

Educating Lawyers  
Amending the Constitution  
Updating *Miranda*

# LAWYER

*Stanford*



*Celebration  
'95*

**Cover:** One of the highlights of Celebration '95 (center insert) was the October 14 colloquy in Memorial Auditorium among Stanford justices of the U.S. Supreme Court and professors from Stanford's eminent constitutional law faculty. Dean Paul Brest (left) hosted the panel and welcomed visiting jurists (l-r) Sandra Day O'Connor (AB '50, LLB '52) and Stephen Breyer (AB '59). Law School professors Gerald Gunther, Kathleen M. Sullivan, and Gerhard Casper—better known as the president of Stanford University—were the Stanford discussants.

This photo was taken by Douglas L. Peck of Palo Alto.



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# From the **DEAN**

## WHAT MAKES A LAW FACULTY GREAT?

*Breadth of interest and collegiality—in addition to excellence in teaching and scholarship—distinguish Stanford's law faculty*

by Paul Brest

*Richard E. Lang Professor and Dean*

"From top to bottom, I believe the nation's strongest law faculty is Stanford."

*—Michigan Law Professor Richard Lempert in UM's Law Quadrangle Notes, Fall 1990*

**I**t is a great faculty that makes a great law school. But what makes a great faculty? And what in particular makes Stanford's faculty great?

Excellence in teaching and scholarship are necessary factors, of course. But they do not fully account for the uniqueness of Stanford, which I believe is explained by three factors. One concerns individual faculty members' breadth of interests and expertise; the other two are qualities of the faculty as a group—its diversity and its collegiality.

First, many Stanford professors have intellectual interests that transcend conventional disciplinary boundaries. We have an assemblage of polymaths—persons (according to the dictionary definition) "of much learning and acquainted with various subjects of study." For example, one faculty member regularly teaches a couple of bread-and-butter courses, Criminal Law and Property; he offers advanced seminars in subjects such as welfare policy and race discrimination; and he writes in fields as disparate as law and economics, critical legal studies, and learning disabilities. Another teaches Trusts & Estates and History of American Law, and an undergraduate

introduction to law; his scholarship ranges over many different fields, including the sociology of law, the legal profession, and culture and nationality; and he is a consultant for a forthcoming television series on criminal justice.

A random sampling of topics in our works-in-progress seminars this past summer also illustrates the point. One faculty member outlined the emerging legal issues of "cyberspace," drawing on insights from intellectual property law, economics, jurisprudence, and high technology. Another colleague drew on her expertise in textual analysis in a close reading of the Armed Forces' "don't ask, don't tell" policy. Still another applied a mixture of contemporary economic theory and legal anthropology to understand the forms of business organizations emerging in China.

Second, putting aside Roman Hruska's encomium to mediocrity, the Stanford Law faculty is diverse in just about every way. Our faculty includes doctrinalists—scholars who engage in the kind of analysis that advocates and judges do, and whose publications directly assist their work. It includes those who approach scholarship from the perspectives of other disciplines—psychology, sociology, economics, finance, philosophy, and the humanities. It includes scholars engaged in theoretical inquiry, empirical research, and policy studies—on issues ranging from criminal justice to the flat tax, the regulation of tobacco products, securities class actions, and marketable emissions permits. Many of these faculty members are rec-





MARCO ZECCHIN

ognized as intellectual colleagues by their peers in other parts of the University. Indeed, several hold joint appointments in other departments.

Consistent with our willful disregard of disciplinary boundaries, the Stanford faculty resists drawing lines between professional training and interdisciplinary perspectives. We believe that a broad, liberal education in the law is an essential part of a professional education. Exposure to legal history and jurisprudence and a multifaceted and critical understanding of legal institutions provide the wisdom, judgment, and values essential to a satisfactory and satisfying professional life. This has been repeatedly confirmed by some of Stanford's most successful alumni, who appreciate how professors like Herbert Packer and Lawrence Friedman, in courses entirely unrelated to the graduates' practice, not only provided foundations for a balanced and ethical approach to their work, but also have helped keep alive their intellectual and cultural interests away from the office.

One could imagine a school whose faculty worked largely in isolation from one another—where students, like guests at a wonderful smorgasbord, created a varied meal by choosing the courses or professors that particularly engaged them. That institution would not be nearly as dynamic, interesting, or productive as one where the faculty also interacted among themselves. What ultimately gives the Stanford Law faculty its unique quality is the interaction among its diverse group of polymath professors—an inter-

action that enriches both the students' education and the faculty's own scholarship.

Over the past few years alone, Stanford faculty members have collaborated on innovative courses on such varied topics as the sociology of the legal profession, an economic analysis of business deals, property theory, international development, nationality, and biotechnology. They have collaborated in writing works too numerous to catalog. Beyond joint teaching and joint authorship, they have influenced and enriched each other's work immeasurably. Turn to the first footnote of almost any article by a Stanford professor, and you will notice acknowledgments of assistance from colleagues whose own writings have no apparent relationship to the author's field.

Each time we add a polymath to Stanford's academic community, we obtain not only needed curricular coverage, but also what economists call an external benefit by adding to the value of those of us who are already here. This is what is so special about Stanford Law School's faculty, individually and collectively, and why continuing to build and strengthen this faculty is a central goal of the Campaign on which we have now embarked. ■



# We the People

...of the United States  
...and we do hereby establish this Constitution for the United States

## Article I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, in which State shall have <sup>the</sup> Qualifications requisite for Electors of the most numerous Branch of the State Legislature.  
No Person shall be a Representative who shall not have attained to the Age of twenty five Years, seven Years, and seven Days, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which shall be determined by adding to the whole Number of free Persons, including all bound Persons for Service, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress, and within every subsequent Term of Years, in such Manner as they shall direct. There shall be one Representative for every thirty thousand, but each State shall have at least one Representative, and the Electors in each State shall have the Qualification requisite for Electors of the most numerous Branch of the State Legislature.

When vacancies happen in the Representation from any State, the Executive thereof shall issue Writs of Election to fill such Vacancies.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the Election, they shall be divided into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the first Year, of the second Class at the Expiration of the second Year, and of the third Class at the Expiration of the third Year, so that one third may be chosen every second Year; but if Vacancies happen, the Executive thereof may make temporary Appointments to fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, and shall hold Office for four Years, and shall have the same Qualifications as the Senators.



# Amendment Fever

*Proposals to amend the U.S.  
Constitution are rampant.  
Here are some reasons for doing so  
only reluctantly and as a last resort*

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*by Kathleen M. Sullivan  
Professor of Law*

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**M**ost things Congress might do this year can be undone by the next election. Amendments to the United States Constitution cannot.

Yet more constitutional amendment proposals are undergoing serious consideration in Congress than at any time in recent memory. Among these are amendments that would impose congressional term limits, authorize laws against flag burning, give the president a line-item veto, abolish the electoral college, outlaw abortion, prohibit remedial school busing, and authorize school prayer, to name a few.



Taken together, the proposed amendments add up to the biggest call for constitutional revisionism since opponents of abortion, school busing, and restrictions on school prayer tried to launch a constitutional convention back in the 1970s and 1980s.

Our Constitution is extraordinarily difficult to amend. Article V of the Constitution provides two routes, but both require large supermajorities. First, Congress may propose amendments by a two-thirds vote of both houses. Second, the legislatures of two-thirds of the states may request that Congress call a constitutional convention. Amendments proposed by either route become valid only when ratified by three-fourths of the states. Once an amendment clears these hurdles into the Constitution, it is equally difficult to remove. The amendment that imposed Prohibition is the only one in our history ever to be repealed.

We have, of course, never had a second constitutional convention. And nearly a quarter of a century has elapsed since a successful constitutional amendment has emerged from Congress. This was the 26th Amendment, which lowered the voting age in 1971. A 1978 D.C. statehood proposal emerged but was never ratified by the states. The most recent amendment to become law—the 27th, which bars congressional pay raises until after the subsequent election—is actually a relic of the founding era; proposed by the First Congress in 1789, it was finally ratified only in 1992.

Against this sparse backdrop, the current proliferation of proposed constitutional amendments is striking. Since the November 1994 elections, three proposed constitutional amendments have already reached the floor of at least one house of Congress. A balanced budget amendment passed in the House but fell one vote short in the Senate last March. Also that month, an amendment that would have imposed congressional term limits failed on the floor of the House.

But in June, the House passed, by a vote of 312–120, an amendment authorizing Congress and the states to prohibit flag desecration.

Other proposed constitutional amendments are in the pipeline, including a “religious equality” amendment on which a House Judiciary subcommittee has held hearings. The leading draft of that amendment would require greater inclusion of religious expression in public settings and allow “public or ceremonial accommodation of religious heritage, beliefs, or traditions.”

The rash of amendment proposals is cause for alarm, even apart from any individual merits. For there are strong structural reasons for amending the Constitution only reluctantly and as a last resort. A brief review of these reasons will help to show why the Congress’s amendment fever is misguided.

## What’s at stake?

**Stability.** James Madison, one of the principal architects of Article V, acknowledged in *Federalist* No. 43 that “useful alterations will be suggested by experience,” and that amending the Constitution must not be made so difficult as to “perpetuate its discovered faults.” But Madison cautioned too “against that extreme facility” of constitutional amendment “which would render the Constitution too mutable.”

Implicit in this caution is the view that stability is a key virtue of a Constitution, and that excessive “mutability” would undercut the point of having a Constitution in the first place. Keeping amendment relatively infrequent thus preserves public confidence in the stability of the basic constitutional structure.

**The Rule of Law.** The very idea of a constitution turns on the separation of the legal and the political realms. The Constitution sets up the framework of government. It also sets forth a few fundamental political ideals (equality, representation, individual liberties) that place limits on how far any short-term majority may go. This is our higher law. All the rest is left to politics. Those who lose in the short run of ordinary politics obey the winners out of respect for the long-run rules and boundaries set forth in the

Constitution. Without such respect for the constitutional framework, the peaceful operation of ordinary politics would degenerate into fractious war.

Frequent constitutional amendment can be expected to undermine this respect by breaking down the boundary between law and politics. The more you amend the Constitution, the more it seems like ordinary legislation. And the more the Constitution is cluttered up with specific regulatory directives, the less it looks like a fundamental charter of government. Picture the Ten Commandments with a few parking regulations thrown in.

This is why opponents of the new amendments often argue that they would tend to trivialize or politicize the Constitution. Consider the experience of the state constitutions. Most state constitutions are amendable by simple majority, including popular initiative and referendum. Many of these state constitutional amendments are products of pure interest-group politics. State constitutions thus are difficult to distinguish from general state legislation, and they water down the notion of fundamental rights in the process. The California constitution, for example, protects not only the right to speak but also the right to fish.

Amendments politicize a constitution to the extent that they embed in it a controversial substantive choice. Here the experience of Prohibition is instructive. The only modern amendment to enact a social policy into the Constitution, it is also the only modern amendment to have been repealed. Amendments that embody a specific and controversial social or economic policy allow one generation to tie the hands of another, entrenching approaches that ought to be revisable in the crucible of ordinary politics. The balanced budget amendment, for example, would enshrine, for the first time in our history, a particular and highly contestable macroeconomic policy in the Constitution.

**Coherence.** The Constitution was drafted as a whole at Philadelphia. The Framers had to think about



how the components fit together. Amendments, in contrast, are enacted piecemeal. In passing a single amendment in response to some particular felt necessity of the time, the nation may easily overlook or ignore some inconsistency or tension between the amendment and the basic structure. And such inconsistencies may have the unintended consequence of undermining the unity and coherence of the document as a whole, destabilizing structures or rights we have taken for granted.

*Simple vs. supermajorities.* The framers considered but rejected proposals requiring supermajorities to pass ordinary legislation. As Madison wrote in *Federalist* No. 58, if "more than a majority" were required for a legislative decision, then "in all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule; the power would be transferred to the minority."

The balanced budget amendment that came within one vote of passing last March (and will likely come up again) ignored Madison's warning by imposing, for the first time, a set of supermajority rules upon ordinary policymaking within the legislative branch. Specifically, it would require that deficit spending and increases in the statutory debt limit be approved by three-fifths of the whole number of each house. And it would require that tax increases be authorized by a majority of the whole number of each house rather than, as is usual, by the majority of members present.

As Madison pointed out in *Federalist* No. 58, the danger of such supermajority requirements in the context of ordinary legislation is that a minority of each house can hold the legislative agenda hostage, blocking majority choices until the minority factions obtain the policy

concessions they want. Supermajority requirements in a constitutional amendment would require another constitutional amendment to undo. Thus the balanced budget amendment would introduce a unique and unprecedented alteration of the democratic process.

*Freedom of speech vs. the flag.* As a second illustration of the problem of amendments inconsistent with the Constitution, consider the flag desecration amendment that

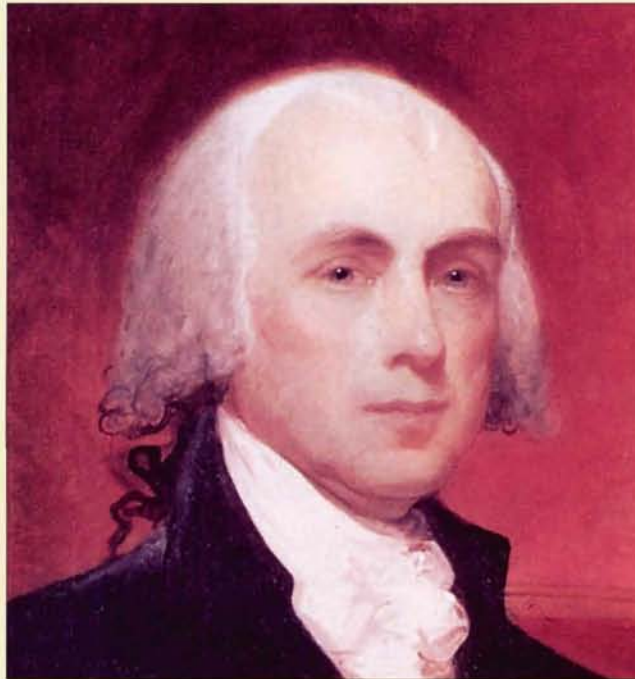
authority of the amendment would quite literally abridge the freedom of (symbolic) speech. For just these reasons, the Supreme Court struck down as unconstitutional both a Texas flag desecration law and Congress's Flag Protection Act of 1992.

If the flag desecration amendment were to pass, it would not only overrule these two decisions of the Court, but would also for the first time ever amend the original Bill of Rights. In effect it would hold that "Congress may not abridge the freedom of speech, except for flag burning."

*Disestablishment vs. religious expression.* The proposed religious equality amendment would likewise amend the Bill of Rights if enacted. This amendment would bar government from prohibiting "prayer or other religious expression in circumstances in which expression of a non-religious character would be permitted," treating this as discrimination against religion. To be sure, the original First Amendment protects the free exercise of religion. But it also bars government from establishing religion.

The Establishment Clause is unique; there is no issue other than religion on which government is barred from taking an official position. Thus the original Constitution required religion to be treated differently from activities "of a nonreligious character." The amendment would rewrite the First Amendment by requiring them to be treated the same. Proponents of the amendment suggest it would simply allow student-initiated, not government-mandated, prayer. But courts would be free to extend the force of this amendment further than its proponents publicly contemplate.

*Generality.* The Constitution is drafted in general terms. It is against the nature of the Constitution to draft too specifically,



James Madison

will go to the states for ratification if the Senate approves it this fall. The First Amendment forbids Congress from abridging the freedom of speech. The flag amendment would permit Congress and the states to prohibit "desecration" of the flag.

Now it's hard to see the flag as anything but a symbol. And it's hard to see its "desecration" as anything but a form of symbolic expression too. If "flag desecration" is not to be construed absurdly as applying to people who get mustard on their flag napkins on the Fourth of July, it will apply only to symbolic protesters who desecrate flags in order to express what others deem to be unpatriotic sentiments. And if that's the case, flag desecration laws passed under the

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*Continued on page 30*



# Educating Lawyers as Counselors and Problem Solvers: A Work in Progress

*Stanford is building an advanced curriculum with the aim of better preparing students for the challenges of practice in an increasingly complex society*

by Paul Brest\*

*Richard E. Lang Professor of Law and Dean*

**A**lthough lawyers add great value to society, the esteem in which our profession is held—not only by the public, but by practitioners themselves—has noticeably declined. There is a widespread sense that the practice of law is devolving from a profession with a public calling into a business—and a business with sharp practices at that.

