very mean things about the legal profession and the fashion in which it falls short of really bringing a system of justice to this country." The world has not changed enormously in the interim. I didn't look at this morning's paper —well, I did, but I saw things about presidential candidates and their girlfriends and not about the legal profession. But it is rare to find a day when 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 size is also going down somewhat. The old structure took a year and three months to complete. The new structure will take about ten months to complete. The funding for this building came from bonding authority conferred by the Arizona Board of Regents, and we are lucky enough to have with us this morning a member of the board, Herman Chanen, who is also the chair of the capital committee of the Regents, and I would like to recognize Herman and thank him for all of 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 has presided over 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 managed to raise the money for it so it doesn't cost us anything. 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, the architects for this structure are the firm of Dean and Hunt. Hal Dean, the principal architect, is here with Jim Hughes, 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 I see John Stellfox, who is the principal person 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 overzealous about that, but so far he's succeeded. And the wonderful construction company that has been working on the building is Territo Construction Company, which has really been marvelous in cooperating with us. We are running a law school as we build this building, and they have managed to work around us so that we can have exams and so that we can have our clinical program.



Left to right—President J. Russell Nelson, Professor Willard Pedrick, Thomas Stillwell, Hon. B. Michael Dann, Gordon T. Alley and Michael D. Hawkins

continue, and we really appreciate that. From Territo Construction are **John Territo** and **Nick Territo** and **Jerry Baxter**. Would you three 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. 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 "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 this 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, 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 brought 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 rededicate ourselves, because brick and mortar alone won't do it. 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 us 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 shovel, 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 make 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,



Hon. Burton Barr holding Distinguished Achievement Award



Groundbreaking guests

that correlation is sometimes a negative one. By helping to eliminate the pressure of equating 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 up to us 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

College. My challenge to each of you today is to think about what you can do as individuals so that together we break new ground inside these walls. I believe this is one of the best places a person can come for a legal education. Let's all work to make it even better. Thank you.

**Dean Paul Bender:** Thank you very much, Tom. I really appreciate those remarks, and I was listening very carefully. I think we have a marvelous student body here, and one of the reasons is that they want to participate in the development of the institution. Tom has been a very positive force in that development.

Along the lines of improving relationships, I should also mention that we took a major step in that direction this year. We reinstated the custom of a law faculty-student body softball game a couple of months ago, and relationships were definitely improved. The final score was 11 to 10 in favor of the faculty, four runs scoring in the last half of the ninth inning despite the attempts of the student body to have ringers playing and to cheat on the officiating. And it's that kind of development which I think will go a long way to improve faculty-student relationships.

When the original groundbreaking for this building took place, the entire Arizona Supreme Court was here. We tried to duplicate that feat today but, sorrowfully, the entire Arizona Supreme Court is sitting downtown today and felt that their obligation to the cases was greater than their obligation to be here. However, we are lucky enough to have the entire leadership of the Maricopa County Superior Court, in the person of the Honorable Michael Dann, who's the chief presiding judge of that court. Mike, thank you for coming, and we await your remarks.

**Judge Michael Dann:** Thank you, Paul. I've never seen you in such an expansive mood. Deans Pedrick, Matheson, and Bender, and President Nelson and other honored guests, I am honored to represent the trial court in this county at this important function. The ASU Law School, since graduating its first class, in 1970, I believe, has contributed roughly fifteen percent of the total bench of this state. I think that's rather significant, considering the relative

youth of this law school. I also think it's an obvious tribute to the law school and its faculty, present and past. I'd like to acknowledge at least three of the judges who are present today: Judge **Cecil Patterson**, 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 appropriate order designating this space as 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'd 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 court house, I think, although I didn't do my usual census last week. They really help us a tremendous amount and we are very appreciative of that.

During Tom Stillwell's 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 over the years, and it is still enormously active in doing that. The president of that group, **Gary Keltner**, 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 support for 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 useful to have some members of the Working Bar, as it were, represented. Gordon 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. Gordon, before introducing you I have a personal 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. Almost from the day that I arrived here they welcomed me with open arms and have been as helpful and 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 Bar 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 I've had 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 legal 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. I think with this new 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—I think he's taking depositions in Montana, actually. But it is delightful to have **Mike Hawkins** here. Mike is a graduate of this law school and he has been U.S. Attorney for Arizona and is now in 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 one example, our moot court programs could 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, Vice President **Victor Zafra**, Regent Chanen, 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 popsicles at the store that was at the end of the street. I think it's a women's dorm now. It's improved in the passing years. Sixty-one years after she graduated I entered this 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 Chanen and to the thousands who are out there fighting for it go my gratitude. 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 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



Left to right: J. Russell Nelson, Willard Pedrick, Burton Barr, Thomas Stillwell, Herman Chanen, Gordon Alley, Michael Hawkins, B. Michael Dann



Armstrong Hall's Addition takes shape



Dean Bender enjoys the view

we are granting amnesty to millions and millions of those who have 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 America, for all of those who believe in this great tradition — today is a vital day.

Today start the Contra 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 out in the open 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. Barr.

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 a ditch digger to being a high public official — leader of the Arizona Legislature, chief judge of the Superior Court, president of the university, or get down to medium positions like dean of a law school — not only is America a country where one can go from ditch digger to those elevated positions, it's 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 neat, 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. These 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 take a walk around to 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 and for the country, but for this law school, and we appreciate the participation of you gentlemen very much.

#### **Building Addition Update:**

Prof. **Jon Rose**, Building Committee Czar, 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 portions of the existing building will include a new 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. ■

## Graduation Ceremonies

Graduation Day, May 15, 1987, marked the end of the 20th academic year at ASU College of Law. The Willard H. Pedrick Great Hall was filled to overflowing with graduating class members and their families and friends.

It was an especially warm and emotional occasion. Dean **Paul Bender** spoke of his special feelings for this class, which entered law school in his first year as Dean and was thus the first class he had known for all three years of their legal education. Co-speakers **Daniel Adelman** and **Catherine O'Grady** delighted the audience with their affectionate remarks accompanied by a slide show of informal pictures of class members. Dean Bender interrupted the presentation of individual class members when **Cheri Emm** stepped forward so that he could introduce her father, **Warren Emm**, who was a member of the second graduating class of ASU College of Law. He also introduced Cheri's son, **Adrian**, telling him that he hoped Adrian would be the third generation to graduate from the school. The Honorable **A. Leon Higginbotham, Jr.**, of the U. S. Court of Appeals for the Third Circuit, gave a memorable graduation address, which is reproduced in its entirety in this issue of the *Law Forum*; his delightful wife, **Jean**, applauded each class member as if she were the proud mother. It was, in short, a thoroughly satisfactory occasion marred only by the fact that those of us remaining behind will miss the new graduates a lot.

Awards were presented to the following graduates:

The DeConcini McDonald Brammer Yetwin & Lacy Academic Achievement Award was given to **Jeffrey Lloyd Weiss**. This award is presented to the student with the highest cumulative grade point average in the class.

The Alan A. Matheson Award, named in honor of former Dean **Alan Matheson**, was given to **JoAnn Pauline Garcia** and **Lori S. Roback** for service to the law school.

The Alumni Association Outstanding Graduate Award was given to **Mary Ruth Crawford**.

The John S. Armstrong Award was presented to **Daniel**

**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 Prentice 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 Vieh ('76)** 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 Disken** and **Bruce Chandler 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 Barnette**, **John R. Becker**, **Mary Ruth Crawford**, **Karen Rita Dickinson**, **Patti Lynn Dikes**, **John C. Lemaster**, **Catherine O'Grady** and **Jeffrey Lloyd Weiss**.

Cum Laude: **Mark William Arnett**, **James Joseph Belanger**, **Mark Douglas Chester**, **Russell Stewart Dickey**, **Kenneth Kirk Getsinger**, **David James Gilchrist**, **Jill Susan Goldsmith**, **Eric B. Gonzalez**, **Deborah L. Gross**, **Denise Joy Henslee**, **Lori Lynn Herzog**, **Diane Crandall Kerns**, **Roberta Frances Mann**, **Barbara Mertz**, **John Joseph Nicgorski**, **Sandra Judith Padegimas**, **Michael Joseph Petitti, Jr.**, **Edward Rubacha**, **Michael Lee Scott**, **David Edward Shein**, **Bruce Chandler Smith**, **Philip Howard Stanfield**, **Marc Thomas Steadman**, and **Jean Ida Updike**.

Left—Catherine O'Grady and Daniel Adelman. Right—Karen Dickinson, winner of ASU Faculty Women's Association Award.



# THE LIFE OF THE LAW: VALUES, COMMITMENT, AND CRAFTSMANSHIP\*

by Judge A. Leon Higginbotham Jr.



Dean and Mrs. Bender, distinguished faculty, graduates and parents, I must come up with a confession immediately to why I came 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, who 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 Spritzer, and get them to leave the university?" I'm going to send back a report and tell him that if you make me 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 I now know that when parents, grandparents, relatives, and friends are smiling, it is not in anticipation of my commencement speech. Rather 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 contemplates any exhilarating 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 there ever be a commencement speaker?" Secondly, "How long will he take?" 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 Joey or Joanne come out? And I've got a

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Judge A. Leon Higginbotham Jr., of the U. S. Court of Appeals for the Third Circuit, is a graduate of Antioch College and the Yale Law School. Highlights of his distinguished career include appointment to the FTC (the youngest person to be named commissioner at FTC and first black person appointed at the commission level), federal district court judge, and adjunct professor at Wharton Graduate School, Univ. of Pennsylvania and lecturer at Harvard Law School (both appointments continuing). His book, *In the Matter of Color: Race and the American Legal Process; The Colonial Period*, won many coveted awards. Named among the Ten Most Outstanding Young Men in America and Most Outstanding Young Man in Government, Judge Higginbotham has received many awards and honors, including 35 honorary degrees.

confession to make; I owe 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 by the name 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 floors 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 there —those of the parents, the grandparents, the teachers, and so many 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 devoured 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. Are you 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 Eulau and Sprague call lawyers "the high priests 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 I so honestly believe that, of all the presidents in my lifetime whom I have known, those who gave the most in opening the doors for blacks and women and Hispanics were Harry 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 on. What should be the role of the lawyer? I submit to you that lawyers must be the visionary persons 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 families, 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 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, haunt us 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 critical 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 are 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 bodies, education and culture for 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 indulgent new majority in our society which seems to say, "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 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, 155 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 disadvantaged, 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 its back against the wall.  
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<sup>1</sup>

Frank X. Gordon Jr.<sup>2</sup>



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 been too busy "doing my own thing" 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 became a trial judge and learned how 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 learn about 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,

those feelings of panic that have once again returned have made me regret not paying more attention, during the last twelve years, to the administrative responsibilities of those around me — especially since I now find myself spending an inordinate amount of time and energy handling administrative matters.<sup>3</sup> I have only too recently learned that there is more to being Chief Justice than occupying the middle chair during the Court's oral arguments and assigning cases during the Court's weekly conferences.

As Chief Justice, I am ultimately responsible for ensuring that the Supreme Court fulfills its administrative tasks in a timely and efficient manner. Some of these administrative responsibilities include:

- supervising the administration of all Arizona courts,<sup>4</sup>
- regulating the admission and conduct of lawyers through the bar exam process and disciplinary committees,<sup>5</sup>
- regulating the conduct of judges through the Supreme Court's rulemaking power over the Judicial Qualifications Commission,<sup>6</sup>
- designing and maintaining rules of procedure for all Arizona courts,<sup>7</sup>
- administering state funds to maintain certain legislative programs,<sup>8</sup>
- monitoring the entire Arizona judicial system and comparing it with judicial systems in other states, in an attempt to keep Arizona courts efficient and thereby earn and maintain public respect for its judicial system,
- approaching the legislature for funding of the State's portion of the cost of Arizona's judicial system,<sup>9</sup>
- and maintaining a relationship with the legislature and state bar that fosters the accomplishment of the foregoing.<sup>10</sup>

In addition to the Court's administrative responsibilities, I, in my capacity as Chief Justice, have several individual administrative responsibilities. Some of these are of a ceremonial nature, such as swearing into office new judges and other public officials, reporting to the legislature on the state of the judiciary, and delivering numerous speeches. In addition, the Chief Justice serves as Chairman of the Arizona Commission on the Bicentennial of the U.S. Constitution, the Judicial Nominating Commission on Appellate Court Appointments,<sup>11</sup> the Judicial Nominating Commission on Maricopa County Superior Court Appointments,<sup>12</sup> and the Judicial Nominating Commission on Pima County Superior Court Appointments.<sup>13</sup> The Chief Justice also presides at meetings of the Presiding Judges Association and the Juvenile Judges Association,

and is a member of the State Criminal Justice Commission<sup>14</sup> and the nationwide conference of Chief Justices.

I have served under three different Chief Justices<sup>15</sup> during my tenure as a member of Arizona's highest tribunal. Each has had a different leadership style, as well as different conditions under which to work. All of them 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 aid the current and future Arizona judiciaries in fulfilling their responsibilities. New approaches are necessary. For Arizona's judiciary to continue to function efficiently, the following four needs must be immediately 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.<sup>16</sup> 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.<sup>17</sup> 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.

My two long-term goals, during 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. Two of 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, presiding judges of the Justice, Magistrate, and Superior Courts and Court of Appeals, and a representative from the Presiding Juvenile Court Judges Committee. The purpose of the Judicial Advisory Council will be to address and draft guidelines for resolving

problems in the judiciary system that exist system-wide.<sup>18</sup> The Commission on the Courts will be a broad-based organization 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 year 2000.

