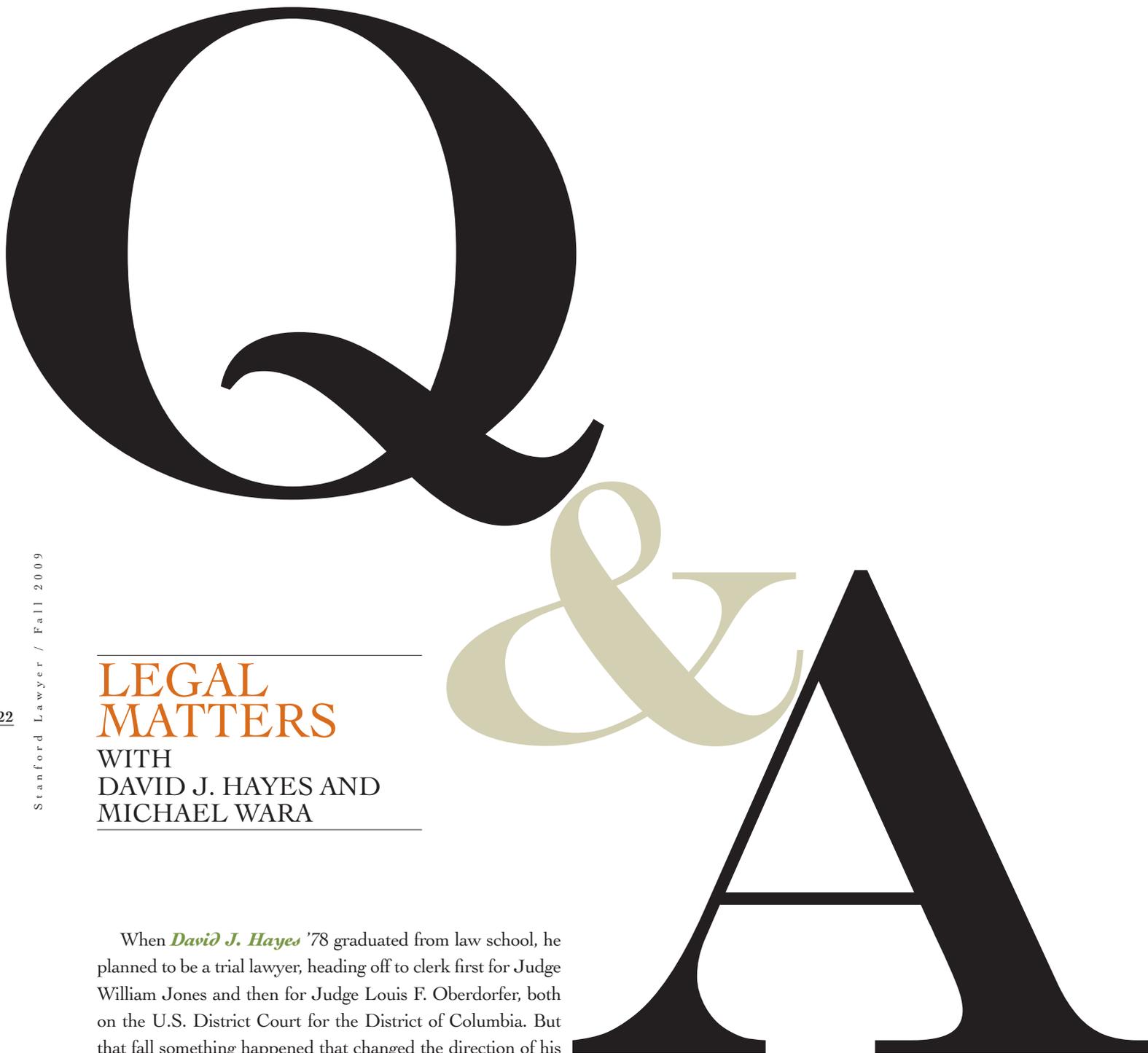

LEGAL MATTERS

WITH
DAVID J. HAYES AND
MICHAEL WARA

When *David J. Hayes* '78 graduated from law school, he planned to be a trial lawyer, heading off to clerk first for Judge William Jones and then for Judge Louis F. Oberdorfer, both on the U.S. District Court for the District of Columbia. But that fall something happened that changed the direction of his career. A strike by workers at Iran's nationalized oil refineries reduced production from six million barrels a day to about one and a half, setting off major political unrest. By early 1979 the Shah had fled his country and Iran was in the throes of revolution—oil exports all but shut down. The resulting spike