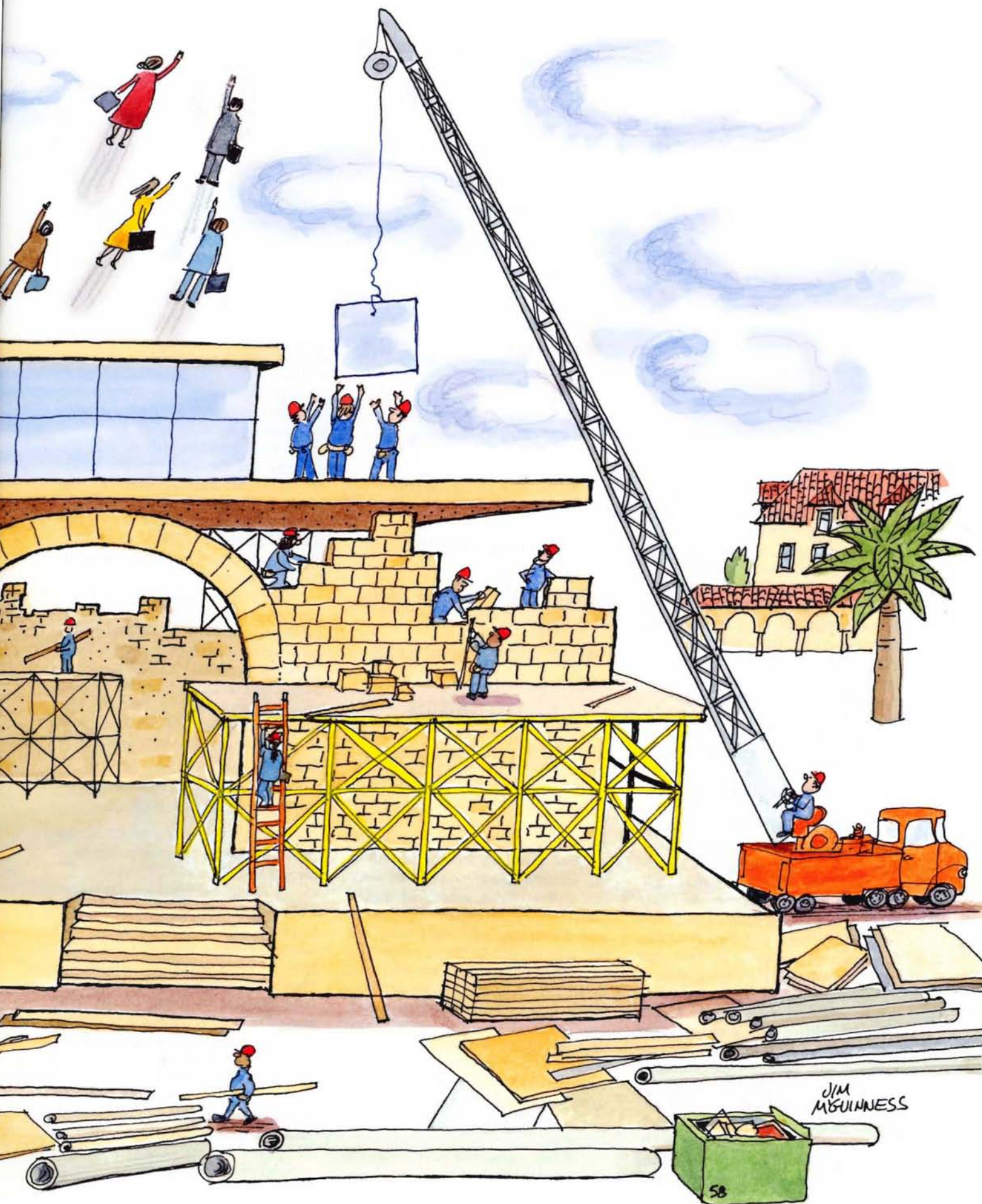
Some lawyers, judges, and law professors have criticized law schools for failing to improve the situation or even for making it worse. These critics particularly deprecate the interdisciplinary turn in contemporary legal education, arguing that law schools should stick to time-honored methods of teaching doctrine and legal analysis through the case method.

In my view, American legal education is as strong as ever in doctrine and legal analysis. But it is strikingly weak in teaching other foundational skills and knowledge that lawyers need as counselors,

ARTWORK BY JIM MCGUINNESS









problem solvers, negotiators, and as architects of transactions and institutions—roles that will pervade their professional lives. The need for these skills can only grow as law school graduates encounter problems with increasingly complex technological, global, financial, institutional, and ethical dimensions. The problem is not that legal education has become too adventurous, but that it has changed so little to meet the needs of a changing society.

This article describes one of several initiatives designed to prepare Stanford Law students for contemporary law practice: a series of advanced courses integrating the fundamental lawyering skills of problem solving, counseling, and negotiation with insights from other disciplines, including economics, psychology, and business. I shall refer to these courses in the aggregate as the “complementary curriculum”—an indication that they are elements of a coherent program that complements the traditional, case-based law school curriculum.

Although these lawyering skills are essential for virtually all the careers our graduates will pursue—whether in corporate transactions, family law, public interest litigation, government, or as civic leaders—the curriculum does not prescribe a unitary approach to acquiring them. While some skills are taught in cross-cutting courses such as “Negotiation” or “Problem Solving, Decisionmaking, and Professional Judgment,” many are also incorporated in substantive law courses such as “Business Associations” and “Environmental Law and Processes.” Students thus can develop lawyering skills in the contexts of different areas of practice, emphasizing those that fit their particular interests and career plans.

Coincidentally, the complementary curriculum responds to a perennial problem that some readers will recall from their own days in law school: By the time students have completed their second year, if not before, they have mastered the essentials of case analysis and yearn for something more. Situated within an array of other advanced courses at Stanford, the comple-

mentary curriculum offers students the challenge of applying their substantive legal knowledge to real-world problems.

### **ESSENTIAL FOUNDATIONS: THE CASE METHOD**

Because the complementary curriculum builds on the foundation of case analysis, it is worth pausing for a moment to focus on that pedagogic method, which has been largely responsible for the success of American legal education.

Like the fifteenth-century explorer for whom he was named, Christopher Columbus Langdell set

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**Good lawyers  
bring creativity,  
common sense,  
practical wisdom, and  
that most precious  
of attributes,  
good judgment**

---

out with one objective but achieved another. Langdell sought to reduce the common law to a set of core principles, from which he could then deduce particular legal rules and doctrines. The legal scholar's job was to derive these principles from the myriad appellate decisions in which they were immanent—much as a biologist studied plants and animals to derive phyla and species. “The library,” Langdell wrote, “is to law professors and students what the museums of natural history are to the zoologists, the botanical gardens to the botanists.”

While Langdell's jurisprudential theory did not last long, his “case

method” of instruction has endured for over a century. James Barr Ames, whom Dean Langdell appointed to the Harvard Law School faculty, suggested the reason when he said that the student “is given no map . . . but is left . . . to find his way by himself. His scramble out of difficulties, if successful, leaves him feeling that he has built up a knowledge of the law for himself.” Coupled with the issue-spotting style of examination, this method of active learning turned out to be a superb way of inculcating the analytic skills, the skepticism about easy answers, and some of the qualities of judgment that are requisite to competence in any career in the law.

The case method teaches problem solving by asking, in one situation after another: Given this set of facts and these precedents, what are the rights and liabilities of the parties? This provides the essential foundation for the lawyer's core task of advising clients about the legal consequences of particular courses of action.

There is considerably more to the lawyer's role, however. While appellate cases embody static situations with determinate facts, lawyers are typically called upon to help clients arrange their future affairs in dynamically changing situations in which the facts, as well as the law, are anything but determinate.

### **THE LAWYER AS COUNSELOR**

Counseling lies at the heart of the professional relationship between lawyer and client.

A client comes to a lawyer—rather than, say, an accountant, an engineer, or a psychologist—because the client perceives her problem to have a legal component. However, most real-world problems do not conform to the neat boundaries that define and divide different disciplines, and a good lawyer must be able to counsel clients and serve their interests beyond the confines of his technical expertise—to integrate legal considerations with the business, personal, political, and other nonlegal aspects of the matter.



In counseling a client about a strategic decision, negotiating or drafting an agreement, or dealing with an organizational problem, the lawyer's work may be constrained, facilitated, or even driven by the law; but it often calls for judgment and even expertise not of a strictly legal nature. Good lawyers thus bring more to bear on a problem than legal knowledge and lawyering skills. They bring creativity, common sense, practical wisdom, and that most precious of attributes, good judgment.

This description of the lawyer's role as counselor raises fundamental questions about the relationship between lawyer and client: When is the lawyer an independent actor or authority? When is he an agent subservient to the client's wishes? Is the relationship usefully understood as a partnership subject to ongoing negotiation? What are the lawyer's obligations when a client requests him to engage in actions that are lawful but which he finds morally problematic because of their impact on others? What are his obligations when he believes that the client will use his analysis of the law to violate its spirit or even its letter? When he believes that the client is acting against her long-run self-interest?

A comparison of the broad American conception of the legal counselor with the more limited role played by lawyers in other parts of the world can illuminate these questions and provide insights into the different legal cultures that our students are likely to encounter in practice.

At the core of the lawyer's role as counselor are the skills of questioning and listening to a client with an attitude of sympathy and detachment, attending to the client's emotional as well as intellectual needs—all with the aim of helping clarify the client's objectives and helping her choose the best means of achieving them. These skills are best learned through closely supervised clinical exercises, which also afford students the opportunity to make, defend, and reflect upon the strategic and ethical decisions presented by particular situations.

Although I am skeptical whether law school is the best place

to teach most practical lawyering skills—largely because, as in learning a language, the skills quickly vanish unless students regularly use them—the basic skills of counseling are eminently usable in the informal interactions with friends and colleagues that take place outside of any classroom setting.

### THE LAWYER AS PROBLEM SOLVER, DECISIONMAKER, AND PLANNER

Problem solving, decisionmaking, and planning will pervade our students' professional work in whatever careers they choose. A client often comes to a lawyer without a clear sense of her underlying objectives or interests, but with her mind fixed on a particular solution. The client may mistake symptoms for the problem itself, define the problem too narrowly, or define it in terms of the most obvious or traditional solution.

A good lawyer can assist clients in articulating their problems, defining their interests, ordering their objectives, and generating, assessing, and implementing alternative solutions. This demands multifaceted problem-solving and decisionmaking skills, which in turn require a multifaceted approach to teaching.

**Transactional case studies.** The transactional case study is a fundamental vehicle for teaching problem-solving skills. Adapted from a method long familiar in business schools, the transactional case study presents a problem as a client might present it to a lawyer, and requires the student to identify, analyze, and propose solutions to it.

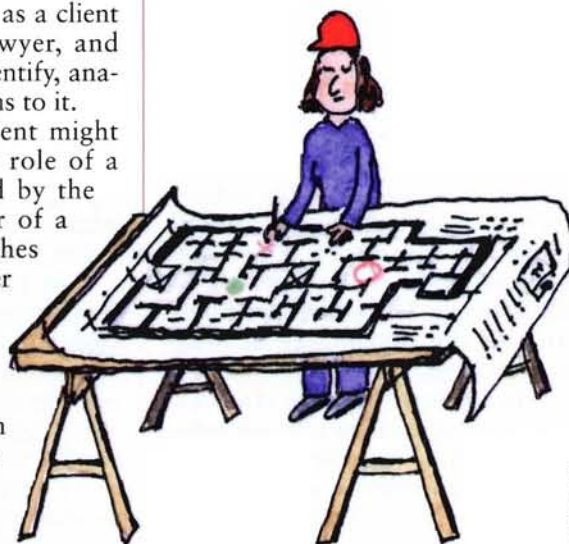
For example, a student might be asked to assume the role of a lawyer who is consulted by the founder and sole owner of a business: The client wishes to give the business to her three children as equal partners, and asks the lawyer to create a partnership and transfer her interest to the children in a way that minimizes the gift tax consequences. However, the case study reveals information

designed to alert students that the client faces problems greater than the legal issues: Two of the children hold very different positions of authority in the family enterprise, and the third has not been involved at all. Whatever stability in their relations may exist while the mother is actively running the business may well dissolve on her retirement or death.

The case study affords students the opportunity to comprehend the broader problem and consider alternative ways to achieve the client's underlying goals. Students might first analyze the case study individually and then work in groups in ways that develop collaborative problem-solving skills.

Transactional case studies are by no means limited to business or estate-planning matters, but can encompass any problem a lawyer might encounter—for example, assessing the options available to a community facing a toxic hazard, or planning a strategy for conducting or settling a lawsuit.

What appellate cases are to the basic law school curriculum, transactional case studies are to the complementary curriculum, teaching a variety of problem-solving and decisionmaking skills through repeated engagement with problems situated in simulated real-world contexts. They promote the same sort of active learning as the analysis of appellate cases, giving students the opportunity to fall into and extricate themselves from the



JIM M. GUINNESS



traps that await the unwary decisionmaker and to cultivate their skills and creativity.

**Interdisciplinary insights.** It is impossible to learn or retain much of value in the absence of conceptual structures. The students' engagement with transactional case studies must therefore be informed by theoretical models, and the multiple realms in which lawyers engage in problem solving call for a multiplicity of models. The analysis of transactional case studies is therefore informed by readings from disciplines including decision theory, statistics, risk analysis, economics, and psychology.

Uncertainty is a pervasive component of most decisionmaking problems—uncertainty in identifying the causes of events and in predicting the consequences of decisions. The basic techniques for dealing with uncertainty come from probability and statistics. While lawyers need not be accomplished statisticians, they should have at least enough grasp of the concepts to avoid making silly inferential errors and to know when and how to consult an expert.

To this end, the complementary curriculum should include elementary probability and statistics. It should also introduce students to two subjects that draw on both statistics and economics: decision analysis, which introduces methods for structuring and making decisions under conditions of uncertainty, complexity, and ambiguous preferences; and risk analysis, which offers methods for evaluating trade-offs between costs and the risk of harm to persons, property, the environment, and other interests.

Decision and risk analysis are quantitative methods for getting decisions right. Lawyers have an equally pressing need to know how they and their clients tend to get them wrong. Here the curriculum turns to the psychology of judgment and behavioral economics.

As intuitive statisticians, humans tend to make systematic inferential errors that frustrate our efforts to understand the causes of events: For example, we gravitate toward explanations that conform



**Stanford faculty are  
preparing students  
for practice  
in a world  
their forebears  
could scarcely  
have imagined**

to preconceived notions or stereotypes and we tend to overvalue vivid or recent data. Thus, television coverage of a single airline crash affects our assessment of how safe it is to fly more than statistics about the number of passenger miles per death.

As intuitive economists, we are loss averse: We weight prospective losses more heavily than prospective gains of the same magnitude, and we also tend to risk large but uncertain losses rather than accept smaller but certain ones.

Furthermore, we are overconfident that our business and personal plans will succeed. We set

expectations based on information or numbers that others suggest to us. For example, a litigant—or an untrained lawyer—who uses a decision tree to estimate the likelihood of a large verdict tends to give far more weight to the predicted outcome than is justified by the speculative probabilities attached to each branch of the tree.

All practicing attorneys—from in-house counsel to community lawyers representing indigent clients—must make decisions under conditions of uncertainty. Indeed, the leadership roles that Stanford graduates play in their chosen fields of work tend to bring them into situations of greater, not less, uncertainty. They need to know how to make unbiased assessments of risky situations.

Transactional case studies allow students to bring both quantitative methods and the insights of cognitive psychology to bear on actual problems. Some cognitive biases may be inevitable. However, as Stanford psychologist Lee Ross puts it, “we may still see the mirage in the desert, but we don’t have to slam on the brakes.”

#### **THE LAWYER AS NEGOTIATOR**

What counseling is to the lawyer-client relationship, negotiation is to the client’s relationship with others, including potential partners in business transactions and parties with whom the client is involved in a dispute. In effect, negotiation is a form of collaborative problem solving among parties whose interests converge and diverge in various ways.