Over the past few years I have sensed an increasing friction between the judicial and legislative branches of government in Arizona.<sup>19</sup> I have acted as budget liaison for the Supreme Court to the legislature for the last nine 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 and cannot improve the quality of life in Arizona by reducing judicial services. Also, in times of revenue deficits, 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 government exercise of unauthorized powers, and to act as the ultimate referee in disputes over the exercises 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.<sup>20</sup> 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 Supreme Court has maintained a strict separation-of-powers attitude when dealing with the 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 the legislature, 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: laws, lawyers, and 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 Hearst Corporation and conducted by Research & Forecasts, Inc.,<sup>21</sup> include the following:

- fifty percent of the public believe that a defendant has to prove his innocence in a criminal trial;<sup>22</sup>
- forty-five percent of the public believe that a district attorney is responsible for representing an accused criminal who cannot afford a lawyer;<sup>23</sup>
- thirty percent of the public believe that a jury decision is final and can never be overruled by a judge;<sup>24</sup>
- and fifty-five percent of the public believe that the state can appeal a decision finding an accused criminal innocent.<sup>25</sup>

A survey prepared for The National Center for State Courts conducted by Yankelovich, Skelly and White, Inc.,<sup>26</sup> indicates that only 23% of the American public has extreme confidence in state and local courts.<sup>27</sup> This percentage placed state and local courts eleventh among the fifteen American institutions rated, behind such institutions as the medical profession (50%), local police (40%), American business (39%), the media (29%), and the federal executive branch (27%), tied with Congress and organized labor, and ahead of only state and local executive and legislative branches of government (21%) and state prison systems (17%).<sup>28</sup>

In 1985 I wrote an article discussing a survey of state courts that I had conducted in 1983 and 1984.<sup>29</sup> This survey indicated that about fifty percent of the states' courts were doing virtually nothing to educate the public about the judicial function.<sup>30</sup> I stated that if 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.<sup>31</sup> 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 to 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 laws, lawyers, and the courts, and an enhanced respect for one of this country's greatest resources — a free and independent judiciary. ■

#### END NOTES

<sup>1</sup>This article is a slightly modified version of a speech delivered by the author to the Maricopa County Bar Association on January 6, 1987, and the Pima County Bar Association on March 26, 1987.

<sup>2</sup>Chief Justice of the Arizona Supreme Court. L.L.B., University of Arizona, 1954; B.A., Stanford University, 1951.

<sup>3</sup>My predecessor as Chief Justice, William A. Holohan, estimated that he spent two hours per day addressing administrative matters. I find myself spending at least twice that amount of time.

<sup>4</sup>Ariz. Const. art. 6, sec. 3.

<sup>5</sup>17A A.R.S. Sup. Ct. Rules, Rule 31(a).

<sup>6</sup>Ariz. Const. art. 6.1, sec. 5; 17A A.R.C. Sup.Ct. Rules, Rule 81.

<sup>7</sup>Ariz. Const. art. 6, sec. 5(5).

<sup>8</sup>In 1987 alone, the Arizona Supreme Court will administer state funds of approximately \$35,000,000 to maintain such legislative programs as Adult Intensive Probation Supervision, Criminal Justice Enhancement Fund, Court Appointed Special Advocate, Criminal Justice Enhancement Fund, Foster Care Review Board, Intensive Probation Supervision, Juvenile Crime Reduction Fund, Juvenile Intensive Probation Supervision, Juvenile Probation Services Fund, State Aid Enhancement, and State Foster Care Review Board. The amount of funds and number of programs which the Supreme Court will administer will undoubtedly increase as the population and crime rate in Arizona continue to dramatically increase.

<sup>9</sup>The State funds one half of the salaries of all justices of the peace and superior court judges and funds the full salaries of all appellate judges and appellate court personnel. The State is also responsible for fully funding the property, plant, and equipment of the appellate court system and for partially funding the State's probation departments.

<sup>10</sup>A.R.S. Sec. 41-2702 (A) (1).

<sup>11</sup>17A A.R.S. Jud. Nominating Comm. Rules of Proc., App. Ct., Rule 1.

<sup>12</sup>17A A.R.S. Jud. Nominating Comm. Rules of Proc., Maricopa Super. Ct., Rule 1.

<sup>13</sup>17A A.R.S. Jud. Nominating Comm. Rules of Proc., Pima Super. Ct., Rule 1.

<sup>14</sup>A.R.S. Sec. 41-1308 (A) (1).

<sup>15</sup>James Duke Cameron, Fred C. Struckmeyer, Jr., and William A. Holohan.

<sup>16</sup>These six entities are now maintained at five different Phoenix locations. The Administrative Office of the Court estimates that rent of \$1.2 million would be saved in 1987 alone if such a building were presently in use.

<sup>17</sup>Current standards call for judges and court personnel to annually receive sixteen hours of training and for probation officers to annually receive forty hours of training.

<sup>18</sup>Current system-wide problems include overcrowded dockets, inefficient technological support systems, and a poor public perception of the role and image of the judiciary.

<sup>19</sup>Until now, the Executive branch has taken a neutral stand regarding the judiciary. I hope this remains so.

<sup>20</sup>See, e.g., U.S. Const. art. III, Sec. 2; U.S. Const. amends. I, IV, V, VI, VIII, X, XIV, XV; Ariz. Const. art. 2, Sections 4, 5, 6, 8, 10, 13, 15, 17, 23, 24; Ariz. Const. art. 6, Sections 5, 14, 15; *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

<sup>21</sup>The Hearst Corporation, *The American Public, The Media & The Judicial System: A National Survey on Public Awareness and Personal Experience* (1983).

<sup>22</sup>*Id.* at 14-15.

<sup>23</sup>*Id.* at 15.

<sup>24</sup>*Id.* at 17.

<sup>25</sup>*Id.* at 18.

<sup>26</sup>Yankelovich, Skelly and White, Inc., *The Public Image of Courts: Highlights of a National Survey of the General Public, Judges, Lawyers and Community Leaders* (1978).

<sup>27</sup>*Id.* at 25.

<sup>28</sup>*Id.*

<sup>29</sup>See Gordon, *The Judicial Image: Is a Facelift Necessary?*, 10 *The Justice System Journal* 315 (1985). The Justice system Journal is published by the Institute for Court Management, a division of the National Center for State Courts. Copies or reprints of the survey may be purchased from the National Center for State Courts, 720 Sacramento Street, San Francisco, CA 94108.

<sup>30</sup>*Id.* at 318.

<sup>31</sup>*Id.* at 323.



## Cleary Documents Are Donated to the Law Library

Richard L. Brown, Professor and Director, Law Library

Professor Emeritus Edward Cleary has been sharing his expertise on the law of evidence with ASU law students and faculty since he came to ASU as a founding faculty member in 1967 (and for twenty years before that with students at the University of Illinois College of Law). Since becoming an emeritus professor, Ed Cleary no longer does that sharing in the classroom. But his contributions haven't stopped and, in fact, they have continued in one very dramatic way this year. Professor Cleary has donated to the ASU Law Library his collection of documents gathered during his service from 1965 to 1975 as reporter to the Advising Committee on the Federal Rules of Evidence.

These are not the mementos of a dabbler. Rather, this unique collection represents a documentary record of the evolution of the major codification of evidence law by one who participated at the very heart of that process. The creation of the *Federal Rules of Evidence*, in 1965, began with the appointment by Chief Justice Warren of an Advisory Committee to draft rules and the naming of Professor Cleary as reporter to the committee. A more appropriate appointment could not have been made, for Professor Cleary has authored the *Handbook of Illinois Evidence*, co-authored a major evidence casebook, and acted as general editor of later editions of McCormick's *Handbook of the Law of Evidence*, the preeminent short treatise on the law of evidence in this country. Professor

Cleary had also served as a member of the American Law Institute, Reporter for the Joint Committee on Illinois Civil Practice, and member of the Illinois Supreme Court Rules Committee. After a lengthy process of drafting, soliciting comments, redrafting by the committee and extensive study by Congress, the federal rules were enacted into law and became effective in 1975. The federal rules have been enormously influential, not only governing proceedings in federal courts, but serving as the model for state rules in at least 27 states and constituting the primary focus of most law school evidence courses.

The documents in this extensive collection include correspondence; drafts of rules and comments upon those drafts by individuals and groups; the Reporter's comments on those comments; actions concerning the draft rules by the Standing Committee on Practice and Procedure, the Judicial Conference of the United States, and the Supreme Court; bills introduced in Congress; hearings before the House and Senate; and final enactment and approval by the President.

The collection will be processed and organized by the law library staff and made available in the reference department to library users. The presence of these materials in the Law Library will make available to legal scholars an unparalleled resource for research into the origin of the *Federal Rules of Evidence*. ■

## Symposium: March 27 and 28, 1987

### Official English and the Border States

In a climate of intense nation-wide activity on behalf of making English the official language, Professors **Karen Adams** and **Daniel Brink** of ASU's English Department organized a symposium to explore issues pertinent to this effort. Just as they were discussing possible law-related 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, and then the conference 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 whether or not language rights are highly protected. Posing the question, "Are language rights constitutional rights guaranteed by the U. S. Constitution?" Professor Weinstein gave the preliminary answer: "Yes" and "No." 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 that laws which 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 scheme of racial or ethnic 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 courts were to find within the due process clause of the First Amendment an express, fundamental constitutional right to language."

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 motives of the English-only and similar movements in the United States. As part of her concluding remarks she stated: "... the challenge is not how best to constitutionalize language choices. The challenge is to create structures that permit educators 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 them while, at the same time, making communities feel 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, concluded 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 rights, 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] are pushing for a 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 Magnet**, 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 intermittently, almost randomly), Professor Magnet gave a comparative perspective by considering the way other countries view language rights. He said, at the outset, that language "... implies a sense of community, a mode of being in the world, and it's in this sense that language rights are not individual rights, nor are they to be exercised by individuals; language rights are collective rights, and they are exercised by individuals as part of a collectivity or a group. Legal protection of 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 or somehow restrict its 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. Magnet asked, "Is the goal of American bilingualism efforts language maintenance — 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 bilingual 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 would be building an institutional network — schools, 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

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 a close, and other means of advancing tribal interests will have to come to the fore."

Saying that he thought tribal courts should be allowed to develop jurisdiction 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 unfortunate," and from which he dissented. His 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 Sparks**, 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 desire 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. Repeatedly 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. Citing the example of disputes over water 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 24)



Rodney Lewis



Kevin Gover



Hon. William Canby

for the non-Indian water 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



L-R, Hon. Delfred Leslie; Hon. Jay M. Abbey; Hon. Hilda Manuel; Hon. Michael Upshaw; John Lewis, Executive Director, Inter Tribal Council of Arizona

## Annual Report of Giving

Arizona State University  
College of Law 1986-87



# Report of Private Gifts to the College of Law

July 1, 1986 – June 30, 1987

As indicated by the following reports, 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 and opportunities 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.

## 1986-87 Total Contributions

|                     | Unrestricted        | Restricted          | Gifts in Kind*     | Total               |
|---------------------|---------------------|---------------------|--------------------|---------------------|
| <b>Alumni</b>       | \$54,450.00         | \$ 2,675.00         | \$ -0-             | <b>\$57,125.00</b>  |
| <b>Law Society</b>  |                     |                     |                    |                     |
| Individuals         | 24,329.80           | 84,571.30           | 44,829.02          | <b>153,730.12</b>   |
| Firms/Organizations | 69,600.00           | 21,395.33           | 4,900.00           | <b>95,895.33</b>    |
| Subtotal            | 93,929.80           | 105,966.63          | 49,729.02          | <b>249,625.45</b>   |
| <b>Total</b>        | <b>\$148,379.80</b> | <b>\$108,641.63</b> | <b>\$49,729.02</b> | <b>\$306,750.45</b> |

\*GIFTS IN KIND include all non-cash gifts (land, art, equipment, etc.)

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Please direct any corrections to the Development Office.

Thank you.