in fuel prices, shortages, and long lines at gas pumps across the world made an impression on the young lawyer. Having witnessed the turmoil shortages could wreak, he became fascinated with environment and energy resource issues, their relationship to national security and economic stability—and the ways in which situations such as those of the 1970s might be avoided by a move toward renewable resources and energy independence.

Until then, environmental law had not been at the forefront of Hayes's career plans—there weren't even classes available to take on the subject at Stanford Law School. But after graduation, he quickly became a leader in the nascent practice area, spending much of the 1980s working his way up to partner at the D.C.



firm of Hogan & Hartson, where he developed legal expertise in environment, energy, and natural resources and published articles on subjects such as the Superfund program to clean up toxic waste. In the 1990s he became a partner at Latham & Watkins and chaired the firm's environmental department. And in 1992 he joined then President-elect Clinton's White House transition team, analyzing the Environmental Protection Agency. In 1997, he joined the Clinton administration first as Interior Secretary Bruce Babbitt's counselor at the Interior Department and then in 1999 as deputy interior secretary. He served in that position until 2001, returning to Latham & Watkins when Clinton's term ended. He advised President Obama during his presidential campaign and was appointed deputy interior secretary in the new administration last January.

As deputy interior secretary, Hayes oversees a vast department with a \$12 billion budget and responsibility to manage 20 percent of the landmass of the United States and nearly 70,000 employees spread out across the country. And he's anxious to get to work, saying, "This is the beginning of a new and potentially transformative presidency."

There is urgency to the work that Assistant Professor **Michael Wara** '06 has taken on since joining Stanford Law's faculty in 2008. The seriousness of climate change questions and the wider implications of its challenges are his daily terrain. A trained scientist with extensive knowledge of the data behind climate change and other environmental law issues, he was not satisfied to simply gather information and study the problem. He chose to pursue a JD after his PhD because, says Wara, "I realized that the more interesting question for me was 'so what do we do.'"

Part of a growing group of faculty whose research is truly interdisciplinary and empirical, he is very much aware of the difficulty and importance of what he is trying to do. "Climate change and how the scientific questions translate into public policy are tremendously complex and, of course, sometimes caught up in misinformation and emotion," he said before sitting down to record the interview that follows. "But solving these issues is *the* challenge for my generation. It's very important that we make progress."

And Wara has quickly become the go-to guy on these questions—his work often quoted in mainstream media as well as in scientific and legal journals, his scholarship sought by policymakers. He is a fellow at both the Program on Energy and Sustainable Development at Stanford's Freeman Spogli Institute for International Studies and Stanford's Woods

Institute for the Environment. His current research focuses on the emerging global market for greenhouse gases and the prospects for reducing emissions post-Kyoto. - SHARON DRISCOLL

WARA: Congratulations on your return to the Department of the Interior. How does it feel to be back in your old office as deputy secretary at the start of this new Obama administration?

HAYES: Thank you. It really is incredible. This is the beginning of a new and potentially transformative presidency. I joined the department last during the second four years of the Clinton administration. So things were already under way, staff was in place. This time, I arrived at the very start, on January 20, with Ken Salazar, secretary of the interior, and three or four others.



Coming into a department of 70,000 people and building a new team from scratch has been challenging, but also a lot of fun.

What are the challenges after eight years of the Bush administration?

The department had a very tough eight years, with budgets cut virtually every year. The Interior Department and Environmental Protection Agency (EPA) sustained the largest cuts of the whole government. And resources within the department were disproportionately allocated to opening up new

areas for oil and gas drilling. It wasn't a balanced approach—and the department has suffered.