The dominant contemporary approach to negotiation seeks to identify and maximize the parties’ interests—to expand the pie rather than just divide it up. It recognizes, as Ronald Gilson and Robert Mnookin observe, that the parties’ “differences in preferences, relative valuations, predictions about the future, and risk preferences,” as well as possible economies of scale and other shared goods, have the potential for creating joint value. However, the tensions between the parties’ dual objectives of creating value and obtaining maximum value for themselves create what



has been called the "negotiator's dilemma": While the opportunities for mutual gain are increased by disclosing one's true interests, the chances of securing the most for oneself are often improved by concealing them.

The task for the curriculum in this area is to introduce students to the barriers to negotiated agreements and the means for overcoming them. Game theory provides a useful model of how rational, self-interested parties deal with each other. Cognitive and social psychology provide insights into how real people may depart from an abstract model of rational behavior.

For example, the tendency toward loss aversion makes people overly reluctant to give up something they already possess in exchange for something else of value—hence, one psychological barrier to negotiating peace treaties that require giving up territory, no matter how, or how recently, acquired. We tend to favor views expressed by people we like or who are on our side of a dispute and devalue the views of adverse parties. We are prone to accede to requests from people who do favors for us—even slight and uninvited favors—and, by the same token, we tend to reciprocate concessions in the course of negotiations. We tend to accede to the requests of people we perceive to be in authority, even when compliance contradicts our strongly held beliefs. Once we have made a decision, we tend to discount evidence calling it into question and escalate our commitment to the decision.

Some of these methods of influence are part of the industry knowledge of enterprises ranging from selling cars, to enlisting people to join religious and civic causes, to fundraising. Lawyers should be aware of these dynamics, which may affect their own behavior and that of their clients.

Knowledge of these phenomena can be used to defend against others' use of them or, conversely, to manipulate people to one's own advantage. Because the techniques of influence are readily subject to abuse, teaching about them carries the concomitant responsibility to

examine the morality of influence. This area of ethics is significantly underdeveloped and in need of thoughtful scholarship.

As in the case of counseling and problem solving, negotiation is usefully taught through a combination of interdisciplinary readings, transactional case studies, and clinical exercises that offer opportunities for students to test their theoretical understanding through simulated negotiations.

### **THE LAWYER AS ARCHITECT OF TRANSACTIONS AND ORGANIZATIONS**

Lawyers negotiate joint-custody agreements, create partnerships, and design executive compensation programs and procedures for dealing with sexual harassment. In these roles, they create or modify ongoing relationships between their clients and other parties; they design and restructure organizations and processes. Much of this work requires knowledge of specific substantive and procedural law, but the doctrinal curriculum alone does not prepare students for the lawyer's role as the architect or engineer of transactions and organizations. Here, again, the complementary curriculum must draw upon knowledge from other disciplines.

**The economics of transactions and organizations.** Recent advances in economics focus on structural or organizational barriers to negotiating and implementing efficient long-term arrangements. This research addresses problems of coordinating actions and sharing information among the parties to a transaction; problems arising from the divergence of interests between principals and their agents; and problems arising from "adverse selection" (e.g., an insurance plan that covers cosmetic surgery will disproportionately attract people contemplating such surgery), and "moral hazard" (e.g., a regulatory regime that allows the owners of savings and loan associations to benefit from risky investments,

### **COURSES IN THE COMPLEMENTARY CURRICULUM**

No other law school is better positioned than Stanford to develop a complementary curriculum, and none has gone as far in systematically doing so. This table shows both our accomplishments to date in offering courses that embody aspects of the curriculum and the distance that remains.

Courses shown in **boldface** are offered regularly. Courses in lighter type are offered occasionally or by visitors or lecturers rather than permanent faculty. Those in *italic type* have not yet been offered.

#### **ECONOMICS, STATISTICS, AND FINANCE**

**Finance and Statistics (minicourse)**  
**Microeconomics**  
*Game Theory*  
*Probability and Statistics*  
*Transaction Cost Economics*

#### **SUBSTANTIVE LAW COURSES**

**Business Associations I**  
**Deals: The Economic Structure of Transactions and Contracts**  
**Environmental Law and Processes**  
**International Business Transactions**  
**Business Planning**  
**Corporate Law Theory**  
**Estate Planning**  
**Lending Transactions**  
**Venture Capital**

#### **CROSS-CUTTING COURSES**

**Decisionmaking, Problem Solving, and Professional Judgment**  
**Interdisciplinary Seminar in Conflict and Dispute Resolution**  
**Lawyering Process for Social Change**  
**International Conflict Mediation**  
**Multiparty Disputes**  
**Negotiation**  
*Counseling*  
*Decision Analysis*  
*Organization Theory*  
*Risk Analysis*

*Continued on page 28*



# at ISSUE

## Updating *Miranda*

*No one favors coerced confessions,  
but the 1966 Miranda procedures go too far.  
Modern technology offers a better way*

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by Paul G. Cassell '84

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Efforts to reform the criminal justice system should target the outdated and harmful *Miranda* rules. As anyone who has ever watched a cop show on TV knows, the Supreme Court's 1966 decision in *Miranda v. Arizona* requires police to warn suspects of their right to remain silent. Less well known is that *Miranda* also obligates police to follow a series of procedural requirements for obtaining admissible confessions. These rules have hurt law enforcement's ability to prosecute dangerous criminals.

The best information on *Miranda*'s harms comes from the before-and-after studies of confession rates in the wake of the decision. A study in Pittsburgh revealed that confession rates there fell from 48% before the decision to 29% after. New York County District Attorney Frank Hogan reported that confessions in Manhattan fell even more sharply, from 49% before *Miranda* to 14%. Similar results were reported in Philadelphia, Kansas City, Brooklyn, New Orleans, and Chicago.

I have recently combined all of the available before-and-after data in



DRAWING BY STEVE REOUTT



jurisdictions that complied with *Miranda*'s procedural requirements.<sup>1</sup> In many of these jurisdictions, police were advising suspects of their rights even before *Miranda*. But after all the *Miranda* procedural rules were imposed, confession rates declined by 16 percentage points, from roughly 50% to 34%.

The decline in confession rates in this country is confirmed by evidence from Britain. Until 1986, British police told suspects they had the right to remain silent but did not follow the other, particularly onerous, features of the *Miranda* system, such as the right to counsel during questioning and the requirement that a suspect affirmatively agree to talk to police. Under these rules, British police obtained confessions in 61% to 85% of cases. The same result is seen in Canada, where the police obtain confessions about 70% of the time.

The British experience not only lets us assess confession rates without the *Miranda* rules, but also allows us to review what happens as a country moves to a *Miranda*-style regime. In 1986, Britain adopted a heavily regulated structure for police interrogations that followed *Miranda* in many respects. Since then, British confession rates have declined toward U.S. levels. Studies suggest that British confession rates have fallen to about 45%. In part because of these falling confession rates, Parliament last November changed the warning given to suspects and modified other rules to encourage more confessions.

Of course, falling confession rates would be of little concern if prosecutors could convict using other available evidence. However, the literature suggests that in the U.S. confessions or incriminating statements are needed to obtain a conviction in about 24% of cases.

To my knowledge, no one has attempted to quantify the number of criminal cases that are lost each year because of *Miranda*. Yet it is possible tentatively to calculate such a cost using the available information. Multiplying the 16-percentage-point reduction in the confession rate after *Miranda* by the 24% need for confessions suggests that 3.8% of all criminal cases will be "lost"—that is, cannot be successfully prosecuted—because of the *Miranda* requirements.

(By way of comparison, the oft-criticized exclusionary rule results in the loss of somewhere between 0.6% and 2.4% of all cases.)

The projected costs in absolute numbers of lost cases are staggering. Each year *Miranda* results in lost cases against an estimated 28,000 violent criminals and 79,000 property offenders for FBI-indexed crimes. In addition, prosecutors lose cases against 57,000 drunk drivers, 42,000 drug dealers and users, and several hundred thousand lesser criminals. About the same number of cases have to be plea-bargained on terms more

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*If you  
were facing  
a police officer  
with a rubber hose,  
wouldn't you  
prefer  
to have the  
interrogation  
videotaped?*

---

favorable to defendants because prosecutors are in weaker bargaining positions without confessions.

These costs from *Miranda* are entirely unnecessary. *Miranda*'s defenders have long argued that any change in the decision's requirements would roll back the clock. But time has passed *Miranda*'s defenders by—they are advocating a 1960s approach to preventing coerced confessions, when the 1990s offer superior solutions.

## THE VIDEO ALTERNATIVE

Congress should consider scrapping the *Miranda* rules that depress the confession rate, particularly the requirements that police obtain a suspect's affirmative agreement to be questioned (a waiver of rights) and that questioning stop immediately whenever a suspect says the word "lawyer." Instead, police could be required to videotape all custodial interrogations while observing the Fifth Amendment's prohibition against coercion.

Videotaping would deter genuine police misconduct more effectively than *Miranda* by creating a clear record of police and suspect demeanor during questioning. To be sure, police can turn off video cameras or deploy force off-camera. But if you were facing a police officer with a rubber hose, would you prefer a world in which he was required to mumble the *Miranda* warnings and have you give some form of waiver of rights (all proved by his later testimony)? Or a world in which the interrogation is videotaped, where your physical appearance and demeanor during any "confession" are permanently recorded, with date and time electronically stamped on the tape? Videotaping is the clear winner.

While videotaping is at least as effective as *Miranda* in preventing police misconduct, it has the clear advantage of not inhibiting voluntary confessions. In this country, the few jurisdictions that have used videotaping have generally found no noticeable effect on confession rates. Studies here and in Britain have even suggested that police might actually obtain more incriminating information when interrogations are taped and available for later review.

Congress should allow police to question suspects under such an alternative. In his *Miranda* opinion, Chief Justice Earl Warren said, "Our decision in no way creates a constitutional straitjacket which will handicap sound efforts at reform." Since *Miranda*, the Supreme Court has made clear that the *Miranda* rules are not themselves constitutional rights, but are more "prophylactic safeguards"—presumably subject to con-

*Continued on page 27*



# School NEWS

## New Professors

### Faculty welcomes Donohue and Fisher



**John J. Donohue III**

**S**tanford has gained new talent in two areas—Law and Business, and Criminal Law. John J. Donohue III, an expert in employment discrimination, economics, and empirical research, comes with the rank of full professor. George Fisher, an expert in criminal procedure and evidence, is an associate professor. Both officially joined the faculty on September 1, 1995.

#### **JOHN DONOHUE**

Previously a professor at Northwestern University School of Law, Donohue has graduate degrees in economics (Yale M.A. 1982, M.Phil. 1984,



**George Fisher**

Ph.D. 1986) as well as law (Harvard, J.D. 1977).

Donohue has published over thirty papers in leading journals, including the law reviews of Harvard, Yale, Stanford, University of Chicago, and Michigan, and the *Journal of Legal Studies*. He is also the author of a book, *Foundations of Employment Discrimination Law*, being published later this year by Oxford University Press.

A rising star in the field of law and economics, Donohue was invited to serve as an economic consultant to the Federal Courts Study Commission from March 1989 to April 1990, chaired the Section

on Law and Economics of the American Association of Law Schools in 1990–91, and has been on the board of directors of the American Law and Economics Association since June 1994. On October 4 of that year, Donohue testified before the U.S. Senate Labor Committee on evaluating the Job Corps. His research also figured prominently in the recent review by the U.S. Department of Justice of federal affirmative action programs.

“Professor Donohue is close to unique in combining the skills and interests of an empirical economist and legal scholar,” said Stanford Law School Dean Paul Brest in announcing the appointment. “He has a broad range of interests that cuts across many disciplinary boundaries, and is a valuable addition to both the Law School and University educational communities.”

John Donohue graduated from Hamilton College in 1974 as a member of Phi Beta Kappa.

He has earned admission to the bars of both Connecticut, where he clerked for the chief U.S.

District Court judge in 1977–78, and the District of Columbia, where he was an associate with Covington & Burling from 1978 to 1981. While with that prominent firm, he worked on corporate litigation and economic regulation, in addition to serving for six months as a staff attorney at Neighborhood Legal Services.

Donohue soon became a leading expert on the death penalty, testifying before both the Senate and House judiciary committees and handling death penalty appeals to the U. S. Supreme Court.

In 1981 he entered part-time private practice in Connecticut and began work on his doctorate in economics at Yale. A distinguished student, he became a University Fellow in Economics and wrote an award-winning dissertation examining the male-female wage gap.

In 1986, he joined the Northwestern University law faculty, concurrently becoming a resident fellow of the American Bar Foundation. He was awarded tenure at Northwestern in 1991 and was installed as a chaired pro-



## Honored Emeriti



Three longtime holders of endowed chairs were roasted and toasted at a faculty dinner last spring. All now emeritus, they are (left to right) Kenneth E. Scott, the Ralph M. Parsons Professor of Law and Business since 1983; Gerald Gunther, William Nelson Cromwell Professor of Law since 1972; and William F. Baxter, Wm. Benjamin Scott and Luna M. Scott Professor of Law since 1976. Each was presented with a personalized Stanford Law School armchair—a symbol, said Dean Brest, “of your continued connection to the School.” ■

## Sallie Kim '89 returns as dean of students

The new school year brought not only two new faculty members, but also a new Assistant Dean for Student Affairs, Sallie Kim '89. Kim arrives from Heller, Ehrman, White & McAuliffe in Palo Alto, where she worked in litigation.

Since graduation, Kim has been a leading volunteer for the School. She served on the Board of Visitors from 1990 to 1993 and is the secretary for the Class of 1989.

“We are all delighted that Sallie has agreed to serve in this new capacity as our dean of students,” says Dean Brest. “An outstanding student and citizen herself, she will be a fine mentor and role model.”

Kim received her bachelor's degree cum laude in 1986 from Princeton University, where she majored at the Woodrow Wilson School and completed a program in East Asian Studies. She also spent time studying in Japan and Korea.

While at Stanford Law School, Kim was a winner in the 1989 Kirkwood Moot Court Competition, a member of the Stanford Law Review, and chair of what is now the Asian and Pacific Islanders Law Students Association.

Kim clerked for the Hon. Spencer Williams of the U.S. District Court,

*Continued on next page*

fessor in 1994. In demand as a scholar and teacher, he has also been a visiting professor at the University of Virginia in 1990 and at the University of Chicago in 1992.

Donohue will begin teaching at Stanford in the Spring 1996 term with two courses designed to enable law students to address business problems—Quantitative Methods: Statistics and Quantitative Methods: Finance.

### GEORGE FISHER

George Fisher brings to Stanford a knowledge of criminal law practice and teaching. Most recently an assistant clinical professor of law at Boston College, Fisher is Harvard educated and a former clerk (1986–87) of now U.S. Supreme Court Justice Stephen G. Breyer, then a judge of the U.S. Court of Appeals for the First Circuit.

Fisher's most recent article, “The Birth of the Prison Retold,” appeared in the April 1995 *Yale Law Journal*. On the practice side, he has served as an assistant attorney general in Massachusetts at both the county and state levels.

“George Fisher is an experienced trial attorney,

a promising scholar, and an excellent teacher,” says Dean Paul Brest. “We are pleased to have him join us.”

Fisher graduated from Harvard College in 1982, receiving his A.B. degree summa cum laude and earning election to Phi Beta Kappa. He received his J.D. magna cum laude in 1986 from Harvard Law School, and was a member its law review.

Fisher then became an assistant district attorney in Massachusetts's populous Middlesex County, working as a trial prosecutor in the Massachusetts Superior and District Courts. In 1991, Fisher moved to the state attorney general's office, where as an assistant attorney

general he investigated and prosecuted police misconduct cases.

His interest in teaching led him to serve concurrently as an adjunct instructor at Northeastern Law School in Boston. And in 1992, he began teaching full-time at Boston College Law School, offering classes on criminal process, prosecutorial ethics, and constitutional law.

Fisher's courses during his first year at Stanford include the basic Evidence course in the 1995 fall term and a seminar, Criminal Trial Jury, in the 1996 spring term. ■





**Sallie Kim '89**

Northern District of California, from her graduation in 1989 to 1991. She then practiced law with Wilson, Sonsini, Goodrich & Rosati of Palo Alto, moving in 1994 to Heller, Ehrman, White & McAuliffe.

