

Stanford

LAWYER

Taxed?

Prof. Joe Bankman
flags five reforms that could
make a difference

LIKE ALL POLITICIANS, SENATOR STANFORD
OFTEN TOOK A BEATING IN THE PRESS.

BUT WHEN HE SAID HE WOULD BEQUEATH
\$20 MILLION TO FOUND A UNIVERSITY IN LOVING
MEMORY OF HIS SON, THINGS GOT REALLY NASTY.

And the reporter wasn't
finished. "...we hope that
Senator Stanford will burn the
will....To create a great university Aladdin-



like out of money is as useless as
would be the building of an
institution for the relief of
destitute ship-captains in
the mountains of Switzerland."

Of course, history has proven the writer
dreadfully wrong. The university flourished,
in large part because of bequests and other
planned gifts from thousands who followed
Jane and Leland Stanford's example.

But still, the reaction to Senator Stanford's
original bequest raises a point. That, no matter
how noble the intention, giving money to

At present Stanford's great wealth can only
be used to erect an empty shell and to com-
memorate a rich man's folly
what you expect from

*The New York Commercial Advertiser,
on Senator Stanford's founding gift of \$20 million.*

support the school you love can sometimes
seem like a daunting process.

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you with everything from simple bequests to
charitable remainder trusts.

Our staff of attorneys can
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STANFORD
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GIVING

dearReader

The name's the same—*Stanford Lawyer*—and so are the ever-popular class notes. What's new is the reader-friendly format and focus. Let us know what you think.



1970

Notice anything new? We hope so. *Stanford Lawyer*, now 30 years and 50 issues old, has been renovated from the ground up, with the needs and wants of today's alumni firmly in mind.

Recognizing that you're a busy person, we are focusing on news that you can use and are unlikely to get elsewhere. And we've put the news up front where you can readily find it.



1981

To save you time, we've also shortened and condensed our articles. Those who want to delve more deeply will find telephone, Internet, and other "links" flagged by ⓘ (for information). Think—resource guide.

Our recent alumni survey confirmed the conventional wisdom: Class notes are by far the most popular feature. You'll be glad to know that we continue to publish the most comprehensive alumni notes in the law school world.

Survey respondents also said they would like to receive the magazine more often. We hereby pledge to pick up the pace, with a goal of three (rather than two) issues a year.

Finally, recognizing that the magazine had begun to look a bit stale, we have freshened our design and layout.



1996

We welcome your reactions and comments. Please address them to editor Constance Hellyer: e-mail chellyer@stanford.edu; telephone 650/723-3019; fax 650/725-0253; or write the Communications Office, Crown Quadrangle, Stanford Law School, Stanford, CA 94305-8610. ⓘ

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Stanford LAWYER

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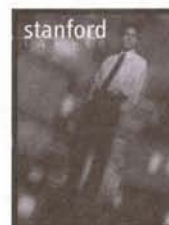
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C O V E R

*Professor Joseph Bankman
ponders our imposing tax system and
suggests some reforms.
Photograph by Richard Morgenstein*



"My personal and professional world was broadened more by this fellowship year than by any other educational experience in my life."

TOM JOHNSON,
President, CNN
White House Fellow 1965-66



"What I learned about government as a White House Fellow was the key to the opportunities that came my way."

GEN. COLIN POWELL,
former Chairman of the Joint Chiefs of Staff
White House Fellow 1972-73

Become a White House Fellow



"The opportunity to learn about varying leadership styles as well as understand how our government and our military function has greatly enhanced my capability to be a corporate leader."

PAULA H. CHOLMONDELEY,
Vice President, General Manager,
Division of Owens-Corning
White House Fellow 1982-83

Since 1965, the White House Fellowships have offered a select group of outstanding men and women a year-long opportunity to participate in government at the highest levels. Between 11 to 19 Fellows are chosen each year to serve as full-time, paid assistants to Cabinet secretaries, executive branch agency heads and senior White House staff. The nearly 500 alumni of the program have gone on to become leaders in all fields of endeavor, fulfilling the fellowship's mission to encourage active citizenship and service to the nation.

SELECTION CRITERIA

- Applicants must be U.S. citizens.
- Employees of the federal government are not eligible unless they are career military personnel.
- Applicants should be out of school and working in their chosen professions.
- Applicants are expected to have a record of remarkable achievement early in their careers; the skills required to serve at the highest levels of government; the potential to be leaders in their professions; and a proven commitment to public service.
- Fellowships are awarded on a strict non-partisan basis.

FOR MORE INFORMATION

Contact the President's Commission on White House Fellowships:

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Web: http://www.whitehouse.gov/wh_fellows

news Briefs

F A L L 1 9 9 7

A quick update on your Law School, its impact, and ways you can enjoy its resources and activities.

Rhode sets agenda for the national law schools association

Ethics expert plans national pro bono initiative

FACT: American lawyers devote an average of just 1/2 hour per week to pro bono work; many do none at all. At the same time, studies show, some 85 percent of the legal needs of the poor aren't being met.

Can law schools help by doing more to promote public service and pro bono involvement among their students and graduates?

Stanford professor Deborah L. Rhode thinks so, and as the incoming president of the Association of American Law Schools she is set to establish the first AALS presidential commission on the question.

Rhode will be inaugurated January 8 during the 1998 AALS meeting in San Francisco. Voted president-elect at the 1997 meeting, she has declared "the professional

responsibilities of professional schools" the theme of the upcoming meeting and her year-long presidency.

At Stanford, Rhode founded the Keck Center on Legal Ethics and the Legal Profession. Her writings include an innovative casebook, *Professional Responsibility: Ethics by the Pervasive Method* (Little, Brown, 1994). This year she won an Emma from the National Organization for Women for her *National Law Journal* column, and was named to Stanford's McFarland professorship (see page 10).

Rhode's Stanford predecessors as AALS president are Nathan Abbott (1904), Marion Rice Kirkwood (1934), Samuel D. Thurman '39 (1962), Joseph T. Sneed (1968), and Charles J. Meyers (1975).

① AALS press release: <http://www.aals.org>. Rhode: <http://www-leland.stanford.edu/group/law/faculty/rhode.htm>

New light on stock fraud suits

Stanford creates on-line resource

Attorneys interested in securities fraud litigation now have what the *National Law Journal* terms a "mecca" on the Web. Other parties likely to benefit from a visit include investors, and—says Professor Joseph Grundfest '78—"CEOs and financial officers, judges, policymakers and legislators, scholars, journalists, and the public."

The mecca is Stanford's new Securities Class Action Clearinghouse, the nation's first and so far only "Designated Internet Site" for securities fraud case documents. Introduced on December 6, the Clearinghouse has been hailed in both the law and business press and honored as a finalist in the Education & Academia category of the 1997 Computerworld Smithsonian Awards.

