

Stanford

LAWYER



Separation of powers

President Gerhard Casper
on the struggles in Washington

An invitation to support the
Stanford Environmental Law Society
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**The Endangered Species Act:
A Guide to Its Protections and
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Stanford Environmental Law Society—one of the nation's leading student environmental law associations—invites you to become a Founder of the Handbook Project. Contributions by Founders support the infrastructure of the Project and production costs of the new edition of *The Endangered Species Act* handbook, as well as future publications. You can become a Founder by donating \$100 or more to the Handbook Project.

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© Galen Rowell / Mountain Light. From Galen Rowell's latest book,
Bay Area Wild (Sierra Club Books, 1997)

THE ENDANGERED SPECIES ACT
A GUIDE TO ITS PROTECTIONS AND IMPLEMENTATION, SECOND EDITION 1998
STANFORD ENVIRONMENTAL LAW SOCIETY

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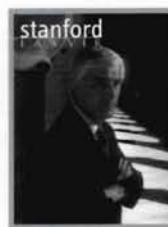
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Gerhard Casper, Stanford President and Professor of Law, looks at separation of powers issues and suggests some reforms.
Photograph by Russ Curtis

SPECIAL INSERT

Volunteer Opportunities

36 great ways to be involved with your School and fellow alums

Letters

For the defense

As a lawyer who has tried over 100 jury cases in a 40-year career, I believe the "Juries on Trial" article [Spring 1998] warrants some comment.

First, it is not a fallacy to state that prosecutors have investigative resources superior to those of a defendant. The prosecutor can always manage an interview with the investigating officer by simply calling the police department. When defense counsel calls the department, he is often told the officer in question is on vacation, on leave, or off duty. This is a routine runaround endured by defense counsel. The prosecutor also gets the first look at the physical evidence and decides which of it will be disclosed to the defendant. The prosecutor has first call on the expert witnesses. If the prosecutor needs money to find a witness, he can get it. This is not always true of the defender.

Peremptory challenges are critical to a fair trial. The larger the jury pool, the more peremptories the attorneys need. I have tried cases in jurisdictions where 18 people are qualified on voir dire. Then, each side strikes three. This is an excellent system in smaller counties. It would not work in San Francisco because of the diversity of the population.

Voir dire must be conducted by the attorney if it is to be useful. The problem with voir dire is that most lawyers don't know how to conduct it. I have witnessed lawyers ask a prospective juror such foolish questions as, "My client is an Iranian. Do you have any prejudice against Iranians?"

No prospective juror will admit a prejudice. He will deny it. I once witnessed the late Charles Garry, a master of voir dire, induce a prospective juror who first denied he was prejudiced against blacks to admit after all, "Yes, I don't think minorities always tell the truth." The answer elicited with skillful voir dire was all it took to sustain a challenge for cause.

The real value of the twelve-member jury is that it takes that number to get a cross section of prejudices. The man who will openly announce his hates in a bar is ashamed to voice them to eleven strangers. It is the synthesis, the consensus of these twelve, that ultimately gets to the truth and renders the correct verdict.

Ms. Babcock is right: "A unanimous jury is fundamental to our democracy." Any old trial lawyer will agree when I say that the times I have waived a jury were gross mistakes on my part. I have lost cases before juries. The fault was not in the jury. The jury system is the cornerstone of our civil and criminal justice system. Rights and freedoms are too precious to trust to judges alone.

—Jerome F. Downs '49

To our readers

The essay on tax reform by Edgar C. Keller '49 mentioned in his letter in the previous issue [Spring 1998] is available online at <http://lawschool.stanford.edu/> via the link titled "Social Consciousness in Taxation." The views expressed in this and other missives published by the School do not necessarily reflect those of Stanford Law School or its faculty.