In her new role at Stanford, Kim will coordinate a wide variety of student programs and services, while seeking to maintain and increase the diversity of the student body. She will also provide academic, career, and personal counseling.

"I am here to be a point person for student concerns or questions," Kim says. "I really love Stanford Law School and working with students. I want to help them enjoy a good quality of life here."

Kim is married to Hubert Kim, MD '93, now a medical resident at the University of California at San Francisco. The couple lives in San Mateo with their two-year-old son, Spencer Jingun Kim. ■

## Legal studies go global

**S**tanford Law School broadened its horizons this fall with the inauguration of the Stanford Program in International Legal Studies. Thirteen SPILS Fellows from around the world have arrived for a year of advanced, interdisciplinary course work and research. Most are working toward a J.S.M.

Codirected by Professor Thomas Heller and Consulting Associate Professor Sophie Pirie '87, SPILS aims to deepen understanding of legal institutions and policies of international concern. Areas of concentration include environmental law and sustainable development, international trade and finance, high technol-

ogy issues, and transitions in civil society, politics, and law. The program's emphasis on policy-oriented research is designed to generate law reform and policy proposals involving Fellows when they return to their countries.

SPILS is distinctive for the way it integrates Fellows into the Law School and University communities. The program offers two specially designed core courses—a research seminar taught by Pirie and a course on international law and society taught by Professor Lawrence Friedman. Fellows will also pursue research and course work related to their individual interests at the Law School and within University

graduate departments, professional schools, and research centers.

A third component of the program involves interdisciplinary research networks that SPILS is organizing among SPILS Fellows, Stanford faculty and students, and interested specialists around the world. The Fellows' participation in the networks is expected to foster ongoing collaboration on research and policy projects.

This year's Fellows, coming from Africa, Asia, Europe, and Latin America, contribute a rich diversity of expertise and experience to the Law School community. While all

*Continued on page 27*

### Family Ties

## Shelly Wharton heads alumni programs



**Shelly Wharton**

**A** newcomer to Stanford, Shelly Wharton, assumed the new post of Director of Alumni Programs on June 5. Wharton, who received an M.B.A. in 1991 from

UCLA's Anderson Graduate School of Management, went on to become its director of alumni relations. Her experience also includes four years in marketing and services at IBM.

The previous head of Stanford Law School alumni affairs, Margery Savoye, has taken a new position as Director of Special Events for the School. She continues to work closely with the alumni programs staff on reunions and other major gatherings, in addition to coordinating such events as the October 18 Herman Phleger Lecture by President Mary Robinson of

the Republic of Ireland.

Wharton's goal, in her role as Stanford Law School's alumni programs director, is "to increase the opportunities for alumni to connect more closely to the School." As a first step, she is taking a comprehensive look at current School-sponsored activities and talking with alumni about their interests.

Wharton invites alums to share their thoughts on ways they would like to interact with the School. She can be reached at ☎ 415/723-2852 or by e-mail: Law.Alumni.Relations@forsythe.edu.com ■



# *Celebration '95*

Stanford Law School  
October 12-14, 1995



# *Celebration '95*

*The Law School community honored the past, reveled in the present, and committed to the Campaign for the future*

• Stars were out—literally and figuratively—at Celebration '95. Held October 12 to 14, the gathering constituted the biggest series of events at Stanford Law School since the dedication of Crown Quad in 1975.

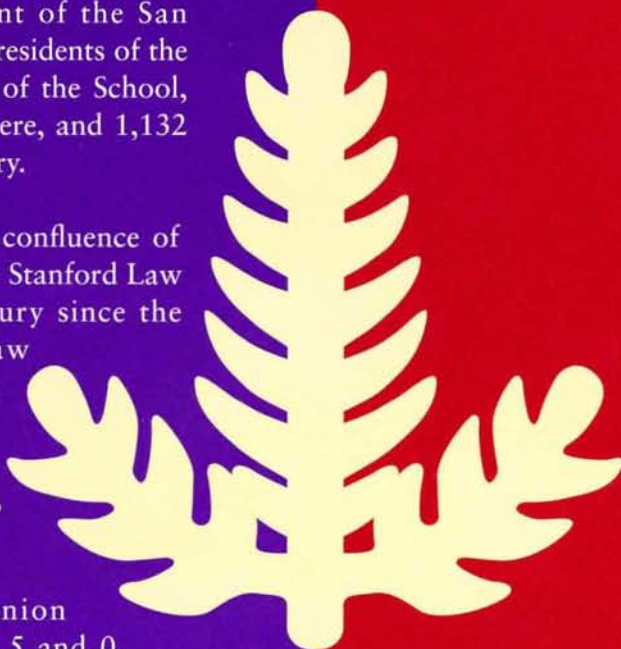
Present were two justices of the U.S. Supreme Court, several CEOs and business magnates, the president of the San Francisco 49ers, the present and two previous presidents of the University, the present and four former deans of the School, eminent professors from the School and elsewhere, and 1,132 alumni and well-wishers from all over the country.

This impressive turnout was occasioned by a confluence of trends and events. There was reason to celebrate Stanford Law School's rapid rise to eminence in the century since the University offered its first course in law (STANFORD LAWYER, Fall 1993). Equally remarkable have been the achievements of its alumni in law, government, and other areas. These made possible a set of fascinating panels, of which more below.

Next, there was the School's annual Reunion Weekend, this year for the classes ending in 5 and 0. Interest in the Celebration '95 events helped bring reunion attendance to a high of 217 (440 including significant others) and attracted a large contingent of non-reunion-year alums and friends as well.

Finally, there was the official kickoff of the Campaign for Stanford Law School. The outgrowth of a far-reaching deliberative process by representatives of all segments of the Law School community, the \$50-million Campaign for Stanford Law School was formally announced to the world at an all-alumni luncheon on October 13. Surrounding this event were special programs for donors and volunteers.

A photo album of this extraordinary weekend follows, but suffice it to say that the interest and commitment shown by alumni and friends of the School bodes well for the success of the Campaign and for Stanford's continued leadership into the 21st century.







Returning alumni and friends were welcomed with a wealth of sights and sounds. Above: The Stanford String Quartet, playing in Cooley Courtyard on the eve of the Campaign kickoff, performed two numbers with Dean Paul Brest on viola.

Left: A pictorial history of Stanford Law School, curated by Howard Bromberg, JSM '91, decked the Crown Library building.

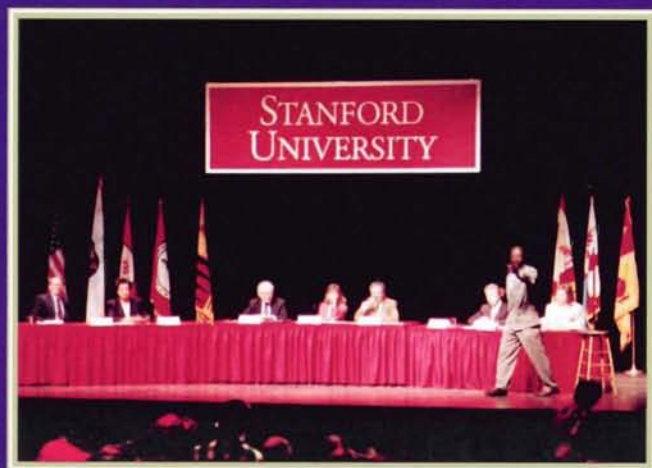
Below: The Celebration reception on October 13 drew a happy throng to Crocker Garden.

Below left: James Gaither '64, Chair of the Campaign for Stanford Law School, joined Cooley Godward partners and friends in underwriting Stanford's first law firm-created professorship. Judge Pamela Ann Rymer '64 praised volunteerism at the Oct. 13 Delegates' Breakfast, and spoke of her student days at the gala lunch, "Stanford Law School: Past, Present and Future."





# Informed Discourse



Star-studded think sessions during Celebration '95 included "Can We Talk?" (above) with panelists (l-r) Prof. Thomas Grey, journalist Nancy Maynard '87, former Stanford President Richard Lyman, TV news anchor Anna Chavez, school administrator George McKenna III, campus speech plaintiff Robert Corry '94, and Prof. Kathleen Sullivan. Harvard Prof. Charles Ogletree, Jr., moderated. Above right: Prof. Grey and Nancy Maynard.



Above: A panel on crisis management featured noted investor and troubleshooter Victor Palmieri '54, veteran attorney James Gaither '64, Dean Brest (moderating), pharmaceuticals executive Lynne Parshall '79, Prof. Joseph Grundfest '78, and airline chief W.A. Franke '61. Stephen Neal '73 served as host.



Left: Sports issues were tackled by Gene Upshaw of the NFL Players Association, Dean Lombardi of the San Jose Sharks, Sandy Alderson of the Oakland A's, sports agent Raymond Anderson, Carmen Policy of the San Francisco 49ers, Gene Washington of the NFL, and Olympic runner PattiSue Plumer '89. Prof. Robert Weisberg '79 moderated.



Lower left: From the high-tech frontier came Alexander Alben '84 of Starwave, Profs. John Barton '68, Paul Goldstein, and Margaret Jane Radin (moderator), Silicon Valley attorney Gordon Davidson '74, Daniel Case III of Hambrecht & Quist, and Kent Walker '87 of AirTouch Communications.

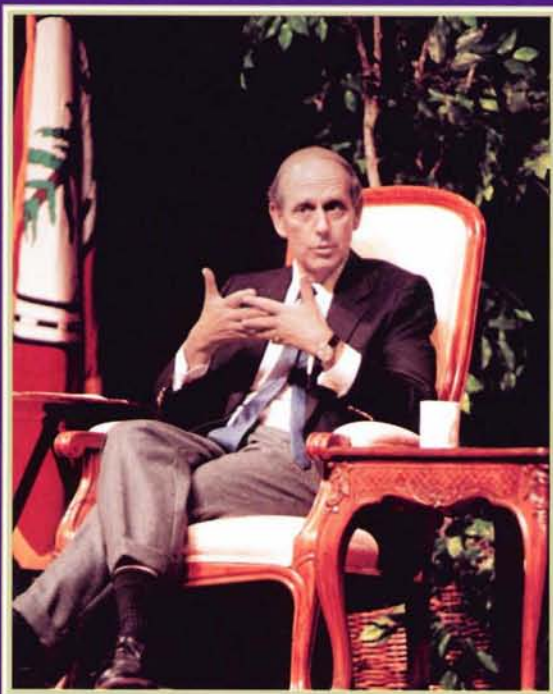




Above left: Ecopolicy dilemmas and solutions engaged Prof. Buzz Thompson '76, policy consultant Joseph Sax, former Stanford President and FDA Commissioner Donald Kennedy, attorney Gail Achterman, and Victor Sher '80 of the Sierra Club Legal Defense Fund. Charles Koob '69 hosted the panel.



Above: Prof. Grundfest offered a user's guide to cyberspace via the World Wide Web. Onlookers included Kendyl Monroe '60 (seated), initiator of the Board of Visitors' 2010 project.



The October 14 dialogue among Supreme Court Justices Sandra Day O'Connor '52 (above) and Stephen Breyer (left) and Stanford constitutional law scholars drew a standing-room-only crowd to Memorial Auditorium. Prof. Kathleen Sullivan moderated the panel (center, left), which included, in addition to Justices Breyer and O'Connor, Prof. Gerald Gunther, Stanford President Gerhard Casper (not shown), and, as host, Law School Dean Paul Brest.



# Reunions & Parties



Memories were indeed golden for Half-Century Club members (left, l-r) Anthony Anastasi '40, correspondent Richard Ryan '34, Raymond Daba '40, E. Robert Williams '40, Jesse Feldman '40, and guests.

Below: Dean Brest circulated among the reunion venues. Here he greets 1950 celebrants Muzzy and Jack Ryersen and former Board of Visitors Chair G. Williams (Bill) Rutherford '50.

Below left: Rod Hills, Del Fuller, and Carla Hills (AB '55) were snapped with 1955 reunion chair Marv Morgenstein.



Above: The Class of 1990, including Audrey McFarlane and Jay Fowler, enjoyed their first quinquennial reunion.

Above left: Class of 1960 returnees, including Nancy and Alan Wayte (center), welcomed the Dean.

Left: Holly Thompson and Prof. Buzz Thompson '76 (center) joined Gayl and Pam Westendorf and other 1975 denizens.







The Celebration tent provided festive space for events like the Tailgate Lunch (above) on Saturday before the Cardinal football game.



Left: Jazz by Bob Murphy '66 (left) and his combo enlivened the all-alumni Celebration reception on Friday evening.

Below: The School thanked past and present alumni volunteers—Board of Visitors members, reunion social and gift chairs, class correspondents, and all—at a Delegates' Breakfast on Friday. Robin Hamill Kennedy '78 and Judge Pamela Ann Rymer '64 were tablemates (left). Speakers included Rymer and (below right) Prof. Barbara Babcock and Law Fund Chair Charles Koob '69.



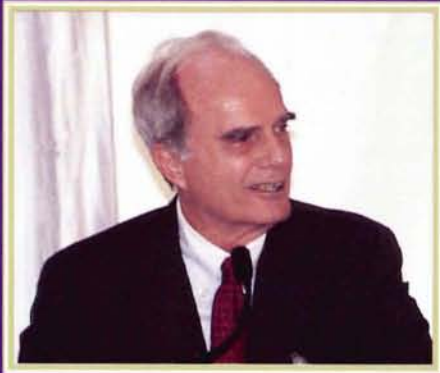


# Campaign Kickoff



The public declaration of the Campaign for Stanford Law School took place at an all-alumni luncheon October 13. Moderated by Prof. Kathleen Sullivan, the program ended with a toast to the success of the historic fundraising effort by Dean Brest, assembled former deans, and decanal widow Sheila Spaeth. Mementos of the occasion included special Campaign-label Cokes. Former Prof. Phil Neal (below, left) was among the luncheon speakers.

Below right: Former Dean Thomas Ehrlich, accompanied by emeritus Prof. John Merryman, enjoyed a warm welcome.



This upbeat group of volunteers, philanthropists, professors, and development officers seeks, among other things, to raise the sights of alumni donors.

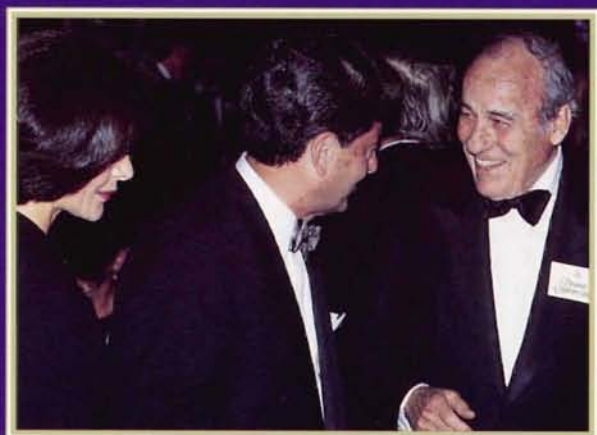




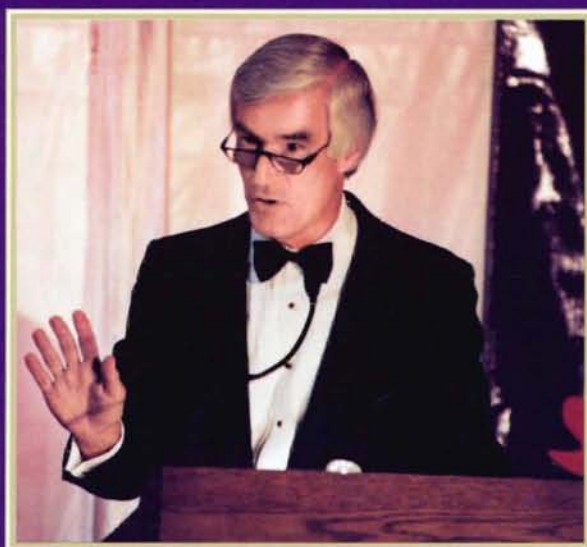
The successful launch of the Campaign was celebrated at a black-tie dinner (left) on the eve of the public declaration. Audrey and Barry '52 Sterling of Iron Horse Vineyards provided Celebration-label wine.

Center left: Deane Johnson '42, soon to be hailed for the largest single donation in Stanford Law School history, spoke with Gail and Carmen Policy, president of the 49ers.