Asked if the Stanford Clearinghouse favors plaintiffs or defendants, Grundfest replied: "Neither. We see information as neutral. Our clearinghouse simply 'opens the docket' and makes the



Deborah Rhode, AALS leader

process more transparent and accessible to all," the former SEC commissioner explained. "That's where the School can make the most valuable contribution."

What is the Clearinghouse? A one-stop, on-line collection, free and open to all, of legal documents filed in class action suits alleging securities fraud.

SCOPE: Federal court documents filed since passage of the Private Securities Litigation Reform Act of 1995, including docket sheets, briefs, orders, and opinions. Also a growing number of state court actions.

FEATURES: "Box Score" totals of number and types of complaints; full-text search capability; individual

docket summaries; index; links to other relevant websites; and e-mail registration for updates.

RESEARCH FINDING: Of the 65 complaints analyzed so far, 59 percent allege accounting fraud and 55 percent allege insider sales.

FACULTY HEAD: Professor Joseph A. Grundfest '78, director of the School's Roberts Program for Law, Business, and Corporate Governance and inaugural holder of the W.A. Franke Professorship in Law and Business (see page 9).

WEBSITE TEAM: Michael P. Perino, assistant director of the Roberts Program; Joan Lambert, associate director of Stanford's Digital Law Project; and Paul Lomio, Erika Wayne, and Rilla Reynolds of Stanford's Robert Crown Law Library.

SPONSORS: Stanford Law School, U.S. Securities and Exchange Commission, and U.S. District Court for Northern California.

FUNDING: Seed money provided by George R. Roberts. Continuing support from The National Center for Automated Information Research, NASDAQ Stock Market, and Stanford Law School. Equipment and software donated by Netscape, Apple, and Sun Microsystems. Continuing support is being sought.

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① Website: <http://securities.stanford.edu>. Clearinghouse: 650/725-0802; e-mail director@securities.stanford.edu



Grundfest (right) with website codevelopers (clockwise) Erika Wayne, Michael Perino, Rilla Reynolds, and Paul Lomio

Professors in the news & on the air



Mann assists Supreme Court

Some \$1.4 billion in escrowed oil lease revenues hung in the balance as the U.S. Supreme Court considered the report of J. Keith Mann, Special Master in a long-running territorial dispute between the United States and the State of Alaska. Also at stake was the seaward reach of the Arctic National Wildlife Refuge. Prof. Mann's 565-page report provided a comprehensive study of the legal ownership of the submerged lands.

On June 19 the Court, with Justice Sandra Day O'Connor '52 writing the opinion, accepted Mann's award of the territory off the National Petroleum Reserve to the U.S., as well as his boundary off Prudhoe Bay. A majority of the Court went further by also

denying Alaska the lagoons off the Wildlife Refuge.

① See *Report of the Special Master, U.S. v. Alaska*, U.S. Supreme Court, October Term, 1995, No. 84 (Original). Also: Linda Greenhouse, "Justices Back U.S. in Dispute with Alaska over

ley of Columbia and political scientist Nelson W. Polsby of UC-Berkeley. These modern essays, like the originals, explore the underlying principles of our founding document. They also appeared individually in the press before

known for her lucid commentary on *Nightline* and the *NewsHour* with Jim Lehrer. At Stanford, she is the inaugural Stanley Morrison Professor and winner of the 1996 Hurlbut Award for Excellence in Teaching.

① Book: Norton, 1997, \$23. Video: 1-800/828-4727.



Coastal Areas," *New York Times*, June 20, 1997.

Sullivan writes new "Federalist Papers"

Kathleen M. Sullivan is one of three noted scholars tapped by the Twentieth Century Fund to write *New Federalist Papers: Essays in Defense of the Constitution*. The other authors are historian Alan Brink-

being published in book form.

Prof. Sullivan expanded the discourse to television by moderating a Fred Friendly Seminar, *Liberty and Limits: The Federalist Idea 200 Years Later*. Her program, released by PBS on April 11, was called "The Price of Politics: Electing Our Leaders."

A seasoned member of the Supreme Court bar, Sullivan is widely

Barton helps find way to share with Third World

Is there a good way for industrialized nations to share profits from genetic material they find in developing countries? UC-Davis researcher Pamela Ronald wanted to know. She had sequenced a potentially valuable gene providing resistance to a widespread plant blight. Recognizing that her achievement grew out of work at the International Rice Research Institute in the Philippines, and that the gene itself had come from a rice strain found in West Africa, she wanted to return some of the benefits of its commercial development.

Stanford Prof. John Barton, an ex-



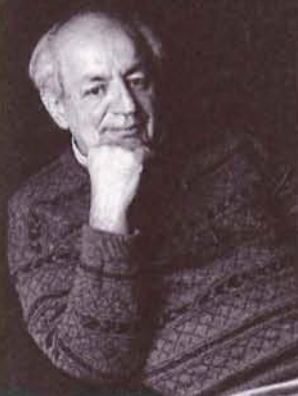
pert on intellectual property and developing countries, helped design a solution: a Genetic Resources Recognition Fund to finance graduate fellowships for promising Africans. UC-Davis, which is patenting the gene, agreed to create the fund, to which it and its licensees are pledging a portion of future royalties.

Ronald and Barton, who is Stanford's George E. Osborne Professor, hope that the UC fund will be a model for other research universities utilizing genetic resources from poor nations.

① Press release: (916) 752-1930, e-mail pjbailey@ucdavis.edu. Also: David Perlman, "Rice-Gene Scientist Sharing Success with Poor Nations," *San Francisco Chronicle*, A-13, May 26, 1997.

Baxter honored in Washington

William F. Baxter, former chief of the U.S. Department of Justice's Antitrust



increasingly diverse communications industry.

① See R. Lowenstein, "Antitrust Enforcers Drop the Ideology, Focus on Economics," *Wall Street Journal*, February 27, 1997.

Gunther speech shown nationwide

Gerald Gunther garnered another honor as Morrison Lecturer for the 1996 convention of the California State Bar. The emeritus William Nelson Cromwell Professor must have given quite a speech, because C-Span broadcast it January 25 on its *America and the Courts* program.

① Videotape (#75878): 1-800/277-2698.

Division, returned to the DOJ in October to receive its prestigious John Sherman Award and commemorate the prosecution and settlement of *U.S. v. American Telephone & Telegraph Company*. Baxter's predecessor, Thomas Kauper of the University of Michigan, was similarly honored. Attorney General Janet Reno joined then-Antitrust chief Anne K. Bingaman '68 in celebrating

PBS documentary entitled "Crime and Punishment in America." Released in January, the special included on-camera commentary by the School's Marion Rice Kirkwood Professor.

① Videotape (#CPIA901): 1-800/344-3337.

New faces of 1997

Arriving professors expand business law program

Emboldened by the



STRNAD

progress of the current fundraising campaign, the School has begun to rebuild the faculty.

This fall brings three new professors: two recruited from other faculties and one from law firm practice. All three will teach in the areas of business and economics.