The editors of *Stanford Lawyer* welcome comment on news and articles published in the magazine. Submissions may be edited for length. Please direct your comments to: Editor, *Stanford Lawyer*, Stanford Law School, Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305-8610. Fax: 650/725-9786. E-mail: Law.Alum.Pubs@forsythe.stanford.edu

Stanford
LAWYER

#53 (Vol. 32, No. 3)
Summer 1998

DEAN

Paul Brest
Richard E. Lang Professor of Law
and Dean

ASSOCIATE DEAN, EXTERNAL RELATIONS

Susan S. Bell

COMMUNICATIONS DIRECTOR

Ann Dethlefsen

EDITOR

Constance Hellyer

ART DIRECTOR

Mimi Fujii

CONTRIBUTING EDITORS

Deborah Fife, Wendy Linden,
Richard C. Reuben, JSD '98

CLASS CORRESPONDENTS

56 congenial alumni

EDITORIAL INTERN

Michael Finney (AB '00)

PRODUCTION ASSOCIATE

Joanna McClean

Stanford Lawyer (ISSN 0585-0576)
is published for alumni and friends of Stanford
Law School. Correspondence and
information should be sent to:

Editor *Stanford Lawyer*,
Room 13,
Stanford Law School,
Crown Quadrangle,
559 Nathan Abbott Way,
Stanford, CA 94305-8610.

E-mail: Law.Alum.Pubs@forsythe.stanford.edu

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Stanford Lawyer is listed in:
Dialog's Legal Resource Index;
and Current Law Index and LegalTrac
(1980-94). Issues of the magazine since 1966
are available on microfiche through
William S. Hein & Co., Inc., 1285 Main
Street, Buffalo, NY 14209-1987.

World Wide Web: Selections from *Stanford
Lawyer* #50, #51, and #52 are available at <http://lawschool.stanford.edu/publications/lawyer/>

Printed on recycled paper.



news Briefs

S U M M E R 1 9 9 8

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

Law in cyberspace: The course, the television series, and now the video

Radin pilots far-reaching exploration of expanding field



Cybernaut: Margaret Jane Radin

NO LEGAL ARENA is more dynamic or uncharted than cyberspace—the computer-based Internet realm where an ever-growing portion of the world's commerce and communication now takes place. Professor Margaret Jane Radin began offering a survey course on Internet law in autumn 1996. Called "Legal Issues in Cyberspace," the course involves not only academic experts, but also pacesetters from the high-tech legal and business communities.

The significance of the course, which has been expanded and developed through two subsequent academic terms, led the Stanford Channel to make it their first law telecourse. The autumn 1997 classes, edited to 20 hours from the original 36, were aired locally over 10 weeks beginning in January 1998, and are now available as VHS tapes to interested learners everywhere (see below).

Issues covered include online content, encryption technologies, intellectual property and copyright, digital cash and payment systems, legal jurisdiction, and the future of Internet governance.

Radin, the School's Wm. Benjamin Scott and Luna M. Scott Professor, is an expert in nontraditional forms of property. Intrigued by the property questions raised by digital communication, she joined two Georgetown University professors to found the Cyberspace Law Institute in 1995 and now focuses her research and writing on the electronic frontier.

① Telecourse (\$1,295 for set of 10 videotapes): 650/725-5491

Course content: http://www-leland.stanford.edu/class/law449/fall_97/

Radin research and publications: <http://www-leland.stanford.edu/~mradin/>

Law faculty involved in major policy debates

*Congressional leaders and scientists
call on Stanford experts*

Professors from Stanford Law School weighed in on some of this spring's hottest issues.

Tobacco legislation

Should big tobacco be granted protection from future litigation? For expert analysis, the Judiciary Committee of the U.S. House of Representatives consulted, among others, Robert Rabin, the Law School's A. Calder Mackay Professor, who appeared before the committee on February 5, 1998.

"The pervasive theme [of the bill in question] is greater certainty for the industry about the financial consequences of continuing tort liability," Rabin observed. "That is, of course, the trade-off the industry seeks in return for the payments and concessions they offered in other provisions of the settlement plan. . . ."



MARCO P. ZECCHIN

Continued on page 4

LAW FACULTY (continued)

"Whether this is a worthwhile trade-off from a societal perspective depends in the first instance on whether one views a trade-off as necessary at all from the perspectives of fairness, economics, or public health. . . . These issues extend far beyond the domain of tort litigation."

Rabin is director and senior policy consultant of Robert Wood Johnson Foundation programs involving grants for tobacco policy research and evaluation.