Center right: Former Assistant Dean Robert Keller '58 got help with his boutonniere from Celebration '95 co-host Lisa Keller. Catherine Nardone, Law Fund Director, looks on.



Speakers at the Celebration eve dinner included recent grad Lisa Yanney Roskens '92 and Stanford President Gerhard Casper.





# Words to Mark...

*Key excerpts from speeches and talks at the gala launching of the Campaign for Stanford Law School*

Welcome to Stanford Law School's Celebration '95. It is indeed a celebration—and somewhat like a graduation. We're celebrating the past accomplishments of this law school, an enormously powerful faculty, a really bright and challenging student body, and an alumni group having an impact globally and worth a celebration all by itself.

But as with a graduation, we are celebrating a beginning—the beginning of a campaign for Stanford Law School. The faculty will be stronger; the student body will be smarter; and the graduates of the school will have even greater impact. Tonight is the beginning of that process. It's an exciting time.

—Robert A. Keller '58, chair  
(with Lisa Keller) of Celebration '95

With the kickoff of the Campaign for Stanford Law School, we are launching an enterprise that I am confident will significantly strengthen the ability of this great school to serve our society and to educate future generations of leaders.

There are times when we need to step up to help a friend, and this is one of those times. This law school has been a good friend to each one of us. The friendship is seen most clearly in the faculty who have changed our lives and enriched our careers. I would not have had the life I have had—the challenges, the opportunities, the associations, the experiences—were it not for Dean Spaeth and Professors Baxter and Franklin and Hurlbut, Mann, Meyers, Packer, Sher, Sneed, and Zimmerman. I know each of you has your own list of faculty members who affected your lives as they affected mine.

These wonderful friends, this community, now need our help to remain competitive; to continue to be able to offer opportunity to everyone irrespective of family wealth; and equally important, to seize the opportunities to

lead the nation in teaching, research and innovation.

—James C. Gaither '64,  
Campaign Chair

I do believe that Stanford is matchless as the most comprehensive private university in the country, and probably the world, . . . including the Law School with its emphasis on both theory and practice.

We need this combination more than ever. Many aspects of our legal system have become completely unmanageable. It will just not do to tinker incrementally. Our law school needs the best faculty and the best students to worry about solutions that will change the system....

THE MOST IMPORTANT part of the Law School's campaign goals is to have the resources to recruit and maintain a preeminent faculty. When I came from Chicago and looked at faculty compensation, I realized that Stanford Law School needed to do better. The School's continued excellence needs the same commitment from alumni and friends that its competitors have been able to count on.

—Gerhard Casper,  
President, Stanford University and  
Professor, Stanford Law School

## HISTORIC GIFT FROM DEANE F. JOHNSON '42

As we approached this evening, one of our most distinguished graduates informed us of his plan to make the largest gift in the history of the School—a \$12-million gift of real property into a charitable remainder trust. That gift will over time create a large endowment, the income from which can be used by the Dean to meet the most pressing needs of the School. This is the kind of gift that should give all of us confidence that we can succeed, and it should inspire us to work as hard as we can to bring about that success just as soon as we can.

—James C. Gaither

I first met Deane Johnson when he interviewed me for a scholarship. I'm sure all of you have had the experience—when you meet someone who has an overwhelming impact on you—of thinking, "I wish I could be like that." I got the scholarship, and Deane went on to become one of the most respected entertainment lawyers in the nation, a counselor to the great names of the entertainment industry, a managing partner of O'Melveny & Myers, and one of the top and most trusted executives in what is now Time-Warner.

But even after he rose to the heights of his profession, Deane always kept that personal warmth and sense of humor that is so special and, I think, must hark back to California and the fact that he had to work his way through school. He never, I think, forgot where he came from. So, Deane, we want to honor you for your generosity to Stanford over these many years, as well as for your spectacular contribution to this campaign. But we also want to honor you for the qualities of personal character and professional competence that are the embodiment of the ideal of the Stanford lawyer.

—Victor Palmieri '54,  
Member, Campaign Steering Committee

## HUDDLESON PROFESSORSHIP FROM COOLEY GODWARD

I am pleased to announce that Cooley Godward Castro Huddleson & Tatum and other friends and admirers of Ed Huddleson have created an endowed professorship in memory of their late beloved partner. The endowment will enable us to begin to rebuild the faculty, and the chair will link one of the Bay Area's and nation's great law firms with a distinguished member of our faculty—an honor that any of my colleagues would hold dear. This is the first chair created by a law firm in the history of Stanford University and the first at this level anywhere in the Western United States. The Edwin E. Huddleson Professorship symbolizes the close connection between this School and the high



# Memories to Share

technology, legal and business communities—a connection that will only grow over the years. While Jim Gaither, Steve Neal, Brad Jeffries, Craig Dauchy and their colleagues are justly proud that Cooley has come first, they share my hope that this gift will serve as an example for other firms.

—Paul Brest,  
Richard E. Lang Professor  
and Dean of the School of Law

## NEEDS AND GOALS

Initially, I and the faculty believed that we could accomplish our educational goals largely by reducing overhead and using existing resources efficiently. But having done this—and even having made the error of cutting too deeply into administrative support—it became evident that only the infusion of new resources could maintain the School's traditions of excellence as we prepared to meet new challenges.

During the past two years, we tested the School's academic plans and fiscal needs with broadening groups of friends and alumni. Literally to a person, they believed that the School's greatest strength, and the source of its excellence, lay in its faculty. And they understood that this most precious resource was at risk because of the differential between Stanford faculty salaries and those at other law schools.

We also found widespread agreement that a Stanford education should be available to students from a broad range of backgrounds and intent on pursuing a wide variety of careers....

AS WE ENTER the challenging years ahead, I give you my solemn commitment—and that of the faculty—that we shall justify the confidence you have shown in us and this wonderful institution. Let us join in a toast: May the success of this Campaign ensure the continued excellence of Stanford Law School, and its leadership of our profession and the society it serves, for the next century.

—Dean Brest

## THE WAY WE WERE

I'm happy I was here at the beginning of what I still think of as a golden era at Stanford Law School, because it was an era that really launched Stanford on the path to becoming a preeminent institution in the United States and farther afield. And of course the chief reason for that was Carl Spaeth. Carl brought a great breath of fresh air and innovation and new spirit and ambition for the school.

—Phil Caldwell Neal,  
former professor

There were six women in my class. I can't say that it made much difference—except for the property course taught by Moffat Hancock, and for getting a job. Professor Hancock kept a seating chart where he had marked each of the women in the class with a big red dot. When one time he called on one by accident, he quickly apologized and moved on to one of the men in the class!

In fact, Brooksley Born, one of the six, became the first woman to be number one in her class and the first to be president of Stanford Law Review.

—Hon. Pamela Rymer '64

My first encounter with [then Dean] Charlie Meyers was in what at other schools or with other people might be a kind of sensitivity session in which serious student concerns are raised and are sensitively dealt with by faculty and administrators. I, myself, a little over-sensitized from years in an earlier academic environment, would be just as happy to hear some straight stuff. Dean Meyers was asked, "How would you recommend handling the pass/fail election option?" Answer: "Real men don't take courses pass/fail!"

—Robert Weisberg, Professor of Law  
and Vice Provost of  
Stanford University

Nowhere in the United States today is there a more distinguished faculty of constitutional law than at Stanford. President Casper, Professor Gunther, Dean Brest, Dean Ely, Professor Cohen, and Professor Grey—I learned constitutional law from their books and articles, and there's something dreamlike about now being their colleague. The constitutional law faculty, though, is just the beginning. Every field at Stanford is notably strong.

—Kathleen Sullivan, Professor of Law

## A HELPING PROFESSION

If there is a single word that underlies our vision of the profession, it is "service"—service to our society as counselors, problem solvers, negotiators, and advocates; service as legislators, policymakers, and judges.

It is easy these days to forget that the practice of law is a noble calling. As much of the world is learning, the rule of law is the bedrock of a constitutional democracy. It is the essential condition for individual flourishing and for national and global economic development. Our profession has been entrusted with the care, nurturing, and development of the legal system....

THERE ARE IMPORTANT roles for graduates to play, in encouraging the best students to come to Stanford, sharing experiences with current students and mentoring them, strengthening our alumni networks, and representing the School to the world at large.

But let me be straightforward: the School's need for financial support is as great as any of these. The volunteer activities I mentioned can only be in support of a fiscally sound institution. And the fact is that graduates of Stanford's peer institutions support their schools in greater numbers and at higher levels than do our graduates. This School's ability to hold true to its mission and maintain its enviable stature ultimately depends on a much higher level of financial support from its alumni. It's that simple.

—Dean Brest ■



# *Campaign for Stanford Law School*

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James C. '64 and Susan G. Gaither

Roderick M. '55 and  
Carla A. (AB '55) Hills

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Peter K. and Melanie S. Maier

Newton N. and Josephine B. Minow

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Michael P. and Paola N. Schulhof



## Graduating students parade, receive diplomas, and ponder the meanings of "we"



**Above: Dean Brest and standard bearer Melinda Demsky '95. Professors Janet Halley—the faculty marshal—and Janet Alexander are also in view. Right: Class president Deborah Swenson, with guidedog and honorary classmate Perro. Below: Carlton Osborne and class secretary RoseAnn Rotandaro (holding her son).**

Stanford Law School awarded 172 degrees—including 164 J.D.s—on Sunday, June 18, during the School's annual commencement ceremony. The event, which followed the University's commencement exercises at Stanford Stadium, began at 12:30 p.m. on the large grassy area fronting Crown Quad. Master of ceremonies Dean Paul Brest greeted the graduating students and their nearly one thousand guests—including and especially their supportive parents and spouses.

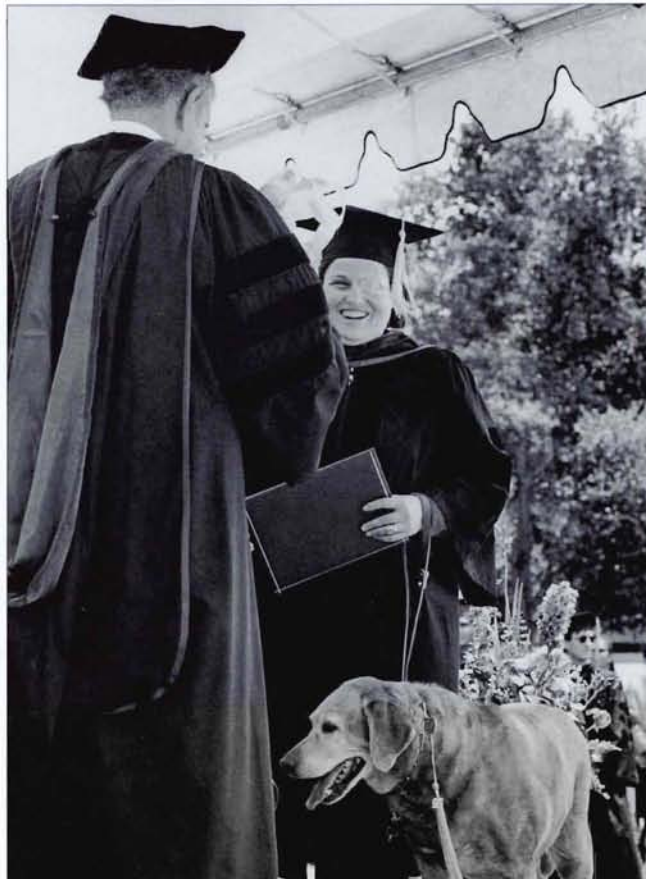
### HURLBUT TEACHING AWARD

The John Bingham Hurlbut Award for excellence in teaching was presented

this year to Linda Hamilton Krieger, acting associate professor of law. Chosen by a vote of the graduating class, Krieger also was the keynote speaker.

Krieger is the co-developer, with Dean Brest, of an innovative course entitled Lawyering Process: Problem Solving, Decision-making, and Professional Judgment. An experienced attorney, she has been teaching at Stanford Law School for five years.

Class president Deborah Claire Swenson, who presented the award, had this to say: "Teaching is an art, and Professor Krieger paints a masterpiece in every class she teaches." The Hurlbut honoree challenges students "to think backward" to root causes and to focus on "working



PHOTOS BY JOHN SHERETZ







**Top scholar Charles Moore, with Law Review president Phoebe Yang and Claudia Schweikert**

out practical solutions to very real legal problems," said Swenson, adding that Krieger "goes the extra mile for students."

Linda Krieger, in her address, spoke eloquently of the distinction between the concepts of "we" as an inclusive versus an exclusive term. The word, she observed, may denote just those close to you or like you, while excluding everyone else as alien, or "they." On the other hand, "we" can embrace the whole community, nation, or even all humanity.

"One cannot help but sense that our country's future depends in large measure on our ability to reconcile the inevitable tensions between 'we—just us' and 'we—all of us,'" she said.

"Surely, in legal practice as in other aspects of life, as economic and institutional realities bear upon us, some unseen psychological current tends to carry us increasingly toward the smaller—and away from the larger—'we.' And yet, if we are to be true to the best in the legal tradition, we must find ways to

maintain our dedication to the larger social good, even as we discharge our ethical obligations to any particular client."

Following this speech, Prof. Janet E. Halley, faculty marshal for the ceremony, read the names of the graduates as they came forward to receive their diplomas and the congratulations of the Dean and faculty.

#### **LAWYERS AND LEADERSHIP**

Dean Brest, in parting remarks to the graduates, noted that the reputation of lawyers today seems to be at a "historic nadir." Nonetheless, he pointed out, "lawyers remain high among our country's leaders," not only in public political roles or as behind-the-scenes policy-makers, but also as general problem solvers. "An unanticipated problem or crisis arises, and the person most likely to be called upon to chair the task force to deal with it is a lawyer. Indeed, citizens often look to lawyers for guidance on matters that have little to do with technical legal issues," he said.

#### *Hurlbut speech*

### **Profession = Theory + Craft**

**"W**hat makes a particular calling a 'profession' is that it represents a synthesis between theory and craft. Many students leave law school worried that they know too little about the craft of lawyering.

"But I guarantee that, five years from now, you will look back on this community of theoretical and interdisciplinary investigation with no small measure of longing. Your task then will be to connect the aspects of craft you have honed in your practice, with the theoretical and interdisciplinary foundations provided here.

"And, if you make time for it, you can forge from that synthesis a col-



**Linda Hamilton Krieger**

lective professional culture that thinks systematically about legal institutions and practices, and works the resulting insights into a practically achievable vision of the greater social good."

—Linda Hamilton Krieger, June 18, 1995

This, said the Dean, is "because of the analytic and problem-solving skills you have begun to acquire during the past three years, and which you will hone during the many years to come. As lawyers, you have developed an instinctual skepticism of oversimplification; you are able to analyze just about any issue you encounter, and to do so dispassionately from every relevant point of view. And this gives you a tremendous power to

understand, and help others understand, the controversial issues of the day."

Calling upon the graduates to use these skills in the service of society, both during their workdays and after hours, Brest said, "Our society has never been more in need of leaders who combine a commitment to the public good with the qualities of reflection, tolerance, analysis, and good judgment." ■



## Honors and Awards to 1995 Graduates

**T**he following awards were earned by members of the 1995 graduating class over the course of their law school careers.

**Nathan Abbott Scholar**, for the highest cumulative grade point average in the graduating class: Charles Cook Moore. Moore had previously won the Second-Year Honor for the class's highest grade point in 1993-94.

**Urban A. Sontheimer Third-Year Honor**, for the second-highest cumulative grade point average in the graduating class: R. Anthony Reese. Reese had received the First-Year Honor in 1993. Earlier in 1995 he received the Irving Hellman, Jr. Special Award for a note published in the *Stanford Law Review* (see below).

**Order of the Coif**, the national law honor society. Membership in the order is extended to graduating students who rank in the top 10 percent of the class academically: In addition to Charles Moore and Anthony Reese, the newly elected members are David Robert Bechtel, Barbara S. Bernstein, Kyle Eric Chadwick, Brendan Peter Cullen, Melinda J. Demsky, Christopher R. Harris, Grant M. Hayden, Michael Thomas Johnson, Olatunde C. A. Johnson, Mara Ilise Kapelovitz, Ranee Alessandra Katzenstein, Darren Benjamin Mitchell, Srikanth Srinivasan, and Isabel M.