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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



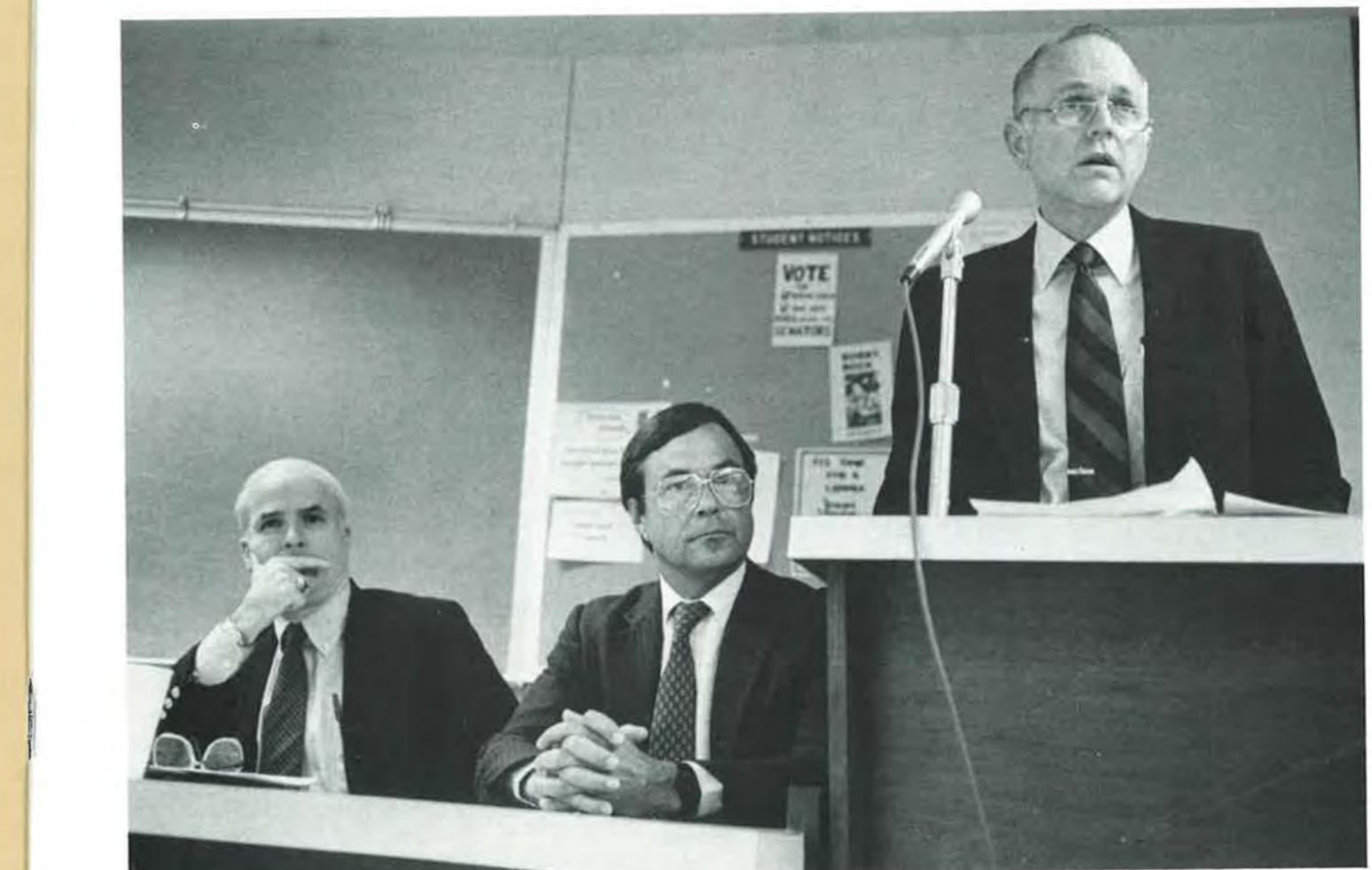
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---

L-R, Senator John McCain, Prof. Leigh Price, Senator Dennis DeConcini

asked to facilitate a meeting between state and tribal judges where, aided by Judges Abbey, Leslie, and Manuel, similar arrangements may be set up in other parts of the state. This meeting was scheduled for October 21, 1987.

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 with Arizona senators **Dennis DeConcini** and **John McCain**. Senator DeConcini spoke of pending water rights settlements with Arizona tribes, economic development, Indian self-determination, and gambling 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 proposal now 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," Prof. Magnet said, during his concluding remarks, "Linguistic difference is a new phenomenon that Americans have to learn to deal with because it requires a certain reformulation of concepts of integration, which flow from the equal protection clause, and a certain reformulation of the total rejection of the separate-but-equal doctrine."

The final speaker, Judge **Noel Fidel** of the Arizona Court of Appeals, began his remarks by reading the Robert Frost poem "Mending Wall." Repeating the lines "Before I'd build a wall, I'd ask to know what I was walling in or walling out, and to whom I was like 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 so frustrating to see a political fight develop over symbols. Symbols have enormous political importance, and yet cloudy 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 constitutionalize either side of this issue."

The following morning a roundtable discussion of issues raised throughout the Official English Symposium was held in the law school's Great Hall. The 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 leader; **Willy Velasquez**, director of the Texas-Southwest Voter Registration Education League; **Stanley Diamond**, Western States Director of U.S. English; Prof. **Leslie Limage**, ASU Visiting Professor of Education, on leave from UNESCO; **Jose Ronstadt**, Arizona Bank and

Senator McCain introduced last year. This act proposes an economic enterprise zone approach to development.

Two participants, lawyers **Kevin Cover** and **Rodney Lewis**, discussed various concerns with the Senators — 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. Both Senators 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. ■

an Hispanic journalist with a program on Channel 33; **Bev Hermon**, Arizona House of Representatives for District 27; **Nancy Mendoza**, Director of the Bilingual Education Office of the Arizona Board of Education; **John Trasvina**, Counsel to the Subcommittee on the Constitution of the U.S. Senate Judiciary Committee; Prof. **Joe Magnet**, University of Ottawa Law School; Prof. **Rachel Moran**, Boalt Hall School of Law, University of California at Berkeley; **Ophelia Zepeda**, Director of American Indian Studies, University of Arizona; and **Ancita Benalli**, ASU College of Education and member of the Mountain States Multifunctional Resource Committee.

Dean **Paul Bender** served as moderator and began the discussion by reading the proposed language amendment to the Arizona Constitution, which became the focus of the participants' responses and Dean Bender's questions. Much debate centered on what the effects would be if the language of the proposed amendment were enacted. Later in the discussion Dean Bender read a proposed amendment to the United States Constitution sponsored by the Federation of American Cultural and Language Communities: "The right of the people to preserve, foster, and promote their respective historical, linguistic, and cultural origins is recognized. No person shall be denied the equal protection of the laws because of culture or language." This introduced the question of whether we should, in fact, be acting to support multicultural values in the United States in more ways than we already do, for example, in the areas of education and voting rights. Several panelists addressed that question, put in special focus by the comment of Prof. Limage that "Diversity is important for national unity." Discussion also focused on the nationwide lack of adequate literacy services for adults and problems in the delivery of health and social welfare services.

For information about the publication of the proceedings of *Official English and the Border States*, please contact Prof. **Karen Adams** or Prof. **Daniel Brink**, English Department, Arizona State University, Tempe, Arizona 85287. ■

ASU College of Law presents occasional forums on current issues. This is a transcript of the forum of April 17, 1987.

## Is Banning of Cigarette Advertising Constitutional?

**Professor Ralph Spritzer:** Let me introduce our speakers.

**Dr. Glyn Caldwell** is currently the Deputy Director of Arizona's Department of Health Services. Dr. Caldwell has had a long and distinguished career in public medicine, having been associated for many years with the Centers for Disease Control, and he has been active in matters having to do with environmental medicine. **Paul Eckstein** is a partner in one of our leading Phoenix law firms, Brown & Bain. Paul is a graduate of the Harvard Law School and a person who is well known as a leading advocate in the Arizona Bar. And finally, we have an in-house person who is probably known to you, Dean **Paul Bender** — I'm not going to recite all of his credentials; they are too long. We are going to start by asking Dr. Caldwell to introduce the topic and deal with some of its medical aspects before we get into the legal debate.

**Dr. Glyn Caldwell:** Thank you. I feel just a little bit out of place here, being a public health physician, and I'm the only one who is not going to talk about law. I'm going to sort of set the stage with some scientific information, or at least I think it is scientific. There are folks who do not believe that epidemiology is science, but we will leave that for another time.

We are going to talk about advertising of tobacco products. I want to carry that back one step to the understanding of what the hazards of tobacco products are, so that you will understand why there is an argument. You have to realize that tobacco has been around a long time. It is a product of the New World the use of which has spread widely since the discovery of this hemisphere. It was first used by the Indians. The first risk of tobacco was noted by a gentleman with whom we had some dealings back in the 1600's; George III of England first described snuff as producing a nasal cancer in individuals. Most of us don't realize George III was, to some extent, an amateur scientist. In 1836 a physician, Benjamin Waterston, an American, quoted that tobacco was a filthy weed that from the devil doth proceed; it drains your purse, it burns your clothes, it makes a chimney of your nose. In the late 1800's, Dr. Robert Vercal, who was often called the father of medical pathology, reported that lung cancer was among the rarer of the cancers. Following World War I and the widespread use of cigarettes, lung cancer began to increase markedly. Today, if there is a cancer epidemic it is primarily due to lung cancer.

If you look at a curve 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 68.1 per 100,000; for females, 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. We have looked at lung cancer for a number of years, particularly since the '50's, and we are able to show that this disease is the leading cause of cancer death. In fact, in the United States it is estimated that there will be 150,000 new cases of lung cancer in 1987 and 136,000 deaths of people who have that disease. That translates to about 1,900 new cases in Arizona, with 1,700 deaths — all from lung cancer; all from a cancer that is indeed totally preventable. Compare that to the concern about AIDS, when over the last 6 years we have had only 30,000 cases, 180 in Arizona.

The known risk factors for lung cancer, of course, include exposure to industrial chemicals. You are all aware of the asbestos problem; you may not be aware of other chemicals. You are aware that there is some need for minimizing radiation. And, of course, 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 personal, direct air pollution right into my lungs as smoke. If I smoke in this room, there is indirect risk to the rest of you 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 cases of lung cancer to healthy 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 of them 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 you might get from my cigarette, is so 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, nose, nasal sinuses, cancer of the urinary bladder, chronic lung disease, particularly emphysema, chronic bronchitis, and coronary artery disease, where it is a primary risk factor although possibly not the open causal factor. Tobacco use other than smoking also increases your risk. If you dip snuff, you can get cancer of the gum or tongue; if you smoke a pipe or cigar, you are at risk for cancer of the lymph and cancer of the tongue. Side stream smoke, of course, is a problem, and I think the question is whether a person exposed in close quarters with the

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 do by doing that? 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 you know any 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 Spritzer:** Our next speaker has told me privately that he is not really strongly in favor of the transmission of disease, but he thinks that there are limits as 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 limits. Paul Eckstein.

**Paul Eckstein:** As Ralph Spritzer 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, and certainly for ending 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, Flo, 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 she became pregnant with our first son. I can't say that it was very romantic, but my first act of love was to give her 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?), Flo and I have determined as a matter of personal preference that we will not accept advertising of tobacco products. We do that not 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 would now like 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 protection under 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 speech proposing a lawful commercial transaction was 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 Judge William Canby (then a distinguished 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 by which the constitutionality of 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 said unequivocally 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 subsidize tobacco products. So in no way can it be said that we are dealing with an illegal product. As for whether tobacco advertising is misleading, it is argued by some that advertising that shows healthy and happy people puffing on cigarettes is inherently misleading. The response to that argument is simple and straight-forward: Large numbers of people do enjoy smoking, whatever you and I may think of it. Since many people smoke because they enjoy it, showing people smoking in positions where they are enjoying themselves is not misleading, particularly where the very 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 products. When 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.

The second 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. That, I do not think, has been demonstrated or can be demonstrated.

The available evidence indicates that advertising expenditures do not significantly affect large, mature consumer

markets other than at the brand level. As M. J. Waterson 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, as Waterson reports, 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 advertising does not cause some people 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 law) that elimination of cigarette 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 is exactly what the First Amendment demands: more information regarding tar and nicotine contents and the harmful effects of smoking, displayed conspicuously on all forms of advertising.

Now Dean Bender will undoubtedly argue 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 casino gambling in Puerto Rico to non-residents of Puerto Rico. Stated otherwise, under that law a Puerto Rican casino was 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 *Central Hudson* case, a bare majority of the Supreme Court found that statute constitutional.

While only time will tell, I believe that the *Posadas* case is *sui generis*. 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 New Jersey and Nevada. Second, the Court went out of its way to observe that the statute under review should be judged 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 impossible to separate the audience to which the advertising was directed in the way the Puerto Rican statute commanded. Indeed, during oral argument of the *Posadas* case, counsel for Puerto Rico stated that casino advertising in a Spanish language 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 ineffectiveness of the



Paul Eckstein

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 us." That, I submit, 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 Spritzer:** As Paul Eckstein was speaking I kept thinking of a picture that I used to see as I drove to work. This was back East, before I came to this land of lotus-eaters. It was a picture of a tall, rangy, good-looking, weather-beaten, southwestern man with a ten-gallon hat drawing deep, and with great satisfaction, upon a Marlboro. And I suppose one way of formulating the issue we are talking about today is whether that picture can be wiped off the face of the map — erased from our highways, our billboards, our glossy 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 Marlboros.

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 values. But in this particular case he is representing the interests of two of my favorite institutions in society, the advertising industry and the tobacco industry. That makes me feel 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 the kind of ban 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 from cigarette advertising 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 ads will get clients away 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 analogize the kind of ban that I think is permissible to the kind of treatment that the law has given to advertisements for securities since the mid-1930's. You don't see securities advertised in the way cigarettes are advertised: Here is the smiling broker handing over 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. I think that kind 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, smiling and smoking away. You could ban them on the ground that they are misleading ads. I think they are fundamentally misleading despite the fact that there's a little corner of the ad, which nobody bothers to read, which says cigarette smoking can be dangerous to your health, it has carbon monoxide, the fetus will not grow as much, and other things like that. I think it presents a misleading picture because the picture that is presented by the ad is of smiling, 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 the Constitution 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 concedes, 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 heroin and other kinds of substances that can be 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 would like to ban 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 deadly. There is no doubt about that deadliness. Do you have to put 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. Are you entitled to put people to that 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 this 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 now, are probably 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'm sitting in Congress and somebody says "Yes, ban cigarettes," my reaction is probably 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 addicts suffer through that kind of thing." 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

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 me improbable that that doesn't have 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 should 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 on that because the stakes are so 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 saving that many lives without intruding at all into the freedom of people, except the freedom of advertisers to make a lot of money.

