Professor Edward Cleary
1907-1990
Contents

ARIZONA STATE UNIVERSITY COLLEGE OF LAW
THE LAW FORUM SPRING 1990 VOL. 13, NO. 2

In This Issue . . .

Law Forum pays special tribute to Professor Ed Cleary, who died in January of this year. With the passing of Professor Cleary, the College is reminded that it is "coming of age." The Law School's first graduating class just marked its 20th anniversary, and plans are well underway for a three-day 20th Anniversary Celebration in October, 1990. A description of the event is found on page 46.

Also highlighted in this issue is the fact that Richard Morgan has rejoined the College as the new Dean, and is rejuvenating both the faculty and the legal community with his presence. A special thanks to Professor Alan Matheson for serving as interim dean until Dick's arrival in January of this year.

The Library Development Campaign is nearing a successful close, with private support at an all-time high. The names of all those people and organizations who pledged their support to the Campaign are listed in the second section of the Annual Report of Giving. Contributions to the '88-'89 Annual Fund are acknowledged in section one.

Since the Law Forum is now published only once a year, this issue looks all the way back to January of 1989. As you will see, the College is uniquely positioned to continue its distinguished and dynamic development. The loyalty and generosity of alumni and friends will make the difference. Thank you all for your support.

Kathy Neitzel, Editor

Staff
Editor: Kathy Neitzel
Contributing Writers: Professor Ira Ellman, Sierra Russell, Professor Alan Matheson, Dean Richard Morgan, Associate Dean Charles Carleno, Bell jarv, Mary Hartman, Paul Welch and Joe Earlley.
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Letter from the Dean

Dear Alums and Other Friends of the Law School:

As you may know, my family and I recently returned to Casper, Wyoming, where I was Dean of the University of Wyoming College of Law. As pleased as I was to return to Casper, I simply could not resist returning to Temple and the terrific professional opportunities that Dean of ASU's College of Law offer.

Having been away for a few years, I was able to review the College from a "quasi-outsider" perspective, and after three months in the dean's chair, I am quite impressed with the quality of the College and its great potential.

Achieving excellence in its short, thirty-three-year life is a tribute to all of the talent, faculty, students, staff and administrators who have comprised the institution over the years. If one person could be singled out, however, as the source of that excellence, it would be Williard Pedrick, who, as founding dean, had the wisdom and foresight to insist on excellence from the beginning. That insistence continues today, as superior faculty and students replace those who have gone before.

Elsewhere in this magazine you will find a tribute to the late Ed Cleary, an internationally known professor of law and human being, and member of the founding faculty whose death is a major loss to us all (as was Dick Ellman's death last year). The College and community owe these gentlemen a great deal of gratitude, for they and the other founders set us firmly on course.

Saddened as I am by these losses, I am glad to see the College continuing to progress. With the faculty, loyal students, and "cream of the crop" students, the people whom we serve and who serve others are first-rate, just as they were in the days of Ed Cleary. Combining our human resources with the facilities the College is poised to become even better in the next several years. In fact, it is this potential for greatness—more than anything else—that caused me to return from Wyoming.

To achieve that greatness, excellence must be the standard for everything that we do at the Law School, and we must strive for excellence and reject mediocrity, particularly in our educational programs. While I believe the College is committed to that goal, I have maintained a high level of excellence, I am concerned that there are some threats to that standard.

For example, the growth of separate, distinct programs—such as the L.L.M. program, the study-abroad program, and many joint degree and interdisciplinary programs—has caused some faculty to spend more time on administrative matters, particularly the administration of these programs, thereby depleting time from teaching, scholarship and community service. Similarly, the numerous University and College committees, on which our faculty are called to serve, deflect faculty time from primary pursuits to secondary ones.

Thus, we need to make sure that faculty time is well spent: that our programs or committees have the resources, the potential and the support to maintain a commitment to excellence of the University and the College, and, to the extent that resources, potential or support are lacking, to either get the College out of the programs or committees, or to provide the missing ingredient or ingredients.

Next year we will re-examine our programs and committees' assignments.

Two distinct programs of the Law School—the Law Science and Technology Program and the Indiana Law Program—deserve special mention, since each of them is quite important to the College. Each of these programs has great potential for success and for enhancing the College's reputation. However, the College must also face the challenges of the future to be fully and continuously supported and augmented our scholarship funds, so that we can continue to support students whose presence will enrich our College and, ultimately, our community.

While resources are a central theme of the challenges that I have described, they are not the only challenge. Our most fundamental challenge for the future will be to increase the visibility of the College, to provide our students with the teaching and professional experience that they need, and to improve our College and its contributions to the community. For this reason, I will make sure that the College is supported and the College is supported from the community. For this reason, I will make sure that the College is supported.

Furthermore, I must work with you in the years ahead, as we strive to improve this fine College. In the meantime, if you have any comments, or suggestions, please write or call at (602) 956-6165. Thank you.

Very truly yours,

Richard J. Morgan
Dean

Can Others Exercise An Incapacitated Patient's Right to Die?

Ira Mark Ellman

Nancy Cruzan, a young Missouri woman whose fate will be decided by this term's United States Supreme Court, suffered catastrophic brain damage as a result of an automobile accident seven years ago. From the time of that accident until today she has been conscious. She can still breathe on her own, however, and under all standard medical and legal definitions she is still alive. But while she is alive, her upper body is not, and her physicians have no doubt that her condition is irreversible. The standard term for her condition is "persistent vegetative state," or irreversible coma. Karen Ann Quinlan, the 22-year old New Jersey woman who was the subject of a highly publicized New Jersey case 13 years ago, had the same condition. In Quinlan's case the doctors doubted she could breathe on her own and she was therefore connected to a respirator which maintained her breathing for her. In 1976 a seminal decision, the New Jersey Supreme Court held that the respirator could be disconnected, as her family requested.

There is nothing necessarily terminal about permanent comas; without other complications, a comatose patient can be kept alive indefinitely. Karen Quinlan herself demonstrated that reality, for it turned out that the doctors were wrong in predicting that she could not breathe on her own. She could and did, and she lived for nine more years after her respirator was disconnected. In fact, a comatose patient cannot eat or drink normally; nutrition and hydration must therefore be supplied artificially, through devices such as nasogastric tubes, J-tubes, and intravenous feeding. After Quinlan's ability to breathe had been established, her father was asked at one point whether he wished to have her nasogastric tube removed. He declined immediately, explaining, "Oh no, that is her nourishment." This attitude is shared by many, who argue that nutrition and hydration should continue if possible, to maintain the patient's body and to keep her from becoming weaker. In other words, we can maintain and prolong a human life for an indefinite period, but we cannot make her alive.

I am not suggesting that doctors and courts have not taken these considerations into account. But in the case of Cruzan, doctors and courts have generally rejected this distinction, and their position is supported by the Council on Ethical and Judicial Affairs of the American Medical Association, which in a 1986 amendment to its Opinion on Withholding or Withdrawing Life-Sustaining Medical Treatment, concluded that, "It is not unethical... to discontinue "artificially or technologically supplied... nutrition or hydration... to a patient with a confirmed diagnosis of irreversible coma, if those "with responsibility for the care of the patient" concur.

After waiting nearly five years for a miracle that did not occur, two years ago Nancy Cruzan's parents asked the hospital to remove the gastrostomy tube that sustained their daughter's life. The hospital would not comply with the排列组合

Legal organizations, as well as "right-to-die" groups, have rallied in support of the Cruzan. The numerous amicus briefs filed with the Supreme Court urging reversal of the Missouri decision include submissions of the American Medical Association, the American College of Physicians, the American Academy of Neurology, the National Hospice Organization, and the American Hospital Association, as well as a"
as the Society for the Right to Die and Concern for Dying. Unfortunately, the question before the Supreme Court is not really the one which has sparked the concern and criticism of ethicists and citizens. Instead, the question is much broader: does the individual's right to privacy grow as the degree of bodily invasion increases and the prognosis dims? Ultimately there comes a point at which the individual's rights overcome the State interest in patient care — the individual's right to refuse treatment and the state interest in preventing suicide — are balanced in the same way without reference to the constitutional doctrine. An individual has a significant interest in the avoidance of unwanted physical intrusions. The law of battery existed long before the constitutional right of privacy, which in any event does not serve to override the individual's right to avoid unwanted physical intrusion. A court balancing these interests would reach the same result whether it found them in the common law or the Constitution. Constitutionalizing the analysis thus adds nothing of substance; it merely provides a basis for federalizing it — for requiring every state to weigh these interests identically, under supervision of the Supreme Court. The Supreme Court has itself now recognized that the constitutional argument is substantially superfluous. In Roe v. Wade, the court, while conceding that in Roe it had earlier raised constitutional questions, did so to the extent necessary to accept certain constitutional principles, concluding that the constitutional analysis was unnecessary. Unfortunately, the authorities that still denounce the Roe constitutional argument generally take no notice of New York's more recent disavowal of its importance.

2. The Constitutional Claim Arises From Concepts of Personal Autonomy Which Have No Application to the Incapacitated Patient

Nancy Cruzan, like Karen Ann Quinlan, was comatose and unable to express her views at the time the medical decision had to be made; nor, both courts concluded, had either left clear advance instructions. In such a case others must decide for the patient. A constitutional right to decide one's treatment for oneself can thus have no application to her case. The Cruzan's argue that a patient like Nancy does not lose her right to refuse medical care simply because she is incapacitated. Assuming such a right exists, this is, of course true. But that tells us only that Nancy Cruzan still has the formal legal right to direct her medical care, an observation that leads us nowhere, since she is incapable of exercising her right and deciding whether she wishes treatment continued. Indeed, the fact that the right only emphasizes our difficulty, since by necessity others must in fact decide for her even though the right is hers. Courts are understandably uncomfortable with this process; they prefer, whenever possible, to avoid responsibility for such decisions by requiring that

individuals make such critical personal decisions for themselves. Their discomfort is healthy, for the responsibility who decides for Nancy is burdened by the reality that they act from necessity rather than from moral — or constitutional — right. The Cruzans invite the Court to dispel this discomfort through more refined application of the principle of self-determination — or autonomy — and can therefore protect only an individual's right to make decisions about his own treatment. A patient's or family member's judgment is not entitled to the special deference arising from the autonomy principle, for it is a judgment that one person has made about another, not a judgment that he or she has made about himself.

We may well wish, as a matter of sound policy, to ensure that the views of close family members have great weight in making treatment decisions for the incapacitated. We may even wish to make their views dispositive. But we cannot base that policy on the autonomy principle; the family's claim to decide cannot be piggybacked on Nancy's autonomy. To say that the Constitution protects the rights of others to exercise Nancy's right for her will not do where, as here, the right in question is a right to make a choice. It stands on the same footing as a claim that Nancy Cruzan's right to be entertained by her family can be exercised by the family to choose for oneself can be vindicated only if the individual herself makes the choice. A constitutional right arising from our core belief in individual autonomy cannot possibly be exercised by a stand-in appointed by the court.

We must recognize that where nature has deprived the patient of the capacity to choose, the Constitution cannot restore it, and the character of the decision about her treatment necessarily changes. The autonomy principle can no longer apply. Since it is foundational to the constitutional claim, it fails, unless another rationale for it can be offered. Rather surprisingly, given the frequency with which the claim has been made, none has been.