Is your priority now to change the culture that was created over the last eight years—or scale up from the budget cuts—or both?

Both. We're certainly looking to get the resources that we need. And with the support of the Obama administration, we've been able to get a significant increase in our budget—the first in eight years.

Culturally, the department has been adrift without clear goals or clear priorities. By the time I left in 2000, we had made a lot of progress in bringing the various bureaus of the department together to produce a broad vision for the balanced protection and development of our natural resources. That progress in the culture and cohesiveness of the department took a major step back, too. Now, Ken Salazar has set a new tone and clearly laid out his top priorities, and we are looking to have them shoot through all the bureaus and agencies in the department.

With regard to striking a balance, what do you think the right approach is for resource energy extraction and natural resource protection?

You start by having a broad approach to energy development. The Bush administration did not advance a renewable energy agenda in any material way. It was all oil and gas. A third of U.S. domestic oil and gas production takes place on public lands within the Interior Department's jurisdiction, so the department must play an important role in that area. But the previous administration virtually ignored the huge untapped potential of renewable energy. So the first step in striking a balanced approach is to also promote renewable energy, which we are doing.

Step two is providing balance regarding where energy is developed. We are committed to taking a comprehensive and thoughtful approach that allows for the development of energy projects where it makes sense to develop them. There are trade-offs for all types of energy. Solar and wind energy can raise significant issues in terms of potential impact on wildlife and view sheds, and certainly oil and gas drilling can as well—so siting is crucial. One of the first things that we did in this new administration was establish procedures for siting wind projects off the Atlantic Coast. That's just one example.

Clinton's Interior Department was successful in bringing stakeholders together to form consensus about the right approach to managing natural resources and resource extraction. Will this administration do the same?

Absolutely. One of the hallmarks of our administration is transparency and participation in decision making. We really want folks to be involved in our decisions.

By way of example, the Bush administration kicked off an environmental review of potential solar project development on

public land, but it waited until the very end of the administration to start the process. And their process was unfocused. So we did a midcourse correction, aided by very good stakeholder discussions. Some of these discussions had been hosted by the state of California, looking at potential siting of solar projects in California. Another one proceeding under the auspices of the Western Governors' Association identified potential renewable energy zones around the West. We incorporated their suggestions into our solar Environmental Impact Statement (EIS) and are asking for public input on not just the broad question of solar on public lands but also on 24 specifically identified areas, called out by the stakeholder efforts as good candidates for siting of solar. And we'll focus our environmental analysis on those areas and continue the public process of evaluation.

This tees off another question about the stimulus package and the tremendous amount of money that was in the American Recovery and Reinvestment Act for green energy. Are there impediments to the department's spending that money quickly and effectively?

We've had such a backlog on maintenance and construction in our national parks and our wildlife refuges, on our Indian reservations, etc. A large proportion of our stimulus money is focused on those activities that are—and have been—"shovel ready." Likewise in the water arena, a large number of projects have been begging for investment—construction projects, water reuse projects, etc. By way of example, we put \$135 million into water reuse projects, partnering with municipalities that are building new infrastructure to help treat water and enable it to be reused. So we've had an abundance of terrific opportunities to spend Recovery Act money in ways that bring jobs and stimulus to a wide variety of areas in the country.

The San Francisco Bay-Delta System is in crisis—both from an environmental perspective and a legal one, given endangered species litigation. What role can Interior play in helping to craft a new framework for work on that system?

The environment of the delta has deteriorated alarmingly over the last eight years with no real federal leadership. The governor initiated a review by a blue-ribbon panel that is really quite good in terms of identifying the challenges and establishing twin goals of achieving environmental sustainability and reliable water supply. That review can establish a blueprint for a way forward.