"Added to our existing faculty, these newcomers will give Stanford a business curriculum second to none in the country," says a pleased Dean Brest.

Here are the new professors:

Jeff Strnad

Finance and tax

Strnad is one of the nation's leading scholars in the growing field of law and economics. He earned his AB in physics from Harvard (1975) and both a JD (1979) and a PhD in economics (1982) from Yale.

Strnad comes to Stanford with 17 years' experience chiefly and conjointly at the University of Southern California Law Center and the California Institute of Technology. He was



KLAUSNER

named in 1989 to USC's Milliken professorship in taxation; at Caltech he was professor of law and economics.

Strnad's contributions to the Stanford curriculum will be in finance and tax law—the focus also of his considerable research and scholarship.

Michael Klausner

Corporations and banks

Klausner is a highly regarded young scholar in corporate law. He began teaching in 1991 at New York University, which awarded him tenure in 1995.

Klausner's work is grounded in joint MA (economics) and JD degrees from Yale (1981); a Supreme Court clerkship with Justice William Brennan; practice with Paul, Weiss, Rifkind, Wharton & Garrison, Dunn & Crutcher; and a year (1989-90) as a White House Fellow and Deputy Associate Director of the Office of Policy Development.

Also acquainted with Chinese law and business, Klausner spent a year in Gibson Dunn's Hong



COLE

Kong office and another year as a visiting scholar and lecturer at Peking University.

Klausner's main teaching areas will be business associations and regulation of financial institutions.

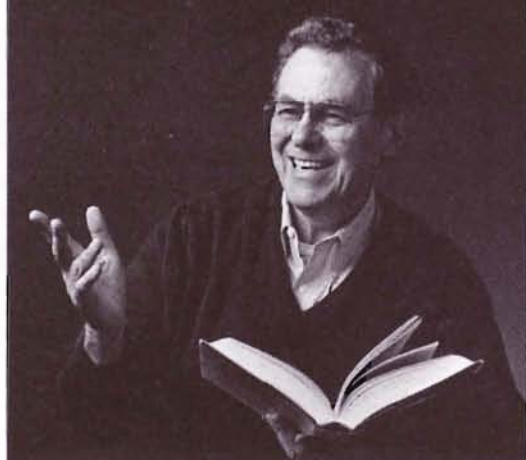
G. Marcus Cole

Contracts and bankruptcy

Cole is entering academia with law firm experience in bankruptcy, commercial, and ecclesiastical law. His practice has been with Mayer, Brown & Platt of Chicago.

Cole is a graduate of Cornell, where he

Friedman



the two history-making academics.

Baxter, who is now William Benjamin Scott and Luna M. Scott Professor, Emeritus, continues to work on behalf of competition in the

Friedman book sparks TV special

Lawrence Friedman's *Crime and Punishment in American History* (Basic Books, 1993) inspired a two-hour

earned a BS in applied economics (1989), and of Northwestern Law School (JD, 1993), where he was editor-in-chief of the *Northwestern Journal of International Law and Business*. In law school he also served as teaching assistant for a torts course and as a member of the school's national Frederick Douglass Moot Court Team. A clerkship with Judge Morris Sheppard Arnold of the U.S. Eighth Circuit Court of Appeals followed.

Now a Stanford assistant professor, Cole will teach contracts and bankruptcy law.

① **Faculty information:** <http://www-leland.stanford.edu/group/law/faculty>

Faculty assets

Five noted professors secure endowed chairs

- A former U.S. Assistant Attorney General
- A recent SEC commissioner
- The coauthor of a leading tax law text
- A widely consulted expert in international business and environmental law
- The president-elect of the Association of American Law Schools

All have been newly named to endowed professorships.

Two of the five appointments involve new chairs created by gifts to the ongoing Campaign for Stanford Law School. The other three represent the succession of a new generation of scholars into established chairs.

"Endowed professorships," says Dean Brest, "undergird our teaching and research efforts and strengthen the bonds between prized professors and the School."

Barbara Allen Babcock
Judge John Crown
Professor of Law

To her string of firsts—including first tenured woman at Stanford Law School—Barbara Babcock can now add "first Judge John Crown Professor of Law."

The chair was created this spring by the Crown family of Chicago to honor Judge Crown, a seasoned jurist and Stanford graduate (AB '51) who with his family had provided lead gifts for the construction of the School's Crown Quadrangle and Robert Crown Law Library.

Judge Crown passed away as the professorship was being established but had been pleased with the plan and with the harmony between his own interests—evidence, procedure, advocacy, and professional responsibility—and

those of the professor destined to be the inaugural chairholder.

Babcock has, in addition to leading the U.S. Justice Department's Civil Division (1977-79), headed the Washington, D.C., public defender service and authored a text on civil procedure. She continues to speak out eloquently in defense of the jury system and on other litigation issues.

① **Campaign Brief #4** (July 1997). Babcock: <http://www-leland.stanford.edu/group/law/faculty/babcock.htm>

Joseph A. Grundfest

W. A. Franke Professor of Law and Business

Former SEC commissioner Joseph Grundfest has been appointed to the new W. A. Franke Professorship in Law and Business. Grundfest directs the Roberts Program for Law, Business, and Corporate Governance—the program the new Franke chair was created to support.

An expert in corporate law, securities regulation, and mergers and acquisitions, Grundfest recently launched the nation's first official on-line Securities Class Action Clearinghouse (see page 5).

Grundfest joined the faculty in 1990 after serving in Washington, D.C., as counsel and senior economist with the

Council of Economic Advisers in the Office of the President (1984-85) and then as a commissioner on the Securities and Exchange Commission (1985-90).

The new professorship was established this spring by gifts from W. A. (Bill) Franke '61, chairman and CEO of America West, and George Roberts, founding partner of Kohlberg Kravis Roberts & Co. and a major benefactor of the School's Roberts Program.

① **Campaign Brief #4** (July 1997). Grundfest: <http://www-leland.stanford.edu/group/law/faculty/grundfes.htm>

Joseph Bankman

Ralph M. Parsons
Professor of Law and Business

One of the nation's foremost tax scholars, Joseph Bankman has

served as president of the Association of American Law Schools' Tax Section and coauthored two books entitled *Federal Income Taxation*: the 11th edition of a classic casebook and a volume of examples and explanations (both Little, Brown, 1997).

Bankman came to Stanford in 1989 from the University of Southern California Law Center, where he had been chosen 1985 "Teacher of the Year." Before entering teaching, he practiced tax law with Tuttle & Taylor of Los Angeles. (Bankman suggests some pragmatic reforms to the tax system in the article beginning on page 14.)

Bankman's predecessor in the Parsons chair, Kenneth E. Scott, has taken emeritus status but continues to teach

STUDENTS

Building Community Day



Some 100 law students turned out April 26 to help East Palo Alto residents beautify their neighborhoods.