3. The Interests of the Incapacitated Patient Are Threatened, Not Advanced, By Giving Others a Constitutional Right to Decide On Their Care

Because the autonomy principle does not provide the standards by which to make medical care decisions for incapacitated patients who have left no directions is a difficult task. The New Jersey Supreme Court, a national leader in this field since Quinlan, has rejected such options in the last few years in a thoughtful effort to work that problem out. But not every court has gone as far as New Jersey for the very reason that some have and by by taking the course now urged on the Supreme Court; pretending that the problem
does not exist by treating the surrogate decision maker as if he were the patient himself. Examining our experience with this approach is not reassuring. The best known is the case of judicial self-delegation is the decision of the Massachusetts Supreme Judicial Court in the case of Superintendent of Belchertown State School v. Saram. From the premise that they have lacked making capacity their whole lives present an acute problem for courts disheartened to limit the limits of the autonomy principle. Not only are such patients incapable of expressing their own wishes, but, as the court judges, the person may not be made; there is no plausible way to reconstruct their preferences from statements made at earlier time, as there sometimes is for patients like Nancy Cruzan, Joseph Salswilk, for example, had been severely retarded since birth. When his case came to the trial court he was 67 years old, but his mental age was two years and eight months. He had not been able to address himself through physical gestures and grunts. In short, he never had the capacity to form a view about his medical care. Salswilk had leukemia, for which chemotherapy was the only possible treatment. Without it he was likely to live only a couple of months at best, and perhaps only a few weeks. Chemotherapy has serious side effects, but all conceded that "most people in Salswilk's position elect to suffer the side effects of chemotherapy rather than to risk their leukemia to run its natural course." Despite this fact, a guardian ad litem appointed by the judge ordered Salswilk's chemotherapy withheld, and the treatment recommendation was ultimately accepted by the Massachusetts Supreme Judicial Court.

How could Massachusetts justify denying to Salswilk the only treatment that offered him any promise of recovery, treatment which competent individuals almost always seek? The obvious suspicion is that the decision makers felt that a severely retarded person was not worth the effort, but the Massachusetts court expressly disallowed such a view. Rather, the court identified as critical Salswilk's inability to cooperate with the treatment, and to understand why the treatment was beneficial to him. But of course we would treat a child of a two and a half, whose ability to understand would be the same as Salswilk's. And it is clear that the court's position was made to elicit Salswilk's cooperation in administering the treatment to tell whether it could be had. There are cases in which the burden of treatment outweighs the benefits. But with life at stake — a life which Salswilk had the capacity to enjoy — such a conclusion surely requires a careful inquiry to establish the facts. Massachusetts made no clear inquiry and from the result one suspects that the reason, in part, was the court's ability to convince itself that it was protecting Salswilk's choice rather than ending his life. For incredibly enough, much of the court's opinion is spent, not on evaluating how to establish Salswilk's...
In April, 1989, a judge in New York issued an order allowing the removal of a feeding tube from an 86-year-old stroke victim who was in a coma for four and a half months. Doctors had pronounced her in a permanent vegetative state. The order was heralded as a breakthrough in New York law, sometimes criticized for insisting too rigidly on paternal control, by reasserting the patient’s preferences in such cases. Over the weekend following the issuance of the order, but before the doctors acted, the woman awoke. Her physician was called to her bedside, found her alert and able to be the legal case to her. She indicated she understood, and the physician then asked her what she wanted done. She replied, “These are difficult decisions, I just want to go back to sleep.” The judge then withdrew his order.

Conclusion

Withdrawing life support is often the right course, as I believe it is in Czurcz. But correcting Missouri’s mistaken decision through a constitutional rule would necessarily sweep too broadly. Danger lurks if the Court grants families a constitutional right to withdraw care from a patient whose views are unknown, thus disabling the states from enacting an appropriate process for weighing the competing considerations. As Professor Laurence Tribe has observed, there is a “significant potential that, without careful and informed decision-making, procedural controls, legalizing euthanasia, rather than respecting people, may endanger personhood.” It is “an error of great magnitude to confute a substantial judgment of [an unaffected] decision-process of the legal case.”

END NOTES

* For a more extended discussion of this point, as it relates to the necessary interplay between the principles of autonomy and paternalism in decisions about how to treat patients, see the final section of this opinion.

** For a more comprehensive discussion of the legal and ethical issues involved in such cases, see the discussion of the Czurcz case in the current issue of JAMA, vol. 283, no. 15, pp. 1964-1965 (1989).

*** For a detailed analysis of the procedures for withdrawing life support in Missouri, see the discussion of the Missouri case in the current issue of JAMA, vol. 283, no. 15, pp. 1964-1965 (1989).

**** For a comprehensive review of the legal and ethical issues involved in such cases, see the discussion of the Czurcz case in the current issue of JAMA, vol. 283, no. 15, pp. 1964-1965 (1989).

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and the Brief of the National Hospice Organizations, Amicus Curiae, at 31.3

39. Quinn was of course the first New Jersey case, but since then the

42. The court held that Salkowski's ability to appreciate or experience life has "no place in the decision" and that "the chance of a longer life carries the same weight for Salkowski as for any other person, the value of life under the law having no relevance to intelligence." Id. at 431-32.

43. Quinn at 433. I am not the only writer to question the inherent incorrectness of the Salkowski opinion, for the congruency of views of another recent critic, see Horden, Litigating Life and Death, 102 Harv. L. Rev. 375, 385-388 (1988), as well as the sources she cites.


53. For a careful approach that would support removing the artificial nutrition and hydration in Cote, see in Re J.J., 108 N.J. 394, 529 A.2d 434 (1987).


56. Zilich v. New England Sinai Hospital, 497 N.E.2d 626, 643 (Mass. 1986) (Kolb, J., dissenting). See also In re Mary C. Giroux, 314 N.E.2d 886, 892 (N.Y. 1974), rejecting the appellate division hilarity in Brodsky observing that "no patient or his substitute should be judged as to what would be an acceptable quality of life for another." Armstrong Hall's chapter of Phi Delta Phi, McFarland Inn, sponsored a panel discussion on "The Current State of Ethics in the Legal Profession" in November, 1989. The McFarland Inn invited Judge Thomas C. Kleinenschmidt of the Arizona Court of Appeals, Adjunct Professor Roxana Bacon, and Professor Michael Berch to participate. Professor Paul Bender moderated the discussion, which was attended by over 125 students, attorneys, and citizens. The discussion was lively and produced a large number of interesting questions and a few controversial stands, most notably by the mercurial Professor Berch.

Professor Berch argued that a lawyer should remember that morality is not the same as the Rules of Professional Conduct, and opined that it might be an oxymoron to call the rules "ethics" when they cannot be summed on an intuitive level. Professor Bacon, a partner in the Phoenix firm Bryan, Cave, McFeaters, and McRoberts, noted the increasing tendency of law firms to grow very large and argued that ethics in the future would be largely developed and lead by the large firms. Judge Kleinenschmidt did not offer a rosy picture of attorney ethics, but asserted that they may have actually improved over the years. He also explained Arizona's Ethics Advisory Committee system and advised the audience that Arizona's disciplinary system is tough and getting tougher, a sentiment with which the other participants agreed. The panel discussion was successful, and Phi Delta Phi is considering establishing the event as an annual occurrence, with topics such as the factors in practice that make adherence to the Rules of Professional Responsibility difficult and ways in which the public can be educated on the profession make ethical behavior more difficult to maintain. Excerpts of the evening's discussion are presented here.
elders. There's a tough Supreme Court in the State of Arizona. They are no-nonsense about discipline matters.

The last group is sad, the saddest group I deal with. They're substance abusers, and there are a lot of them. Previously, they were by law denied the same way you do the words. A couple of years ago we changed that approach and know we have a very good membership assistance program. We can take people out of the main report. A key law, put them on disability status—which is no practice of law—but not through a discipline process yet. They can get help from over 100 people in Arizona. All our attorneys are recovering from some kind of abuse or addiction. Our program doesn't replace regular treatment programs, but it offers some additional hope. And often this group of people can be rehabilitated. When they are, they still face Bar charges for any infractions of the Code of Professional Conduct that might have occurred before they went on disability status. They still face the entire discipline procedure. The treatment, rehabilitation, and performance while on disability status can all be considered in mitigating any discipline. Those are the three groups.

I see all too many young people with the toxic and substance abuse problem, and I'll tell you quite frankly that as a professional, a cocaine user in young people is what I've seen, and alcohol abuse in older lawyers is what I've seen. I think it's clear why. We don't do anything to people who are older. Cocaine is a relatively new drug for the police in California. Most of the time you're also looking at people who have gone from an annual income of about $2,000-3,000 per person, in some cases, an annual income of $50,000-60,000 per year, and that's a lot of money. Too much temptation and an enormous amount of pressure can lead to drug problems. I want to take a few minutes and tell you what I think is happening in the profession. What I see is happening is that law is becoming a big business with all of the ethics of big business, and is virtually abandoning the ethics of the profession. That's a sweeping statement but I think it's a true statement. Let me give you an example. Right now there are over 300 law firms in the United States with more than 100 lawyers. In the next 10 years, it is assumed by those people who study law as a business, those who make money from law as a business—consultants—that in the next 10 years, probably more than 25 firms, with over 1,000 lawyers in them. They will virtually control national legal business. A regional firm will be a thing of the past, and a large local firm will be a dinosaur. The world is in the process of internationalization of economy, the internationalization of finance that only beggars, like mega accounting firms, like mega law firms can handle. I'm not talking about sweeping kinds of legal problems and transactions that are the wave of the future.

If that's true, that means that a little state bar organization struggling with volunteer lawyers and volunteer hearing committees to discipline each other for infractions of a code will miss the mark by far. Most lawyer discipline will happen in the marketplace, and most lawyer ethics will be determined by the marketplace. These rules will become a set of guidelines for professionals to conduct business.

Judge Kleinschmidt

The current state of ethics in the legal profession is not very good. I don't think it was ever very good, and I don't think it is any worse now than it ever was. One thing that has changed, though, is that the activities of the Bar and the Supreme Court directed at improving it have changed, at least in the 22 years I've been practicing. They've changed dramatically.

When I came to Arizona in the mid-60s, almost no one had done it, and I don't think that any lawyer who got disciplined was in the Supreme Court for sex. I've been practicing law since 1972. The Bar has a very extensive apparatus in operation now for disciplining lawyers. Those who are found guilty ought to be found guilty with reasonable dispatch, and the punishment ought to follow with reasonable dispatch, or else the whole thing gets cluttered. Also, if people who are guilty.

The Bar has improved a lot, and I guess it has improved to the stage where it now has too much business. The medical profession went through an economic revolution in the 50s, and the legal profession went through that revolution in the late 70s and 80s. The business aspects of the practice of law have changed very radically. It is much more powerful than it is to make money from big incomes. There's more emphasis on that than there ever was. I am not convinced that the revolution in legal economics has made any difference at all to all lawyers in the practices of lawyers. I don't see that it's much different now than it ever was.

Now, let me tell you about some practical things that you should know if you have an ethical problem. The Rules of Professional Conduct, which the Supreme Court of Arizona has adopted, are complex. A lot of the ethical problems that will be presented to you or that present themselves can't be solved in 10 minutes. You think you know what's right and wrong? Well, try reading the Rules of Professional Conduct. It's like any other code. You have to puzzle over it.

There is one way to really stay out of trouble if you have a question. That is to go to the Committee on Rules of Professional Conduct. I served on that Committee for a number of years and the Committee itself has changed radically in recent years. It is well worthwhile.

In 1967, for example, we published 27 opinions, possibly 40 or 50 unpublished—but written—opinions, and gave advice over the phone in response to inquiries in hundreds and probably thousands of instances. In 1988, we dropped from 27 to eight opinions and in 1989 to five published opinions, so far.