① R. Rabin and S. Sugarman, *Smoking Policy: Law, Politics, and Culture* (Oxford U. Press, 1993)

MARCO P. ZECCHIN



GREELY

Human gene research

The international scientific effort to survey the genetic diversity of our species has been hindered by the need for agreement on ethically and culturally sensitive ways to collect and

analyze biological samples of peoples from around the world. Prof. Henry T. (Hank) Greely of the Law School is a leading member of the interdisciplinary group of medical doctors, geneticists, and ethicists that is working on guidelines for the landmark genetic study.

Greely discussed the group's "Model Ethical Protocol in Human DNA Sampling" at the 1998 annual meeting of the American Association for the Advancement of Science.

"Knowledge of the genetic similarities and (small) genetic differences between human groups is exciting, but the research must be done carefully," he says. "We need to develop guidelines that make the participating groups partners with researchers in exploring our heritage."

① H. Greely, "The Control of Genetic Research: Involving the Groups Between," 33 *Houston Law Review*, 1397-1430 (1997)

Model protocol: *Ibid.*, 1431-1473 and online at <http://www-leland.stanford.edu/group/morristn/HGDP.html>



SULLIVAN

Secrets in cyberspace

Should the government, as part of its crime-fighting mission, be able to bypass encryption codes used by businesses and individuals to protect the confidentiality of their online communications and business records? The Constitution Subcommittee of the Senate Judiciary Committee invited First Amendment expert Kathleen M. Sullivan to shed light on this issue.

Testifying on March 17, 1998, Prof. Sullivan advised that "government efforts to require escrow of digital encryption 'keys' with third parties raises serious First and Fourth Amendment issues by diminishing the privacy and security of electronic transmissions and data storage."

This spring, Sullivan also coauthored an amicus curiae brief submitted to the U.S. Supreme Court in *National Endowment for the Arts v. Finley*, in which she helps argue that conditioning government arts grants on conformity with "general standards of decency" or "respect for the values of the American public" violates the First Amendment.

Sullivan is the School's inaugural Stanley Morrison Professor of Law and coauthor with Prof. Gerald Gunther of the 13th edition of *Constitutional Law* (Foundation Press, 1997).

① Encryption testimony: <http://computerprivacy.org> and <http://lawschool.stanford.edu/faculty/sullivan/testig80317.html>

NEA issue: Sullivan, "Subsidies for 'Indecent' Art," *Legal Times*, March 30, 1998, p. 21

Listmakers redux

Five professors are newly recognized in the national law press

Stanford law professors continue to be picked by media listmakers as leaders of the profession (*Stanford Lawyer*, Spring 1998, p. 6). Here are the latest citations:

Deborah Rhode, the School's Ernest W. McFarland Professor, was named by the *National Law Journal* as one of "50 Top Women Lawyers" in a March 30, 1998, Profiles in Power supplement. The *Journal*

cited Rhode's writings on legal ethics and gender discrimination, her participation on key ABA and California bar committees, and her current presidency of the Association of American Law Schools.

Kathleen Sullivan is also among the *National Law Journal's* top 50. The editors noted Sullivan's eminence in the field of constitutional law, her many appearances before the U.S. Supreme Court, and impressive publications.

Readers may recall that the School's Stanley Morrison Professor had already been dubbed a "legal eagle" and one of the state's "most influential lawyers" by *California Lawyer* (December 1996).

Paul Goldstein, the School's Stella W. and Ira S. Lillick Professor, was one of seven "Leading Lights" profiled in the Spring 1998 issue of *AmLaw Tech*, the *American Lawyer's* technology magazine. Goldstein was cited for his expertise in—and reasoned defense of—copyright in the burgeoning intellectual property arena.

The professor's 1997 induction into *Newsweek* magazine's "Century Club" was reported in the last *Stanford Lawyer*.

Janet Cooper Alexander is the author of one of the ten "best corporate and securities articles of 1997," according to a poll of law teachers conducted by the journal *Corporate Practice Commentator*. Alexander's piece, "Rethinking Damages in Securities Class Actions," was published in 48 *Stanford Law Review* 1487 (1996). Prof. Alexander is the School's Justin M. Roach, Jr. Faculty Scholar.