In terms of our role, Interior has the biggest federal stake in the California water situation. We run the largest water project in the state—the Central Valley Project is a Bureau of Reclamation project, so we move millions of acre feet of water a year on behalf of a large number of both municipal and agricultural contractors. And Interior's Fish and Wildlife Service is concerned about the many species, particularly in the bay-delta

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region, that have been negatively impacted by the water conveyance system and other stressors. We are also closely allied with National Marine Fisheries Service, which is part of the Department of Commerce and which deals with salmon issues. So we’re in it and we’re committed to rolling up our sleeves and working with the state and the stakeholders.

Do you think that the solution will be helped by Interior’s renewed emphasis on science? And will its efforts to rebuild relationships with the Fish and Wildlife Service and its role in enforcing the Endangered Species Act (ESA) and the Bureau of Reclamation’s interest in delivering water to its contractors also help?

If the government is balanced and evenhanded and attentive to water supply obligations but also to environmental laws—and if all players understand that science is going to be the centerpiece of any approach—if everyone knows those are the rules, I think it helps folks reach consensus. On the flip side, if some of the stakeholders think that they have an inside track with governmental decisions, then you have a pernicious factor in play.

Looking at the ESA, do you think there’s a good prospect for reducing the level of controversy surrounding that act, even with the special interest stakeholders very vocal on all sides of the enforcement issue?

Yes. It’s very important to promote common sense solutions to the habitat and wildlife challenges that we face. I thought that we made great progress in the Clinton administration with former Secretary of the Interior Bruce Babbitt’s leadership on this. Secretary Salazar brings the same practical, results-oriented philosophy to the job. We’re very pleased to have Michael Bean as part of our team as counselor; he’s been a pioneer in collaborating with landowners to come up with ways that make sense for the species and for landowners—so we should see more progress. With climate change affecting the range of species and disrupting some of the biology and the habitat needs, we’re in for new challenges.

Do you expect to incorporate climate change issues into ESA planning moving forward, and into the habitat conservation planning process, for instance?

Climate change will affect our resources, so addressing it is not something we can delay. This is a new challenge, but we’re committed to being at the forefront of it and we’re organizing ourselves toward that end.

This department manages 20 percent of the landmass of the United States. We are the primary wildlife manager, both on private and public lands, through the Migratory Bird Treaty Act, the Endangered Species Act, etc. We’re also the largest water provider in the United States. And we’ve already discussed energy resources within our jurisdiction. We’re seeing climate change impacts already through increased invasive species, changes in wildlife ranges, and hydrologic changes in important basins. So when we’re addressing climate impacts on land, on wildlife, on water—the Department of the Interior must lead. We are committed to cutting across our departments—our 5,000 scientists and 15,000 land, water, and wildlife managers—and having them work together to identify the impacts on our resources and adjust to them.

Are you empowered by the current set of environmental laws and regulations to plan in the way that you need to handle the new challenge from potential climate changes?

We have broad discretion under the Federal Land Policy and Management Act and some of our other laws to manage as we see appropriate to keep our public trust assets viable for future generations. But we’re at the front end of this. We may find that there are constraints in our laws that leave us unable to take necessary steps to adapt to climate change impacts.

With respect to climate change and the discussion of carbon offsets, particularly the work that Congress has been doing, one of the most interesting dynamics in that legislative process has been the role that agriculture and forestry offsets may play.

Right. Your favorite topic.

And one that you know a tremendous amount about. It seems obvious that Interior should play an important role in planning and probably implementing how carbon emissions from forests are incorporated into U.S. climate policy. But so far that role isn’t spelled out in the legislation.

I think when the dust settles, we will be a big player in whatever emerges from the Congress. The U.S. Geological Survey (USGS), which is part of our department, was tasked in the Energy Independence and Security Act of 2007 with developing methodologies for measuring carbon sequestration in natural systems. So we have launched an important effort of measuring carbon storage in our forests and landscapes. This effort is incredibly important, given that measurement is one of the most difficult aspects of biological sequestration and offset

issues. And, of course, we have great expertise, both in terms of forests and land management in striking a balance between carbon storage and broader management issues. We must not prioritize carbon sequestration over other ecosystem values such as wildlife, habitat, etc. Our Fish and Wildlife Service and our land managers are charged with looking at the whole picture when it comes to managing landscapes. We bring a lot to the table in this regard.