Organizers included (below) Suzanne McKechnie (1L), Manuel Herrera (EPA), and Noah Sachs (1L).



courses related to bank and thrift institution regulation.

The Parsons professorship was established in 1980 to strengthen the School's law and business program and to honor Ralph M. Parsons, founder of the international engineering and construction company that bears his name.

① **Bankman:**
<http://www-leland.stanford.edu/group/law/faculty/bankman.htm>

Thomas C. Heller

Lewis Talbot and Nadine Hearn Shelton Professor of International Legal Studies

Thomas Heller is at the forefront of efforts to break the international impasse over global warming. Also an expert on international law and economics, he has been consulting on climate change issues with the World Business Council for Sustainable Development.

The widely traveled professor helped found and currently codirects the postgraduate Stanford Program in International Legal Studies (SPILS). He is also a senior fellow of the Stanford Institute for International Studies and a former director of Stanford's Overseas Studies Program.

The Shelton professorship was created in 1972 with gifts from Talbot Shelton (AB '37) and funds from the Ford Foundation to support international studies. The previous holder, Mauro Cappelletti, is now emeritus.

① **Press release:**
<http://www-leland.dept/news/relaged/970106heller.html>.
Heller: <http://www-leland.stanford.edu/group/law/faculty/heller.htm>.
SPILS: 650/723-2978; or e-mail spils@forsythe.stanford.edu

Deborah L. Rhode

Ernest W. McFarland Professor of Law

Deborah Rhode has been appointed to a professorship created by and named for a devoted public servant and alumnus. Ernest McFarland '22 was a U.S. senator (1941-52) and majority leader (1951-52), governor of Arizona (1955-59), and a state supreme court justice (1965-71) and state chief justice (1968-71).

The mantle of McFarland Professor fits Rhode's own deep commitment to public service. Not only is she about to assume the presidency of the Association of American Law Schools (see page 5), but she is preparing to make public service and pro bono work a focus of her term.

Rhode succeeds Barbara Babcock in the McFarland chair following Babcock's appointment to the new Crown professorship (see page 9).

① **Rhode:** <http://www-leland.stanford.edu/group/law/faculty/rhode.htm>

FACULTY SCHOLAR

John J. Donohue III

John A. Wilson Distinguished Faculty Scholar

John Donohue joined the faculty in 1995 as one of the most sought-after legal scholars of his generation. Combining a Harvard JD with a Yale PhD in economics, he applies economic analysis to legal issues in corporate finance, employment discrimination, and criminal law.

The fund supporting the Wilson post was established in 1996 by Alan Austin '74, his colleagues at Palo Alto's Wilson Sonsini Goodrich & Rosati, and other friends of Wilson Sonsini founding partner John A. Wilson. Faculty scholar funds like the new Wilson fund provide research support to a succession of up-and-coming faculty members.

① **Campaign Brief #3** (March 1997). Donohue: <http://www-leland.stanford.edu/group/law/faculty/donohue.htm>

CAMPAIGN

Progress on all fronts

Alumni rally for expanded fundraising effort

● More than 3,000 alumni and friends of the School have so far donated to the Campaign for Stanford Law School. The circle of supporters continues to grow as the Campaign evolves and new leaders join the drive. Some recent highlights:

● The initial \$50-million goal for the Campaign was passed by the end of 1996. Efforts are now focused on a goal of at least \$75 million, which is closer to the School's true level of need.

● Warren Christopher '49, former secretary of state and presidential Medal of Freedom holder, joined the Campaign in March as co-chair.

● John Freidenrich '63, recent president of the Stanford University Board of Trustees, joined the Campaign Steering Committee.

● The participation rate of Stanford Law School alumni rose to 34 percent in 1995-96, the highest level in recent years. Hats off to Chuck Koob '69, outgoing Law Fund chair.

● The School's newest alumni, the Class of 1997, set a student-donor participation record of 69 percent and \$8,593 in actual gifts. Thanks go to six farsighted alums whose matches made each student dollar worth \$7 to the School.

① <http://www-leland.stanford.edu/group/law/campaign/>



Seen and heard

Guest speakers shed light on the High Court, war crimes, and civil rights.

"I thought the Supreme Court took Cruzan—the right-to-die case—a little too soon. We would be well advised to wait and take advantage of the wisdom and deliberation of the appellate courts."

—Anthony Kennedy, Associate Justice of the U.S. Supreme Court, September 9, 1996, in Kresge Auditorium.



Justice Kennedy talked of civility and answered questions.



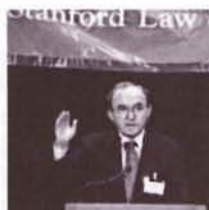
Deval Patrick, fresh from the DOJ, taught a course in civil rights law.

"It's important to enforce civil rights laws the way other laws are enforced: without fear, without favor, and without apology. We can't enforce these laws in a tentative way and expect them to be respected by American citizens."

—Deval Patrick, Herman Phleger Visiting Professor of Law, in his spring-term course.

"If the international community doesn't follow through [with arrests], it sends a very bad message to victims in all countries."

—Richard J. Goldstone, Justice of the South African Constitutional Court and recently chief prosecutor for the U.N. International War Crimes Tribunal for Rwanda and the former Yugoslavia, October 12, 1997, in Kresge Auditorium.



Justice Goldstone urged action against war criminals.

"Racial preferences have indeed benefited people—talented people who would have succeeded anyway. For people mired in poverty, affirmative action is stunningly ineffective."

—Clint Bolick, Director of Litigation, Institute for Justice, October 2, 1996, in the F.I.R. Building.



Affirmative action was debated by Clint Bolick...

"I would love a color-blind America. But we're not there yet, and believe me, affirmative action isn't what keeps us from getting there."

—Eva Jefferson Paterson, Executive Director, Lawyers' Committee for Civil Rights, San Francisco, at the October 2 event.



...and Eva Paterson.

Web resources

Cloning debate

"Cloning Sheep; Cloning People?"

Transcript of March 5 panel discussion by scientists, ethicists, and lawyers, including Professor Henry (Hank) Greely. Transcribed by Stanford Technology Law Review.

<http://stlr.stanford.edu>

Securities litigation

Securities Class Action Clearinghouse (see pages 5-6).

<http://securities.stanford.edu>

Faculty who's who

Names, titles, and biographical information on Stanford Law School professors.

<http://www-leland.stanford.edu/group/law/1996/faculty.htm>

Faculty publications

A continuously updated list of available writings by the School's scholar-teachers.

<http://www-leland.stanford.edu/group/law/library/what/lawbib.htm>

Alumni events

The latest plans for Alumni Weekend 1997, along with information on get-togethers in your area and elsewhere.

Visit this website frequently!

<http://www-leland.stanford.edu/group/law/alumni/index.htm#weekend>



from the Dean

Stanford has initiated a dialogue
between law school deans and law firm leaders from around the
country. Here is a report on the first exchange.

by Paul Brest

Richard E. Lang Professor and Dean

An unprecedented event took place in Washington, D.C., this past January—a day-long conversation between the deans of leading law schools and partners of some of the nation's most prominent law firms.