**Professor Spritzer:** Are there any questions from the audience? Judge Hill.

**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 smiling children on the cover, maybe not, scholarly articles which discuss cigarette smoking and come to the conclusion that its dangers have been exaggerated. And then the last, clinching paragraph of that article, with some ringing language about this conclusion, are up on a billboard, maybe with smiling children, maybe not. A serious 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've 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 proposing banning a learned article, 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 smiling 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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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 smiling people 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 in the uncomfortable position of agreeing with Justice Rehnquist. 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 finally 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 just 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 experiment) it seems to me that, if Congress can show 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 reason to ban it. It seems to me that a sensible legislature could well conclude that maybe, in the short run, banning cigarette advertising won't reduce the incidence of cigarette smoking. But it is

through vagueness, and that's a problem that the people who draft this legislation have to deal with. I think it is something that is capable of definition, although all definitional questions are not easily answered. And the only thing I'm addressing myself to is what you would call an advertisement. So, Judge Hill, I think no one is proposing to ban the article. I have some serious problems in banning it. If you take the last example, though, and you put it on a billboard and say "Smoke Marlboros," then I think it becomes an ad, and then the legislation being talked about would ban it. I think that is constitutional. What's the difference between an article urging people to smoke cigarettes and an ad urging people to smoke cigarettes? There is a common sense difference. I think most of us understand the way ads work, and they work on people's minds and behavior somewhat differently from the way that learned articles do. The Supreme Court has recognized that difference in saying (it's not, by the way, a commercial speech exception, it's a commercial advertising exception) that commercial advertising had no First Amendment protection at all. That was wrong, and that was properly overruled, but when they overruled it they didn't say that commercial advertising has the same protection as all other speech. They gave it a kind of in-between protection, and the Court has even written a number of opinions that nobody can understand trying to describe what it is. I think everybody agrees that there's more ability to regulate commercial advertising. There must be some constitutional content to the word "advertising" because it's in a constitutional rule about commercial advertising. The only thing that I'm saying you can ban is cigarette advertising — whatever that means.

**Paul Eckstein:** If I could just interpose a question. Let's assume it's an ad like Mobil Oil has run — their evocative, provocative ads in the *Wall Street Journal* arguing a particular point. And R. J. Reynolds Tobacco Company buys space in the *Wall Street Journal* for a 300-word piece urging the smoking of cigarettes. They pay for it -- clearly commercial advertising, hard-hitting, encouraging young people, old people, everyone to smoke. Is that something that could be banned?

**Dean Bender:** Well, those are nice questions which the lawyers will have a lot of fun answering if this legislation is enacted. Your approach would stop lawyers from dealing with those questions. Think what you are doing to your colleagues! No, I don't mean to trivialize; those are difficult line-drawing problems, and I think, if the kind of legislation that I'm saying would be constitutional were enacted, those problems will arise. And with the advice of counsel I'm sure the cigarette companies will figure out as many different ways to try to get around that legislation as the southern states figured out to try to get around *Brown v. Board of Education*. It's a long-term problem; a lot of money is at stake. But I don't think that undercuts the essential point. The billboards we see, the full-page ads we see, in color, in magazines and newspapers — the question is, should those things be insulated from regulation by the First Amendment? And my position is that they shouldn't. ■

**Professor Weinstein:** The problem that you posed as being hypothetical and only to come about if you voted the legislation is already being discussed. About three years ago, in California, a friend of mine who was in the Attorney General's Office told me that he was thinking about bringing a prosecution against, I think, R. J. Reynolds' running of a Mobil-type ad that said the government's statistics are misleading; that there's no proof that cigarettes hurt people in the way that the government has said. And he was thinking about this as being misleading advertising. I told him that there were a lot of perceived problems with that. I don't know; I don't think the prosecution was ever brought. One concern was the protection commercial speech gets. The commercial speech doctrine exception to the First Amendment full protection applies only when it is proposing no more than a commercial transaction. So if you dress it up with political advocacy like that, so long as it doesn't contain a straight-out pitch, by my analysis I think it is protected. I just wanted to say to Dean Bender, your point that commercial advertising was helping Marlboro appeals to people's lives in different ways and relates to other types of ideas. It does so, probably, in the sense that that's the argument used for banning pornography in the Meese Commission Report — that that kind of pornography doesn't appeal to natural activity, it appeals directly to lust, as it directly causes sexual excitement. I think that that's a very dangerous path to go down, given that music does the same thing and a lot of literature does the same thing. I don't think you want to be drawn by some lame duck intellectual process.

**Dean Bender:** Well, those are good points. Do you really have to do that to me — tell me that not only do I agree with Jesse Helms, but also with Meese? No, no, he is the one who agrees with Jesse Helms. I agree with you.

There is a problem there. There are two ways to deal with it. One is that the Court has drawn that line between advertising and non-advertising, and, I take it, it has some substance. But even more fundamentally, I think the thing that pornography doesn't do is associate with the sale of a product. I think that does make a difference. The kinds of motivations that come into play when millions and millions of dollars are at stake provide a different kind of background than in the pornography industry, where they are not selling a product along with it, they are just selling things that people like for themselves. On the other point of drawing this line between ads and non-ads — hasn't that come up in connection with legislation? It hasn't been mentioned here today, but I think it should be; namely, the federal legislation that prohibits advertising of cigarettes on radio and television. There is such legislation; its constitutionality has been upheld on a ground that I do not strongly support, but it has been upheld because of the special problems associated, supposedly, with regulation of the licensed media, and the issue of what amounts to a cigarette ad at least potentially can come up in that same context. I am not aware that that's posed any problems there. That doesn't mean it wouldn't cause any problems. ■

Proceedings of the Meeting held at ASU College of Law, April 5, 1987  
(partial transcript)

## Meeting with Senator Barry Goldwater

**Dean Paul Bender:** It's a great pleasure today to introduce to you Senator **Barry Goldwater**. You know, you can say that people need no introduction, but Barry Goldwater is really somebody who needs no introduction, not only to 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 "Colonel," I take it; a title 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 for president as the Republican candidate in 1964 and was not elected. But he was elected twice to the Senate before that and three times to the Senate after that, and he just retired from the Senate in January.

What a lot of people do not know about Senator Goldwater is that, in addition to his long career of public service both in the military and in the Senate, where he was on the Armed Services Committee, the Commerce Committee, and the Select Committee on Intelligence, he also has a different life as a naturalist, photographer, and a person with a great interest in Native American affairs and Native American art in Arizona. Among the first things you see when you come to Phoenix, as you go down the escalator in the airport, are wonderful Navajo rugs that I believe were given to the airport by Senator Goldwater. The Heard Museum's new addition has a room devoted to Senator Goldwater's kachina dolls that he has collected over the years. He has written a number of books about Arizona. That's just another wonderful part of him that I'd like everybody to know about.

He is here today as the occupant of the Goldwater Chair in American Institutions, which has been established at ASU, and in this capacity he is going to various parts of the university and meeting informally with students. He is going to say a few words about issues that are on his mind and then spend the rest of the hour listening to, answering, and reacting to your questions. I give you Senator Barry Goldwater.

**Senator Goldwater:** Thank you very much. It's a real pleasure for me to be back here at this law school. I think I was here when they first opened it and I've been here several times since, but not as a lawyer because I'm not a lawyer. I follow the admonition of Thomas Jefferson, who said the trouble with the national legislature was we had too many lawyers. Having served there for 35 years, I'm

inclined to think he's right. But I won't say that, because a lot of you will probably wind up in politics. Now, I don't know a darn thing about law. All I know is I pay my lawyer a hell of a lot of money, and so far he's earned it. But I thought there might be some things on your mind about what's going on politically in Washington or any place in this country or even around the world, and with that thought in mind, I'm making this a time to answer your questions. So just hold up your hands and let's go. Don't be bashful.

**Question:** Would you comment on the possibility of limiting the time period for senators and congressmen?

**Senator Goldwater:** I would opt for a six year term for a senator, and only two of them. I'm for a six year term for a president, and only one of them. Now, where we get the most difference of opinion on this is in the House of Representatives, where people want to make it co-terminous with the office of president. The reason I don't like that is that if we elect a congressman every four years, we do away with the only device we have of telling the president we like what you're doing or we 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 Navajo-Hopi dispute?

**Senator Goldwater:** I'd be glad to, and I'll try to keep it 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 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 Moqui Indians (that's what the Hopis were named back then), and the big mistake came when they included "and other tribes." I don't know how that got in, because there were no other tribes. The Navajo had just begun to show themselves to be around, mostly east of the Hopi land. This trouble between the tribes has been going on for about a hundred years. The clause "other tribes" is the whole cause of the trouble. The Navajo, being cattle people (they started out with no livestock to speak of, gradually got into sheep and then into horses), took the southwestern section of the Moqui lands, where the

Moquis actually didn't live nor did they place any religious value on that land, and they moved in. Well, one thing led to another. Let me say that the Hopi are probably the most religious Indians that we have, and their lands are sacred to them. Now, they can't sit down with a map and draw you a line and say, "This is religious land," but they'll take you out there on a horse and show you the land that they think is sacred. The Navajo have encroached on some of that land. Well, it got into politics about 20 years ago, and the leader of the Navajo tribe raised so much political Cain about it that Congress finally had to appoint a commission to attempt to bring the two tribes together. That wasn't a bad idea. The bad idea came when they put money in it, and they agreed to move the Navajo from Hopi land to, say, any one of the cities, like Flagstaff, Winslow, or Holbrook, and build them a home or buy them a home. There wasn't a lot of that that went on, but there was some. The whole effort so far has cost the federal government about \$500 million, and what are we down to now? We're talking about 280 people that might have to move from this piece of land to another piece of land. I hope they abolish the commission because I can see nothing but further political turmoil over this without ever settling it.

Then we got into this famous thing called Big Mountain. I've known Big Mountain all my life. I used to run a trading post on the Navajo reservation. I used to drive my truck over to Big Mountain and pick up shale coal to burn in my stove. There were about 100 people living up there who I think had been there longer than any other Navajos had been in that particular part of the country. That's settled. We now have outside Indian organizations moving in; people who say they're Indians but they're not. They just want to raise a lot of hell up there. I think that we now have it on sort of an even keel, and I'm hopeful that in the next two years or so the few remaining families in question can be moved. And before I close, let me tell you that the finest thing I ever heard two politicians say, or one politician say to another, was when the chief of the Navajo group, at his inauguration, looked at the chief of the Hopi group and said, "You know, there's nothing about this that we can't settle by sitting by the side of a brook." And you know, they never could find a brook, and that's the whole damn trouble.

**Question:** What is the United States' true position as far as South Africa is concerned, and 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. I flew a couple of missions to South Africa during World War II, just to carry some papers and to carry some people, and I've been back to South Africa about six times since then. You have to go back into history to understand the real problem. That's not going to solve it, but it's good to know these things. It was only about 600

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 little bit east of the central part of South Africa. The 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. Now, you ask about economic sanctions. I think economic sanctions have had some effect on the governors down there, the Botha brothers. But there's one other thing you have to remember. There's a far different and more intense type of apartheid between the whites, between the Afrikaners and what I call the English, than there is between the black and the white, because the whites 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 no longer the number 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 yet. 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, there's going to be a lot of trouble down there. And I hate to see it, 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 28% of all the gold in the world. But they still have this thing hanging over their heads, and it's not right. I think I can safely say that if we ever end

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 happen to have a very strong feeling that I thank God I'm not going to be around. I think the continent of Africa, in about 300 years, will be the leading continent of the whole world. They have more resources and more people, people that are skilled and people 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, great, great, great grandchildren will recognize the preeminence 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.

**Question:** I would like to point out something about a point you made. You said South Africa has been a friend to the United States, and you made reference to the wars, First World War and Second World War. A point of correction is this. The South African government, during the Second World War, was in support of the United States, the Allies. The present government of South Africa,

which is the Afrikaners, was not as important, but they were in support of Hitler and were in opposition to the Allies at that time. I think when it came to this government they were never in support of the Allies.

**Senator Goldwater:** You're correct on that. But you have to remember that today, as then, when you say "South Africa," I think you have to start dividing it up. I know that the leadership at that time was behind the Allies. I know Olympia, which is north of there, and which I've been through — there are not many people living there — they were not hostile to us, but they were not friendly to us. And while there were very, very few South African troops, there were South African pilots who flew with us, so on the whole I'd say they were on our side. I'd never want to get in a fight with them, I'll tell you that.

**Question:** Would you please comment on the plight of hostage negotiator Terry Waite?

**Senator Goldwater:** Well, I'm going to try to say this the way I feel. When I first saw President Reagan after he had gotten into this hoo-hah about Iran and Iraq, I told him, "You know, Mr. President, when we go to war, we know we're going to have prisoners. Now, we may only have a handful; we may have hundreds of thousands. But you don't put the whole future of the United States on the board for a handful of people."

Now, why do I say that? If somebody wants to go into a country that we know is not friendly to us, I think first of all we should tell them that we don't like it. But you can't stop an American from doing what he wants to do. They go to those countries and become hostages, and if you want to get them back, you're going to have to pay the price, and that's what he was trying to do. My reaction is, if an American goes to these countries and asks for a visa, tell him he can't have a visa. If they still want to go, they do it on their own courage. Yes?