One of the reasons for that apparent drop in productivity is the fact that the Committee gets some hard questions. Currently, for example, one of the questions they are considering has to do with surreptitious tape recording of telephone conversations by lawyers of witnesses. We've gotten into a lot of problems that have come out of lawyer advertising and the way we go about thinking about it. We used to think it was a serious problem, but it was not. We gave birth to one another before you can expect interview witnesses and expert witnesses for the other side. Their number is legion. Everybody had to have his say. The Committee was just unilaterally and unembarrassing ineffective. So, the Bar cut the Committee down to 20 members, and hired a full-time attorney whose job it is now to answer all the telephone inquiries that come in, to draft every published opinion, and to write every unpublished but written opinion that's provided to members. The Committee of 20 reviews all of these things and has the last word on a policy. The process is really now too new to know how well it's going to work. But if it does work, Arizona will have probably the best machinery in place for answering your questions about the application of the rules and ethics.

So when you are confronted with a problem you can't work out yourself, I suggest you look at the rules first, before you do anything else. If you are still in doubt, call the State Bar, ask for the lawyer who is in charge of handling the Ethics Committee, and talk to them and her. A person in the position of dealing with these rather narrow problems quickly develops an expertise. Hopefully, she will be able to answer your questions quickly, on the spot. If not, if it merits a written opinion, hopefully, she'll get that out pretty quickly. A lot of people, a lot of lawyers, don't even know this Committee exists. But it's there and I would urge you to use it.

Professor Brech

I do agree with much of what the speaker said, and I think now I can sum up things. The speakers discussed the current state of ethics. I'm going to tell you I really have problems with that because I differ in my answers to the question, "what do we mean by ethical problems?" Well, here's my book, and it's called the Standards of Professional Responsibility. It tells you about everything, including how to sit down in court and be a gentle person. It talks about advertising, it talks about commencing a cause. It talks about fees. It talks about important things, and it talks about the significant etiquette points.

Roxana said 65% of the disciplinary cases are a failure to communicate. You're in trouble if you violate these rules. Don't get me wrong, but I don't think that's ethics. Even though it is regulated as such, it's not ethics. The middle ground contains the lien, the checks, and those who steal. People who steal, that troubles me, and I want to talk about that in a minute.

Judge Kleinschmidt said, "Look, there's a committee here that will sort of help you." But my problem is that the judge believes you can't intuitively know right from wrong. The rules are so complex, that's a problem in my mind. It is a problem when ethics have reached the point when you cannot intuitively know right from wrong. The moment you tell me that ethics are something you can't know, then to me they are not ethics. It's important, you'll be disbarred, but it's not ethics. It's a game. Well, I see it as a big, important thing, because motivation is the key to ethics.

We make judgments on less than all of the facts, and I'm going to tell you two, as an example of that. These are my hypotheses that I'm going to state. These are not God-given, these are not necessarily accurate, but these are some that I've lived with for 30 or 40 years. Let me note that I am sick and tired of lawyer bashing. These speakers didn't do it. I'm glad they didn't do it. And I believe what Roxana said about the big firms of the future being a grave problem. I like a society where there are individuals who work, where there are individuals who go before courts. I don't trust conglomerates. I don't like too much power concentrated in anything because power does corrupt. Watergate? The Congress of the United States? That's where the problem lies! Not with the rank and file lawyer.

You want to know something funny? Twenty years ago we had real judges, judges who were appealing to it to bash the lawyer, bringing the proceeding, ineffective assistance of counsel, sue them for malpractice. Try to find the cases claiming civil rights violations in 1940. You're not going to find many. Today, there are thousands of cases of civil rights violations. Are we more racist today? Some of you will say so. The Wall Street lawyers got awfully uptight about ambulance chasers, while they were dealing money in connection with securities. Before their Deal and after, these same Wall Street Wall Street lawyers were worried that Mike Brech from Great Neck, New York ambulance-chaser and found a close.

If you want to talk about competence, the level of competence is at an all-time low. But the level of ethics, I consider that—ethics and this is my thesis—is really at a high. In 1967, the Supreme Court ruled. We called the Rules; read the Rules. They're pretty inspirational. They're pretty damned good. They're tough to beat. Society depends on the lot from 10 years ago. Anybody about everything, including how to sit down in court and be a gentle person. It talks about advertising, it talks about commencing a cause. It talks about fees. It talks about important things, and it talks about the significant etiquette points.

Roxana said 65% of the disciplinary cases are a failure to communicate. You're in trouble if you violate these rules. Don't get me wrong, but I don't think that's ethics. Even though it is regulated as such, it's not ethics. The middle ground contains the lien, the checks, and those who steal. People who steal, that troubles me, and I want to talk about that in a minute.
students. They violated the great rules of the Supreme Court—they advertised! Terrible sin—the big lawyers didn't like that at that time. And they won—the First Amendment—yet they violated ethical rules. But did they have a good excuse? No!

Let's take another case, Nix v. Whitleade. That's a case where the Supreme Court held that it's not ineffective assistance of counsel for counsel to say, "Hey, you're going to take the stand. But if you take the stand, I'll blow the whistle on you. I'll report you and I'll testify against you." The Supreme Court of the United States says that's not ineffective assistance of counsel. The Rules here say that's the appropriate way to respond. Think about blowing the whistle on your client. Do you really applaud that lawyer? If you do, good for you! But I'll tell you what happens! You applaud that lawyer; the client gets another lawyer and does the same damn thing, because this time this client is sophisticated. Has the system been purified? No. Has lawyer number one gone home happy? Yes. Has he violated ethical precepts? No. I want you to live by the Rules. I live by these Rules, but note that there's also something called conscience.

**Audience**

Do you think Rule 11 has reduced the level of either frivolous or harassment complaints?

**Judge Kleinmichaud**

You know, those things take a long time to bubble up to the appellate courts. I haven't had a lot of practical experience with Rule 11. I don't particularly like it. I think it's abused, and I don't like the possible chilling factor on the filings on some types of complaints.

**Roxana Bacon**

I think it becomes just another litigation threat for people who are inclined to view litigation as a sport without rules. You see a lot of Rule 11s being used again just as an unfair tactic, and that I think falls squarely at the feet of the trial court. A good judge will handle it quickly and a not-so-good judge will be snookered and fall into the same trap.

At the State Bar, we take a very dim view of people taking Rule 11 as a joke. (That's what's happening.) When you do, you're writing to the lawyer who's complaining, and to the lawyer against whom he has complained and say take it to the court. And when everything is over, if you still have something to say, come on back and we'll give it another look. But we refuse to be used as another playground for a sandbox squabble.

The thing about Rule 11 that I think is legitimate is that it can be used with effective counsel and effective judge to curb absurd litigation, but all of that presupposes a certain elegance and quality of lawyering that is not the norm, frankly.

**Audience**

Do you advocate some sort of speedy trial rule for disbarment-type proceedings to reduce the emotional strain and to reduce the logjam and try to move things along?

**Judge Kleinmichaud**

The first thing I'd want to know is what would the sanction be for the violation of the speedy trial rule. Would it be simply a dismissal, like it is under the rules of criminal procedure? I don't know if we need a speedy trial rule. I don't know all the rules, and I don't know how to apply them. I just wonder if you can cure it with a rule.

**Roxana Bacon**

I don't think so. I think if what you want to really address are the lie, cheat, and steal cases, we have a speedy trial. This is the interim suspension. If a lawyer is found to have misappropriated funds, the Commission can then move the Supreme Court for an interlocutory order suspending you from the practice of law. It has to be either misappropriation of funds or a pattern or practice that will do great harm to the public. There's a high threshold, as it should be. I think the fact-finding process is critical. It's not a civil trial and it's not a criminal trial, but if you're in it, it sure feels like it. And if it's your ticket to practice law and they say they're going to take it away, I don't think you want to do it on the run. In fairness to the current state of the discipline, I don't think delay is a major issue anymore. I think it will be again in a couple of years when the new lawyers that we've just hired in the discipline department are adequate for the ever-growing number of lawyers in the Bar. And right now things move along pretty quickly. I see probable cause review for things that were filed as a complaint three months ago. That's moving fast.

**Professor Bender**

I suppose it's possible, isn't it, that we might come to a time when ethical discipline is divided and the regulation of the interstate large firms would take place on a national basis?

**Roxana Bacon**

What does that mean when you have a national law firm with partners and associates from 12 other branches in the U.S. coming in and out of your office, and all working together? Deal with your practice law in Arizona? Blow a whistle. Not everybody in that national law firm branch office is admitted to practice in Arizona. Do they all have to go get admitted? Do we all have to take state bars in every state? Where do you start? Where do you stop? And how would the State Bar of Arizona ever even have a clue as to what's going on?

**Audience**

A year or so ago there was a feature on Sixty Minutes talking about lawyers suing lawyers for unreasonable legal representation. One of the attorneys who was sued said that the firm was fighting back and they were using the California firms that had sued each other over six times a piece. The question is, are lawyers breaking the law more or adding to their own bad name in bringing about this kind of litigation? Is it beneficial? 

**Professor Bender**

I'd like to answer that. I think the answer is no. What I think has become a powerful tool in some cases is lawyer disqualification motions. That's a common weapon in complex litigation. Every lawyer who gets a big case wants to disqualify the other attorney because of the tactical advantages. Rule 11 has been used in connection with some of these motions. I am opposed to those things, but let me tell you that I think lawyers are usually very restrained with respect to their clients. The Rules frown on those sorts. We heard one example where they used one another six times, and I'm sure there are other anecdotal episodes. I think we should be restrained by good judgment. I don't like those disqualification motions solely as tactical advantages, and I see the abuse. But I don't see it as much as you seem to. I really think we are fairly restrained on those.

I'm going to tell you something that bothers me about Rule 11. We are so worried about Rule 11 that sometimes we try to use a penalty and not so much for the client, especially a small client who can't come back to us anyway, win or lose. I'm afraid that lawyers are almost simultaneously sometimes. The problem is not the lawyer who's too adamant. The problem involves the timid lawyer, the guy who's in the middle, the one who's worried about his future, who doesn't want to step on toes. Go to the Hoffman trial, go to the Chicago — those lawyers had guts. Now, I don't like all the things they do, I don't get me wrong. How can we practice law without holding hands under the table with the owners of this business, and the owners of this business, I'm afraid, are the State Bar, the judiciary, and in some states the legislature. That's the real problem.

**Professor Bender**

I expect it's possible, isn't it, that we might come to a time when ethical discipline is divided and the regulation of the interstate large firms would take place on a national basis?
Audience

How many complaints do you receive each year?

Roxana Bacon

Well, total intake, garbage and all, about 800. Out of meaningful intake, about 125-140.

Professor Bender

But not all of those, even if everything in them is true, would be discernable events.

Roxana Bacon

Absolutely not. Everybody, in my opinion, who does something that deserves disbarment, gets disbarred. If you're going to fool around with people's money, you can turn in your license to practice right now. I think this court would give you about a New York minute, and then you're out. Eventually the lie, cheat, steal will get you. And so will the substance abuser.

Audience

Along the lines of reporting violations, the people who work for attorneys are becoming more and more professional in their attitude and may feel bound in some respects by the lawyer's professional ethics. To what degree, Judge Kleinschmidt, do paralegals have access to the State Bar record to call and ask whether some situation poses an ethical problem?

Judge Kleinschmidt

Well, I think the Committee would answer the question of a paralegal calling in that respect. I don't see any reason why they wouldn't. I would look at it more if the paralegal were calling as the agent of the lawyer.

Professor Berch

I do have one problem with that. I'm not too happy with paralegals in the mainstream of things making the kind of judgment which says, "Maybe this deal is unethical." Paralegals should be restrained. And the first line, of course, is to the firm. Now, if that doesn't work, you, and you're still concerned, then I'd say go ahead and do it. The economic sanction may be that you're not around any longer, but, of course, that's life. Associates have that problem.

Judge Kleinschmidt

Let me make something clear that I should have told you at the outset. The Ethics Committee does not answer questions for lawyers or paralegals or for anybody about the conduct of a third person. It's strictly limited, according to its jurisdictional statement, to answering the question that you want to ask about your own conduct. That's frequently misunderstood, and the Committee gets many inquiries about what the lawyer on the other side of the case is doing, and it's proper, and we just don't answer.