The idea for the January discussion grew out of my own experience as dean—10 years during which I have spent as much time with practicing lawyers as with law professors, discussing common concerns of the legal academy and practicing bar. The deans of Chicago, Harvard, and Yale readily joined Stanford in organizing a broader forum for an exchange of views on these issues.

To encourage candid, face-to-face conversations, we limited the invitation list to 10 law schools and to the

managing or senior partners of 25 firms. Law school attendees ultimately included the dean and a faculty member from Columbia, Georgetown, Harvard, Michigan, New York University, Pennsylvania, Stanford, Texas, Virginia, and Yale.

The law firms represented major employers of the schools' graduates. Stanford alumni who participated included Jim Gaither '64 (Cooley Godward), John Larson '62 (Brobeck), Duane Quaini '70 (Sonnenschein), and Marsha Simms '77 (Weil, Gotshal), as well as Bryant Garth '75 of the American Bar Foundation.

The Ethos of the Profession

The working meeting began with a wide-ranging session entitled "The Ethos of the Legal Profession Today." Dean Anthony Kronman (Yale), Professor David Luban (Maryland), Barbara Paul Robinson (Debevoise & Plimpton), and Wesley Williams (Covington & Burling) each offered their perspectives and then

opened the floor for discussion.

Participants cautioned against a romanticized view of the profession's past or a Panglossian view of its present status, and against the polar tendencies to be fatalistic about economic forces or to underestimate their real power.

They asked how lawyers and law schools could improve the collegiality, civility, public responsibility, and personal fulfillment of law practice.

They questioned whether pro bono service has declined and if so, why.

They also wondered whether professional standards or regulations should do more to protect third parties and society against the abuse of power by clients and their lawyers.

Some enthusiasm was expressed for the proposal that law firms adopt mission statements reflecting their particular firm cultures and values.

Personal and Professional Life

The second session concerned "Issues of Personal and Professional Life." Sociology professor Cynthia Fuchs Epstein (City University of New York) began by summarizing her study, commissioned by the Association of the Bar of the City of New York, on the status of women in large law firms. Professor Epstein noted that relatively few women are partners in such firms. She then outlined some of the barriers to women's success, including the lack of strong mentors and of opportunities for networking and rainmaking, as well as the problem of balancing professional and family responsibilities.

Professor David Wilkins (Harvard) followed with a discussion of why there are so few black lawyers, and especially black partners, in large law firms. Minority attorneys confront many of the same problems as women, such as the absence of mentors and networking opportunities, he observed. These associates may be further handicapped by fear that their mistakes will be particularly visible to their supervising partners. This can lead them to avoid challenging assignments, to be overly cautious in their work, and to choose litigation rather than corporate work—all choices with

potentially career-limiting or damaging results.

Following one participant's observation that women and minority lawyers are, in effect, canaries in the coal mine of the legal profession, the discussion broadened to consider various "quality of life" issues faced by all lawyers in large firms. There was general agreement that the disjunction between associates' expectations and the reality of practice contributes to dissatisfaction, and participants thought that both the expectations and the reality were in need of adjustment.

Professional Education

The meeting's third session, "Preparation for Practice," featured Dean Robert Clark, Professors Todd Rakoff and David Wilkins (all of Harvard), Michael Cooper (Sullivan & Cromwell), and Donald Kempf (Kirkland & Ellis). The ensuing discussion reflected a consensus that law schools do quite well in teaching students to think like lawyers, as well as introducing them to substantive areas of law and to the infrastructure of the legal

system. Some law firm participants were pleasantly surprised to learn of efforts by law schools to integrate ethics into the mainstream curriculum.

While enthusiasm was expressed for teaching some practical skills in law school, the consensus was that most

such skills are best acquired during the early years of practice, through mentorship and in-firm training. Much of the discussion focused on legal writing. Practitioners informed the

deans and faculty that young lawyers come to firms with inadequate communication skills: They are unable to express themselves clearly and succinctly and do not know how to communicate to the variety of audiences that lawyers must address. Practitioners and faculty agreed that law schools should offer more advanced legal writing. (This has been an ongoing project at Stanford, which I shall report on during the coming year.)

Continuing the Dialogue

In a wrap-up session moderated by Chicago dean Douglas Baird '79, practitioners and academics agreed that the meeting should be

repeated, with focused discussions of the chief issues raised.

Responses to a follow-up questionnaire indicated that participants found the conversation valuable. "A very constructive first step toward establishing ongoing communication" was a representative assessment. Law firm participants emphasized the value of not only "bridging the gulf between the concerns of practicing lawyers and the legal academy," but also "discussing issues in big-firm practice with the leaders of other national law firms." Academic participants cited "very useful insights into how the top of the profession thinks about changing professional norms and economic demands."

The other deans and I are committed to continuing and deepening this valuable dialogue. ☞

Dean Brest welcomes input from practicing lawyers and others with comments on legal education. Call the Dean's Office at 650/723-4455 or e-mail pbrest@stanford.edu

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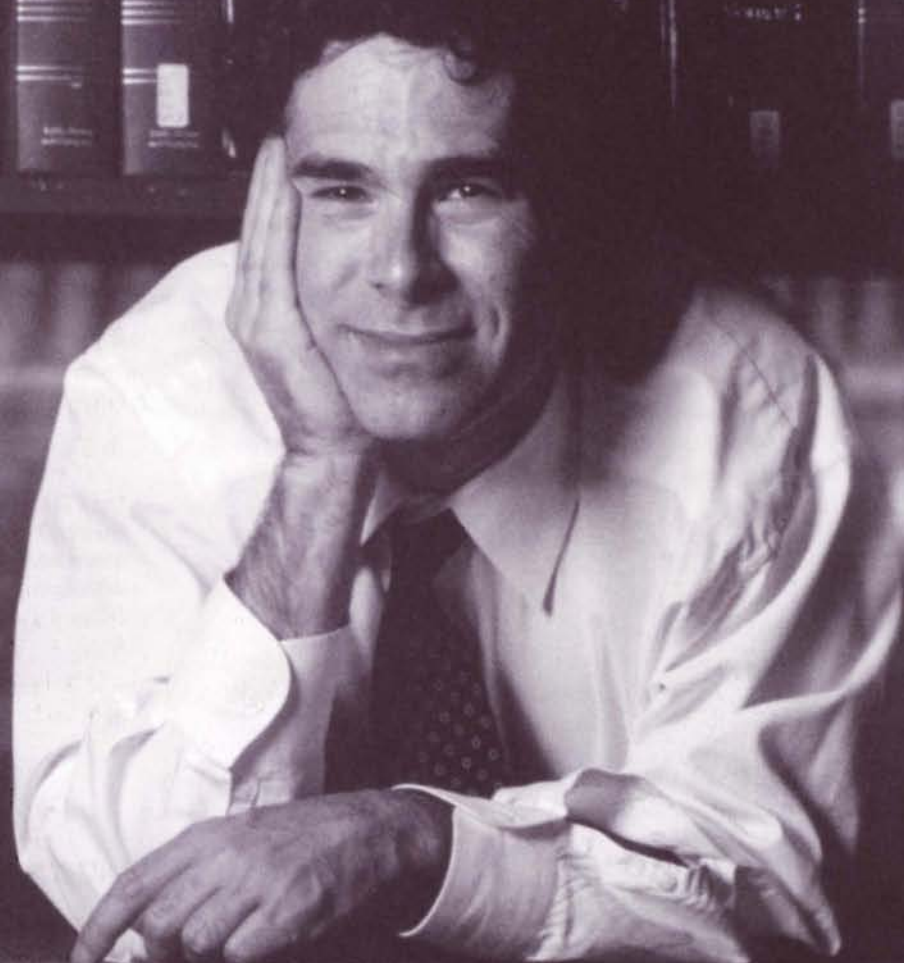
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taxReform