With respect to discussions around forests and the advent of the U.S. carbon market, that will put a lot of money on the table, with the focus on one variable—storing carbon in forests. Do you worry that the carbon market might reset management priorities?

There is certainly a potential for concern there. I think that we will see legislation that emphasizes the importance of maintaining environmental integrity for any carbon storage project. But it's going to put a premium on how that's administered and enforced.

Another aspect of these discussions is education. One of our goals at Interior is to help identify just how important our natural landscapes are to the carbon cycle, to educate folks and to enable communities to enhance, where appropriate, their own landscapes, both to help their quality of life but also to help the environment. We have to take advantage of this opportunity—this teachable moment.

How do you see the work on domestic issues relating to deforestation internationally?

There are important connections. Some of the toughest issues in the international context relate to how to measure carbon in forests, particularly where there's active deforestation under way. And there are challenges to reducing deforestation impacts both in terms of technology and human capacity. As I mentioned, USGS is developing, per Congress's direction, methodologies to measure carbon in our landscapes. USGS operates the Landsat system, which provides very detailed satellite imagery, so it's working on a sophisticated combination of satellite imagery and on-the-ground tracking to measure carbon storage across broad landscapes. We have a program under way already, called LANDFIRE, which was developed to deal with fire issues primarily, that—combined with the methodology that calculates carbon in different types of landscapes—has the potential to give a very, very good estimate of carbon storage. That's exactly the kind of technology and approach that will be particularly important on the international side where you have to look at large landscapes because of the concerns about leakage and additionality. So there's a lot we can do.

In private practice you led one of the most successful environmental groups in the country, probably in the world. What's your vision of the future of private environmental law practice?

I think it's both an evolutionary and a transformative period we're in right now. Evolutionary in the sense that environmental law has moved from something of a boutique specialty into a broader, more traditional practice area. In the past, the EPA was at the center of environmental law. Now, it's a much more diffuse practice area that encompasses challenges associated with project development, growth-related issues as cities expand, and resource constraints of all kinds. Disputes in these areas are here to stay as our country continues to grow and competition for land, water, and other resources continues to tighten. And you sprinkle climate change on top of that and you've got a challenging set of issues that affect business, that affect municipalities, and touch a lot of people.

In terms of the transformative side of the practice, if the U.S. launches a market system for carbon—a cap-and-trade system that cuts across the whole economy—and that's where we're heading—that will be transformative. And it will require a large number of environmental lawyers and administrative law lawyers to help make it work. It is daunting. EPA will face enormous challenges in administering a program that regulates a gas that is invisible and yet pervasive, in a broad variety of contexts. So if some form of carbon market legislation is passed, and we hope and expect it will, the rollout of the regulations associated with that will have enormous consequences for the environmental bar.

How does it feel to be back in public service?

I love public service and it's a privilege to be able to be here, particularly at this time, for this president, and at this level. I feel very fortunate. I can't imagine wanting to do anything else than what I'm doing. We have the opportunity to make some real across-the-board impacts and that's quite exciting.

You've been back to Stanford, last year as a guest lecturer. And your amazing legal and public service career and dedication to environmental issues provide a real role model for our students. Is Interior doing anything to get young people interested in environmental issues?

Yes, it is. There are lots of studies about how youth are losing their connection to nature. At Interior we want to work on that.

I was hiking in the backcountry of the High Sierra recently and noticed there was a real generational imbalance in others one runs into in the wilderness, at least in California. What are the prospects for changing that?

We're doubling the number of young people we're hiring for the summer. We're going to have 15,000. We're looking to create new outreach programs to bring diverse communities out to nature, whether to urban parks or traditional iconic parks. And there are career opportunities that we can help identify for folks. There's been no systematic attention devoted to this issue, and yet there are real opportunities in our department with anticipated turnover in the coming years.