Traugott. Kyle Chadwick also served during 1994-95 as the managing editor of the *Stanford Law Review*.

**Hilmer Oehlmann, Jr. Prizes**, for outstanding work in the first-year Research and Legal Writing Program: Melinda Demsky, plus Taline Aharonian, Ann Maria Caviani, Selena C. Dong, Selena Fitantes, Agnieszka Klich, Elizabeth Avery Lake, William Alvarado Rivera, RoseAnn Marie Rotandaro, Jennifer Elaine Smith, Christopher Marshall Richard Turner.

**Frank Baker Belcher Award**, for the best academic work in Evidence: Michael Thomas Johnson.

**Steven M. Block Civil Liberties Award**, for distinguished written work on issues relating to personal freedom: Alexandra Natapoff.

**Brown & Bain Scholarship**, for the best research project proposal concerning High Technology and Law: Dale Buford Thompson, 1992-93 recipient.

**Lawrason Driscoll Moot Court Award**, for officers of the moot court board: In addition to Christopher Harris and Elizabeth Lake, Stephanie Louise Marn, Steven Y. Quintero, Vicki Wen-Yuan Ting, and, in 1994, Stephen B. Dunbar III.

**Carl Mason Franklin Prize**, for the best papers in International Law: Taline Aharonian, plus Patrick Shawn Campbell and Tamara Rice Lave.

**Richard S. Goldsmith Award**, for the best research papers concerning Dispute Resolution: Eric Douglas Frothingham (honorable mention) and Eric Leonard Talley (1992-93 winner).

**Mr. and Mrs. Duncan L. Matteson, Sr. Awards**, for the finalists in the Marion Rice Kirkwood Moot Court Competition: Melinda Demsky and William Rivera as best team of advocates; Selena Fitantes and Lester F. Hardy as runner-up team. Srikanth Srinivasan and Bradley Weston Joondeph '94 won as best team in 1994.

**Walter J. Cummings Awards**, also in the Moot Court finals. For best oral advocate: Fitantes. For best brief: Demsky and Rivera. For best brief 1993-94: Srinivasan and Joondeph '94.

**Public Service Fellowships**, for demonstrated commitment to public service and academic achievement in law studies: Olatunde C. A. Johnson, Michele Magar, Naomi Jewel Mezey, and Kathryn Christine Palamountain.

**Lisa M. Schnitzer Memorial Scholarship**, for a commitment to public interest and to helping the disadvantaged: Magar and Palamountain.

**Board of Editors' Award**, for outstanding editorial contributions to the *Stanford Law Review*: Marta Michelle Alvarez and Irene Florence Chang.

**Irving Hellman, Jr. Special Award**, for the outstanding student note published in the *Stanford Law Review*: Anthony Reese in 1995 and Eric Talley in 1994.

**Johnson & Gibbs Law Review Award**, for the greatest overall contribution to the *Review* during their second year: Tamara Lave and Dennis M. Woodside.

**President's Award**, for extraordinary dedication to and vision on behalf of the *Review*: Adam Lawrence Rosman.

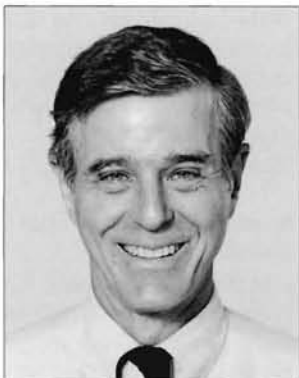
**Jay M. Spears Award**, for outstanding service to the *Review* during her second year of law school: Alyse Graham.

**Stanford Law Review Special Service Award**, recognizing exceptional contributions to Volume 47 of the *Review*: Edward Ronald Barret.

**United States Law Week Award**, for outstanding service and unfailing commitment to the *Review*: Naomi Mezey and Jennifer Smith, along with Jennifer M. Choo. ■



## Crocker responds with early and generous gift



Donald Crocker '58

**D**onald Crocker '58 has once again shown himself a great friend of the School with a pledge of \$500,000 to the newly announced Campaign for Stanford Law School. The gift will create an endowed fund that Crocker is naming the "Dean Paul Brest Fund." Unrestricted as to use, the fund will provide income that may be expended at the Dean's discretion wherever the need is greatest.

According to Frank Brucato, the Law School's Associate Dean for Administration, "Our need for unrestricted funds has never been greater. Such funds not only enable us to keep the Law School functioning and maintained, but allow us to keep up with an ever-changing world. Unrestricted gifts further new academic programs, faculty recruitment and research, financial assistance to students, computer and library acquisitions, and building remodeling."

Dean Brest says he is "deeply moved by this gesture, and flattered to have my name associated with

those of Donald Crocker and the Crocker family. Their generosity and commitment have played a vital role in the success of the Law School."

Crocker is the vice chairman of J.E. Robert Companies, one of the nation's largest capital recovery firms. From 1963 to 1970 he was a partner in the Los Angeles firm of Halstead & Crocker, later serving as chairman of the board and chief executive officer of First Lincoln Financial Corporation and as western regional director of Federal Savings and Loan Insurance Corporation (FSLIC) operations.

"My twin brother and I attended Stanford Law School together," Crocker says in explaining why the Law School remains a central focus of his philanthropy. "What we both learned there became a critical component of our successful legal practice and business activities."

At the same time, Crocker praises Dean Brest for helping to move the Law School into areas that were not part of the curriculum when he and his brother were students. In particular, he underscores recent efforts to foster the skills of practical problem solving. "It is extremely valuable to teach people to see the big picture and find alternative solutions to problems."

"One approach the Law School is taking," notes Crocker, "is to use some of the techniques of the business school—such as transactional case studies—to go with the case

analysis that is the basis of legal education." He adds that "The clinical opportunities that now exist at the Law School are extraordinary, and students are lucky to be able to participate in that kind of intensive examination of an issue and self-critique of their performance."

In explaining his decision to name the fund in honor of Dean Brest, Crocker says, "I think that Paul has brought a very high level of excellence and collegiality to the Law School. There is a tremendous amount of support from students and faculty for his leadership." Crocker has worked with Dean Brest in a variety of capacities, having served as chairman of the Dean's Advisory Council, and as a member of the Board of Visitors' Executive Committee, the Law and Business Advisory Council, and the Campaign Advisory Council. He has also lectured on negotiating real estate transactions for the School's Advanced Topics in Law and Business class.

The Crocker family has a long tradition of support for Stanford Law School (STANFORD LAWYER, Fall 1990). In 1970, Crocker's mother, Josephine Scott Crocker, established the Wm. Benjamin Scott and Luna M. Scott Professorship in honor of her parents. This chair has been held for many years by William F. Baxter, the eminent antitrust expert and former Assistant Attorney General of the United States.

In 1975, the family created the School's Crocker Garden with a gift in memory of Benjamin Scott Crocker '58, Donald Crocker's twin brother. A second endowed chair—the Josephine Scott Crocker Professorship in Law and Economics—was established in 1978 in honor of Donald Crocker's mother. Noted scholar and economist A. Mitchell Polinsky is its inaugural holder.

Then, in 1990 as part of the Stanford University Centennial Campaign, Crocker made possible the establishment of the Law School's first faculty scholar position. The Helen L. Crocker Faculty Scholar Fund creating the position was named for Crocker's daughter. Tax law expert Joseph Bankman is its current holder. In 1993 Crocker again heeded the School's call with a \$100,000 pledge in honor of his 35th class reunion.

Equally generous with his time and expertise, Crocker has aided Stanford University and the School in various capacities for more than two decades. From 1977 to 1979, for example, he chaired the Law School Board of Visitors. In 1981, the University awarded him a Gold Spike for Distinguished volunteer fundraising service.

"The Law School is extraordinarily fortunate, to have Don among its strongest supporters," says Dean Brest. ■



## Colton serves both church and school



Sterling Colton '53

In July, Sterling Colton '53 became president of the Mormon mission in Vancouver, British Columbia, where he oversees 150 young missionaries throughout the province.

"It is quite a dramatic change from what I was

doing," says Colton, who retired May 1 as Marriott International's Senior Vice President and Vice Chairman of the Board of Directors. "I am responsible for training and motivating them, and for serving as a surrogate parent when they are homesick or lovesick," Colton says. The volunteers, some only 19, "learn self-discipline, how to work, and how to express themselves. You have an opportunity to really have an impact."

Colton's missionary call came at a point in his life when he was already planning to devote himself more fully to community service work. At the same time, he has decided to repay a debt of gratitude to his alma mater. While a

Stanford Law student, he received scholarship aid. Now he has pledged \$250,000 to establish the Sterling D. and Eleanor R. Colton Scholarship Fund. University matching funds will bring the total to \$332,500.

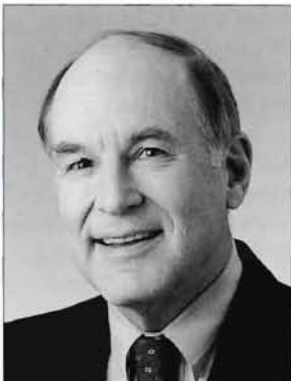
"I've always felt an obligation," Colton says. "It's a great law school. I feel very fortunate to have been able to go there."

Colton's interest in the School has led him to play an active role in discussions of Stanford's Law and Business program. He brings to these issues first-hand knowledge acquired during nearly thirty years of work in corporate law. With Marriott since 1966, Colton became General Counsel in 1970, a senior

vice president in 1975, and a director in 1985.

"There have been some tremendous changes in the legal profession over the span of my tenure at Marriott," says Colton. "At one time, corporate counsel were looked down on as second-class lawyers, but that has changed dramatically." He hails Stanford's efforts to teach students "how to be problem solvers—not just people who know the law. The role of the lawyer is much broader than that, and I think this is particularly evident in the corporate field, where you are really part of the team and counseling management." ■

## Hand gift combines security with charity



Dent Hand '59

Dent Hand '59 has chosen one of the more far-sighted options available for giving: a life income trust. In so doing,

he has made an investment that will simultaneously furnish him with income throughout his life, while providing Stanford Law School with a major new source of scholarship funding. "I could have given to other institutions, but I wanted to favor the Law School," says Hand. "The School has certainly favored me."

Hand decided that the wisest method of giving would be to donate some highly appreciated stock in his company—Benham Management International, Inc.—to a tax-exempt trust managed by Stanford.

Stanford, as trustee, sells and reinvests the proceeds from such gifts without paying capital gains taxes, while the donor receives a percentage of the capital for the rest of his or her life. Additional arrangements are also possible, such as assigning the income to a surviving spouse or other family member.

"This was the right time for me to do something like this. It has very favorable tax consequences," says Hand. "You avoid capital gains taxes entirely, you get a charitable deduction based

on the present value of your gift, and you get the income of a trust." The trust will reinvest Hand's contribution in a wide variety of mutual funds. "This way I diversify my property," he notes. "I had a lot of eggs in one basket."

Thanks to a matching gift from the University—currently available for life-income gifts of \$100,000 or more—Hand's gift is already helping students. This is because income from the match portion of the

*Continued on page 27*



## Faculty Notes

**Janet Cooper Alexander** was honored recently by *Corporate Practice Commentator* for her 1994 article, "The Value of Bad News in Securities Class Actions," published in the *UCLA Law Review* (41:1421). In a poll conducted by *CPC*, Professor Alexander's article was voted one of the top securities articles of the year by a panel of experts in the field.

**Tom Campbell** has declared his candidacy for the U.S. House of Representatives seat being unexpectedly vacated by Norm Mineta of San Jose. Campbell gave up a congressional seat in 1989 to run for the U.S. Senate. Defeated in a three-way Republican primary by a candidate who failed to win the general election, the professor then ran for the California State Senate, where he currently serves. He continues to teach Transnational Law and Separation of Powers in the autumn term.

**Barbara Fried** has just completed a book on Progressive-era law and economics, focusing on the work of Robert Hale. The book is due to be published in the fall of 1996 by Harvard University Press. This past year, Professor Fried presented portions of the book at the Yale Legal Theory Workshop and at the UC-Davis Program on Ethics and Economics. She has also recently completed an article on Robert Nozick's theory of justice, and is currently working on an article, with Professor

Joseph Bankman, on the flat tax.

**Lawrence M. Friedman**, Marion Rice Kirkwood Professor of Law, was awarded an honorary doctor of laws degree by the John Marshall Law School, where he delivered the June commencement address. Friedman was described as "the premier legal historian of the current generation," whose "breadth of vision has enriched the academic community" and "provided insight and guidance to a broad range of readers on the nexuses between law and society." The John Marshall degree is the fourth honorary doctorate conferred on the professor.

**Ronald J. Gilson**, Charles J. Meyers Professor of Law and Business, is the coauthor of two recent texts: a second edition of *The Law and Finance of Corporate Acquisitions* (Foundation Press, 1995) with Bernard Black of Columbia, and a fourth edition of *Cases and Materials on Corporations* (Little, Brown, 1995) with Jesse Choper of Boalt Hall and John C. Coffee, Jr., of Columbia. Gilson has also lectured on corporate governance at conferences in Paris and Copenhagen.

**Paul Goldstein**, Stella W. and Ira S. Lillick Professor of Law, has published *Copyright's Highway: From Gutenberg to the Celestial Jukebox* (Hill & Wang, 1995) to critical acclaim. *The Washington Post* called it "superb," while *Publishers Weekly* judged it "essential read-

ing." Also, Little, Brown has just come out with the second edition of Professor Goldstein's magnum opus, *Copyright: Principles, Law and Practice* (1995). The new edition adds another volume to the treatise, bringing the total to four. In July, Goldstein delivered the concluding paper in a colloquium, "The Future of Copyright in a Digital Environment," organized by the Royal Netherlands Academy of Arts and Sciences in Amsterdam.

**William Benjamin Gould IV**, Charles A. Beardsley Professor of Law, remains on leave with the National Labor Relations Board in Washington, D.C. "I am particularly proud to head an agency which is celebrating its 60th anniversary this summer and which, from the very beginning of its origins in the Great Depression of the 1930s, has contributed to the public good through adherence to a statute which encourages the practice and procedures of collective bargaining," he recently said in a commencement address at the Ohio State University College of Law.

Among his many lectures this year were "Changes in Labor Law: Here and Now and the Future," presented at the Washington State Labor Council Constitutional Convention; "Overview of Labor Law in the United States," read at the U.S.-Mexico-Canada Conference on Labor Law and Industrial Relations; "Lincoln, Labor and the Black Military: The Legacy Provided," delivered before

the Military Order of the Loyal Legion of the United States; and "The National Labor Relations Board at the Turn of the Century," presented at Loyola Law School in Los Angeles.

Gould also intervened in the baseball strike: he convened an extraordinary weekend session of the National Labor Relations Board that led to an injunction against alleged owner unfair labor practices. The injunction was ultimately instrumental in returning players to work for the 1995 baseball season.

**Henry T. (Hank) Greely** continues his work in bioethics, speaking on the Human Genome Diversity Project at meetings and workshops organized by UNESCO, the American Anthropological Association, and the National Institutes of Health. He was the principal author of the Model Ethical Protocol drafted by the genome project's North American Committee.

Professor Greely's research in the area of health policy led to "Policy Issues in Health Alliances: Of Efficiency, Monopsony, and Equity" in *Health Matrix* (March 1995); "Baby Doe and Beyond: The Past and Future of Government Regulation in the United States" in *Perinatology and Ethics* (Amnon Goldworth, ed., Oxford University Press, 1995); and an op-ed piece in the *New York Times* on abortion and national health reform (with Leigh Goodmark '94).



Greely has delivered lectures throughout the country and abroad on a variety of topics, including biology and the law, ERISA, conflicts of interest in biomedical research, and physician compensation under managed care. With Professor John Barton and Dr. David Botstein, chair of the Genetics Department at Stanford Medical School, Greely created and taught an interdisciplinary course on biotechnology this spring.

**Joseph A. Grundfest** delivered the Fourth Annual Fritz Burns Lecture at Loyola Law School. His address, "We Must Never Forget that It Is an Ink-blot We Are Expounding: Section 10(b) as a Rorschach Test," is forthcoming in the *Loyola Law Review*. The *Harvard Law Review* published his analysis of current legislative efforts to reform the securities laws, entitled "Why Disimply?"

