

MEMORIAL RESOLUTION

JOHN KAPLAN (1929 – 1989)

John Kaplan, Jackson Eli Reynolds Professor of Law, died at his campus home on November 23, 1989, after battling courageously with cancer for more than a year. He was sixty years old.

Professor Kaplan is survived by his wife, Elizabeth (Betty); his mother, Dorothy Kaplan and his brother, Benjamin Kaplan, both of New York; and his three children, Carolyn Springer Kaplan, Jonathan Edward Kaplan, and Jessica Saron Kaplan, all of the Palo Alto area.

Born in New York City on July 9, 1929, Professor Kaplan attended Midwood High School in Brooklyn, and then received his A.B. degree from Harvard in 1951, where he majored in physics. Though Professor Kaplan soon turned his career interests to law, that undergraduate specialization engendered in him a lifelong interest in both the natural and social sciences that later enriched his legal scholarship. He received his LL.B. degree from Harvard Law School in 1954, where he was an editor of the *Harvard Law Review*. After graduation, he was selected to be a law clerk to the Hon. Tom C. Clark, Associate Justice of the Supreme Court of the United States, whom he served in the 1954-55 term. After completing his clerkship, he journeyed to Europe, where he studied criminology at the University of Vienna. Then, after a year with the United States Department of Justice, he became a federal prosecutor, serving as Assistant United State Attorney for the Northern District of California from 1958 to 1961.

Thereafter, he took his interest and experience in the criminal justice system to the academic world, becoming Associate Professor of Law at Northwestern University from 1962 to 1964, and then becoming Visiting Professor of Law at Boalt Hall Law School at the University of California at Berkeley from 1964 to 1965. In 1965, Professor Kaplan joined the Stanford Law School faculty, where, except for an appointment as a Visiting Professor at Harvard in 1984-85, he spent the rest of his renowned teaching career. In 1974, he succeeded the late Herbert Packer as Jackson Eli Reynolds Professor.

In his almost three decades in the academic world, Professor Kaplan distinguished himself as one of the foremost scholars of our criminal justice system. In addition to numerous scholarly articles, his writings include widely noted books focusing on the actual workings of the criminal judicial process, including *The Trial of Jack Ruby* (with Jon R. Waltz) in 1966, and *The Court-Martial of the Kaohsiung Defendants* (1981). Professor Kaplan probably achieved his greatest fame with his pioneering works on the criminal regulation of illicit drugs, most notably his 1970 book, *Marijuana: The New Prohibition* and his 1983 work, *The Hardest Drug: Heroin and Public Policy*. In these works, he offered encyclopedic and extraordinarily clear analyses of the scientific, political, economic, and legal aspects of drug regulation, subjecting common assumptions about the feasibility of regulation to penetrating critical analysis.

As if this were not enough to fill a productive scholarly career, Professor Kaplan was editor or co-editor of several major textbooks and casebooks, and his book on *Evidence* (co-edited with Professors David Louisell and Jon R. Waltz) became, and remains, the most widely used on the subject in America. In addition to numerous other academic honors, Professor Kaplan was elected a member of the American Academy of Arts & Sciences in 1984 and received honorary LL.D. degrees from Lewis & Clark College in 1982 and from the University of Puget Sound in 1985. In addition, he served as a vital adviser on national panels examining legal policy in such areas as substance and alcohol abuse, and the use of animals in medical research.

At Stanford, Professor Kaplan was legendary as both a teacher and scholar. Over two decades' worth of Stanford law students had the unique opportunity of learning criminal law or evidence from one of the classic classroom artists. With crackling wit and irony, peppered with outrageous hypotheticals (which often found corroboration in real cases), Professor Kaplan ran his students through the most rigorous exercises of legal analytic thinking. Yet, for John Kaplan, law was no abstract exercise in logical analysis. Rather, what energized his work was his ability to marry a passion for philosophical truth to the beauty of raw fact. He thought facts had a shock value of great educational importance. One of the values of teaching criminal law, he believed, was to help students realize the very real and bizarre things that real human beings do. In 1989, his law students honored him with the John Bingham Hurlburt award for excellence in teaching. (Stanford undergraduates were also the beneficiaries of Professor Kaplan's teaching arts. His undergraduate course in Criminal justice became one of the most heavily subscribed and popular in the University.)