**Question:** Isn't Waite's situation different from an average citizen who goes there? I mean, this was a diplomatic mission that should have been subject to international laws of diplomacy, and yet there was apparently no recognition of that fact by the people there.

**Senator Goldwater:** I would have to say that he's certainly not an ordinary citizen from any country, but he went in there knowing there could be trouble, and if he wants to take that chance, for himself and his own country, that's up to him.

**Question:** Senator Goldwater, have you had a talk with your problem child yet, and if so, has there been any result between you and the governor?

**Senator Goldwater:** No. I will have lunch with him tomorrow, and I've been trying to have lunch with him now for about two months. Let me just speak quietly about this. I've known Ev Mecham for 45 years, I guess. I flew with him in the Air National Guard. He's always been a very stubborn person. He says what he thinks before he thinks about it. But you know, the best governor this state has ever had — and I've lived through every governor

we've ever had, though I wasn't old enough to really know George W. P. Hunt — was the same kind of a guy as Mecham and he got elected six times. Now, let me just explain something that might answer some of your questions. When the constitution of our state was written, it was written in the Adams Hotel. That used to be tantamount to saying it was written in the Capitol, because the Adams Hotel was the Capitol, and my old uncle who founded the Democrat party and the territory of Arizona helped write that Constitution. I think he was one of the few people around who could write. But the only industry we had in this state at that time was the mines. Now the miners knew it would be much harder for them to get a certain person elected governor than to get a collection of legislators, representatives and senators, elected over whom they had control. So we have what we call today a legislative government, and the governor has very little power. I remember when Howard Pyle became governor. Out of over 200 appointed jobs, he had about 24. We've since made some changes. We've lengthened the governor's term. We still have a long way to go.

But what am I going to do tomorrow? I've got a list about that long. I've got two things that I think can get this guy going. Number one, don't fight with the press. That's the first thing I learned. Don't ever fight with anybody in the press. Even though they're wrong, don't fight with them. They own the typewriter; you don't. And the second thing is, I'm going to suggest that if he gets a bright idea in the middle of the night and wakes up in the morning with that bright idea, before he says anything about it, he calls — I've got a list of about 12 people — calls them and asks them what they think about it. Then he doesn't do anything until he hears back from them. If he'll do that, I really think he's going to surprise you. I think he'll wind up being a good governor.

**Question:** Senator, what do you think our position should be with respect to Nicaragua?

**Senator Goldwater:** About what it is today, only doing it a little better. That whole section of the world, Central America, has been a real problem for the United States for over 150 years. We've had Marines down there, not constantly, but almost constantly. We have a pretty strong Air Force established in Panama. We do a lot of our training down there. Why these countries should be so different from each other I don't know. But let me tell you why I don't want to see the outside forces win. We're sitting here closer to Nicaragua than we are to Chicago, and this country — well, we bought the land we're sitting on, but the rest of the state we took from Mexico. That Mexican war had no reason, no rhyme. We weren't mad at Mexico and they weren't mad at us. We took the land. Every once in a while I go to Mexico and visit with friends of mine and, after a few shots of tequila, they'll say, "Some day we'll get it back." That's my major concern in this — that we don't make a boo-boo ourselves in Central America and turn out to back the wrong people or, in backing the right people, we don't back them in the right way, so that the victors down there will be — I hate to use

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 does not believe in freedom or 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 we can avoid any war or any 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. They have a population that is 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 afternoon, 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 his father and 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 UN, ambassador to Red China — a hell of a good background. But then this guy Paul Laxalt announces 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 going and got the money, that he could very well be the next Republican candidate, and that's about 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 it's an economic thought. Trying to run an 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 give 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 because I'm a Republican — I look at it in a very pragmatic way. They're in about the fix that we Republicans were in back when I first started working in the Republican party. Christ, 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 about the same fix. I think American politics 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, maybe in 10 years, will come a new approach to 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 went to school with my children. 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 in our Senate. I don't know of a

better American in the whole country. I just don't think that either one of them wants to run. So, that's about as far as I can go. I won't make any bets. Yes, sir?

**Question:** I wonder if you could comment, Senator, on the possibilities of a treaty between the United States and Russia on nuclear limitations, and if possible, the impact upon conventional warfare in Western Europe.

**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 we can have any effect on what actions might be taken if war broke out on the plains of Europe. Now let me try to tell you why, and I can be just as wrong as man can be on this, but I hope I'm right. Gorbachev is a relatively young man. I say that advisedly; he's 55. That's quite young. He's the first leader of the Politburo who hasn't made the philosophy of Lenin and Stalin 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 25% of its people who are 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 to 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 United States of America. The problem is 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 very well cause 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 us. I discussed this with the President; didn't get any place. I just said, "Why can't we sit down with this guy and explore?" Explore. Just see if he's agreeable to seeing what we might suggest that he could do in a way that's not going to destroy the whole government or cause revolution.

Now, that's what I'm thinking. As far as signing any agreements that will prevent the use of nuclear weapons, I just don't think that's possible. They have in place about seven times as many large missiles as we have. 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 on either side, or in any country, the demand and the use for a small tactical nuclear 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 Soviets on that that will do any good. I further don't think, at my ripe old age, that we're

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 they got a boat load or two of airplanes, over at Abadan, 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 tried to talk to each other, and of course that was out. 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'd like to go to Russia, but I've never had any encouragement. The Soviets tell me it's not safe, and the State Department says the same thing. So, I'm home in Arizona, and that's where I want to stay.

**Question:** Throughout 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. I probably speak to three or four schools a week the year around, 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, understandably, there was a great slackening off of 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 or even Korea. I'm very, 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. But the great, great majority of American people believe in what we stand for.

**Question:** I was referring to European countries and different countries throughout the world and their perspective of America. There are a lot of people burning American flags throughout the world, and things like that.

**Senator Goldwater:** Well, I think we can apply that any place 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 gets 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 anti-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 some American businessmen while I was in China. I asked them why there is no political and economic relationship between some province 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 America in the future?

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

**Response:** Yes.

**Senator Goldwater:** Well, the answer I give 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 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, to my knowledge, 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 that the government of Arizona is attempting to create better trade relations with the People's Republic 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 of communist government, 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 American-style free 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:** In the future. But while you're over here being a student, find out what's wrong, and then tell your people at home what to do. I know that Taiwan does a terrific business with this country, yet they're the same Chinese that live all across China. ■

# Law School News

## Staff News

**Marcelle P. Chase**, Reference and International Law Librarian, wrote two book reviews that have been published in the *International Journal of Legal Information*. She reviewed *The European Community and Gatt* in the Feb.-Apr. 1987 issue, and *Medicine and Surgery for Lawyers* in the June-August issue.



**Monica Tineo** was promoted to Printing Services Supervisor I in July of this year, following **Dottie Swanton's** retirement. She started working at the Law School in August of 1983 as a duplicating equipment operator. **Mona Freeman** is taking over Monica's former position in printing.



**Bonnie Cotter** came to the ASU Campus in 1978 after 17 years at the University of Wisconsin Law School. She began work at the College of Law in November, 1981 as Secretary II in the Administration Office.

She transferred to the Clinic in 1983, as secretary, became administrative assistant, and is currently program coordinator. In the summer of 1987, Bonnie completed writing a *Law School Clinic Survival Manual for Interns*. Ms. Cotter was employed as a legal secretary and office manager in law offices for 28 years prior to coming to ASU.

**Marianne 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 Librarians, 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.



**Rhonda Kirkeide** has recently been promoted to Business Manager II. Rhonda has been with the College of Law for two years. Before that, she worked in the Department of Geology at the College of Engineering and in the Center for Professional Development at the College of Engineering and Applied Science. She received a Bachelor of Science Degree from Emporia State University, Emporia, Kansas, in 1976.

Rhonda's duties include monitoring the College of Law's budget, overseeing the construction of the building addition, maintaining the physical plant, scheduling meetings and community-relations events. One such program brought a number of Arizona high school juniors to the law school to

school registrations and serving as a general liaison for law students, faculty, administration, computer center staff and the University Registrar's office. She is the Custodian of Records and will process the semester class schedule. She compiles reports and statistics concerning law school enrollments, registrations, grades and graduating students.

**Ms. Hoffman** says: "I'm very excited to begin my duties as the College of Law Registrar. The best and most rewarding task I have in this position is working directly with our students. It gives me great satisfaction to help them in any way I can during their journey through law school."



**Christine Hoffman**, the new College of Law Registrar, assumed her duties in mid-August of this year. Chris joined the staff at the College of Education at ASU in April of 1983, transferring to the College of Law in September of 1984. One month later, she was designated Academic Advisor.

Chris will be assuming the duties of **Chris Smith**, who was formerly the College of Law Registrar and now serves as Assistant Dean. Those duties include overseeing all law



**Kathy MacNabb** is the new placement coordinator. She most recently worked as an advisor at Career Services on campus; prior to that she worked at New York University Placement Office as an assistant recruitment coordinator. Kathy has lived in both Colorado and Oregon, where she worked as a teacher and school counselor. She holds a bachelor's degree from Central Michigan University and a master's degree in guidance and counseling from the University of Colorado, Colorado Springs. ■

## Admissions Update

**Brian J. Murphy**, Coordinator of Admissions

The 1987 Spring Semester was extremely busy for the Admissions Staff. The national direct-mail-marketing campaign, initiated last year, continued. The first campaign involved contacting highly talented minority students from across the nation, with special emphasis on Native Americans. The second campaign followed through on initial meetings with students during the fall recruitment period. Through these methods the College of Law received applications for admission not ordinarily received.

In addition, the College of Law increased the number of on-campus seminars and community-relations events. One such program brought a number of Arizona high school juniors to the law school to

hear a presentation by Professor **Jane Aiken** and Admissions Director **Brian Murphy**. Others involved LSAT and Law School admissions information for undergraduate students.

In March a reception for outstanding students admitted to the 1987 entering class was held at the home of Associate Dean **Michael Berch**. Many faculty and alumni were in attendance.

In a year where most law schools saw a decline in the number of applications, ASU experienced a 30% increase in applications over last year's 12% increase.

There are 146 students in the entering class of 1987; 64% are residents and 36% non-residents; 50% are women and 27% are minorities. Twenty-five states, 4 foreign countries and 60 undergraduate institutions are represented. The median LSAT is 37 and median GPA is 3.36.

Although the College of Law has closed admissions for the 1987 entry class, the staff is busy preparing for the upcoming fall recruitment season. Applications for the 1988 entering class will be available after October 1, 1987. For more information call 965-7207. ■

## Placement Update

It's recruitment as usual in the Placement Office. The Fall recruitment season is well on its way, with approximately ninety-five firms and organizations participating in the On-Campus Recruitment Program, thirty-two of which are from out-of-state organizations primarily representing the states of California, Utah, Nevada, and New Mexico. A national consortium, representing some of the largest firms in the nation, are recruiting for the first time at ASU College of Law, attempting to lure students to large firms and other states.

The experimental effort to conduct interviews on Saturday has received mixed reviews, although for the most part the comments have been positive. Saturday interviews eliminate both class conflicts and room constraints. At the end of the season Saturday

interviews will be evaluated by students, staff and employers to determine whether or not they will be continued in the future. ■

## Law School Clinic

The ASU Law School Clinic, in 1986-87, experienced a year of both change and continuity. The former Defender and Civil clinics were consolidated into an expanded Law School Clinic under the direction of five faculty members — Professors **Aiken, Blaze, Dallyn, Lowenthal and Weeks**. Prof. **Bartels**, on leave from the Clinic in 1986-87, returned in September as the sixth faculty director.

The clinic also added a new component, a branch office in the Community Legal Services office in Mesa, funded largely by an IOLTA grant from the State Bar of Arizona. The clinic's Mesa office was organized and managed by Professor **Blaze**, one of the bright new lights on the faculty. **Anne Ronan**, a 1979 graduate of the College of Law, directed the Law School Clinic as a Visiting Professor during the summer months, while the regular clinic faculty reportedly worked on their scholarship.

The clinic continued its remarkable record of successes during the spring of 1987. Two students from the clinic argued a major case before the United States Court of Appeals for the District of Columbia Circuit in March, and two months later two other clinic interns convinced a majority of the Arizona Supreme Court to make a major change in the law related to appeals by the state in civil cases. The clinic was successful in two summary judgment motions in civil rights actions in federal district court in Phoenix, and students in the clinic's Mesa office won a series of government benefits cases without a single setback.

Finally, two students from the clinic persuaded the Maricopa County Superior Court to rule that certain practices of the Arizona Board of Pardons and Paroles violated due process. That case is currently on appeal. ■

## Devil's Advocate

**Tom McCauley, Jr.,**  
Editor

The *Devil's Advocate* put out three issues during the Spring '87 Semester. We also changed somewhat by taking much of the production of the paper out of the hands of the *State Press* and doing the typesetting and layout ourselves. This decreased our turnaround time (deadline to edition date) so that reported events were more timely. More importantly, we reduced the cost of the newspaper by almost half. With this increased autonomy, we hope to expand the *Devil's Advocate* and its function at the law school.

The hard work of both the Fall '86 and Spring '87 staffs has paid off. Near the end of the summer we were awarded a first place in the Class A Division (700 students or less) for best overall newspaper during

the year in the ABA newspaper competition. One of our writers, **Prudence Lee**, also won first place in the "law in the community" category. Her article addressed the recent Arizona Supreme Court decision on punitive damages.