Roxana Bacon

You don't get in the middle. If you think it's improper, if you think it's serious, that's the responsibility of the enforcement arm, or that's meat for a Bar complaint.

Professor Bender

You'd have to make a complaint—

Judge Kleinschmidt

Right.

Audience

Would you comment on the In re Himmel case?

Roxana Bacon

It's an Illinois case, first of all, not a U.S. Supreme Court case, and what really moved the court was that Casey, the lawyer who was not reported, was continuing to run a money and steal money from other clients. So really, In re Himmel presented the most awful kind of lawyer misbehavior, and yet the lawyer who saw it, knew it, even litigated about it (Himmel), did not turn Casey in to the Bar, and his defense was, "I reached a settlement on behalf of my client." One condition of the settlement was that no other action would be taken against Casey, including turning him in to the Bar. Under those circumstances the Illinois Supreme Court said that you can't bargain away your ethical duties. They believe in you, not the client. You can't do it. You can agree that the client won't turn him in, but you have to turn him in. And because you didn't, Casey has been out here going nuts and hurting a lot of people for about a year or two longer than he otherwise would have. Given those facts, I think all of us would say, yes, the lawyer should have turned him in.

Professor Berch

One observation. I have not read that case, but it presents a real dilemma. It's very easy for the lawyer to report someone else once he's already gained the advantage for his own client, and once a Rule 60 motion can't be made to upset the judgment. If you are the lawyers in the situation, I think you would at least try to wait a little bit so that you could win the case and then report. But that presents an ethical problem. When you are in practice, you get the strain. It's not in the classroom. When I was in law school, and I was taking the bar, you know what they told me? I know it's not true anymore. They told me to answer any question by saying it's unethical. That's the honest-to-God message I got from the Bar Review at New York, the one-minute lawyer. Whatever it is, it's unethical, you can't lose. That's a terrible mentality! That's awful

Judge Kleinschmidt

But there is this Rule E.3 in the Arizona Rules which says that you must report conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness. So you do have an ethical obligation under these Rules to report. You know, you see these violations, lots of them. I have reported, four times I think, mostly out of things arising in court. I don't do it unless I'm really personally satisfied of my interpretation of the facts. When the facts lead me to believe that there is a substantial question, particularly where this kind of conduct is going to wind up really hurting someone, then I do report it.

Professor Bender

Are law schools doing enough to prepare people to face the ethical dilemmas and difficulties that will face them in practice?

Judge Kleinschmidt

I think they are. What you really need is an awareness that you have to live by the Rules, and that when problems arise you can't just look at them and hope they'll go away. They have to be faced and resolved. I think the law schools are making people aware of that, from what I can see.

Roxana Bacon

I think law schools are doing as much as they can. It's a subject that remains abstract as long as you're in law school. It's gut-wrenching the first time you start actually signing something with J.D. after your name. You're always going to have that division between real life and pretend, but I think I might add a heavier ethical component in law school, where you're at a real peak learning time because this stuff is vital to you. I think more role playing would be helpful, just more hands-on, generally. Also we know about mandatory C.L.E. and that two of the units this year have to be devoted to ethics. I like the idea that whatever good the teaching of it in law school does, it doesn't end there.

Judge Kleinschmidt

Let me say one other thing on that. I have known some people who got in trouble with the law or did things they ought not to have done because they believed the Rules were really good. Usually they came from places other than Arizona. I think there really are some jurisdictions where the level of practice is lower. But I think if the law school teaches it, and teaches it seriously, it sets the tone, so that when people get out they know that this is it, this is part of the profession. I think the law schools do that.

Professor Berch

I'd like to have a suggestion to my colleagues. They won't like it, but they neither love any of my suggestions. I don't think we are doing enough, and frankly, I would require every faculty member to take the course on professional responsibility. I wouldn't teach it but they have to take it. And then I would say use it as a component for each and every course. How much time does a contracts professor spend on ethics? How much does the property professor spend on ethics? And I can tell you zip, very little, and that to me is a problem! Ethics is not incidental. It is everything you do! I now talk about professional responsibility, even in federal courts. When I talk about jurisdiction, I talk about professional responsibility because I know it and it is important, and I don't think you'll find it in contracts. I think you'll find it in property. It is window dressing if it is just this course. If you go to church on Sunday, it is window dressing; if you live the good life, it is forever! We do as faculty live it. That's my point.

Professor Berch

Well, we do have to stop. I will say something semi-spirational. Law schools are in business to study the phenomenon of the law. That's not only the abstractions of the law and the rules of substantive law, but I think it's also the practice of the profession, and law schools have not done a very good job of analyzing what the problems of practice are in keeping up with the times. It's not necessary that things in law school have to be abstract and hypothetical. We have clinical programs; we don't have enough of them. There are role playing situations where you can really face people with ethical problems. Law schools have not done very much to get the funding to do that kind of thing. It's expensive education, but if you want to train people for a profession, it's a good argument that you ought to have them practice the profession under supervision before you let them out. On that inspirational note, I want to thank Phi Delta Phi for putting on this wonderful program and thank the participants and the speakers for doing it. Thanks a lot.
Three ASU Alumni Become Top Legal Counsel For Navajo Nation

Siera Russell  
Indian Legal Programs Administrator

Arthur eagerly took the position. After three years on the job, former Navajo Tribal Chairman Peter MacDonald asked Interior Secretary James Watt to remove her. Arthur was dismissed from her position in Windrock. Arthur became Atorney General of the Navajo Nation in that capacity, and Arthur did an excellent job for us by bringing and winning some critical tribal sovereignty cases," Zah said. "She set a standard for the Attorney General of the Navajo Nation that others would have to emulate.

When Zah left the Chairman's position, she left. Arthur is now general counsel to the White Mountain Apache Tribe. Her responsibilities include administrative law, bankruptcy, legislative matters, tax, natural resource law, water law, economic development and contracts with the federal government, and intergovernmental agreements with the State, all of which are very similar to the Attorney General's job but on a smaller scale.

Besides being a highly skilled Indian law attorney, Claudene modestly states that she's a 'mother, a model matrarch, and a grand mamba—with emphasis on the grand,' Zah describes her as "one of the finest American Indian attorneys I know. She really cares about the American Indian people.'

Claudene Botes Arthur

Specifically, the Navajo Nation Attorney General's responsibilities include administrative and supervisory work over a legal office with twenty-seven attorneys, a staff of more than fifty, and a budget in excess of three million dollars. The Attorney General supervises all the attorneys in the Navajo Nation Department of Justice. He or she handles legislative affairs, administrative law, tax, bankruptcy, construction law, service contracts, natural resource law, economic development, regulatory matters, health and human services, litigation in state and federal courts, representation of the Navajo Nation before federal and state agencies, congressional committees, and the U.S. Congress.

Former Attorney General Claudene Botes Arthur was raised on the reservation by a Navajo extended family who taught her the traditional values and cultural understanding. Arthur describes herself as "a Navajo Indian woman of the Tsinjikini clan, born and raised on the Navajo reservation. Arthur attended first grade in a one-room country school and then from second grade through high school at a small mission school in New Mexico. While at New Mexico State University she did her undergraduate work in biology and decided to attend law school after reading a brochure on an Indian law program at the University of New Mexico (UNM). Although attending law school was never a burning desire for Arthur herself, her parents insisted in her a will to work hard and to overcome any obstacles to her success. Arthur was faced with a major obstacle to law school when she was turned down for the dean of UNM's law school. Judge Bill Canby, U.S. Court of Appeals for the Ninth Circuit and former professor of law at ASU, was recruiting at the summer Indian law program when he met Arthur.

Canby remembers Arthur as "one of our best students in the law program" and "certainly the easiest to remember because she possessed an unusual amount of self-confidence." He encouraged her to apply to ASU's law school. After three years of "hard work," Arthur graduated from the ASU College of Law in 1974, and became licensed in both Arizona and New Mexico. She went to work as a staff attorney for Legal Services on the Navajo reservation which later became DNA-People's Legal Services, a non-profit legal organization that serves low-income people residing on the Navajo reservation. (DNA is an acronym for DNA phase meaning "attorneys who contribute to the revitalization of the People").

Eventually, she went into private practice on the reservation where her practice included juvenile cases, consumer problems, domestic relations, and contracts. During the Carter administration, Arthur went to the U.S. Department of Interior as a staff attorney in Washington, D.C. One and one-half years later the Interior Department had an opening in Window Rock, Arizona. Her D.C. co-workers were less than enthusiastic about living in Window Rock. However, for Arthur it meant going home.

Michael Upshaw

Michael Upshaw became the next Attorney General of the Navajo Nation. Born in Fort Defiance, Arizona, Upshaw grew up on the Navajo reservation and graduated from Window Rock High School in 1977. He then became heavily involved in the American Indian Movement (AIM). AIM's primary mission was to raise the American people's consciousness about serious Indian issues such as inadequate health care, high unemployment, and alcoholism," said Upshaw. "While promoting Indian pride in traditional culture, protecting tribal sovereignty, and encouraging self-sufficiency among Indian nations.

While an AIM member, Upshaw worked with Indian activists Vernon and Clyde Bullock, Dennis Banks, and others to publicize the injustices perpetrated against American Indians. His involvement resulted in a trial for his protest activities which in turn fueled his interest in law school. "After my experience with AIM, I decided that the more effective route to deal with the problems of tribes was to work within the legal system," Upshaw said. Marriage in 1975 tempered his activism and he redirected his energy towards pursuing a degree in political science at ASU. "I've always been intrigued with social organizations and social dynamics," Upshaw says.

Prior to beginning law school in 1979, Upshaw attended the summer law program at UNA. He recalls that it "helped me become more familiar with the professors' expectations and the amount of time and effort required for class preparation.

Law school was a childhood ambition of Upshaw's. A Catholic nun at St. Michael's Catholic School on the reservation encouraged her students, especially Upshaw, to push themselves and aim for professional occupations. It was in her class that Upshaw was first introduced to the idea that he could become a lawyer. It was an idea that he shaped into reality.

Upshaw credits his parents for emphasizing education as an important goal. They taught him the Navajo language and involved him in traditional custom and ceremonies while supporting his educational pursuits.

Following graduation from the ASU College of Law in 1982, Upshaw was assistant general counsel for the Gila River Indian Community. While assistant general counsel, Upshaw maintained a limited private practice concentrating on construction and federal Indian law. In 1987 Navajo Tribal Chairman Peter MacDonald, impressed with Upshaw's achievements, asked him to become Attorney General.

Having successfully handled the challenge of law school and five years of an Indian law practice, Upshaw accepted the post in the midst of intense politics and factionalism. From February 1987 through March 1989, Upshaw brought to the position an energy and commitment that emanated from a great sense of responsibility to his tribe. "I accepted the position because, professionally, I was intrigued with MacDonald's economic development platform and its compatibility with my desire for more business opportunities on the reservation," Upshaw admitted.

"I was also excited about the opportunity to give something back to the Navajo Nation for supporting my education. I wanted to show my appreciation to my tribe for putting me through undergraduate and graduate school," said Upshaw. "Among other things, I was involved in renegotiating the Navajo Nation's coal contracts and royalty rates which included a whole series of legal issues,
Richard Morgan Returns To ASU
To Assume Deanship

Prof. Alan A. Matheson

Returning to the University, Richard J. Morgan assumed the office of Dean of the Law School on January 1, 1990. The fifth dean of the Arizona State University College of Law, he joined the faculty originally in 1980 and taught here from July 1, 1987, when he accepted appointment as Dean of the University of Wyoming Law School. Graduates will remember his strong teaching skills in the Business Associations and Commercial Law courses, his fairness as an Associate Dean and his wry good humor.