Five sensible ways to lighten the taxpayer's burden. (You might never have to file again.)

by Joseph Bankman

Ralph M. Parsons Professor of Law and Business

Americans have objected to taxes for longer than there has been a United States. In fact, tax resistance in colonial days was cloaked with patriotism. Times have changed, but opposition to taxation is alive not only in odd cults, but also in mainstream efforts to reform and reduce taxes in this country. Taxes remain, as the saying goes, a "hot-button issue."

Nonetheless, Americans can't seem to agree on a remedy. Proposals range from a flat tax or a consumption (VAT) tax to a further accretion of deductions, exemptions, and credits in the current system. Some of the ideas are economically—or at least politically—unworkable. But others are sensible and overdue.

We asked Professor Bankman, coauthor of the book *Federal Income Taxation*, what reforms he would recommend. Here are his top five suggestions. —ED.

1

Eliminate the corporate income tax

Capital arising from corporate profits is subject to an enormous hidden double-level tax that by any standard—liberal or conservative—does not make sense. First, the corporation pays taxes on its income; then the individual shareholders pay tax on it again when they receive dividends or sell their shares.

There's a lot of fuzzy thinking on this issue. When politicians reduce individual tax rates, they commonly compensate for it by increasing corporate rates at the same time. So, many tax reform proposals that might seem to be in an affluent person's self-interest—such as reductions in the tax rate on capital gains or on high wages—actually turn out to be neutral or worse, because of offsetting increases in the effective tax rate on corporations in which they are shareholders.

More generally, our tax system is incoherent in the way it treats capital. Some forms of capital are taxed very heavily, while others are taxed lightly. For example, capital invested in stock and publicly traded companies is heavily taxed; investments in real estate and passive investments in certain financial instruments are taxed relatively lightly.

We need a more rational system of taxing capital. We should start by doing away with the corporate income

tax. If we did that and then collected an equivalent amount of money through slightly more progressive tax rates overall, we could increase the size of the economic pie, with absolutely no serious change in the relative tax burdens of high- and low-income groups.

There have been many other responsible plans—put forth by Democratic and Republican administrations alike—to integrate the corporate and the individual income tax. Any of them would be better than the system we have now.

2

Go after unreported income

A lot of potential tax revenue is lost due to poor compliance with tax laws by individuals. Many successful

small-business owners just pocket cash. One study of general contractors indicates that on average they report just half of their income. No aggressive tax planning by any large publicly traded enterprise is as effective as simply putting cash in your pocket and not reporting it.

There are many ways to get at unreported income. We could, for example, identify property purchased by people who habitually pay little or no income tax. There are political reasons why—except for suspected criminals—this isn't done; checking on property ownership smacks of Big Brother. But if the government got a share of that unreported income, it would be an enormous boon: We could have lower rates for everyone. I think people who pay honest taxes would regard the Big Brother trade-off differently if it were tied to, say, a 5 percent tax cut—which it could be, overnight.

We also would have a more productive society. Many people select jobs—as service providers or retailers, for example—in part because those jobs provide tax-free cash income. If all income from all occupations were subject to the same tax rate, workers would move to jobs that are the most productive to the economy.

3

Weed out pointless provisions

Suppose you have a vacation home that you also rent out. Is it, from a tax perspective, a vacation home or a rental? Which expenses

can you deduct? And what do you do about costs like mortgage interest, property tax, or roof repairs that are not divided very neatly?

The answer depends in a complicated way on how often you use the vacation home and how often you rent it out. The aim of the law here is laudable—to prevent taxpayers from deducting costs attributable to personal use. Unfortunately, the rule is overly complex and nearly impossible to understand and apply.

This is an example of how our law, in an effort to fine-tune things, has become unbelievably complicated. No one can sort through these kinds of rules without an accountant or tax lawyer. You need only be affected by one such section to become a foe of the IRS for life.

That sort of tax fine-tuning is a senseless strategy. It makes everyone suffer from complexity without significantly improving fairness.

4

Reward pension supersavers

The acronym ERISA stands for Employment Retirement Income Security Act, but it is sometimes derisively referred to as Every Ridiculous Idea Since Adam. There are certainly many good parts of ERISA—like ensuring that your employer does not invest your pension money on the roulette wheels in Monte Carlo. But ERISA is extremely complex, and its tax aspects have a very weak theoretical foundation.

The tax advantages for a company in having a pension plan depend on the plan being “antidiscriminatory.” In this context, that term means that the plan does not discriminate on the basis of income: The janitor and the CEO both get the same percentage of benefit for saving toward retirement.

I believe this is an irrational way either to stimulate savings or to assure lower-paid workers of an adequate retirement.

Take the janitor: He or she pays for a pension directly, in the form of payroll deductions, and/or indirectly, through a reduced overall salary. This may on the face of it be equal treatment, but there's no doubt that a janitor suffers more from having a reduced salary than does the CEO.

At the same time the CEO, who would most likely be saving anyway, gets a tax benefit for the first and every dollar saved through an IRA or an employer-provided pension plan. In his or her case, the tax benefits are not stimulating savings so much as presenting a windfall.

We should eliminate the anti-discrimination requirement completely, so that there is no requirement that employers cover all employees equally.

What about the janitor's retirement years? That is tied to what we do about other things, such as Social Security. If we can keep our current Social Security safety net, we may not need to require company pension programs for the average worker. If, however, we cannot afford to keep Social Security up and must

paternalistically require our janitor to save, then we ought to require that all janitors and other employees save, whether or not their companies happen to have pension plans.

Second, we should stop rewarding high-paid executives and other wealthy individuals for their first dollar of savings. Why give tax benefits to people for doing what they would do anyway? We would be much better off focusing on their last dollar of savings.