Michael Klausner is coauthor (with Marcel Kahan) of another *Corporate Practice Commentator* top ten. Called "Lockups and the Market for Corporate Control," his article also appeared in 48 *Stanford Law Review* (at 1539). This is Prof. Klausner's third consecutive appearance on the annual CPC honors list.

Ⓢ To order a faculty article (service for alumni only), e-mail agurthet@stanford.edu, or mail requests to Interlibrary Loan, Robert Crown Law Library, Stanford Law School, Stanford, CA 94305-8612.

Faculty websites: <http://lawschool.stanford.edu/faculty/>



GOLDSTEIN

GLENN MATSUMURA



RHODE

XING ZHOU

VISITORS

Seen and heard

Ralston and Phleger lecturers come from international frontlines



Warren Christopher '49 on negotiation

"The Negotiator"

Jackson H. Ralston Lecture
April 9, 1998

"A negotiator makes his own task much easier if he sets out to find an agreement in which both parties can find some advantage. Revenge and punishment rarely characterize durable agreements. . . .

"There are many individuals with the capacity to serve as effective negotiators and problem-solvers. Without that capacity, we would be living in a world where war and litigation would be customary rather than exceptional."

Warren Christopher '49, senior partner of O'Melveny & Myers, was U.S. Secretary of State from 1993 to 1997. His many negotiations include the release, when he was Deputy Secretary of State, of 52 American hostages in Iran, for which he was awarded the Medal of Freedom in 1981.

① Report and photos: <http://lawschool.stanford.edu/news/ralston/spring98/>

Justice Goldstone on war crimes

"Past Violations of Human Rights: War Crimes Tribunals or Truth Commissions?"

Herman Phleger Lecture
January 13, 1998

"A permanent international criminal court is clearly, urgently needed. I've got no doubt that the knowledge there is at least a probability that they're going to get caught and punished is the only effective deterrent to some political and military leaders who are intent on committing war crimes or having them committed."



The Hon. Richard J. Goldstone is a Justice of the Constitutional Court of South Africa and former chief prosecutor of the United Nation's International Criminal Tribunals for the former Yugoslavia and Rwanda. He taught a January 1998 term course at the School on international war crimes.

① Interview with Goldstone: <http://lawschool.stanford.edu/faculty/visitors/Goldstone.html>

OTHER VISITORS

Nadine Strossen on Web speech

"Internet Porn, 'Communications Decency,' and the First Amendment"

Speech plus question period
March 12, 1998



"Protection of sexually oriented expression has always been an issue in every medium. It doesn't matter what the medium is: The same free speech principles should apply.

"Censoring sexually oriented expression does more harm than good. The inevitable problem of vagueness gives those who enforce censorship unlimited discretion. It provides a weapon to discriminate against and persecute the most vulnerable. . . .

"In international cyberspace, the First Amendment is only a local ordinance."

Strossen is president of the American Civil Liberties Union and a professor at New York Law School. Her visit was initiated by the Stanford Civil Liberties Union. Law Prof. Kathleen M. Sullivan introduced the speaker and moderated the post-lecture question period.

① Strossen book: *Defending Pornography: Free Speech, Sex, and the Fight for Women's Rights* (Scribners, 1995)

Michael Nava '81 on open minds

Lunchtime talk with students
March 11, 1998

Asked what straight people might gain by reading books by and about gays, Nava said:

"Rios [his gay protagonist] is an outsider looking into a culture that most people inhabit as easily as fish swimming in water. His perspective can enrich and enhance people's understanding of their world.



"Besides, the human experience is vaster than our own small experience. The way to expand your understanding is to read writers with whom you don't think you have anything in common."

Nava is an attorney and author of six mystery novels featuring a fictional Stanford Law grad. His visit was sponsored by Outlaw (the gay, lesbian, and bisexual rights student group), and cosponsored by the Latino Law Students Association and the Office of Career Services.

① Nava's latest novel: *The Burning Plain* (Putnam, 1998). See also Nava and Robert Dawidoff, *Created Equal: Why Gay Rights Matter to America* (St. Martin's Press, 1995).

Dialogue on race

Student-organized conference looks to the future

Stanford Law School's signal contribution to the national dialogue on race relations was a solutions-oriented conference on Saturday, April 4, called "Where Do We Go from Here? A Colloquium on Race in the 21st Century."