Dick is a graduate of the University of California at Los Angeles Law School, where he served as Editor-in-Chief of the Law Review. Prior to entering legal education as a professor, he practiced law with the Los Angeles firm of Nossaman, Guthner, Knox and Elliott and became a partner.

As a known quantity and, therefore, almost an inside candidate, Dick survived the long dean search process in the spring of 1989 and edged out other fine aspirants for the position. Satisfied with his role at Wyoming and not in the market for a new assignment so soon after going to Laramie, he stated that the opportunity at Arizona State was one he "simply could not resist." Fortunately for the School, he consented to allow his name to be placed in nomination.

During the process of selecting a new Dean, I was asked by the Search Committee to speak with persons at Wyoming who worked with Dick and who could assess his administrative performance at that institution. Because I had shared decanal assignments in the same office with Dick for one year when he served as Associate Dean at Arizona State and had observed his role in that same capacity for two additional years, I knew he had the talent, good judgment and management skills to direct a law school in superior fashion. Nonetheless, I was somewhat unprepared for the level of enthusiasm in the Wyoming contacts' responses. In his brief time at Laramie, Dick (assisted greatly by his wife Tina) won the hearts and support of every constituency. Faculty members, university administrators and state officials commented upon his great effectiveness in dealing with people, his special dedication to improving educational programs and curriculum, assistance, guidance, and administration. Riding circuit around the state, he was soon identified as a strong force by Wyoming alumni in the legal profession and other members of the bar who received letters from gubernatorial and members of the Supreme Court as well as trustees of the University. Students joined in praising Dick as "approachable," "supportive," and "caring." This record is remarkable for a newcomer to a state where he resided for only two years.

The qualities recognized by his many friends in the cold North are the same as those his friends at Arizona State know him to possess: high integrity, superior teaching ability, wisdom, unusual energy, and strong personal commitment to improving the Law School to new levels of achievement. He comes with the trust and the support of the law faculty.

Although his appointment as Dean was to have commenced on July 1, 1989, Dick requested a six-month delay in order to wind up his duties at Wyoming and to allow that law school to have additional time to select his replacement. This thoughtfulness is typical of Dick Morgan. Dick comes back to Arizona State as a welcome friend and colleague who has proved himself in another league and now leads the batting order at the Law School. Who said you can't come home?
College Community Feels Great Loss Over Death Of Professor Cleary

Dean Richard J. Morgan

Professor Emeritus Edward Cleary passed away on January 19, 1990, at the age of 82. In deference to his wishes, no memorial services were held. The College of Law takes this opportunity, however, to remember Ed to many of those who knew him best: his students, his colleagues and his friends.

Ed Cleary was not only a member of the founding faculty of the ASU College of Law, he was the first member to be recruited by the founding dean, William Pedrick. This was appropriate, of course, since Ed was then (and continued to be) a nationally renowned law professor and a world-class human being.

After earning his J.D. degree from the University of Illinois in 1932 and his J.S.D. degree from Yale University in 1933, Ed practiced law before serving in the Navy in World War II. After the war, he became a distinguished faculty member at the University of Illinois College of Law, where he established himself as one of the nation's leading scholars in the law of evidence, before joining the ASU faculty in 1967. Ed's expertise and reputation in the field of evidence led to his appointment, by Chief Justice Earl Warren, as reporter of the committee that drafted the Federal Rules of Evidence. Ed's work on these Rules, and his scholarship (including the editorship of McCormick on Evidence), helped improve and streamline the very important law of evidence. Just as importantly, he was also a wonderful teacher, as evidenced by his receipt in 1974 of ASU's Distinguished Faculty Achievement Award.

Having Edward Cleary as its first faculty member made a profound difference in the success of ASU's College of Law. As Dean Pedrick later commented, "We were fortunate indeed to have this modest man as a member of the founding faculty. After his recruitment, the job was easy. Once other founding members of the faculty we were trying to recruit found out Cleary was going to ASU, they simply said 'if it's good enough for Ed Cleary, it's certainly good enough for me.'" Because of Ed Cleary's initial belief in the potential of the new college, a small but sterling group of legal scholars followed him to Tempe to join the faculty, ensuring the College's reputation as a first-rate state law school from the start.

Dean Pedrick recently summarized his opinion of Professor Cleary as a law professor. "A splendid classroom teacher with a wry sense of humor, he was known as "easy Ed" both at Illinois and here at ASU for his rigorous grading. In a Cleary course, an A was really an A. Over a ten-year period, his former students at ASU viewed him as a model for the profession—a cultivated, civilized, articulate, resourceful, marvelously effective lawyer. As a teacher, he touched his students and affected the way they now go about being lawyers. His reputation as one of the great legal scholars of his generation has long been secure. Members of the legal profession have, and will, continue to use and appreciate his work."

In 1976, shortly before his retirement, a fund was established to recognize Professor Cleary's contributions to the School. The Cleary Research Fund, as it is called, supports faculty research and scholarship. Because Ed Cleary appreciated the importance of scholarship to the Law School, to the community and, indeed, to the law itself, his widow, Margaret, has requested that anyone wishing to make a memorial gift in Professor Cleary's name direct the gift to the Cleary Research Fund of the Arizona State University College of Law.

The College and the legal community have lost a great scholar, a dear friend, and a wonderful person. This College will forever be indebted to Professor Edward Cleary.
Professor Michael Berch Receives ASU’s Distinguished Teacher Award

Professor Berch is consistently singled out by colleagues and students as an exemplary teacher and adviser. Instructing such disparate subjects as securities regulation, federal courts, techniques of advocacy, evidence and civil procedure, he is praised by his students for his insight and understanding of the law and his ability to pass that on to his classes.

"Taking a course from Professor Berch is like taking a science course from Einstein," wrote one student on an evaluation. "He knows it all."

A lawyer and former student writes, "I selected Michael's classes... because he was (and still is) an incredibly exciting teacher, one who can make a dry subject interesting and who ignites within his students intellectual curiosity."

Berch's popularity among his students is enhanced by his teaching methods. While some professors employ a classic Socratic method, where the student is never completely right because each question raises another, Berch prefers to ask questions that can be answered.

"Besting a student neither pleases Mike nor teaches much to the other students," a former student writes. "I have never seen Mike make a student look small, but have often seen him make a frightened student sit up straighter because Mike has shown him or her what they have learned, not emphasized what they have not."


Before joining the law faculty in 1969, Berch was an attorney for the U.S. Department of Justice, Criminal Division, and worked in private practice in New York City. He has served on numerous committees; published many articles, books and essays; and received two service awards. He has been a visiting professor at four law schools.

Berch received his B.A. degree from Columbia College and his J.D. degree from Columbia Law School.

Professor of Law Michael A. Berch was recently selected to receive Arizona State University's highest teaching honor, the Distinguished Teacher Award. The Distinguished Teacher Award, created in 1964 to recognize faculty excellence, considers outstanding teaching performance in the classroom, the ability of the professor to inspire students to inquire and to learn, and the interest shown to students through outside advice and consultation. The Award is presented each year at the Alumni Association's Founders' Day Dinner, and carries with it $1000 and a copper-engraved plaque.
Gifs/Pledges to the Law Library Campaign as of March 10, 1990

Major Space Endowments

$5,000.00—Brown & Bannister, P.A., Bowling Green, Ohio $5,000.00—Fleming, Stevens & Lewis and Lewis and Lewis $5,000.00—Snell & Wilmer, Covington, Kentucky

$15,000.00-$35,000.00

Arizona Public Service

Alma Alma-Alma County Foundation

Covington & slight

Deloitte & Touche

Edward P. Tilden

Elizabeth S. Bassen

Richard J. Reddick

Mark D. Samson

Robert D. Tober

Jane A. Stacey

Phyllis Hughes

Karen L. Jones

Barbara K. Moine

Nina Ortega

Lynda Marie Pedersen

Mark D. Samson

Robert D. Tober

Jane A. Stacey

Anonymous

Library Development Campaign

Gifs/Pledges as of March 10, 1990

Alumni

Lansing, Wix, and Wixson, P.A.

Fleming, Stevens & Lewis

Lewis and Lewis

Snell & Wilmer

Individuals

121,975

Firms

581,875

Corporations

142,000

Foundations

25,990

Subtotal

871,250

Total

$2,197,121

Wendy Gayer, Marilyn & Olson, P.A.

Tunis Alumni

Evans, Ritchie, Janucos & Polsinelli

Kirkland & Ellis

Procter & Gamble

Robert A. McConnell

The Thirteen Rule of Metro

Tennant Joseph

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8% Participation

8% Participation

8% Participation

8% Participation

8% Participation

8% Participation

Anonymous
Faculty Highlights

During the spring and summer of 1989, Professor Jane H. Allen chaired the Committee on the Task Force on AIDS, and wrote a report to the Governor on participation in the legislation. She introduced an interim report for statewide policy in the area of AIDS, and delivered the final report to the Governor in November. It included over 200 recommendations about AIDS in Arizona.

During the summer he held public hearings in Chirlo, Navaho, Flagstaff, Parker, Yuma, Florence, and Prescott. She spoke at several conferences and symposium, including a conference sponsored by the FAA and ASU on the use of human subjects in research, and gave an address to the Sonoran Life Team of the University of California Center on international AIDS issues. Professor Allen co-authored the ASU Decriminalization Team, which won the regional competition and placed third in the national. She wrote a grant with Larry Weeks to the Department of Education for an HIV Legal Support Clinic that later received $42,000 in funding, and was also co-principal investigator on a National Science Foundation grant studying court processing of AIDS-related cases. She continued to serve as a commissioner on the Arizona Disease Control Research Commission, which gave out close to a million dollars in medical research grants to Arizona researchers in the spring.

Professor Allen’s Committee memberships included the Dean Search Committee, the Indian Program Committee, the Executive Board, the Justice Studies Ph.D. Program, the Clinic Committee, the Board of the Faculty Women’s Association, the University Governance Council, and the AHG Committee on the Hispanic Law Journal.

Professor Paul Bender continues as Chair of the Committee on the Task Force on Medical Malpractice Insurance. He serves as facilitator of a national panel of tribal leaders, museum directors, archaeologists and lawyers seeking to reach a consensus on the property treatment and disposition of Native American skeletal remains, ceremonial objects and lands. The panel was organized by the Heard Museum in Phoenix in response to a request from the U.S. Senate Subcommittee on Indian Affairs. He is the member of the State Bar’s Committee on Professionalism and Coalition on Minorities and Women in Law. He also served on the Task Force on Professionalism of the Commission on the Courts and is a member of the Advisory Committee for the South Mountain High School Law Magnet Program and the Arizona Center for Law in the Public Interest.

In October, Professor Bender delivered the Law and Literature Lecture at the University of Victoria Law School in Canada. His subject was the first seven years of development of the Canadian Charter of Rights and Freedoms under the auspices of the Federal Judicial Council. Last semester, he lectured to the federal judges of the 6th, 9th, and 10th Circuits on recent Supreme Court Rules of Rights decisions. In March he was the commencement speaker for the first class of the People’s Law School in Phoenix.

Professor Bender continues service as a member of the Appellate Court of the Hup tribe. The Court has been sitting regularly once each month on the Hopi Reservation and has issued several significant opinions. He serves as legal analyst for Public Television Station KETA in Phoenix. KETA has been televising oral arguments before the Arizona Supreme Court, with commentary and analysis by Bender and host Michael Grant (ASU Law School Class of 1976). Grant and Bender also do regular horizon programs on U.S. Supreme Court decisions and trends and other legal developments.

During the spring semester of 1989, Professor Michael A. Charley was a visiting Professor of Art at Southern Methodist University. He was the first, with his wife, Professor Rebecca White Charley, an article entitled "Insurer, Insurer-Related Council, Insured: A Re-examination of Conflicts of Interest in the Tripartite Relationship," 57 S.J. of Tax Law and Commerce (1989).