Now that we have worked on the production and technical aspects of the newspaper, we hope to work on its substantive quality. This will entail development of a more structured staff and greater overall performance by all — and we do have the people to do that. In particular, we hope to secure our own office when the dust clears after renovation/construction. We hope to acquire a computer so that our writers have greater access and capability to write their stories.

All in all, things are moving along so that the *Devil's Advocate* can maintain its position as the number one Class A newspaper in the country. ■

awards were underwritten by Snell & Wilmer, a Phoenix law firm. Each recipient received a plaque and a cash award.

The Law Journal Symposium topic for this year is the Arizona Constitution.

Members of the second-year class who will serve as writers this year are the following: **Lynn Allen, Bill Bainbridge, Dan Beeks, Barbara Calloway, Cindy Cordas, Kathleen Coughenour, Elizabeth Feldman, Alice Finn-Gartell, Gaelle Gralnek, Patricia Hubbard, Jeanean Kirk, Diane Lucas, John Mayo, Lin Messinger, Rene Morgan, Steve Munt, Ron Oines, Renee Roelants, Polly Ruhl, Patrick Sheehan, David Smith, Brenda Taylor, John Titus, Denise Troy, Michael Valenzuela, LynDee Wells-Stevens**. Writers from the third-year class are **Larry Felder, Jon James and Virginia Murphy**. ■

## Perspectives

In March, the faculty approved as an addition to the first-year curriculum, a requirement that each first year student choose one from among several special Perspectives courses offered in the Spring Semester. Recommended by

the Curriculum Committee in 1986, it is hoped that these courses will fulfill a need to complement the doctrinal approach of traditional courses with a course that emphasizes general issues about the law as an institution in society, with a focus upon historical, philosophical, critical and science approaches. The traditional law school curriculum, like the practice of law as a whole, has been becoming increasingly specialized. The faculty hopes that the new Perspectives courses will send the important signal to our students that the law must always be considered in the context of the society in which it lives. Even students with great analytical skills cannot be considered to be truly educated lawyers without this kind of perspective on the social significance of their profession.

The Perspectives Course will be offered for the first time during the Spring Semester of 1987-88. Each first year student will choose from a "menu" of perspectives possibilities. The courses will also be open to limited numbers of second- and third-year students, providing an experiment in integration across traditional class lines while affording an opportunity to students to take as many as three of these new courses while at the law school.

The menu of Perspectives Courses planned for this Spring tentatively include: Law and Social Change, taught by John Leshy; Jurisprudence, taught by Fernando Teson; and Law, Language and Ethics, taught by James Weinstein. In future years, we hope to have offerings on the Legal Profession, the Critical Legal Studies Movement, Economic Analysis of Law, and Legal History. ■

### Prof. Jon Rose Receives Burlington Northern Foundation Faculty Achievement Award

During the past three years, Burlington Northern Foundation made available each year three awards for "unusually significant and meritorious achievement in teaching." The entire faculty of Arizona State University was eligible for these

awards. This spring, Prof. **Jon Rose** received one of the prizes. Dean **Paul Bender**, in his nominating letter, said that "... Jon is an excellent, committed and caring teacher is a proposition that is so well-founded and long-established that most of us around here take his superb teaching somewhat for granted."

Congratulations, Jon, from all your fans! ■

### Faculty Seminars

The College of Law offered many faculty seminars during the spring semester. Professor **Takeo Hayakawa**, emeritus professor from the University of Kobe, discussed current problems in Japanese constitutional law. University of Arizona Professor **Robert Glennon** spoke on "The Role of Law in the Modern Civil Rights Movement: The Montgomery Bus Boycott."

**Norbert Wimmer**, Dean of Law at the University of Innsbruck, spoke on the topic "The President of the Federal Republic of Germany: His Power and His Powerlessness." Greyhound Fellow **Pamela Samuelson**, of the University of Pittsburgh, discussed the legality of modifying copyrighted software. Senator **Barry Goldwater** met with faculty and students for an open-ended question and answer discussion hour. **Almarin Phillips**, this year's Merriam Professor, spoke about the proceedings, currently pending before Judge Greene in Washington, to modify the AT&T divestiture order. **Kevin Gover** and **Sue Williams**, both Indian Law experts from Albuquerque, gave seminars on aspects of recent Supreme Court decisions as they affect Native Americans.

The Honorable **Irving Hill**, Senior Judge of the U.S. District Court for the Central District of California, was Judge in Residence at the College of Law for three days, speaking to classes and judging the Canby Competition. The law school co-sponsored, with the ASU Center for Medieval and Renaissance Studies, a colloquium on "Brackton: A Tangled Web of Legal Mysteries," presented by **Frederick Bernays Wiener**, a retired lawyer

and former active advocate before the U.S. Supreme Court; medieval law is his avocation. ■

### Works by Native American Artists Loaned to College of Law

James T. **Bialac**, Phoenix attorney and internationally famed collector of Native American art, has loaned the College of Law many fine examples of contemporary Native art. These works will be exhibited, once the dust has settled, in various areas of the law school. Thank you, Jim, for enriching our lives. ■

### Reception for Merriam Professor and Adjunct Professors

On April 29, 1987, Dean and Mrs. **Paul Bender** held a reception for Merriam Professor **Almarin Phillips**, Hower Professor of Public Policy, Economics and Law at the University of Pennsylvania, and our adjunct professors, who so greatly enrich our curriculum. More than a hundred people joined us to honor these important contributors to the life of the College of Law. ■

### Pedrick Scholars

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

**Lynn Marie Allen**, **Daniel Paul Beeks**, **Daniel Hunt Bergin**, **William D. Bishop**, **Mark Carl Bracht**, **Kelly Mae Buntjer**, **Jenae R. Bunyak**, **John Gregory Cahill**, **Barbara Callaway**, **Chad Steven Campbell**, **Linda Louise Carleton**, **Carrie Sue Chaplin**, **Cynthia A. Cordas**, **Kathleen Coughenour**, **Shawn Michael Cunningham**, **Karen Dickinson**, **Douglas Vincent Drury**, **Donna Lee Elm**, **John Evans**, **Lawrence Felder**, **Elizabeth Louise Feldman**, **Barbara Jean Franzreb**, **Scott Frazier Freichs**, **Alice Finn Gartell**, **David Ira Goldberg**, **Gaelle H. Gralnek**, **Matthew Robert Gregory**, **Randall Mack Howe**, **Patricia Ann Hubbard**, **Donald Wayne Hudspeth**, **Tracy Lynn Hurt**, **Jonathan Michael James**, **Ron**

**Kanwischer**, **Jeanean Kirk**, **Monica Linn Klug**, **John Clyde LeMaster**, **Diane Marie Lucas**, **Darren Jon McCleve**, **Angela Dodd Miller**, **Jeanne Sammons Morris**, **John J. Nicgorski**, **Leah D. Pallin**, **Kevin Anthony Park**, **Renee Roelants**, **Lynn M. Roseberry**, **Edward Rubacha**, **Polly Susan Ruhl**, **Debra Lynn Runbeck**, **Michael Lee Scott**, **Patrick John Sheehan**, **David Earl Smith**, **Deborah Elaine Solliday**, **Lee David Stein**, **John Lighter Stoss**, **Frank Ransom Strong**, **Jean M. Sullivan**, **Brenda Lee Taylor**, **John Dunning Titus**, **Denise Troy**, **Susan Arminda Turner**, **Janet Francina Wagner**, **David Donald White**, **Cindra L. White**, **Lise Rae Witt**, and **Rachel Leigh Yosha**. ■

## Faculty Highlights

**Jane Aiken** taught Evidence to Clinic students and co-taught The Sociology of Law for ASU's Justice Studies Ph.D. program. Her article, "Education as Prevention" in *AIDS: A Guide for the Public* was published by the Yale University Press. Prof. Aiken is working on two articles, "Making Sense of the Ex Post Facto Clause: Punitive Statutes in Civil Dress" and "Women and AIDS". The latter will appear in an Arizona Town Hall Publication. She is editing a sourcebook, *AIDS and the Law*, for Oryx Press. The following is a list of speeches that Jane has made during the spring and summer, or will make this fall: "AIDS and the Law" — Arizona Hemophilia Society in April; "AIDS in Prison" — National Conference of the National Lawyer's Guild, in May; "Women and AIDS" — ASU Women Studies Program in June; "AIDS in The Workplace" — DES Office of Hearings and Appeals, in August; "The Constitution: A Birth Without Women" — Arizona Humanities Council, in September and November and again next January; "AIDS and the Law" — Arizona Center for Law in the Public Interest in October; "AIDS and Civil Liberties" — the Las Vegas Chapter of the ACLU in October; and "Bringing the Third World Home" — National Humanist Sociologist Convention in November.

Professor **Bob Bartels** spent much of his time during the Spring Semester playing judge in several mock trials in Practice Court and Advanced Trial Advocacy; oral arguments in the Canby Competition; and practice arguments for the National Moot Court Team, the Jessup Team, and four Clinic students who argued cases in the Arizona Supreme Court and the United States Court of Appeals for the D.C. Circuit. He also completed the editing of his forthcoming book, *Benefit of Law: The Ernest Triplett Murder Case*.

Dean **Paul Bender**'s chapter "Free Expression" has been published in *The Limitation of Human Rights in Comparative Constitutional Law* (Mestral, et al, ed.), a book composed of papers by scholars from Europe, Canada and the United States presented at a conference held in 1985 under the auspices of the Institute of Comparative Law of the Faculty of Law of McGill University.

In April, Dean Bender was the principal speaker at the Honors Awards Ceremony at Grand Canyon College. In May, he spoke to the Scottsdale Bar Association on the Supreme Court. He participated in a debate on "Original Intention and the Constitution," sponsored by the

Federalist Society at the law school, and in a Law School Forum debate on the constitutionality of banning cigarette advertising. With Herb Ely, Esq., he presented a short course on Constitutional Law for Journalists, sponsored by the Arizona Bar Association. In January, he spoke on "Civil Rights, Then and Now," at a celebration of Rev. Martin Luther King's birthday held in the Pedrick Great Hall. In March, he moderated a panel on "Is Language Choice a Fundamental Right?" and led a roundtable discussion on issues raised by Official English legislative and constitutional proposals at a conference on "Official English and the Border States" sponsored by the law school and the ASU English Department. In April he moderated the panel "Future Directions in Indian Law" at the conference "Tribal Government in Arizona: Emerging Legal Issues and Tribal-State Relations," sponsored by the law school and the Inter Tribal Council of Arizona.

In June he again served as a faculty member at the annual Federal Judicial Center course in Constitutional Law for federal judges held in Berkeley, California. His subject was the Equal Protection Clause. In July, he served for the eighth consecutive year as the speaker on the American Bill of Rights at the annual Seminar on Human Rights sponsored by the Canadian Human Rights Foundation and held at the University of Prince Edward Island in Charlottetown, P.E.I., Canada. He continues to appear regularly on Channel 8's Horizon program as a commentator on Constitutional Law and the Supreme Court, and also appears regularly on Phoenix radio stations, discussing legal issues.

Dean Bender serves as Special Master for Discovery and Settlement in the AHCCCS litigation in Superior Court. He is a member of the Search Committee for the Academic Vice President and Provost at ASU. He is a member of the Boards of Directors of the State Bar of Arizona and the Arizona Center for Law in the Public Interest. He serves on the program committee of the Arizona Bicentennial Commission, is a member of the State Bar's Coalition on Minorities and Women in Law, the Arizona Prosecuting Attorneys Advisory Council, the Arizona Commission on Judicial Education and Training, the Board of the South Mountain High School Law Magnet Program, and the Advisory Board of the Canadian Human Rights Foundation. Assisted by **Cheri Emm**, of the ASU law school class of 1987, he is engaged in conducting an evaluative study of the Hopi Tribal Court for the Hopi Tribal Council.

**Rebecca Berch** continues to write monthly articles on legal writing for *Barbriefs*, the State Bar newspaper. Her goal is twofold: (1) to raise the awareness of local practitioners about many of the types of things we tend to forget after law school, and (2) to make valley law firms aware that we have a very active legal writing program at ASU.

In early summer, ASU's law journal published an article co-authored by Professor **Michael Berch** and **Rebecca White Berch**, entitled "Will the Real Counsel for the Insured Please Rise?"

In June, Rebecca and Michael team-taught an Introduction to Legal Method course at NAU, and, in August, they worked with **Leigh Price** and **LynDee Wells-Stevens** to present a week-long "Introduction to Law School" course for ASU's entering Native American law students.

Professor **Richard L. Brown** continued to serve as Book Review Editor of *Jurimetrics Journal*. He also was a member of the American Bar Association accreditation team inspecting the Georgia State University College of Law.

Professor **Ira Ellman** served as Editor-in-Chief of the *Jurimetrics Journal of Law, Science and Technology* as the law school and the ABA completed the transition of the journal from one put out by the Section of Science and Technology to a co-published journal whose day to day operations are run by ASU College of Law. He served on the Ethics Committee of the Good Samaritan Hospital and on a subcommittee considering hospital policies on abortion.

In the Spring '87 semester, Prof. Ellman offered a new course on Law and Medicine, focusing on the legal treatment of ethical issues arising in the practice of medicine.