Relying on his training in science, he became one of the greatest social scientists of law. He was a great analyzer. He took apart the criminal justice system and the system of courtroom procedure, to see how they are put together and to see how they work and why they fail. He took apart the criminal mentality and the criminal organization to examine how these things arise. Who takes drugs? Why do they do so? Who loves to use guns? Is there anything we could do to stop them even if we wanted to? Driving his work was a passion to go past assumptions and sentiments and see the truth in one of its purest forms--as fact. We can choose to accept or ignore fact; but we have to know what we are choosing. He fully appreciated the arguments for gun control, but subjected them to his sharp skepticism about the feasibility of greater regulation. Conversely, he was critical in examining philosophical attacks on the death penalty, but nevertheless concluded in his later work that the sheer unworkability of the capital punishment system was enough to damn it.

Typifying his work is the brutally unsentimental conclusion of his 1983 book on heroin, where he explains that the choice of a new policy towards heroin is essentially a choice of whom to benefit and whom to harm. He viewed current American policy as harming our institutions of criminal justice, and also harming the addicted and those upon whom the addicted prey. Yet, in his sober analysis of proposals for free availability, he warned us of the trade-offs: it would improve the lives of addicts and of those they victimize, and possibly cleanse our justice system, but it would harm those who would become addicted under this regime who would otherwise never have encountered heroin (especially youth and minorities), and might undermine our public health system. For Professor Kaplan, the burden often lay with proving that any legal change would do less harm than good, and on that sort of matter he was a stem judge.

A prime example of Professor Kaplan's thinking was one of his last and most profound essays – on the subject of abortion. Typically, it is disturbing across the whole political spectrum on the abortion issue, because his drive to find fact and truth were indifferent to structured political ideology. The essay speculates upon what the world, or this society, at least, will look like if *Roe v. Wade* is overturned, in terms of the non-uniformity of state laws, the likely number of illegal abortions, the likely *de facto* wealth discrimination, and so on. The essay has disturbed those who seek the overruling of *Roe v. Wade*, because it depicts a world very different from one of revived abstinence or idealized adoption. But it has also disturbed those who support *Roe v. Wade*, by contemplating what for many is the unthinkable and by describing a politics of inelegant legislative lobbying and political compromise, rather than one of high moral and constitutional principle. The essay demonstrates that acute intelligence of Professor Kaplan's work, yet it reaches such alarming insights precisely because that intelligence is driven by a passion to force examination as far as it can go, to pursue fact and truth.

Beyond his teaching and scholarship, Professor Kaplan was a legendary colleague in the University at large. His wide interest in the humanities and natural and social sciences made him the close friend and colleague of innumerable faculty members in all fields. In addition, his spirited public presence and love of the University led him to serve in many formal and informal posts, capped with his selection, in the last year of teaching, as chair of the Faculty Senate.

He will be remembered above all for his most visible yet most intangible qualities – his outrageously expansive humor, his irrepressible warmth, his extravagantly exhibited love for his family and friends.

A memorial service for Professor Kaplan was held in Kresge Auditorium at Stanford on December 11, 1989. Tributes were delivered by Paul Brest, Richard E. Lang Professor and Dean of the School of Law; Maggie Scarf, author; by Sanford H. Kadish, Morrison Professor of Law, University of California, Berkeley; by John G. Simon, Augustus Lines Professor of Law at Yale; by colleague, former student, and co-editor, Robert Weisberg, Professor of Law at Stanford; by Janice Hoeffel, Stanford J.D. 1990, representing Professor Kaplan's admiring students; and by Donald Kennedy, President of Stanford University.

The John Kaplan Memorial Fund has been established at Stanford Law School.

Paul Brest
Arthur Coladarci
Lawrence Friedman
John Meyer
Robert Weisberg, Chair