Professor Charley gave a lecture on "Specialized Panels in the Courts of Appeals," at the Southern Methodist University School of Law, and on "Developments in Criminal Law" at the University of Wisconsin School of Law, at Lafayette, Wisconsin.

In January, 1989, Professor Charley was appointed a Judge Pro Tem, Superior Court of Maricopa County. He was also awarded the ASU Alumni Association’s prestigious Distinguished Teacher Award in 1990.

In the spring, the Journal of Air Law and Commerce published an article entitled "A Re-examination of Conflicts of Interest in the Tripartite Relationship," which Professor Rebecca White Charley co-authored with her husband, Professor Charley. The article, entitled "Legal Writing and Oral Advocacy," was published in the Newsletter of the AALS Section on Legal Writing, Reasoning and Research (1989). She was also named to the executive board of the American Bar Association’s Citizenship Education Committee. As one of her duties for that committee, she will serve as editor of the Citizenship Education Committee Newsletter. In addition, she was on the faculty of a Supreme Court-sponsored seminar for new city court judges and justices of the peace. Professor Charley was a visiting professor at the University of Denver College of Law. She continues to write legal writing articles for the State Bar Magazine, Arizona Attorney.

In February, 1989, County Supervisor Carol Carpenter appointed Professor Douglas Blum to serve as a public interest member on the Maricopa County Regional Travel Reduction Task Force, a task force charged with implementing legislation designed to reduce air pollution through reduction in commuter traffic. Professor Blum also worked with several members of the State Bar and state and federal judiciary to establish an American Inn of Court in Phoenix, an organization dedicated to fostering professionalism in the law. He is also serving on the Board of the Arizona Capitol Representation Project and is Chairman of the University Hearing Board, the appellate panel for all student disciplinary matters. In June, the Maricopa County Bar Association directed Professor Blum to its 1989 Outstanding Faculty Award in recognition of sustained and outstanding academic performance and community service.

Also during the summer, Professor Becker completed an article on procedurally burdensome issues imposed on plaintiffs in civil rights litigation. He has also begun work on a book, to be published by Michie Company, on Arizona negligence law.
addition, he continued to serve as a member of the Board of Directors of DNA, Navajo Legal Services; of the Tempe Sports Authority; and of the Minority Alumni Committee of the Law School Admissions Council. At the University, he was a member of the Faculty Senate, of the Board for Faculty Development, of the President's Consultative Committee, and of the Curriculum and Academic Programs Committee. Professor Matheson is also the chairing search committee for the new ASU Provost.

He spoke to the Hearing Officers of the Department of Economic Security on "Recent Developments in Administrative Law."


In the spring, Professor William H. Pedrick gave a lecture in Barry Gray's Tort Class on "Proximate Cause---The Curse of the Thinking Class." He received the William Proc. Prize Award from AALS, Torts Section, in January 1989.

In August, he met with the Multi-State Bar Exam Torts Committee in Seattle.


Associate Dean Jonathan Rose has been involved in fundraising for the new library. He is a member of the Governor's Regulatory Review Council; member, BPA, Antitrust and Trade Regulatory Report Advisory Board; member, Administrative Conference of United States; member, Academic Advisory Council, Barry Goldwater Institute for Public Policy Research; member, Consultative Committee, Restatement of Law Governing Lawyers, American Law Institute; member, Dean Search Committee. He was an expert witness for FDIC and FSLIC in the American Continental litigation.

Professor Ann Stanton had Alloncy, Chief Support Counsel/Unenforced--At the Arizona Supreme Court, she represented the Arizona Law School Student Association in a legal dispute over the constitutionality of Rule 11. The case was heard in December 1988. She served as the President of the ASU Faculty Women's Association for 38 years, and continues to serve on the FWA Board for 1989-90.

Professor Stanton was appointed to the State Board of Behavioral Health Examiners and is doing a study of divorce in Maricopa County with the American Bar Association Committee on the Delivery of Legal Services.

In April of 1989, Professor Robert E. Suggs moderated a debate at the College of Law on the Supreme Court decision in City of Richmond v. J.C. Cosco Co. Later that month he traveled to Washington, D.C. to present a paper on minority business development strategies in the aftermath of the Civil Rights Act of 1964. The paper was presented at the Minority Business Development Conference.

In January, immediately after the Cynkon decision, he participated in a one-hour call-in program on the Phoenix AM radio station XFYX 910 AM.

In July, Professor Suggs attended a conference at the University of Wisconsin on Critical Race Theory where his article "Reframing Minority Business Development Strategies" was presented. It will appear in the Harvard Civil Rights-Civil Liberties Law Review. In August he participated in a panel discussion at the University of California at Irvine, sponsored by the California Republican League, on the implications of privatization for minorities. His book, Minority and Privatization: Economic Mobility at Risk, was published by the Joint Center for Political Studies Press at the end of 1989.

In January he traveled to Richmond, Virginia to make a presentation on economic development opportunities at the Metropolitan Business League. He is currently working on articles analyzing the pecuniary legal status of racial discrimination in housing decisions and an antitrust analysis of racial steering in housing markets.

He has also been elected to the Board of Directors of the Arizona Center for Law in the Public Interest.

Professor Bonnie Tucker taught Trusts and Estates at the University of Denver School of Law during the summer of 1989. She was elected to the Board of Directors of the American Society of Legal Studies, of the American Bar Association, and of the American Bar Association of the Northern District of California.

In September, she was appointed to a special committee of the American Association of Law Schools which held its first meeting in Washington, D.C. in September to discuss problems relating to disabled law students and faculty. Professor Tucker was elected to the Board of Directors of the American Bar Association of the Northern District of California.

The Arizona State University College of Law National Moot Court Team won the regional Moot Court competition in Salt Lake City in mid-November, defeating the University of Arizona and six other schools and advancing to the national competition in New York in January.

The ASU team of Terryl L. Corbett, Rachelle L. Devaux, and Catherine C. Weinberger beat Brigham Young University in the competition finals. The ASU team also was invited to participate in the competition.

Before the court was whether a target company in a corporate raid can claim a violation of anti-trust laws and what kind of information must be disclosed by parties in a tender offer.

Another ASU team comprised of Michael Buric, Deanna Salazar and Deborah Owens, researched the entire issue and won the award for best oral arguments in the regional round. Both the winning and runner-up teams go to New York for the finals, where they will compete against 30 other teams of law students from all over the United States.

"They think they were splendid, but I thought they were splendid before they went," said ASU Law Professor Michael Berch, who coached the ASU teams. Berch also praised the Maricopa County Bar Association, which has provided "generous support" for ASU's Moot Court Team. The final round was argued in the courtroom of the Utah Supreme Court before two justices from the Texas Supreme Court.

Environmental Moot Court Team Wins First National Competition

The Arizona State University College of Law Environmental Moot Court Team won the first National Environmental Moot Court Competition in the spring of 1989 in White Plains, New York. The competition was held at Pace University and was sponsored by the Environmental Law Institute.

In addition to taking the overall title, the winning team of David Goldberg, John Mayo, and Michael Running, won the best third-year law student, also awarded for best brief in the competition.

Under the coaching of Professor Joseph Feller, the winning team argued against an environmental prior use in Brown v. Jackson and on the spreading of the U.S. Supreme Court decision in the case of the United States v. Georgia. The Arizona State University College of Law was represented by the Environmental Law Institute, which has provided "generous support" for ASU's Moot Court Team. The final round was argued in the courtroom of the Utah Supreme Court before two justices from the Texas Supreme Court.

Professor Joseph Feller (far right) offers a congratulatory toast to his winning team: (l-r) Michael Running, John Mayo, and David Goldberg.

It was a dispute between the state government, an industrial polluter and a citizen's environmental organization," Feller said. "In each round, the team had to represent a different side of the argument." Two more ASU teams also competed: Michael Burke, Myron Scott and Lawrence Stuart were the most industrial polluter and the environmental organization, while the state government was represented by the Environmental Law Institute.

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Annual Dinner Pays Witty Tribute to Departing Dean

The Annual Law Society Dinner held in the spring of 1989 had the Honorable Barry G. Silverman from the Class of 1976 as its guest Master of Ceremonies. To the surprise of many and the amusement of everyone, Barry delighted the audience with his comedic talents as he introduced the evening’s guests, all of whom were there to pay tribute to the departing dean, Paul Bender. Barry, a judge of the Superior Court of Arizona, Maricopa County, turned the tribute dinner into a series of stand-up comedy routines, with his humorous introductions, ironic comments, and witty descriptions.

For those who missed the dinner, Barry’s comments are printed below. For those who did attend, I recommend you take this opportunity to enjoy them again.

How many of you know that this was going to be Dean Bender’s last year at the law school? Let me see if there are any hands. There are a few. It’s hard to believe that after only five years, Paul Bender is leaving the law school. I always heard the time Paul ever threw in his hand was when he’s checking out of a hotel.

In any event, we’re going to have a little more fun at Paul’s party. And here we go, I see a lady who looks familiar. I saw her in a movie the other day. We’re very honored tonight to be joined by Governor Rose Mofford, Governor Mofford, won’t you stand up. We’re very honored to have you with us tonight, Governor.

Tonight we’re going to be paying tribute to a man we all have to know, but we’re going to honor him anyway.

Barry Silverman

Ladies and Gentlemen, good evening. Welcome to the 22nd Annual Dinner of the Law Society of ASU. And Louise, thank you for those semi-nice remarks.

Yes, it’s unbelievable as it sounds, I’m really lecturing a Criminal Procedure class to the new law students. I’m Professor Lowenthal this semester. They say the A-students become professors, the B students judges, the C students lawyers, and look at me: The D’s students do it all! When I graduated in 1976 I didn’t get a J.D. degree like everyone else. I got the J.D.—that’s the Juris Doctorate degree. That’s the one you get if you are a lawyer.

I saw in the paper that ASU hired a new basketball coach, Bill Frieder, and offered him a $10,000 a year bonus. If the team excels academically, Frieder told them he made him the same sort of deal, and that in my first semester of law school, personally, they cost him five grams.

In my first semester of law school, I got four Fs and a D. And Pedrick called me in and said, “Son, you’ve got to quit spending all your time on one subject.”

Before we go on, I see a lady nice guy and he’s got some business to conduct.

Won’t you welcome, please, Mr. L. Harrison Levy. It’s now time for the Dean’s report. (Yawn . . .) For those of you who have small children at home and would like to check with theitter, this would be a good time.

I’ll call Dean Bender, but we’ve been blessed with some terrific

Law Society President L. Harrison Levy (77)

The Honorable L. Harrison Levy is the President of the American Law Society of Arizona State University. I had never met Mr. Levy before tonight, but during the cocktail

deals at this law school: Dean Pedrick, Dean Alan Matheson. And who’s the other guy who was here for a couple of weeks?

Frank X. Gordon, Jr., Chief Justice, Arizona Supreme Court

It’s not even the length that impressed me so much as the little card he had on the back that you can mail in for

Ernest Goffman. Each of these three people has made a terrific contribution in his own way and I take nothing from them. But, Paul, I tell you all in sincer-

periodic updates. It’s the only resume I ever saw that comes with pocket

To kick off the tribute portion of the program, I thought I’d hit some of the highlights of his resume. First, he was born in Brooklyn, New York in 1933. For those of you who went to the University of Arizona, that makes him 56. Married to Margie. He has two college-age sons. Graduated from Harvard in 1954, magna cum laude from Harvard Law School in 1957, third in a class of 505. Was an editor of the Harvard Law Review.

And there’s something on the bottom here that says, “From 1957 to 1958 he was a Frederick Sheffler Traveling Fellow.” What in the hell is a Frederick Sheffler Traveling Fellow? It sounds like a carnival.