Prof. Ellman completed a New Developments Memorandum for teachers using his Family Law Casebook, and has also completed a draft of an article, "Explaining Alimony: The Futility of Contract and Partnership Concepts."

Professor **Dale Furnish** published two articles, "El Derecho Privado de los Estados Unidos Frente a la Deuda Externa," in *XX Boletin Mexicano de Derecho Comparado* 31-55 (No. 58, 1987) and "Formacion del Contrato Mercantil y el Problema del Riesgo: Un Ensayo Comparativo Sobre el Proceso Juridico Estadounidense," in *Derecho* 77-118 (No. 40, 1986, Lima, Peru).

In July, Professor Furnish was re-

elected to the Board of Directors of the American Bankruptcy Institute in Washington, D.C.

In April, Professor Furnish spent a week as a Visiting Professor at the National Autonomous University of Mexico and the State University of Tlaxcala, where he lectured at their law schools on international trade, commercial law and constitutional law topics. Also in April, he lectured on Secured Transactions at the Tenth Annual Banking Law Institute in Austin, Texas.

In June, Professor Furnish was one of four lecturers invited from the United States to a week-long symposium in Santiago, Chile, comparing the United States and Chilean constitutions. He also attended the Inter-American Bar Association's annual meeting in Buenos Aires in May, where he served as Vice-President of the Committee on Development and Integration, and lectured in Venezuela, Uruguay, Bolivia, Costa Rica, and Colombia.

Professor Furnish chaired the law school's Committees on Advisory Personnel matters and the recently approved Master of Laws, which he shepherded to approval by the Board of Regents.

Professor Furnish sat on the University Graduate Council and the University Curriculum Committee, and served on the Board of Directors for the Center for Latin American Studies at ASU. He chaired the president's committee that drafted standards for the new Regents and Distinguished Professorships at ASU. He also sat on the Arizona Bar Association's Committee for Continuing Legal Education, which considered the issue of mandatory CLE, as well as on the Bar's Creditor-Debtor and Bankruptcy Committees.

**Mark Hall** published "The Jurisdictional Nature of the Time to Appeal" in Vol. 21 of the *Georgia Law Review*, and began work on a project entitled "Institutional Control of Physician Behavior: Legal Barriers to Health Care Cost Containment" while at the Vermont Law School this summer as a visiting scholar. He and Professor **Ellman** signed a contract with West Publishing Co. to write a volume for their *Nutshell* series on *Health Care Law, Policy, and Ethics*. Professor Hall was a discussion group leader at the Greater Phoenix Affordable Health Care Foundation's conference on Uncompensated Care and was the invited speaker at the Cumberland Law Review's annual Alumni meeting at the Alabama Bar Convention.

Professor **Dennis Karjala**'s article entitled "Federalism, Full Disclosure, and the National Markets in the Interpretation of Federal Securities Law" appeared in late spring, Vol. 80, No. 6 of the *Northwestern*

*Law Review*. He completed two additional articles during the summer: "Copyright, Computer Software, and the New Protectionism," which will appear in Vol. 28, No. 1 of *Jurimetrics*, and a comparative study of Japanese/United States copyright law that he has done together with Keiji Sugiyama entitled "Fundamental Concepts in Japanese and American Copyright Law," which has recently been submitted for publication. Many here at the law school will remember Keiji, who was a Scholar in Residence at the College for the academic year 1986-87.

During the summer of 1987, Prof. Karjala was again a Visiting Research Scholar at the Faculty of Law of the University of Tokyo. In addition to writing the two articles mentioned above, he gave a presentation on computer program user interface protection, "Broderbund Software v. Unison World," to the Law & Computer Society of Japan and, together with Keiji Sugiyama, spoke on "Recent Developments in the Protectionist Policy Concerning Intellectual Property in the United States — Focusing on Software" before the Research Group on Corporate Law and Taxation. Both presentations were in Japanese.

In April, Prof. Karjala spoke on "Legal Problems of Computer Software Protection" at a workshop entitled Computers in Managing Public Agencies, sponsored by the ASU School of Public Affairs.

Professor **David H. Kaye** published a series of essays on the use of statistical methods in law for the *Jurimetrics Journal of Law, Science and Technology*. His invited paper on "The Polygraph and the PVP" will be published in the journal *Statistical Science*, and his article "Apples and Oranges: Confidence Intervals and the Burden of Persuasion" will appear in the *Cornell Law Review*. Professor Kaye's update of chapters 16-20 of *McCormick on Evidence* was published in the 1987 supplement to this treatise. Two of his previously published papers on probability and evidence were selected for inclusion in a forthcoming book on *Probability and Inference in the Law of Evidence: The Uses and Limits of Bayesianism*.

In addition, he prepared a new paper, entitled "What is Bayesianism?" that will appear in this book. He continues to serve on the Board of Editors of the *Journal of Law and Human Behavior*, the *Journal of Legal Education* and *Jurimetrics Journal*.

Professor Kaye spoke on "Computer Generated Evidence" at the national conference on The Effective Use of Microcomputers in Legal Aid and Public Defenders' Offices. He conducted a seminar on Scientific Evidence: Developments in Arizona and the Nation for the Center

for the Study of Law, Science and Technology. He also attended the First International Conference on Artificial Intelligence in Law.

In February, Professor **John Leshy** gave a talk on federal-state relations in federal water project management to a conference sponsored by the ABA's Natural Resources Section in San Diego; in March, he gave a lecture on the Mining Law as part of a lecture series sponsored by the Environmental Law Society of the University of San Diego Law School. In April, he gave a luncheon talk on federal-state relations in public land management in Denver, sponsored by the National Resources Law Institute of the University of Colorado School of Law. His remarks addressed the implications of the United States Supreme Court's March decision in *California Coastal Commission v. Granite Rock Co.*, in which he wrote a brief, on behalf of nineteen states and the Western Governors' Association, supporting what proved to be the winning side in a 5-4 decision. In June, he gave the opening address at a conference in Boulder, Colorado, on the federal lands, speaking on planning as a major tool of public land management. That same month he received the Maricopa County Bar Association's outstanding faculty award and was, by committee invitation, the lead witness at oversight hearings on the federal Mining Law conducted by the Subcommittee on Mining and Natural Resources of the House Committee on the Interior in Washington, D.C. In July, Leshy was named one of 13 members of the City of Phoenix's new Environmental Quality Commission, created to advise the Mayor and City Council on measures to preserve and improve the environment in the City.

Professor **Gary Lowenthal** spent most of his waking hours supervising students in the ASU Law School Clinic.

In April, Professor **Alan Matheson** chaired an ABA Inspection Team which visited the University of Tulsa Law School. He continued to serve on the Executive Committee and Board of Directors of the BNA (Navajo Legal Services), as a Director of the Faculty Development Board, and as Chair of the Curriculum Committee of the Law School. His article on due process and free speech on university campuses was published in the *Arizona State Law Journal*. In addition, he spoke on radio and before public school audiences on the Bicentennial of the U.S. Constitution. During the month of July, he led a group of American lawyers on a professional tour of the People's Republic of China.

Professor **Willard Pedrick**'s publications

for the Spring 1987 Semester include the article "Perspectives on Personal Injury Law," published in Volume 26 of the *Washburn Law Journal* in June of 1987. A new edition of the *CCH Casebook on Federal Estate and Gift Taxes*, of which he is a co-author, went to press in June of 1987, and will be available before the Fall Semester for use in a number of law schools. Together with Professor **Richard C. Dahl**, he is currently at work on a short article in the field of Constitutional Law, not his usual subject field. That article deals with the method for ratifying amendments to the Federal Constitution by submission to special state conventions elected on a pro or con basis for the purpose of ratification or rejection. Commenting on the piece Professor Pedrick said, "This is a 'neglected' method for ratifying a constitutional amendment and, if Congress could be persuaded to use it, it would bring more democracy to the system — an end to be desired." Professor Pedrick will serve as a visiting professor at Southern Methodist University in Dallas, Texas, for the Fall Semester and will return to teach the course in Estate and Gift Taxation in the Spring of 1988. He says the rumors that this may well be his last year of full semester classroom teaching have considerable substance.

**B. Leigh Price, Jr.**, spent a second year at the College of Law as a Visiting Professor, teaching Spring Semester courses in Federal Indian Law and Environmental Law. In addition to teaching, he served as Vice Chairman of the ABA Committee on Native American Natural Resources Law, organized a national ABA Conference in Santa Fe, New Mexico, on Environmental Protection on Indian Lands, and organized an ASU Indian Law Symposium at the College of Law for Native American and non-Native judges, attorneys and law students. He also participated as speaker or panelist in conferences of the American Indian Lawyer Training Program and the Federal Bar Association, and oversaw new externship programs for ASU students at the Gila River Tribal Court and the Supreme Court of the Navajo Nation.

**Jonathan Rose** continued to serve as Chairman of the Building Committee, a member of the Governor's Regulatory Review Council, a member of the Arizona Board of Legal Specialization, a member of the Executive Committee of the Section on Antitrust Law of the Arizona State Bar Association, a member of the Antitrust and Trade Regulation Advisory Board of the Bureau of National Affairs, and a hearing officer of the Arizona Department of Administration.

Professor Rose is a member of the U.S. West Academic Fellowship Committee. This activity involves reviewing and

awarding grants to undergraduate and graduate students for research involving telecommunication issues. These grants are funded by U.S. West.

In August, 1987, Prof. Rose was host of the annual U.S. West Academic Seminar, "Emerging Telecommunications Technology and Issues," which took place in Keystone, Colorado.

In March, 1987, Prof. Rose participated in the Airlie House Antitrust Conference of the Antitrust Policy Institute.

Professor Rose received the Burlington Northern Award for Outstanding Teaching.

Professor **Milton Schroeder** was on sabbatical leave during the Spring semester. During the semester he served as a judge *pro tempore* on the Arizona Court of Appeals. He also was a visitor at the University of Melbourne in Australia for two months, where he studied electronic banking, spoke to various student and professional groups, and participated in classes at the University in finance law and banking. During this time Professor Schroeder also was a visiting Fellow at Ormond College, which is a residential college associated with the University of Melbourne. Additionally, Professor Schroeder participated in the work of the American Bar Association committee on Payment Systems. That committee is reviewing the preparation of amendments to the *Uniform Commercial Code* — to Articles 3 and 4 on commercial paper and the development of a new Article 4A on electronic funds transfers. He also completed work on a supplement for his book, *The Bank Officer's Handbook of Commercial Banking Law*. Professor Schroeder continued his work with the NCAA Committee on Infractions, hearing cases of violations of NCAA rules on recruiting, benefits to athletes, and athletics eligibility requirements.

Professor **James Weinstein** was appointed Chairman of the ASU/Maricopa County Bar/Arizona State Bar Bicentennial Committee. The Committee, composed of Justice **Stanley Feldman**, Dean **Paul Bender**, **Bruce Meyerson**, **Michael Hawkins**, **John Lundin** and **Elie Sbragia**, will organize six bicentennial programs. Each program will be conducted by people actually affected by various constitutional provisions (e.g., clergymen speaking about the religion clause; prosecutors, policemen and public defenders discussing the various constitutional provisions governing criminal procedure).

In March, Prof. Weinstein spoke to the Scottsdale Bar Association on professional courtesy and legal ethics in large communities. He participated in the Saguaro High School Mentorship Program, in which high school honors students are introduced to various professions by practitioners in the community. He was matched with a high school junior who is interested in becoming a lawyer.

Prof. Weinstein helped organize the Judge-in-Residence program; the Honorable **Irving Hill**, Senior United States District Judge for the Central District of California, spent two days in April at the College, speaking in several classes and participating in other events. Also during the Spring semester, Prof. Weinstein moderated a debate between Dean **Paul Bender** and **John Harrison**, a United States Deputy Attorney General, concerning the role of the framers' intent in constitutional adjudication. He was also a panelist in the Official English and the Border States symposium in March. Prof. Weinstein has been elected to serve on the Tempe/Mesa ACLU Board of Directors.

Professor **Laurence Winer** published "The Signal Cable Sends, Part I — Why Can't Cable Be More Like Broadcasting?" 46 *Md.L.Rev.* 212 (1987) and "The Signal Cable Sends, Part II — Interference From the Indecency Cases?" 55 *Fordham L.Rev.* 459 (1987). He was awarded tenure and promoted to full professor. During the summer he attended the Institute for Retraining in Computer Science at Clarkson University in Potsdam, New York. He also participated in a four-day academic seminar on business, economics and legal issues of telecommunications regulation held by U.S. West at the Keystone Resort in Colorado. Professor Winer continues to serve on the Steering Committee for the Maricopa County Bar Association's annual Law and the Media Seminar, on the Rules of Professional Conduct Committee of the State Bar of Arizona, and as a member of the Editorial Board of *Jurimetrics Journal*. ■

## New Faculty



**Robert Evan Suggs** joined the faculty as an Associate Professor this fall. Robert comes to us from the Joint Center for Political Studies in Washington, D.C., where he was Senior Research Associate for the past four years. While with the Center he convened a national conference to assess minority set-asides, and is presently working on a monograph which analyses set-aside eligibility. Prof. Suggs also directed a national public policy study of the implications for minorities of privatization, and developed antitrust litigation strategy as a remedy for racial steering in housing markets.

Prof. Suggs received his B.A. at the University of Michigan in 1968 and his J.D. from Harvard Law School in 1973. He has traveled abroad extensively, speaks and reads French, and has a limited command of Spanish.