Professor Grundfest's "Disimplying Private Rights of Action Under the Federal Securities Laws: The Commission's Authority" (*Harvard Law Review*, 107:1961) was selected by *Corporate Practice Commentator* as one of the top securities articles of 1994. He also filed an amicus brief with the U.S. Supreme Court—the first Supreme Court brief to be posted in hypertext form on the Internet (<http://www-Leland.Stanford.Edu/Group/Law/Reckless/>).

In addition, the professor helped head off a

spate of litigation against Intel Corp. in February. A letter he wrote on behalf of Intel investors influenced plaintiffs to drop a series of questionable suits related to the flawed Pentium chip. Professor Grundfest became involved in the Intel litigation through the Institutional Investors Forum, a group that seeks to further the interests of institutional shareholders, which he started with Professor Ronald Gilson last year.

Grundfest also organized "Director's College" and "Tools for Executive Survival," two of the School's executive education seminars, and he continues as the director of the Roberts Program for Law, Business and Corporate Governance.

**Gerald Gunther**, William Nelson Cromwell Professor of Law, became emeritus on September 1 (see page 17). For his highly acclaimed biography *Learned Hand: The Man and the Judge* (Knopf, 1994), Gunther won the triennial Erwin N. Griswold Book Prize of the United States Supreme Court Historical Society. The Society's president praised the book (which has now been published in paperback by Harvard University Press) as "clearly the most outstanding judicial biography published in recent years."

Learned Hand continued to occupy Gunther as the main subject of two articles and a number of endowed lectures he gave around the country.

"Reflections on Judicial Administration in the Sec-

ond Circuit, From the Perspective of Learned Hand's Days" appeared in the *Brooklyn Law Review* (60:505), while the *Journal of the Copyright Society U.S.A.* published "Learned Hand: Outstanding Copyright Judge" (41:315).

The past academic year also brought Gunther an honorary doctorate—his fourth—from Duquesne University. In addition, he received popular recognition in the July 1995 issue of *San Francisco Focus* magazine as a member of the "Bay Area Brain Trust," a select group of men and women who are leaders in their fields.

Finally, Gunther was recently awarded the Bernard E. Witkin Medal by the State Bar of California for "significant contributions to the quality of justice and legal scholarship in our state."



**Professor Halley**

**Janet E. Halley** was promoted in July to the rank of full professor. Dean Brest commended Halley as "a brilliant scholar; an excellent, demanding, and much-loved teacher; an

exemplary citizen of the Law School and University; and a generous and highly valued colleague." A member of the faculty since 1991, her principal subjects include civil procedure, family law, and national, racial, and sexual identities in law. Professor Halley's scholarly work centers on issues of sexual orientation and the law.

**Bill Ong Hing** was appointed by U.S. Attorney General Janet Reno to the Department of Justice's newly created Citizens' Advisory Panel. The panel was established for the dual purposes of reviewing complaints from the public concerning practices by employees of the Immigration and Naturalization Service and reviewing the current INS procedures for responding to those complaints. Hing, an associate professor, was selected for his knowledge of human and civil rights issues, immigration, and ethics, particularly in the law enforcement field.

**William C. Lazier**, Nancy and Charles Munger Professor of Business, extended his involvement in campus affairs as a member of the boards of directors of the Stanford Bookstore and Tresidder Union. He also serves as chair of the Tresidder Task Force Committee, as co-chair of the Stanford Golf Course Study Committee, and as a member of the Development Committee of the Stanford University Board of Trustees.



**Miguel Angel Méndez** has published an innovative text for teaching evidence that uses explanatory materials and problem sets instead of appellate opinions. *Evidence: The California Code and the Federal Rules—A Problem Approach* (West, 1995) grew out of his 18 years of experimentation with a variety of teaching methods.

Professor Méndez also has published two law review pieces this year: "A Sisyphean Task: The Common Law Approach to Mens Rea," *University of California, Davis Law Review* (28:407) and, with Edward Imwinkelried, "People v. Ewoldt: The California Supreme Court's About-face on the Plan Theory for Admitting Evidence of an Accused's Uncharged Misconduct," *Loyola of Los Angeles Law Review* (28:473).

The Chicano/Latino undergraduate class of 1995 presented Méndez with a plaque "in recognition of distinguished service," praising him for his work as faculty sponsor of the Chicano pre-law society and for his mediation between students and administrators. Also this year, he was elected chairman of the board of Public Advocates, Inc., the leading public interest law firm in the West.

**A. Mitchell Polinsky**, Josephine Scott Crocker Professor of Law and Economics, is coauthor with Harvard Law School's Steven Shavell of two 1994 publications: "A Note on Optimal Cleanup and Liability After Environmentally Harmful Discharges" in *Research in Law and Eco-*

*nomics* (16:17); and "Should Liability be Based on the Harm to the Victim or the Gain to the Injurer?" in *Journal of Law, Economics, & Organization* (10:427).

In December 1994, Polinsky participated in Harvard Law School's Conference on Property Rules and Liability Rules. In 1995 he chaired panels on "Economics and the Law" and "Tort Law" at American Economics Association and American Law and Economics Association meetings in Washington, D.C., and Berkeley, respectively.

**Robert L. Rabin**, A. Calder Mackay Professor of Law, spent the Fall 1994 semester as the Pritzker Distinguished Visiting Professor at Northwestern Law School, teaching torts. He also gave lectures on recent tobacco tort litigation there and at the University of Wisconsin and Chicago-Kent law schools. He was a panel participant at a symposium meeting on mass toxic torts at Cornell Law School. During the spring semester, Rabin was on sabbatical in Rome and London, lecturing on tort law at the Universities of Rome, Pisa, Florence, and Brescia, and at Rome's Luiss University.

**Margaret Jane Radin** delivered the James A. Moffett Lecture in Ethics (entitled "Commodification and Polity") at Princeton University in March. In the same month, she served as a keynote speaker for the 5th Conference on Computers, Freedom and Privacy, sponsored by Stanford Law School's Law and Technology Policy Center. The subject of her speech was "Property at the Crossroads: Two

Paradigms in Need of Reinterpretation." Professor Radin also read a paper entitled "Commodification and Free Speech" at the American Philosophical Association's Pacific Division meeting last spring.

**Deborah L. Rhode** delivered endowed lectures at the UC-Berkeley, Vanderbilt, Oklahoma City, and Cumberland schools of law, as well as a paper at a conference on Women and Violence at the University of Pennsylvania. Her "Gender and Professional Roles" appeared last year in *Fordham Law Review* (63:39), while "Media Images, Feminist Issues" came out this year in *Signs: Journal of Women in Culture and Society* (20:685). Professor Rhode recently began writing a regular column on gender issues for the *National Law Journal*.

**Kenneth E. Scott**, Ralph M. Parsons Professor of Law and Business, became emeritus as of September 1, 1995 (see page 17). In April, he led a panel on independent trustees at the Symposium on Mutual Fund Governance in Washington, D.C., and spoke at conferences in Saarbrücken, Germany, and Lisbon, Portugal.

Scott is also the author of a chapter entitled "The Use of Statistics in Judicial Decisions" in a forthcoming festschrift for Gerald Lieberman, former Stanford University Provost, edited by Kenneth Arrow et al. His article "Cartels as Ideological or Economic Phenomena" came out in *The Journal of Institutional and Theoretical Economics*.

**Byron D. Sher**, Professor of Law, Emeritus, has announced his candidacy for the California State Senate seat being vacated by Professor Tom Campbell. Sher, a Palo Alto Democrat, has represented the mid-Peninsula in the state Assembly since 1980. Currently chairing the Assembly's Natural Resources Committee, he is widely acknowledged as the leading legislative environmentalist.

**William H. Simon**, Kenneth and Harle Montgomery Professor of Public Interest Law, has been performing yeoman service by chairing the School's committees on Petitions, Clinical Search, Tenure, and (with Professor Sullivan) Faculty Seminars. On the scholarly front, he delivered a lecture on "Legal Theories of Property Rights" at the Conference of Social Scientists at the University of Maryland, and spoke on "Alternative Forms of Economic Organization" at a Conference on Critical Legal Studies in Washington, D.C.

**Kathleen M. Sullivan** appeared again before the U.S. Supreme Court, this time to argue for the plaintiffs in *Anderson v. Green*, a case challenging the constitutionality of California's provision of less favorable AFDC benefits to new residents. As urged by plaintiffs, the case was ultimately held moot. Professor Sullivan also appeared before the Ninth Circuit Court of Appeals in the still-pending case *One World One Family Now v. City and County of Honolulu*, representing the City and County of Honolulu in their attempt to enforce an



anti-peddling ordinance against a First Amendment challenge.

In addition to her appellate activities, Sullivan delivered endowed lectures on "Resurrecting Free Speech" at Fordham University, UCLA, and the University of Arizona. She also gave the keynote address, "Free Speech Flip-Flop," at the Stanford Humanities Center Conference on Censorship and Silencing: Practices of Cultural Regulation. Sullivan has joined Professor Gunther as coauthor for the 13th edition of his influential constitutional law casebook.

**Kim Taylor-Thompson** appeared as legal analyst for the Bay Area's NBC affiliate, KRON-TV, providing weekly commentary on the O.J. Simpson trial. This same case was

the subject of her recent lecture to alumni in Hawaii, "Trial By Media: The Case of the *People v. O.J. Simpson*." In a different vein, the associate professor conducted a Socratic panel on "Ethical Choices for Teens" for WNET-TV of New York. Taylor-Thompson, a member of the ABA's Committee on Ethics and Professional Responsibility, provided testimony on behalf of California Attorneys for Criminal Justice before the Public Safety Committee of the California State Assembly, where she opposed a bill to eliminate the requirement of jury unanimity.

**Barton H. (Buzz) Thompson, Jr.** continues as head of the Law School's pioneering program in Environmental and Natural Resources Law. He has

made a number of invited presentations on the implications of "takings" law for environmental and resource regulation at conferences sponsored by Stanford, the University of Colorado, the American Bar Association, and the Rocky Mountain Mineral Law Foundation. He also organized and spoke at a 200-person conference on Indian Water Rights at the School in September 1994.

This summer, Professor Thompson spoke on "Environmental Policy and the State Constitution" at a conference sponsored by Stanford and UC-Berkeley and on "Legal Disconnections between Ground and Surface Water" at the 20th Biennial Conference on Ground Water in San Diego.

He remains actively involved with "Common Ground for the Environ-

ment," a consensus-building effort involving business, government, and community organizations.

**Robert Weisberg** continues to serve the University as Vice Provost for Faculty Affairs, and within the Law School shares the responsibility of Associate Dean for Academic Affairs. His writings this past year have focused on intersections of law and literature, including a talk, "What Do Lawyers Really Say When They Say That Lawyers Tell Stories?" at a Symposium on Rhetoric held at Yale Law School (to be published in a symposium book by Yale University Press), and a review-essay of William Gaddis's *A Frolic of His Own in the Fall*, for the 1995 issue of the *Yale Journal of Law & the Humanities*. ■

## UPDATING MIRANDA

*Continued from page 15*

gressional modification for federal cases. Congress should exercise its constitutional powers, as the final arbiter of rules of evidence in federal court, to strike a better balance between a suspect's right to be free from coercion and society's right to have voluntary confessions obtained and entered into evidence. ■

<sup>1</sup> See Paul G. Cassell, "Miranda's Social Costs: An Empirical Reassessment," 90 NW. U.L. Review (forthcoming 1995). For discussion of the validity of this estimate, compare Stephen J. Schulhofer, "Miranda's Practical Effect: Substantial Benefits and Vanishingly Small

Social Costs," with Cassell, "All Benefits, No Costs: The Grand Illusion of *Miranda*'s Defenders," in the same issue.

*Paul G. Cassell '84 was president of Stanford Law Review in 1984 and a clerk for then Judge Antonin Scalia of the U.S. Court of Appeals and then Chief Justice Warren E. Burger of the U.S. Supreme Court in 1985-86. Now an associate professor at the University of Utah College of Law, he teaches criminal procedure and evidence.*

*This article is adapted from a Rule of Law column, "How Many Criminals Has Miranda Set Free?" in the Wall Street Journal, March 1, 1995.*

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## LEGAL STUDIES

*Continued from page 18*

have a background in law, the Fellows also bring knowledge of such fields as banking, securities, diplomacy, economics, and politics in a global setting. In Pirie's words, SPILS "provides the Law School with a very important international dimension."

For information about the program, contact Kate DeBoer, Program Administrator, Stanford Program in International Legal Studies, Stanford Law School, Stanford, CA 94305-8610; ☎ 415/723-2978; e-mail: spils@forsythe.stanford.edu.com ■

## HAND

*Continued from page 23*

fund goes to the School without delay.

The entire Hand trust, augmented by the matching grant, will eventually revert to the School as a permanent, endowed fund for scholarships.

Stanford President Gerhard Casper says that gifts such as Hand's "enable generations of students in their intellectual pursuits and certainly add strength to the future of the School of Law." ■



## EDUCATING LAWYERS

*Continued from page 13*

while imposing the costs of failure on taxpayers).

The research also sheds light on mechanisms for minimizing these problems, such as screening, monitoring, the use of incentives, and considerations of reputation. For example, consider the strategies available to an institutional client seeking to maximize the efforts and minimize the fees of the lawyers it retains.

While detailed knowledge of these bodies of economics will be especially useful to students planning careers in policymaking or business law, an understanding of the basic concepts is valuable for almost any career in the law.

**Organization theory.** The economic model of the self-interested, rational actor is an abstraction. Most of us have myriad opportunities to engage in opportunistic behavior, which we resist or ignore for reasons of personal morality, institutional loyalty, law-abidingness, altruism, or socialization.

Our behavior is affected by the contexts in which we act, and one context of particular interest to lawyers is the organization. As James March and Herbert Simon observe, "Organization members are social persons, whose knowledge, beliefs, preferences, and loyalties are all products of the social environments in which they grew up, and the environments in which they now live and work." The field of organization theory views decisionmakers as actors in the context of the structures, rules, norms, cultures, and politics of organizations. Much of the work in this field considers how these organizational features evolve and how they affect and are affected by decisionmaking within an institution.

Having a good sense of the dynamics of organizations will serve a lawyer well in many areas of practice. However, there is relatively little scholarship bringing

organization theory to bear on the practical problems that lawyers and their clients face in organizational settings. In contrast to economics, this part of the curriculum is a work in progress.

**The dual role of transactional case studies.** Transactional case studies play a dual role in teaching law students about transactions and organizations. At a minimum, they provide students with opportunities to analyze and solve problems that underlie long-term business relationships, and to use their creativity in designing viable institutions and processes. For these purposes, one can craft entirely hypothetical case studies, such as the family-business problem described earlier.

However, Stanford faculty are also preparing case studies that allow students to test the application of various economic, psychological, and sociological theories to real-world transactions. For example, in the course "Deals: The Economic Structure of Transactions and Contracts," Professors Ronald Gilson and Jeremy Bulow examine an actual real estate syndication to inquire how economic theory explains, or could have improved, aspects of the deal. Such empirical studies require the detailed examination of actual transactions—a time-consuming and expensive endeavor, but one that can expand theoretical knowledge as well as provide an excellent teaching vehicle.

### OTHER CROSS-CUTTING SKILLS

In addition to teaching counseling, negotiation, and related skills, the complementary curriculum contributes to law students' education in three essential areas: collaboration, legal writing, and legal ethics.

**Collaboration.** From the moment they enter practice, lawyers spend much of their time working collaboratively with others, including clients, other lawyers, legal assistants, and professionals in other fields. The forms of collaboration

include brainstorming, group decisionmaking, engaging in complex multitask projects, and editing and being edited. At its best, collaboration is efficient, as well as professionally and personally rewarding. At its worst, it is wasteful and pathologically destructive.

Collaboration is a skill that can be learned. Yet law schools have not traditionally offered students many opportunities to work collaboratively, let alone to reflect systematically on their successes and failures in team efforts. Most class assignments, exams, and papers are individual endeavors.

While traditional doctrinal courses could easily require collaborative work, the complementary curriculum is especially conducive to helping students examine, critique, and improve their collaborative skills.