We should follow the advice of my former colleague, Deborah Weiss, and give tax benefits only to supersavers—people who set aside more than the usual at his or her salary level. That's a more efficient way to stimulate savings.

5 **Institute automatic filing**

The odium attached to taxes isn't just about the money; it's about the obligatory nuisance of filing.

In fact, about two-thirds of returns presently require only a few personal details and the information from two pieces of paper. Even so, filing can seem frightening and burdensome to someone unfamiliar with paperwork. You have to save records. You have to sit down and fill out the form. You worry about whether all the documents have come in, whether you'll finish in time, when the refund will come in, and so on.

We should accelerate and expand what is now a gradual move toward

electronic filing, by having employers file their employees' tax returns for them. With filing at the source, we could completely eliminate the burden of filling out tax returns for millions of people. It could be the default filing method for the average person.

Depending on the specific plan implemented, anywhere from 50 to 90 percent of taxpayers could be spared. These are people with no extraordinary personal circumstances, who have straight wage income and run-of-the-mill returns. This arrangement may also work for people with certain other sources of income who consent in advance to allow their income tax to be based on information that is already filed electronically with the IRS.

Most people have employers who are electronically reporting to the IRS their wage statements anyway. And banks electronically report to the IRS most mortgage expense and interest income. The same IRS computer that gets all this information could calculate a typical person's tax liability. You would not have any filing responsibility at all. Since you would still be subject to wage withholding, you would not even have any responsibility to send in a check.

You would of course get a copy of all these reports, and you could always override this default method if you chose to.

Automatic filing would not work for everyone. It would not be best for you if you need to take advantage of certain major deductions.

Nor would it work if your employer doesn't know, for example, whether you have a disabled child or high interest on a car loan.

But I believe millions of taxpayers would make the trade-off of giving up tax breaks for such situations in return for being freed of the burden of filing a tax return.

If we could completely eliminate the aggravation of filing for the average person, a lot of the dissatisfaction with the tax system would go away. That would be the smartest tax reform we could make. ☞

Joseph Bankman is the School's new Ralph M. Parsons Professor of Law and Business (see page 9). This article is based on a February 21, 1997, interview with editor Constance Hellyer and freelance writer John Boykin.

What about a flat tax?

For years tax critics have tried to balance the simplicity of a flat tax with the fairness of a graduated tax. No proposal has made much headway.

The reason is that there is a fundamental conflict between a tax that's the same for everyone and a tax that takes into account characteristics like whether someone is wealthy or poor, healthy or disabled, using their

money for schooling or to make a fashion statement, investing in a socially desirable way or pillaging the environment, and so on. Whenever you take factors like those into account, you get complexity.

To be sure, our current law gives us the worst of both worlds: unbelievable complexity without much perception of fairness. Various flat tax proposals are often trotted out as appealing solutions.

The loudest cheers in the 1996 presidential campaign came when Steve Forbes proclaimed that, with the flat tax plan he proposed, we could "drive a stake in the heart of the IRS and kill it dead." At first, people loved his proposal to eliminate loopholes and make the tax system fairer by making it the same for everyone. Some supporters assumed that the wealthy in this country had been successfully avoiding income taxes, and that a

flat tax would even things up.

In fact, Forbes's proposal would have benefited the wealthy by reducing the top marginal rates and by replacing the income tax with a consumption tax.

The proposal would have had the same effect as the type of consumption tax with which most people are familiar—a sales tax. It would also have the same effect as a value-added tax (VAT),

which can be thought of as a European-style sales tax. A sales tax or VAT would increase the size of the economic pie, but it would also divide the pie less equally. The magnitude of each change is hotly debated.

When voters realized that the flat tax proposals involved real trade-offs and were not miracle cures, they lost interest. ☞

professors in Print

A concise guide to recent faculty writings on
a range of current issues. Here are three excerpts, plus a comprehensive bibliography
of publications appearing between January 1996 and June 1997.

Genetics Research

"Almost all the detailed work . . . in human genetics has been done with samples taken from people of European descent, not because of any conscious or subconscious racism but because most of the research has been done in Europe and North America. The result, however, has been research on 'the' human genome that has largely excluded genetic variation in general and almost entirely ignored the variation found in about 85 percent of humanity.

"The proposed Human Genome Diversity Project (HGDP) is one resolutely noncommercial effort to collect and make available, in a scientifically and ethically coordinated manner, genetic information about a representative sample of the world's entire human population: European and non-European, indigenous and non-indigenous."

—Henry T. Greely

"Genes, Patents, and Indigenous Peoples"
(See Articles)

Jury 'Reform'

"[Even] before the Simpson verdict was in, partly in response to other notorious cases involving unpopular jury results (the acquittal in the first Rodney King beating case, the hung jury in the Menendez parricide), legislative moves were afoot to abolish the unanimity requirement, to reduce the number of jurors, and to eliminate the peremptory challenge. The basic problem with these proposals is two-fold: they wrongly assume that the jury system is broken; they could profoundly change its operation in unpredictable ways."

—Barbara Allen Babcock

"In Defense of the Criminal Jury" (See Chapters)

Water Markets

"For over twenty years, national and state commissions have touted the potential economic and environmental benefits of water markets. Rather than locking marginal water uses into place and requiring water-short regions to build expensive and environmentally damaging new water projects, markets would permit high-value, water-short uses to purchase water from lower-value uses. The opportunity to sell water for often considerable sums would encourage valuable conservation.

"Water markets would also reduce the cost of sudden reductions in water supply resulting from droughts or environmental regulation by permitting reallocation of the remaining water to its highest uses.

"These and other market advantages seem convincingly strong. Yet active water markets remain a relatively local and often sporadic phenomenon."

—Barton H. (Buzz) Thompson, Jr. '76

"Water Markets and the Problem of Shifting Paradigms" (See Chapters)

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① This list was compiled by reference librarian Erika Wayne of the Robert Crown Law Library. Continuously updated, it is available online at <http://www-leland.stanford.edu/group/law/library/what/lawbib.htm>

lawGatherings

Grads and friends from around the country continue to meet, network, and otherwise enjoy the benefits of membership in the greater Stanford Law School community. Here's an overview of 1996-97 events.

eastCoast



PHOTOGRAPHY BY JOE PINEIRO (TOP); DAVID HATHCOX (BELOW LEFT AND RIGHT); JON ROEMER (BELOW CENTER)

theWest

The School's **Southern California Celebration '97** on April 17 featured (l-r) legal correspondent David Margolick '77, Profs. Robert Weisberg '79 and Barbara Allen Babcock, television scriptwriter Marshall Goldberg '71, and lawyer/novelist Scott Turow (AM '74). Their topic—"Heroes and Villains: Images of Lawyers in Popular Culture."



Alumni in **New York (left)**, **Washington, D.C. (below)**, and **Boston** joined Prof. Buzz Thompson '76 and a 2L student at April receptions to encourage potential students who had been offered admission but not yet made a commitment to accept.