We have a wonderful opportunity to acquaint folks with our mission and our resources. It's not just traditional environmental and landscape resources but also cultural ones. We are the guardians of much of our cultural history, from the Constitution Hall to the Selma to Montgomery Civil Rights Trail and to the Women's Rights National Historical Park in upstate New York. There's a lot to share with our youth and we're committed to doing that.

Are there aspects of legal education that should change? What could we do differently to help new graduates participate in both the evolution and the revolution that's coming in environmental law and land management?

I think Stanford Law has been a leader in this respect and is heading in absolutely the right direction by providing opportunities for students to work across disciplines. As they learn the law, they also have the opportunity to learn the science and to learn how to work with business and government. Environmental law is an excellent example of a discipline that requires a unique skill set in which effective lawyers must be facile in a number of subject areas. You can't just be a "green eyeshade" lawyer if you're going to be effective. You have to be able to understand and talk about the science. You have to work in teams. You have to be comfortable in an ambiguous regulatory environment. Dean Kramer's focus on interdisciplinary education and a holistic sense of the problems lawyers encounter is really terrific. I totally enjoyed my quarter at Stanford's Woods Institute for the Environment and saw that firsthand. I think Stanford is leading the pack in that regard, but I will admit to significant bias in that respect.

Well, we certainly hope, when you're a little less busy, to get you back to Stanford.

I'd love to.

Does anyone stand out as a real inspiration to you while you were here at Stanford or elsewhere early in your career that led you to this field?

When I went to Stanford, long ago, there was no field of environmental law. But there was a public service orientation to the law school as there is now, and the notion that the law should be used to help people was emphasized. I graduated just as the first energy crisis was hitting with the oil embargo, the long gas lines, and all that. I joined a law firm after my clerkship and got involved in those issues and saw the energy and environmental connection. That's how it all started for me. The environmental field grew up around me, and I saw it as an area where the issues really mattered to people.

In terms of professors, I had former Dean Paul Brest as my small section constitutional law professor my first year. He was very influential. But he was not alone. Paul Goldstein [Stella W. and Ira S. Lillick Professor of Law], for example, taught me in an area that I didn't end up working in, but he gave me an enthusiasm for the law. Ironically, when I graduated I wanted to be a trial lawyer. So there's a lesson there. Sometimes it takes a little while to find your niche.

In some ways you were one of the people who created the career path by seeing those connections and working to implement the key administrative and regulatory aspects of the laws that connect us.

Well, that's a little over done, but I appreciate the compliment!

Maybe. But I think you've played an important role, especially in your work in the Clinton administration in terms of natural resource management.

Thank you. **SL**

To hear this interview, go to www.stanfordlawyer.com.

IN FOCUS:

Rethinking the First-Year Curriculum

CONTINUED FROM PAGE 5
exposing the horrendous conditions of a public institution—is protected by the First Amendment.

In the real case, *Titicut Follies* was the subject of an unprecedented injunction that lasted for more than 20 years, until Sullivan, serving as counsel for Wiseman, persuaded the court to lift it in 1991. To this date, it remains the only film enjoined for reasons other than obscenity. In the hypothetical case, the plaintiff like-

wise seeks to enjoin the exact same film, which has been retitled *Claremont Review*.

Federal Litigation students are assigned to represent either Nolan or Best throughout the course. By the end, students will have drafted a complaint, taken or defended a deposition, briefed and argued three motions, watched and critiqued six sets of oral arguments, had their written and oral arguments critiqued by instructors, and have served as judges for their classmates' arguments.

"Key here is that, unlike the traditional moot court brief, the students must participate in a series of exercises that

develop their research, writing, and advocacy skills. There is no substitute for iterative experience in learning how to analyze and advocate," says Kramer.

Incoming 1Ls will begin *Federal Litigation* during the winter quarter and continue into spring quarter—with a total of 10 sections of approximately 17 to 18 students each. And for those students who are still eager to participate in moot court, the Marion Rice Kirkwood Memorial Competition, which moved to autumn quarter, is available to provide a rigorous appellate advocacy experience—as well as those irreplaceable memories. **SL**