From 1958 to 1959 he was a law clerk for Judge Learned Hand, and in 1959 he gave and he’s a lawyer. In 1960, Paul began a teaching career at the University of Pennsylvania Law School where he taught for 10 years until coming out of ASU in 1984. In this resume he lists several hundred articles, but I wanted to mention just a couple of them which struck me as interesting. Here on page 5, he’s got one entitled, “The Legal Considerations Relating to Erotica.” Then right under

that he’s got one called, “Conversing with Learned Hand.” I thought that juxtaposition of those was rather interesting.

He lists all his associations and memberships and you name it, he’s got it in here. He was on the Board of Directors of the Greater Philadelphia Chapter of the American Civil Liberties Union and he was cremated at the ACU in what looks like a half dozen important civil liberties cases. I guess it’s fair to say that Paul is on the liberal side of the civil liberties spectrum. In fact, he’s
Thank you, Chief. All of the technical details for tonight's dinner were very ably planned by the law school's development officer, Kathy Neistadt. Stand up and take a bow, Kathy, (applause)

Kathy told me that tonight, from the State Bar, we would have Z. And I said, "Z what?" I thought she was talking like I was French. She goes, "No, Z. It's Tom Zlaker. Everybody calls him Z. That's his nickname."

Is that true? May I call you Z? You can call me E. Where's I? Harrison Levy I, do you know what I thought the three of us could go out later and get very few vowels. Anyway, Mr. Zlaker is a lawyer practicing personal injury law in Tucson. He is the President of the State Bar and we're happy to have him tonight.

Mr. Tom "Z" Zlaker.

Dan Durrenberger, Station Manager, Channel 8, KAET-TV

The first one is addressed: "Dearest Dinner Chairman: Congressman Jim Kolb regrets that he will be unable to attend the Friday, March 31 dinner for Dean Paul Bender due to prior commitments in the district. Sincerely, Deolores Johnson."

What a warm letter! I'm sure you'll want to frame this one, Paul.

Here's another one. This is a real letter from Governor Moffitt's office: "Dear Gentleman: Governor Moffitt is pleased to have received your invitation and the opportunity to present at your event. This acknowledgement is not an acceptance of your invitation, but simply to let you know quickly that your request has reached our office. Sincerely, Mary Ann Kirkland, Special Assistant." Boy, the enthusiasm is just infectious, isn't it?

Here's another one: This one's addressed to Dean Paul Bender, College of Law, etc. "Dear Paul: Congratulations on the fine work you've done at Arizona State. Sorry I cannot attend your tribute dinner, but give me a call when you get a good chance and I'll have a few drinks. Your friend, John Tower." It says, "PS, Remember me to the Mrs."

We've had a lot tonight about Dean Bender's interest in Indian art, in Indian law, and in the Indian community generally, and we're very honored tonight to have with us John Lewis, the Executive Director of the Inter-Tribal Council of Arizona.

Mr. Lewis. If you watch Horizon, and...
ASU Hosts C.L.E.O. Scholarship Program

Thirty-five entering law students studied contract law, criminal procedure, and legal methods and writing at the Region II C.L.E.O. Institute hosted by Arizona State University College of Law from June 10, 1989 to July 1, 1989. The institute was sponsored by the Council on Legal Education Opportunity, a special grant from Arizona State University Central Administration, and by the following law schools from the Southwest and Rocky Mountain Regions: Arizona State University, the University of Arizona, Brigham Young University, the University of Colorado, the University of New Mexico, the University of Utah, and the University of Wyoming.

The Program

C.L.E.O. will provide a three-year scholarship totaling more than $6,000 to each student who successfully completed the rigorous course of study and who eventually gains admission to an accredited law school. At the beginning of the institute, 24 of the 25 law students were accepted to law school for the Fall 1989 entering classes of law schools throughout the nation, and several others were placed in law schools during and shortly after the institute.

The institute was staffed by faculty and administrators from institutions throughout the area served by Region II. A.S.U. law professor Charles Calleros directed the program in the assistance of student administrative assistant Monique Brancowitz, A.S.U. Business Manager Rhonda Kirkade, A.S.U. Admissions Director Fausto Ramos, and part-time student assistant Steven Escovedo.

Three small sections of legal method and writing were taught by Jose Bracamonte, a professor of law at the University of Houston and U.C.L.A., and now a Phoenix attorney; by Kevin Worthen, a law professor at B.Y.U., and by Andrew Silverman, a law professor at the University of Arizona and the director of an earlier C.L.E.O. Institute. They assisted with teaching assistants Carl Hernandez from the University of Wyoming, Cecilia Espinoza, a city procurator from Salt Lake City, Utah, and Pedro Castillo from the University of Arizona.

Student Profiles

The C.L.E.O. students represented a variety of cultural and ethnic groups, including Hispanic, African-American, American Indian, Asian-American, and Anglo-American. Profiles of a few of the successful C.L.E.O. students will serve to represent the ways in which all of them will enrich the law school classroom and the legal community.

Vibita Ly is a South Vietnamese refugee who escaped by boat to Malaysia in 1978 and later settled in Ogden, Utah. Despite the difficulty of learning English as a second language, she successfully completed his undergraduate studies at Bonneville High School and BYU. His ultimate goal is to graduate from law school and to "represent America in international organizations and help re-establish peace in Indochina."

A former journalist and student of Native American Art, Diane Eno, is a member of the Salt River Pima-Maricopa Indian Community in Arizona. As a child growing up on the reservation, Mrs. Eno was impressed by "the strength of the people to the land." After graduating from Arizona State University College of Law, Mrs. Eno plans to return to the reservation to help her community strengthen its commitment to tribal lands and ways of life.

As part of the graduation ceremonies, C.L.E.O. students are treated to dinner, speeches, and dancing.
Alumni News
1989 College of Law Reunions
The Class of 1973

With live Brazilian dance music providing the background, students enjoy one of several extra-curricular functions held during the Institute.

The list of other contributions to the program is impressive. In conjunction with Arizona State University College of Law, Los Abogados sponsored an opening reception for the Institute, complete with catered buffet and mariachi band. Superior Court Judge Cecil Patterson appeared in the classroom as guest lecturer. Arizona State University and the Phoenix law firm of Lewis and Roca co-sponsored a party at the Director's home, featuring catered Italian cuisine and live Brazilian dance music. The law firm of Rooshi, McCracken and Guerrero sponsored a field trip to the courtroom of Arizona Superior Court Judge Gloria Ybarra, who joined attorney Pete Guerrero in describing litigation practice in Phoenix. Immediately after the visit to Superior Court, the students enjoyed a Mexican buffet and office tour hosted by the Phoenix law firm of Gutierrez, Contreras and Salazar. The law firm of O'Connor, Cananagh, Anderson, Winstead, Killingsworth and Boshears treated the students and national C.L.E.O. Associate Director to an office tour and a buffet reception with members of the firm and its summer associates. Finally, Lonnie Williams, a partner with the law firm of Snell and Wilmer, co-sponsored a party at his house with the Young Lawyers Association. In addition to those named above, Phoenix attorneys Chris Arden, Rosemary Christofalo, Barbara Rodriguez and Kathy Stillwell deserve acknowledgment for their efforts in organizing and obtaining sponsorship for C.L.E.O. receptions. The C.L.E.O. Institute thanks all the individuals, organizations, and law firms that helped make the program a success.

A. (l-r) David Lange, Mrs. Severiano Rodarte, Severiano Rodarte and Barbara Caldwell; B. Bruce Barton; C. Jerry Bonnett and Mrs. Greg Fairbourn; D. Founding Dean and Professor Willard Pedrick and Ted Jarvis; E. (l-r) Jerry Shultz, Mrs. Shultz, and Jerry Hirsch; F. (l-r) Greg Fairbourn and Jon Duker; G. (l-r) Mike Donovan and Tom Baun; H. (l-r) Jerry Shultz and Greg Fairbourn; I. (l-r) Tom Russell, Thomas Robert, Crystal Russell and Kevin Martinez; J. (l-r) Rebecca Berch, Michael Berch, and reunion organizer Barbara Caldwell.
The Class of 1979

A. Dave Whitmore, Leslie O'Hara, Debbie Rose and Barbara Ross; B. Stan Schaffer, Prof. Michael Berch and Rebecca Berch; C. Pat and Mary Cunningham; D. Prof. Gary Lomnthal, Marilyn Barry, Edward Barry, Teri O'Brien, Michael Herzog, Lori Herzog, Glenn Hallman and Cheryl Hallman; E. Pat Damiani, Joe Padilla and Ken Behringer; F. Chris Reece, John Anderson and Janice Anderson; G. Larry Pringle, Chris McCracken and Janet Keating; H. John Anderson, Randy Patton, Ken Behringer and Mark Williams.

The Class of 1982

A. Stan Sloniker and Gloria Sterman; B. Marshall Cunn, Ralph Harris and Brian Stark; C. Loren Molleve, Kaye McCarthy, Patricia Bollen Harris and Ralph Harris; D. Dick Osanger and Ann Oakley; E. Austin Potenza and his fiance; F. Kenna Finch and Julie Alwood; G. Richard Rosen and Jeanne Stark; H. Mr. and Mrs. Jim Ackerman.
ASU Law Alumni Elect New Board of Directors; Outstanding Alumnus and Faculty Member Honored at Annual Alumni Membership Luncheon

At the annual ASU College of Law Alumni Association Membership Luncheon held in January, a new Board of Directors was elected and the College's outstanding graduate and faculty member were honored.

The Alumni Association selected Flagstaff attorney Frederick "Fritz" Aspey (77), to receive the College's 1989 Outstanding Alumni Award, and Professor of Law Alan A. Matheson was chosen to receive the Outstanding Faculty Member Award.

Mr. Aspey, a 1972 graduate of the College of Law, is a founding partner in the Flagstaff firm Aspey, Watkins & Dixie, and is the president-elect of the State Bar of Arizona. Mr. Aspey has been a member of the Board of Governors of the State Bar of Arizona since 1982, is the former president of the Coconino County Bar Association, and sits on a judge pro temo on the Arizona Court of Appeals.

In selecting Mr. Aspey, the Alumni Association considered his contributions to the legal community, his long history of community service, his efforts to advance the reputation of the College of Law, and his continuous efforts to improve the quality of law and administration of justice for all individuals.

Professor Matheson has been a member of the law faculty since 1970 and during his 20-plus year tenure has held positions of Dean, Associate Dean, and Assistant Dean. In addition, he has been a professor of law since 1970, teaching in the areas of constitutional law, administrative law, education law, and community property.

Professor Matheson has been a member of the Board of Governors of the State Bar of Arizona since 1970, and has been active in the Arizona Center for Law in the Public Interest. He has also been heavily involved in various university matters in addition to devoting his attention to the College of Law.

In designating Professor Matheson as the recipient of this award, the Alumni Association considered input from the College of Law alumni population as well as Professor Matheson's contributions to the College of Law, the University, and the community. Professor Matheson received his law degree from the University of Utah, where he was the editor-in-chief of the Utah Law Review.

A new Board of Directors for the Alumni Association was elected at the annual luncheon. They are:

Andrew Abraham (82), Vice President
Alan Barrow, Jr. (76)
Jamie Brody (81)
Hsu, Elizabeth Finn (72)
John Garcia (87)
Mary E. Hartman (88)
Theodore C. Jarvi (73)
Calley L. Joseph (70)
Mark Karolczuk (83)
Thomas Lucas (70)
Ivan Matthew (77)
Patrick E. McGillicuddy (79)
Randy Nussbaum (80)
Benfield Rice (04), Treasurer
Michael R. Scott (71), President
Michael P. Shilars (81)
Louise Stark (73)
Thomas Stillwell (88)
Alex Yakula (87), Secretary

Ted Jarvi, ASU College of Law—Class of 1973, presents the Outstanding Faculty Member Award to Professor of Law Alan A. Matheson during the Annual Law Alumni Association Luncheon held in January.