The School's **Northeast Celebration** on June 5 drew an illustrious crowd including (opposite, l-r) Campaign chair James Gaither '64, Dean Paul Brest, and dinner chairs Victor Palmieri '54 and Miles Rubin '52.

Anne Bingaman '68 (opposite, center) spoke at law society receptions in both **New York City** and **Washington, D.C.**

David Hayes '78 (opposite, left), William Kroener '70, and Rob Edwards '90 (opposite, right) were snapped at the Stanford breakfast during the 1997 **Association of American Law Schools** meeting in D.C.



the Midwest



Chicago-area alumni congregated to salute one of their own—Hon. Joan B. Gottschall '73 (*lower left*), who was elevated in September 1996 to the U.S. District Court for the Northern District of Illinois. Celebrants at the February 13, 1997, luncheon included (*clockwise from upper left*): featured speaker Barbara Allen Babcock, since named to the Judge John Crown Professorship; John Sabl '76, Bryant Garth '75, and Harle Montgomery (Garth's aunt and a longtime benefactor, with her late husband Kenneth Montgomery, of the School's key public interest initiatives); and Bill Kirsch '81 with Susan Bell, the School's Associate Dean for External Relations.

bayArea



California Chief Justice Ronald M. George '64 (*top*) was feted October 29 by the **San Francisco Law Society**. Some 100 Stanford jurists joined the honorary committee. San Francisco 49ers president and Stanford Law parent Carmen Policy (*left*) enlivened a May 29 event in that city.

A landmark conference initiated by **Women of Stanford Law**, "Women in the Legal Profession," was held at the School April 5 (*below*). Broadly attended, the program featured NYU sociologist Cynthia Fuchs Epstein, Stanford's women law professors (now 8 in number), and several savvy alumnae.

Members of the **Silicon Valley Law Society** breakfasted with Dean Brest at the Alza Corporation on March 19 and experienced virtual reality April 16 in a tour of Stanford's new Gates Building (*both unpictured*).



comingEvents

For your calendar—a preview of Stanford Law School gatherings
on campus and around the country.

1997

- | | |
|-----------------|---|
| September 14-16 | Class of '52 Reunion
<i>At Asilomar, Pacific Grove, Calif.</i> |
| September 16 | "Lizzie Borden on Trial: A Dramatization"
On the bench: Hon. William H. Rehnquist '52, Chief Justice of the United States; and Associate Justice Sandra Day O'Connor '52. Presented in celebration of the establishment of the Judge John Crown Professorship in Law.
<i>At Stanford</i> |
| September 16 | Seattle Law Society
<i>In Seattle</i> |
| Sept. 25-28 | Alumni Weekend 1997 and Class Reunions
<i>At Stanford</i> |

1998

- | | |
|---------------|---|
| January | Association of American Law Schools
<i>In San Francisco</i> |
| January 15-16 | General Counsel College
<i>At Stanford</i> |
| March 23-24 | Directors' College
<i>At Stanford</i> |

① For information and reservations, contact the School's Alumni Office. Telephone: 650/723-2730. E-mail: Law.Alumni.Relations@Forsythe.stanford.edu

Friends, Forums, and Football

Alumni Weekend¹⁹⁹⁷

September 25 - 28, 1997

A selection of events for all alumni—plus reunions for the Half-Century Club (Classes of 1920 to '47) and for '57, '62, '67, '72, '77, '82, '87, and '92 (The Class of '52 is meeting September 14-16 at Asilomar.)

PROGRAM HIGHLIGHTS

THURSDAY, SEPTEMBER 25

Dean's Circle Dinner

(by invitation)

FRIDAY, SEPTEMBER 26

Delegates' Summit

(by invitation)

Celebration Lunch

with Dean and Faculty, 49ers president Carmen Policy, Reebok CEO Paul Fireman, and Stanford Women's Basketball coach Tara VanDerveer.

Panel Discussions

- *The Money Game: Investing in an Uncertain World.* Professor Joseph Bankman and five financial experts.
- *Does the Constitution Still Work? Perspectives on the Framers' Vision and American Politics Today.* Stanford president Gerhard Casper, *New Federalist Papers* coauthors Kathleen Sullivan and Nelson Polsby, and 1997 Pulitzer Prize winner Jack Rakove.

- *Issues of International Diplomacy.* Former U.S. secretaries Warren Christopher and William Perry, Stanford provost and former White House adviser Condoleezza Rice, and Carnegie Corporation president emeritus David Hamburg, MD. Moderated by Professor Thomas Heller.

Alumni Reception

Reunion Dinners

SATURDAY, SEPTEMBER 27

Continental Breakfast

Panel Discussions

- *Fooling Mother Nature: Opportunities and Challenges in the Biotechnology Age.* An interdisciplinary panel from medical research, industry, and the law. Moderated by Carey Heckman of the Stanford Law and Technology Policy Center.
- *Women at Law: Hurdles and Prospects.* Lisa P. Lindelef '88,

and a panel of women alums and faculty, with insights on obstacles and routes to success for female attorneys, and on the prospects for change.

Recreational Choices

- Tour of Jasper Ridge
- Stanford Linear Accelerator Center (SLAC)

Tailgate Celebration

Football Game

Stanford vs. University of Oregon.

SUNDAY, SEPTEMBER 28

Reunion Brunches

(for some classes)

AND MORE . . .

For further information, contact the Alumni Office, 650/723-2730.

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A two-day program exploring the special skills and attributes that set the most effective corporate counsel apart from the rest. Designed for in-house lawyers, this program offers theoretical insights and practical tools that will enhance your ability to expertly counsel your organization regarding business and policy decisions.

FOR INFORMATION ON EITHER PROGRAM, CONTACT

Ana Hays, Associate Director, Executive Education Programs
Phone: 650/723-5905 • Fax: 650/725-1861 • E-mail: ahays@stanford.edu

JANUARY 15-16, 1998

Program Topics

Organizational Culture, Leadership, and Control

Collaborative Decisionmaking and Negotiation within the Organization

Problem solving and Decisionmaking Skills

The General Counsel's Special Roles and Obligations

Managing the In-House Law Office

The General Counsel in a Multinational and Multicultural World

The General Counsel's Role in Crisis Prevention and Management

executive

STANFORD LAW SCHOOL

education

Program Topics

Executive and Director Compensation

Litigation and the Director

Headhunting: Searching for New CEOs and Directors

Mergers, Acquisitions, and the Director

D&O Insurance and Indemnification

MARCH 23-24, 1998

Technology for Directors:
The Internet and the Boardroom
Board Structure and Composition
Institutional Investor Activism

DIRECTORS' COLLEGE

An intensive, two-day program that brings together leading directors, executives, jurists, and regulators to explore today's most challenging boardroom issues. Designed specifically for directors, executives with board responsibility, and general counsel, the program focuses on strategies that link governance and compliance to bottom line corporate performance.

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