**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 is 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.

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, Prof. 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.



**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.



**Professor Jeffrie Murphy**, former Chair of the Philosophy Department at the University of Arizona and at ASU, has accepted a joint appointment as Professor of Law. Prof. 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

**Class Editor's Note:** Alumni should use the enclosed information form, found at center of this magazine, to provide address changes and news. We welcome personal notes, clippings, photographs and other forms of communication about events of interest in the lives of the College of Law Alumni. Photographs will be credited and returned after publication if so requested. Please send your news to Class Notes Editor, Law Forum, College of Law, Arizona State University, Tempe, AZ 85287.

The class agents listed below are for the 1986-87 fiscal year.

'70

**John S. Lancy**  
Lancy, Scult & McVey, P.A.  
3003 N. Central, Suite 2601  
Phoenix, AZ 85012

In April, **Timothy J. Burke** served on the faculty of the State Bar of Arizona's Continuing Legal Education seminar entitled "Antitrust & Product Distribution." He 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 Fennemore, Craig.

**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. On July 1, 1987, Mike assumed the presidency of the Maricopa County Bar.

'71

**Guy Knoller**  
Guy Knoller, P.C.  
3550 N. Central, Suite 1600  
Phoenix, AZ 85012

**William B. Perkins** has become associated with the firm of Teilborg, Sanders & Parks in Phoenix.

**Jeffrey B. Smith** participated in the writing of chapters for the publication of *Arizona Fees Manual*.

'72

**Timothy J. Tweeton**  
2525 E. AZ Biltmore Circle, #130  
Phoenix, AZ 85016

**Van O'Steen** was featured in a PBS special on lawyers' ethics, "Ethics on Trial," which aired over KAET/Channel 8 in January. He appeared in a segment on the propriety of lawyer advertising. It was O'Steen's Supreme Court case in 1977 which overturned the legal profession's self-imposed ban on advertising.

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

'73

**Paul S. Harter**  
2025 N. Third Street,  
Suite 200  
Phoenix, AZ 85004

**Lyle O. Reisch** is now residing in San Diego, 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," in April. She is 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 & Mote; **Jerry C. Bonnett** of Bonnett, Fairbourn & Friedman; **Barbara Lee Caldwell** of the Maricopa County Attorney's Office; **J. Richard Gama**, sole practitioner in Phoenix; and **John W. Oberg** of Crampton, Woods, Broening & Oberg.

'74

**Stephen W. Myers**  
Myers & Barnes  
234 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.

**Donald H. Bayles, Jr.**, of the Flagstaff firm of Aspey, Watkins & Diesel, will also serve on the faculty.

**Ruth V. 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, McHatton & Wooten in Phoenix.

**Stephen W. Myers** is serving on the Continuing Legal Education Committee

of the Maricopa County Bar Association for 1986-87.

'75

**Judy Bailey**  
Gaston Snow Moya Bailey  
Bowers & Jones  
2198 E. Camelback, Suite 365  
Phoenix, AZ 85016

**Stephen Gorey** has opened a new office at 401 W. "A" Street, Suite 205, San Diego, CA 92101.

**Judy Bailey** served on the faculty of the State Bar of Arizona's Continuing Legal Education seminar entitled "Overview of Franchising: How More Than One-Third of U.S. Retail Business is Conducted" in April. Ms. Bailey has specialized in franchising throughout her professional career.

**Susan K. Smith** was approved as Tax Law Specialist by the Arizona Board of Legal Specialization in January.

**Honorable Rebecca Albrecht** served on the faculty of the State Bar of Arizona's Continuing Legal Education Seminar entitled "Family Law, Psychology and the Court" in April. Honorable **Barry G. Silverman** chaired the program entitled "Collecting Child Support Judgments Without Contempt," which was also sponsored by the Arizona State Bar.

**Jeffrey A. Hotham** was appointed by Governor Evan Meacham as Judge of the Maricopa County Superior Court in June. He served as a deputy county attorney since 1975, and as a specialist in condemnation and real estate law for the past three years.

**Dean Trebesch** was appointed the Maricopa County Public Defender by the Board of Supervisors. He has been the Maricopa County Public Fiduciary since 1981.

The Honorable **Rebecca A. Albrecht** was elected to the office of Treasurer for the Maricopa County Bar.

'76

**Martha Kaplan**  
Horne, Kaplan & Bistrow  
201 N. Central, Suite 2480  
Phoenix, AZ 85073

**Richard H. Lee** is the Chairperson-Elect of the State Bar of Arizona Bankruptcy Law Section. In May, he participated in the Continuing Legal Education International seminar entitled "Commercial Leases: Remedies and Enforcement" in Phoenix.

'77

**Michael Brophy**  
Riley, Carlock & Applewhite  
101 N. First Avenue, 26th Floor,  
Phoenix, AZ 85003

**Jane Goldman** is now with the National Labor Relations Board in Nashville, Tennessee.

**Laurie F. 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 Friedl & Richter.

**Stephen C. Newmark** served on the faculty of the National Business Institute's seminar, "Arizona Sales and Use Tax," in April. He is a partner in the Phoenix firm of Snell & Wilmer, where he practices primarily in the field of state and local taxation, including sales, use, income and property taxes.

**Janis Posner-Raynak** 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. Groh** announces the opening of his law office located at 5150 N. 16th St., Suite B-145, Phoenix, AZ 85016.

**Daniel R. Ortega, Jr.**, P.C., has recently relocated its offices to 802 N. Third Ave., Phoenix, AZ 85204.

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

**Robert Bass** was part of the faculty for "The Real Estate Series," sponsored by the State Bar Continuing Legal Education Department.

**Patricia Norris Halstead** is a co-author of the publication *Arizona Fees Manual*.

'78

**Barbara McConnell Barrett**  
Evans, Kitchel & Jenckes  
2600 N. Central, 20th floor  
Phoenix, AZ 85004

**Denise M. Blommel** has joined the Legal Department of the Industrial Commission of Arizona. She was formerly counsel to Western Growers Association.

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

Merritt's topic was Labor Certifications.

**Tom P. Hannis** 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. Hannis is with the Maricopa County Attorney's Office.

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

**Eliot G. Wolfe**, will serve on the faculty for the Second Annual Arizona College of Trial Advocacy in August. He is with the Phoenix firm of Langerman, Begam, Lewis & Marks.

**A. Frederick Schaffer, Jr.** has been elected to the Board of Governors of the Arizona Chapter of the Real Estate Securities & Syndication Institute.

**Nancy Opre Logan** has opened an office at 3030 N. Central Ave., Suite 310, Phoenix, AZ 85012.

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

'79

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

**Cheri L. McCracken** has relocated her law office to 2402 N. 24th Street in Phoenix. The firm is now known as McCracken & Associates.

**Patrick E. McGillicuddy** has become associated with the Phoenix firm of Daughton, Hawkins & Bacon, working in civil/commercial litigation and criminal defense emphasizing white collar business crimes. He was previously associated with the Maricopa County Attorney's Office for six years, the last two in the Major Felony Unit.

**J. Lawrence Dunlavy and David M. Savory** announce the formation of Dunlavy & Savory, P.C., located at 1430 E. Missouri Ave., Suite 100, Phoenix, AZ 85014.

'80

**Jack MacIntyre**  
Martin & MacIntyre  
6900 E. Camelback Road, Suite 920  
Scottsdale, AZ 85251

**Macre S. Monson** has married and is now Macre S. Inabinet. She is still associated with the Arizona Attorney General's Office in Phoenix.

**Jon Titus**, of the Scottsdale firm of Furth, Fahrner, Bluemle & Mason, is the Chairman of the Section on Securities Regulation of the State Bar of Arizona. Mr. Titus co-chaired "Financing Arizona's Technological Growth," a State Bar of Arizona seminar, in May. He was approved by the Arizona Board of Legal Specialization as a Real Estate Law Specialist in December, 1986.

**Thomas K. Irvine** is a partner of Dushoff & McCall, P.C., in Phoenix. His practice includes all aspects of real estate and condemnation law and litigation, especially eminent domain cases involving commercial property owners. He serves on the editorial board of *The Maricopa Lawyer* and was on the faculty of the seminar "Arizona Boundary Law and Adjoining Landowner Disputes" in April. The seminar, sponsored by Professional Education Systems, Inc., was held in Phoenix.

**Vicki Malrich Sandler** reports the birth of her first child, Shelby June, in December, 1986. Ms. Sandler is in-house counsel for Arizona Public Service Company, where she concentrates in contract negotiations, federal appellate practice and regulatory work. She has been with APS for five years.

**Richard Mahoney** served as chief speech writer for Senator Gary Hart during his campaign.

**Brian E. Kelly** has become a member of the firm of O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears. He served on the faculty of the State Bar of Arizona's Continuing Legal Education Seminar, entitled "Family Law, Psychology and the Court," held in Phoenix in April.

'81

**Susan Van Slyck**

Carson Messinger Elliott  
Laughlin & Ragan  
3300 N. Central, Suite 1900  
Phoenix, AZ 85067

**Thomas A. Curran** is associated with the Phoenix law firm of Bosco & DiMatteo, where he specializes in commercial and real estate litigation. He was a faculty member for the CLE International, Inc., seminar "Commercial Leases: Remedies and Enforcement" in May. Also participating in this seminar as a faculty member was **James B. Wright**, a partner in the Phoenix law firm of Gust, Rosenfeld, Divelbess & Henderson. Wright's practice concentrates on representing lenders in foreclosures and trustees' sales and in loan documentation of commercial real estate financial transactions.

**Anita Valainis**, former counsel to Samaritan Health Services, has joined the Legal Department of the Industrial Commission of Arizona.

**Michelle K. O'Hair** joined the Maricopa County Attorney's Office in February.

**Ann Dumenil**, a partner in the Phoenix firm of Jennings, Strouss & Salmon, participated in the National Business Institute, Inc., seminar on "Arizona Sales and Use Tax" in April. She practices primarily in state and local tax matters.

**Maritza I. Munich** practices with the firm of Rivera, Tulla & Ferrer in San Juan, Puerto Rico.

**Douglas Gerlach** and **Victoria S. Lewis** have been admitted to the Phoenix and Palo Alto law firm of Brown & Bain.

**R. Todd Lundmark**, from the law firm of Lewis & Roca, has been selected for the faculty of the Defense Research Institute's 1987 Workers' Compensation Academy.

'82

**Judy Miller**

Harrison & Lerch  
1001 N. Central, Suite 900  
Phoenix, AZ 85004

**Kathleen A. Nielsen** served on the Continuing Legal Education Committee for the Maricopa County Bar Association for 1986-87. She is with Arizona Public Service.

**Ronald H. Snyder** is President of Prime Benefit Services, Inc., in Salt Lake City, Utah, specializing in Employee Benefit Plans.

**Gary D. Kidd** has become associated with Randolph A. Bartlett, P.C., in Lake Havasu City, Arizona.

**Lance B. Payette** has been appointed Counsel/Western Operations for Xerox Corporation in El Segundo, California.

'83

**Lenni Benson**

Daughton, Hawkins & Bacon  
3636 N. Central, 11th floor  
Phoenix, AZ 85012

**Mitchell S. Allen** is associated with Constance, 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 Roxana Bacon.

**David J. Rivers** has moved his practice from the offices of Lionel, Sawyer & Collins to those of K. Michael Leavitt, Chartered.

**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 associated with the law firm of Ridenour, Swenson, Cleere & Evans, of Phoenix, Arizona.

'84

**David Damore**

Campana, Vieh & Strohm  
4422 N. Civic Center Plaza  
Scottsdale, AZ 85251

**Cindy Hansel Strickland** is associated with the Phoenix firm of Treon, Warnicke & Roush.

**Roberta Lee Lasswell**  
P.O. Box 1006  
Roseburg, OR 97470

'85

**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 Furth, Fahrner, Bluemle & Mason.

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

**Helen Sandalls** participated in the writing of chapters for the publication *Arizona Fees Manual*.

**Mark S. Iacovino** has opened the firm of Iacovino and Kayler, located in Scottsdale, AZ.

**Patricia Cooper** was part of the faculty for "The Real Estate Series" sponsored by the State Bar Continuing Legal Education Department.

'86

**Gloria Cales**

Skarecky, Horenstein & Davis  
3130 N. 3rd Avenue  
Phoenix, AZ 85013

**Jeffrey L. Laskin** has become associated with the Phoenix firm of Broadman & Hartmann.

**Lloyd Fisher** is opening a health spa in Tempe.

**Kathy Sandweiss** has become associated with the Law Office of Jeffrey Irwin in Phoenix.

**Susan Baker** has joined the Arizona Corporation Commission in Phoenix.

**Kenneth Burford** is an associate with the Tempe firm of Johnson, Blake & Kadish.

**Jean Huffington, Scott H. Houston** and **Kevin L. Beckwith** have become associated with Teilborg, Sanders & Parks in Phoenix.

**Jack T. Corman** has become associated with the law firm of O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears of Phoenix, AZ.

**T. Dawn Garrison** has become associated with the firm of Myers & Barnes, P.C. in Phoenix, AZ.

**Kevin M. Moran** has become associated with the firm of Teilborg, Sanders & Parks of Phoenix, AZ.

'87

**Karen Dickinson** won the Faculty Women's Association annual scholarship award for graduate women students at the Association's luncheon in May. ■



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College of Law  
Tempe, Arizona 85287

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