Dean Morgan, Frederick Schaller (78) and College of Law Development Director Kathy Nitzel.

Dean Richard J. Morgan thanks the Law Alumni Association for its strong support of the College.
Judicial Clerkships: Class of 1989

Lynn Allen
Arizona Court of Appeals Judge on March 13, 1989

Drew Christensen
U.S. District Court of Nevada Judge

Kathryn Delano
Arizona Court of Appeals Judge

Elizabeth Feldman
Judge on March 13, 1989

Alice Finn-Carril
U.S. Federal Court of Appeals, Ninth Circuit

Carolyn Hettberg
Arizona Court of Appeals Judge

Mark Knape
Arizona Court of Appeals Judge

John Mayo
Superior Court, Appellate Division

Polly Kuhl
New Hampshire Superior Court Judge

Bonnie Schwartz
Suzan Turner
Arizona Court of Appeals Judge

Juliet Wagner
Arizona Court of Appeals Judge

Lynnolls Wells-Stevens
Supreme Court of Arizona Chief Justice Frank X. Cordon

Michael Warszynski
Arizona Court of Appeals Judge

Edward Voss

Tenth Anniversary Celebration Planned

The year 1990 marks the 20th anniversary of the College of Law. The ASU College of Law Alumni Association plans to celebrate this anniversary with a series of events to be held on Friday, October 20, and Saturday, October 21. All alumni will be invited to attend, along with classmates who have since moved to other law schools. The announcement of the College of Law has evolved since the first class was launched in 1970.

These events will be held at the Tempe Hilton Mission Palms and will feature a major speaker. The golf tournament will be held on the following day, Friday, October 20, at the Karron Golf Course. A favorable package has been set up for the golf tournament. The event will be held on Saturday, October 21, at the Tempe Hilton Mission Palms.

The tagline party is planned to be a major event for both those who want to go to the USC football game, and those who don't. The University of Arizona has committed 100 extra tickets to the College of Law for those who don't have enough tickets. These will be distributed on a first-come, first-served basis. Attendees for the football game will be seated in the last four rows of the stadium.

for the Class of 1989 and 1990, the *Annual Fund*

Michael Hawkins
Brian Caw, McPherson, and McRoberts
3800 N. Scottsdale Rd.
Phoenix, Arizona 85014-3128

John Lancy
Law Office of John Lancy
1333 E. Old Towne Ln.
Phoenix, Arizona 85014

Larry Felix
City of Phoenix
211 W. Washington, Rm. 800
Phoenix, Arizona 85003

Kent E. Turley
Vermeule & Turley, P.C.
340 E. Palm Lane, Ste. 300
Phoenix, Arizona 85012

Robert J. Sturdevant
Sturdevant, Sturdevant & Sturdevant
1100 E. Main St., Ste. 330
Phoenix, Arizona 85012

Sharon Chadwick
Chadwick & Chadwick
1100 E. Main St., Ste. 330
Phoenix, Arizona 85012

Ruth McGregor
was appointed by Judge of the Arizona Court of Appeals by Governor
Rose Mofford on November 8, 1989.

John P. Zanotti
recently returned to Phoenix, Arizona to accept a position at
the Arizona Bar and the Arizona Bar Foundation.

Jack Rudin
Robbins & Green, P.C.
1300 N. Central Ave., Ste. 1800
Phoenix, Arizona 85004-2578

Kevin A. Hendrix
works with Richard P. O'Connor, L.J. Lawrence
McCormick, Richard E. Chambers and
William E. Brown. In 1989, he
formed McCormick, Brown, Lawrence
Chambers & Brown, P.C., 2390 E. Camelback Rd.,
Scottsdale, Arizona 85251, to represent clients in the
real estate and commercial litigation.

Robert N. Bass
was appointed co-chairman of the State Bar Committee
on Continuing Legal Education, is co-chairman
and secretary of the Bar's Seminar on "Residential
Real Estate Transactions," serves on the Legal Specialization Committee on
Real Estate, and is President-Lect of the Arizona Real Estate Association.

Richard S. Plattner
also made a presentation on March 1989, "Learn at Lunch Seminar" entitled
 "Apparelley Highlights," in which he reviewed the history of the flapper era.

Amy G. Coy
Lewis & Roth
1300 E. Main St., Ste. 330
Phoenix, Arizona 85012

Stephen Goodin
now has an office both in San Francisco and L.A. under the name
of Law Offices of Stephen Goodin.

Douglas B. Reeves
& Roberts
now represents clients in a variety of areas.

Smith
Smith
was appointed by the Supreme Court as a Special Assistant Attorney General.

The City of Phoenix, Arizona, has selected him for the position of Chief Attorney General.

Interim Dean Matheson testifies before a House Committee that the University of Arizona should be closed.

Amelia Lewis was endowed professor of law at Arizona State University.

The Amelia Lewis endowed professorship was established in 1983 by her son, Frank Lewis, at the Law School.

In Memorium

Susan Jacobson, a 1980 graduate of the Arizona State University College of Law, died on June 1, 1989, of cancer. She was 33 years old.

After receiving her J.D. at Arizona State, Susan took a position with the Securities Division of the Arizona Corporation Commission and later worked at the Securities and Exchange Commission in San Francisco. Most recently, she worked in the Legal Department of Sears in Chicago. Her family in Wisconsin has requested that those wishing to make a donation in her memory send their gifts to the Law School Alumni Memorial Endowment, in care of the College of Law, Arizona State University, Tempe, Arizona 85287.

Jerome "Jerry" B. Schultz, an alumnus from the Class of 1973, died on January 20, 1989. Jerry was a partner in the Phoenix law firm of Forman, Craig, PC, and was 42 years old. He was chairing the Class of 1973 alumni commuter dinner last year when he died. Jerry is survived by his wife, Sharon, his son, two brothers.

Melcher P. Evans, Class of 1973, died on January 19, 1990. Melcher had been living in Alberta.

Frank Jue, Class of 1983, died on August 4, 1989.

Gall Fostrum, Class of 1981.

Class Notes

Class Editor's Note: "Class Notes" is a column of the Encouragement Journal. It is a place for alumni to share their news, updates, and announcements. The column is open to all alumni who wish to contribute. The deadline for submissions is the 15th of each month.

77 Jack Rudin
Robbins & Green, P.C.
1300 N. Central Ave., Ste. 1800
Phoenix, Arizona 85004-2578

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Gall Fostrum, Class of 1981.
through exemplary efforts in support of parobo to erate representation of indigent aliens.

'79
Ron Kilgard
Meyer, Hendricks, Victor, Osborn & Malden
2700 N. Third St., Ste. 4000
Phoenix, AZ 85004
Kathleen Bowman is the new Executive Director of DNA—Navajo Community Legal Services.

Donna A. Killough, a civil litigation attorney, was elected to the Governing Council of the Law Practice Management Section of the American Bar Association at its annual meeting in Honolulu. This is her fifth term on the Council. Additionally, she was appointed Chair of the Products Liability Board of the Section. The Board oversees production of all publications of the Section, with the exception of Legal Economic, the Section's magazine.

'80
Kevin O' Malley
Gallagher & Kennedy
360 E. Coronado
Phoenix, AZ 85004-1524
Diane Lindstrom serves on the State Bar Public Relations Committee and on the Board of Directors of the Arizona Living Association.

'81
Vickie Lewis
Brown & Bain, P.A.
2901 N. Central
PO Box 400
Phoenix, AZ 85015-0400
Vicki Golkin-Adler gave birth to Kyleen Elizabeth Adler, who was born January 1, 1990 to Vicki and her husband, David Adler.

We regret to note that Call Forsum passed away. She had multiple sclerosis.


'82
Andy Abraham
Steich & Czeczora, P.A.
702 E. Osborn, Ste. 200
PO Box 16862
Phoenix, AZ 85011-6862
Julie Putnam Comfort recently gave birth to child number three Callin, and is the mother of two other boys, Callin, 5, and Drake 4. Julie is employed by Holder Publishing Co., writing handouts for Illinois Appellate Court Reports, and is able to work out of her home with the help of "trusty computer!"

Mary C. McDonnell formed a firm with Patty Lee Holm in Glendale on June 12, 1989. Their practice is limited to domestic relations, bankruptcy and probate.

Richard C. Onager was a speaker on June 22, 1989 for a seminar entitled "The Business Entity" presented by the Maricopa County Bar Association. On February 16, 1989 he chaired a seminar entitled "Partnerships" presented by the Maricopa County Bar Association.

Joanne Stark was elected chairman of the Arizona Chapter of the American Immigration Lawyers Association at the national conference in Washington, June 7, 1989.

'83
Scott A. Swinson
3600 N. Central, Ste. 1000
Phoenix, AZ 85012
Lenni Benson was elected vice-chairman of treasurer and Scott Richardson was elected secretary of the Arizona Chapter of the American Immigration Lawyers Association at the annual conference in Washington, June 7, 1989.

We are sad to note that Frank Jue died August 4, 1989.

Amy Langerman spoke on "The New Malpractice Rules" in a medical malpractice seminar presented by the Arizona Trial Lawyers Association on December 15, 1989.

Michael P. Scott, formerly an Assistant City Prosecutor in Phoenix, is now a member of the California Bar and an associate at the Santa Rosa, California law firm of O'Brien, Walters, Davis, Mattich & Plaia. He and his wife Allison now make their home in Santa Rosa and are the proud parents of a son, Jake, born February 1989.

'84
David Lamsky
O'Connor, Cavagnagh, Anderson, Voetover, Killingsworth & Beshears
One E. Camelback, Ste. 100
Phoenix, AZ 85016-1606
John Titus
7849 E. Bellview Street
Scottsdale, AZ 85250

'85
Gerald T. Hickman
7309 N. Third St., Ste. 1300
Phoenix, AZ 85012-3039
Joseph William Krueger was recently made a partner in Shuman, Shuman, Bishop & Gruender, P.C.

'86
Jeff Pylburn
Gallagher & Kennedy
360 E. Coronado
Phoenix, AZ 85004
Sue Sack-Lowther
4601 W. Barridge
Glendale, AZ 85301

'87
Lee Stein
Brown & Bain, P.A.
2901 N. Central
P.O. Box 400
Phoenix, AZ 85001-0400
Len Munnall has been selected for a one-year appointment as Judicial Counsel to Judge Daniel A. Marion of the United States Court of Appeals for the Seventh Circuit, beginning September 1, 1989.

Since graduation, he has served as legal counsel for Children's Legal Foundation, a national, non-profit, public interest law firm dedicated to the fight against censorship and child pornography. In that capacity he drafted federal and state legislation, testified as an expert witness on obscenity laws before five state legislatures, filed amicus curiae and appellate briefs before the U.S. Supreme Court and several circuit courts, and frequently was interviewed by national and local media about constitutional issues relating to pornography regulations. He and his wife Traci, who received her Master's degree in Political Science from ASU in May, are expecting their third child in October.

Change of Address/Alumni News

Return to:

College of Law Development Office
Arizona State University
Tempe, AZ 85287

Name
Class Year
Home Address
City State Zip
Firm/Organization
Office Address
City State Zip
Home Telephone
Office Telephone

Please use other side for news or comments

Placeement

Return to:

College of Law Placement Coordinator
Arizona State University
Tempe, AZ 85287

Expected openings for third-□, second-□, and/or first-□ year law students.

Date positions available

Name
Telephone

Firm/Organization

Address
City State Zip

Please use other side to describe position(s) and indicate requirements.

☐ I am willing to talk to students about job opportunities.
☐ I would like to receive the alumni placement newsletter.

Please send the alumni placement newsletter to the above address (enclose $10.00 for postage and handling).

42 LAW FORUM
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