**Legal writing.** The form of writing distinctive to counseling is the memorandum to a client analyzing his or her problem and setting out and evaluating alternative courses of action. By requiring students to analyze a set of facts (not already homogenized, as they typically are in appellate writing assignments) in terms of both legal and nonlegal considerations, and to present options and recommendations in nontechnical language, the memorandum teaches clarity of analysis and exposition.

Negotiations often culminate in contracts or other documents designed to guide the parties' future relationships. Drafting such documents calls for imagination in predicting different ways in which the future may unfold and for creativity and strategic choices about the precision or open-endedness of language.

Most fundamentally, drafting provides students with a sense of the inherent ambiguity and vagueness of language and, indeed, of what the legal philosopher H.L.A. Hart called the "indeterminacy of aim" that characterizes our vision of the future.



**Ethics.** Finally, the complementary curriculum presents countless opportunities to examine challenging issues of professional ethics in real-world contexts.

Transactional case studies can readily incorporate many of the ethical issues that lawyers face outside of the courtroom—issues ranging from conflicts of interest, to the use of devious tactics in negotiations, to counseling the client who wishes to engage in antisocial behavior.

In clinical exercises, rather than merely discussing what would be the right or wrong thing to do, students actually *make* decisions, which can then be examined critically. This process, initially done with the guidance of a professor, lays the essential groundwork for critical self-reflection during the lawyer's career in practice.

## CONCLUSION

Like Langdell and Ames, today's law professors want to teach students how to teach themselves the most important components of skilled and principled law practice. Building on foundations laid over a century ago, Stanford faculty are preparing students for practice in a world that their forebears could scarcely have imagined.

While Langdell thought that legal scholars should imitate the scholarly techniques of other disciplines, today's curriculum at Stanford Law School is truly interdisciplinary, drawing on the resources of the Economics and Psychology Departments of the School of Humanities and Sciences, the Business and Engineering Schools, and the Stanford Center on Conflict and Negotiation.

The complementary curriculum also draws on resources beyond the University, relying on alumni and friends of the School not only for financial support, but for essential knowledge about how lawyers function as counselors, negotiators, and problem solvers in real-world situations.

The complementary curriculum does not substitute for other parts of the advanced curriculum at Stanford Law School—for courses that broaden and deepen a student's knowledge of substantive law and policy, introduce global perspectives, and develop advocacy skills. It does not substitute for courses that examine the legal system from the viewpoints of jurisprudence, history, social science, and critical legal theories—perspectives that are as important to the development of a lawyer's judgment as any technical skills.

In the end, no law school curriculum can substitute for good mentoring in a lawyer's early years of practice and for the experience of grappling with actual problems day to day. But law schools can provide a strong foundation for the ongoing, reflective self-education that is integral to any successful professional career.

Ensuring that Stanford students graduate with this foundation will not, by itself, turn the legal profession around. However, to the extent that Stanford increases the number of lawyers who possess the skills described in this article and the judgment and character to exercise them wisely and ethically, we will improve the quality of the profession and serve as a model for others in law teaching and practice. That is our goal and our commitment. ■

## NOTES

\*This article emerges from an ongoing collaboration with Linda Hamilton Krieger, Senior Research Fellow at the Stanford Center on Conflict and Negotiation, in designing a course entitled "Problem Solving, Decisionmaking, and Professional Judgment." Some of the text is borrowed from our co-authored article, *On Teaching Professional Judgment*, 69 Wash. L. Rev. 527 (1994).

*Paul Brest welcomes comments on the ideas expressed in this article.*

*His address: Office of the Dean, Stanford Law School, Stanford, CA 94305-8610. E-mail: pbrest@leland.stanford.edu*

## RECOMMENDED READINGS

### CRITIQUES OF THE LEGAL PROFESSION AND LEGAL EDUCATION

Harry Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 Mich. L. Rev. 34 (1992).

Mary Ann Glendon, *A Nation Under Lawyers* (1994).

Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (1993).

### COUNSELING AND THE LAWYER-CLIENT RELATIONSHIP

David A. Binder, et al., *Lawyers as Counselors: A Client-Centered Approach* (1991).

Robert Gordon, *The Independence of Lawyers*, 68 B.U.L. Rev. 1 (1988).

Stephen Pepper, *Counseling at the Limits of the Law: An Exercise in the Jurisprudence and Ethics of Lawyering*, 104 Yale L.J. 1545 (1995).

William Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones's Case*, 50 Md. L. Rev. 213 (1991).

### PROBLEM SOLVING AND DECISIONMAKING

James L. Adams, *Conceptual Blockbusting* (3d ed., 1986).

Max H. Bazerman, *Judgment in Managerial Decision Making* (3d ed., 1994).

Robin M. Hogarth, *Judgment and Choice* (2d ed., 1987).

### COGNITIVE AND SOCIAL PSYCHOLOGY

Robert B. Cialdini, *Influence: Science and Practice* (3d ed., 1993).

Scott Plous, *The Psychology of*

*Continued on page 30*



*Judgment and Decisionmaking* (1993).

Richard Nisbett and Lee Ross, *Human Inference: Strategies and Shortcomings of Social Judgment* (1980).

Philip G. Zimbardo and Michael R. Lieppe, *The Psychology of Attitude Change and Social Influence* (1991).

#### NEGOTIATION

Kenneth Arrow, et al., *Barriers to Conflict Resolution* (1995).

Roger Fisher, et al., *Beyond Machiavelli* (1994).

Roger Fisher, et al., *Getting to Yes* (2d ed., 1991).

#### ECONOMICS

Douglas Baird, et al., *Game Theory and the Law* (1994).

Ronald Gilson and Robert Mnookin, *Foreword: Business Lawyers and Value Creation for Clients*, Ore. L. Rev. (forthcoming, 1995).

Paul Milgrom and John Roberts, *Economics, Organization & Management* (1992).

#### ORGANIZATION THEORY

James G. March and Herbert A. Simon, *Organizations* (2d ed., 1993). ■

### AMENDMENT FEVER

*Continued from page 7*

and both powers and rights are set forth in broad and open-ended language. As Chief Justice John Marshall wrote in *McCulloch v. Maryland*, "It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur."

On the other hand, drafting amendments in general terms is fraught with dangers of its own. A generally worded amendment may contain hidden threats to the overall constitutional structure just as grave as the overt conflicts discussed above, if not more so because they are less likely to be openly debated.

Again, recall the failed balanced budget amendment. The amendment provided in general terms that "[t]otal outlays for a fiscal year shall not exceed total receipts" without supermajority authorization. The amendment appeared by its terms to be self-enforcing in the Congress: "The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts." Invisible from the face of the amendment was its serious potential to involve the other two branches in fiscal controversies that Congress could not itself resolve.

Specifically, if Congress failed to balance a budget, the president could have deemed himself authorized under the amendment to impound funds that Congress had authorized and appropriated to specific programs, or to freeze federal wages and salaries—even though the amendment did not specifically confer such authority.

And although the proposed amendment is similarly silent on the question of judicial review, it had the clear potential to unleash a torrent of enforcement litigation in the courts. Such lawsuits would have entangled the judicial branch in

questions of economic measurement and prediction for which it is surely ill equipped.

These dangers prompted the Senate, at the eleventh hour, to adopt an amendment to the balanced budget amendment that would have eliminated judicial review of controversies arising under the act. But it declined to adopt an amendment to the balanced budget amendment that would have prohibited presidential impoundment. Thus, even in its final form last March, the amendment proposed a redistribution of powers among the branches that would undermine the original assignment of the taxing, spending, and borrowing powers to the Congress.

**The Role of the Court.** How have we managed to survive more than 200 years of social and technological change with only 27 constitutional amendments? The answer is that we have granted broad interpretive latitude to the Supreme Court. Narrow construction would necessitate more frequent resort to formal constitutional amendments. Broad construction eliminates the need. Thus the Court has determined that eighteenth-century restrictions on searches of our "papers and effects" apply to our twentieth-century telephone calls, and that the command of equal protection forbids racially segregated schools even though such segregation was known to the 14th Amendment's framers. Neither of these decisions—*United States v. Katz* and *Brown v. Board of Education*—required a constitutional amendment.

Increasing the frequency of constitutional amendment would undermine the respect and legitimacy the Court now enjoys in this interpretive role. This danger is especially acute in the case of proposed constitutional amendments that would literally overturn Supreme Court decisions, such as amendments that would declare a fetus a person with a right to life,



permit punishment of flag burning, or authorize school prayer. Such amendments suggest that if you don't like a Court decision, you mobilize to overturn it.

Justice Jackson once quipped that the Court's word is not final because it is infallible, but infallible because it is final. That finality has many salutary social benefits. For example, it allows us to treat abortion-clinic bombers as terrorists rather than protesters. If every controversial Supreme Court decision resulted in plebiscitary overruling in the form of a constitutional amendment, surely the finality of its word would be undermined, and with it the social benefits of peaceful conflict resolution. The fact that we have amended the Constitution only four times in order to overrule the Supreme Court is worth remembering.

The Court itself has helped keep that number low by occasionally reinterpreting the Constitution in such a way as to obviate the need for a proposed amendment. For example, the equal rights amendment (ERA) passed by Congress and submitted to the states in 1972 would have provided that "equality of rights under the law shall not be denied or abridged on account of sex." In 1971, the Supreme Court had struck down as irrational a law preferring men over women as estate administrators. But by 1973, the Court imposed a stricter standard. In striking down a law giving wives of male military officers more automatic benefits than husbands of female officers, the Court suggested that sex discrimination is unconstitutional even if it has some rational basis. The pending ERA no doubt had an influence on the Court. But the more the Court struck down sex-discriminatory laws in the mid-1970s, the less need there was to ratify the amendment.

Something similar may be happening now in the shadow of the religious equality amendment. Last term, the Supreme Court for the first time upheld public funding of religious evangelism against

Establishment Clause challenge. The University of Virginia had refused to disburse funds raised through a mandatory student activities fee to an avowedly Christian student magazine, on the ground that it was primarily religious. The university granted such funds to nonreligious student publications. The Court held by a vote of five to four that this selective exclusion violated the free speech clause and rejected the university's argument that including the Christian magazine would violate the Establishment Clause. Thus the Court did on its own what the religious equality amendment would require: entitle religious speech to equal access to public funds.

The Court itself, of course, can squander public respect and legitimacy by changing its interpretations of the Constitution so abruptly that they appear more politics than law. But the fact that the Court itself sometimes approaches the outer bounds of reasonable interpretive practices in no way strengthens the case for readier constitutional amendment. If anything, it cuts the other way: it illustrates the very pitfalls of constitutional mutability that amendment fever would exacerbate.

## First, do no harm

For all of these reasons, we should keep in force a strong presumption against amending the Constitution. That does not mean it should never be amended. The Constitution surely should be amended on occasion—for example, when changes consistent with its broad purposes are unlikely to be implemented by ordinary legislative means. The four amendments expanding the franchise are good examples.

To their credit, advocates of some recently proposed amendments have argued that they are necessary to correct structural biases in ordinary legislation. For example, proponents of the balanced budget amendment have

argued that budget self-discipline by Congress is unavailing, for it is too easy for current legislators to impose debt on future generations who are not now around to vote. And term limits amendment advocates have argued that the self-interest of members of Congress in their own perpetual re-election makes it impossible to implement term limits by statutory means.

These are the right kinds of arguments, though ultimately unpersuasive. Many amendment-happy legislators, however, do not even bother to make such structural arguments for the necessity of their proposals. Perhaps they are merely grandstanding, while expecting to lose anyway in the supermajoritarian gauntlet Article V requires them to run. But to the extent they are serious, they should remember that it is a Constitution they are amending, and that they should not tinker with it lightly. ■

*Kathleen M. Sullivan has been a Stanford Law School professor since 1993. Previously an award-winning Harvard professor, she has argued cases before the Supreme Court, appeared as an expert commentator on the MacNeil/Lehrer Newshour and Nightline, and published articles in both academic journals and the lay press. Her current projects include the preparation, with Professor Gerald Gunther, of the 13th edition of his influential casebook, Constitutional Law.*

*The present article is excerpted from a longer piece, titled "Constitutional Amendmentitis," in the Fall 1995 issue of The American Prospect. Readers interested in a copy or bulk reprints of the complete article may call the Prospect at ☎ 1-800-872-0162.*

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# Alumni GATHERINGS



LISA ROMEREIN



LISA ROMEREIN

**Los Angeles**—"Entertainment Now, Consequences Later" was the topic of Charles Rosenberg's luncheon presentation at Jimmy's on May 24, 1995 (top). Bud Glikburg '54 and Arnold Shane '54 (center, l-r) were among the guests.

**San Francisco**—Michelle Lee '92 (below, center) joined host Sara Peterson '87 (below, left) at a get-acquainted reception for alumni and students working in the SF area.



MARCO ZECCHIN

**A**lumni in several cities around the country came together to welcome students in the Classes of '96 and '97 who were working in their cities for the summer.

Los Angeles Law Society president Geoff Bryan '80 and Shauna Jackson '91 organized a get-together at the Kachina Grill in downtown Los Angeles on June 28. Nearly 60 alums and summer associates met and mingled on the patio, which has a sweeping view of the city's skyscrapers. The congenial LA lawyers had convened just a month before for lunch and a talk on entertainment law at Jimmy's Restaurant near Century City.

Sara Peterson '87, a partner at McCutchen Doyle Brown & Eversen, invited alums and students in San Francisco to a cocktail reception hosted by her firm on July 20. San Francisco Law Society president Don Querio '72 and McCutchen partner Bill Armstrong '67 welcomed the more than 50 guests at the multigenerational affair. Both speakers encouraged students to stay in touch with the School after graduation, emphasizing the mutual benefits of ongoing alumni involvement and support.

Board of Visitors member and former Law Fund chair Marsha Simms '77 hosted a reception for New York City alums and summer associates at her home in Manhattan on July 20. Both contingents enjoyed the intimate setting and the opportunity to talk about the School and life as a lawyer.

Thanks to the hard work of Terry Adlhock, JD/MBA '72, and the hospitality of Jim Atwood '69, many alumni and students in Washington, D.C., gathered at the offices





DAVID HATHCOX



MARCO ZECCHIN



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of Covington & Burling on July 31. Stanford University trustee Ivan Fong '87 and Stanford Law School professor Michael Wald, who was then serving as deputy general counsel at the U.S. Department of Health and Human Services, were present at the reception and addressed the guests.

On August 7, the School held its annual reception in conjunction with the national ABA meeting, which took place in Chicago this year. Stanford Law School professor and California state senator Tom Campbell spoke about developments and current activities at the School, while Susan Bell, Associate Dean for External Relations, provided an update on the status of the Campaign for Stanford Law School.

All alumni in the Peninsula and San Jose area were invited to a reception at the School on September 6 to welcome the incoming Class of '98. Both recent alums and those of much longer standing (including a '36 graduate) demon-



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strated their commitment and their enthusiasm by their presence. Craig Johnson '74, Jane Goldman '90, and Ira Ehrenpreis (JD/MBA '96) addressed the new students, urging them to take advantage of the myriad learning opportunities offered

**Washington, D.C.—**(Top left, l-r) Leonade Jones, JD/MBA '73, D.C. Law Society president Terry Adlhock, JD/MBA '72, and Audrey McFarlane '90 were on hand for a summer fête chez Covington & Burling. Prof. Michael Wald (above left), then with HHS, also touched base.

**Peninsula and San Jose—**Local alums gathered to welcome the new Class of '98 (above center). Dean Paul Brest greeted Barbara Rogers (top right), spouse of Harold Rogers '55, while Albert Horn '51 (left) enjoyed meeting future Stanford lawyers.

both in and out of class. Afterwards, students and alums introduced themselves to each other and exchanged ideas.

—Shelly Wharton  
Alumni Programs







# Coming EVENTS

1996

January 6

Association of American Law Schools  
Stanford reception  
*In San Antonio*

March 19-20

Jackson H. Ralston Lecture  
featuring Helen Suzman of South Africa  
*At Stanford*

May 2-3

Board of Visitors  
*At Stanford*

October 11-13

Alumni Weekend  
With Reunions for the Half-Century Club and the Classes  
of 1946, 1951, 1956, 1961, 1966, 1971, 1976, 1981,  
1986, and 1991  
*At Stanford*

For information on these and other events, call  
the Alumni Programs Office, 415/723-2730

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