Some 600 concerned individuals—faculty, students, and alumni—gathered at Crown Quad for the event, which featured Professor Cornel West of Harvard as keynote speaker and Constance Rice, veteran NAACP Legal Defense &

Education Fund attorney, in the closing address. Also on the full-day agenda were 33 scholars, activists, and practitioners representing a range of views.

This meritorious event was initiated by Stanford's Black Law Students Association (BLSA) and cosponsored with the Law School and several other student organizations.

① Conference website: <http://www-leland.stanford.edu/group/BLSA/Colloquium.html>
BLSA: 650/723-1873



The BLSA conference steering committee, with event chair Jacqueline M. Sutton (2L) at center.

Professors on tape

Stanford Channel offers VHS visits with a Nobel economist, a gender law expert, and a gene wars mediator

The pioneering cyberspace law course described on page 3 is the most extensive—but not only—new video-taped program you can get from the University's Stanford Channel. Here are others featuring Law School professors on matters of interest:

High finance

Myron Scholes—the emeritus Stanford professor who shared the 1997 Nobel Prize in Economics—explained his breakthrough work on asset valuation in a one-hour presentation to the Advisory Board of the Center for Economic Policy Research at Stanford. The talk, "Derivatives and Financial Innovation," was first televised in March 1998. Primarily affiliated with the Graduate School of Business, Scholes held a joint appointment at the Law School during his first five years at Stanford.

Speaking of sex

Deborah Rhode discussed the persistence of gender discrimination in a half-hour "InterChange" session broadcast in December 1997. A nationally recognized authority on women and the law, Rhode is currently president of the Association of American Law Schools and author of the recently published *Speaking of Sex: Gender*

Inequality in America. At Stanford she is the Ernest W. McFarland Professor of Law and a former director of the Institute for Research on Women and Gender.

Alzheimer's double jeopardy

What's worse than learning that your genes make you susceptible to Alzheimer's disease? Perhaps having other people—say, prospective employers or insurers—find out. On the other hand, knowing your genetic makeup could help doctors slow or even prevent the disease.

Issues raised by progress in Alzheimer's gene research were the subject of a full-day national conference at Stanford last October 25. Titled "Genetic Testing and Alzheimer's Disease: Has the Time Come?", it is now available in seven hours of Stanford Channel videotape. Readers may be most interested in the first installment, in which Professor Henry T. (Hank) Greely presented the ethical guidelines developed by the Stanford Program in Genomics, Ethics and Society, which Greely co-chairs.

① **Stanford Channel:** For information and VHS tapes (at \$24.60 each), telephone 650/723-5100 or visit <http://tsc.stanford.edu/tsc/>

View from the top

Corporate leaders share survival strategies at annual Directors' College



Ideas that work: Joe Grundfest, founder of an executive education program and a new website (see page 9)

Decisionmakers from nearly 100 major corporations converged on Crown Quadrangle on March 23 for the Law School's fourth annual Directors' College. This distinguished, two-day seminar focused on concerns of corporate directors, senior executives, and general counsel.

Corporate-sector speakers at the 1998 gathering included Chairman and CEO Steven Goldstone of RJR Nabisco, Inc., and CEO Kenneth Derr of Chevron Corp. Also heard were Commissioner Laura Simone Unger of the U.S. Securities and Exchange Commission and Chief Justice E. Norman Veasey of the Delaware Supreme Court.

Returning participants found several new sessions in the curriculum, with "Technology for Directors" and "Sniffing Out Cooked Books" among the most popular. Said one attendee: "Best CLE I have received in my 28-year legal career."

Directors' College was launched in 1995 by Joseph A. Grundfest '78, a former commissioner of the Securities and Exchange Commission, who is now Stanford's W. A. Franke Professor of Law and Business.

① **Stanford Law School Executive Education Programs:** 650/725-5491. E-mail: cajensen@stanford.edu. Website: <http://lawschool.stanford.edu/programs/ExecEd>

Web resources III

A site that expedites motions, plus new and better info banks and an online journal

The School's Robert Crown Law Library is the locus of two innovative new websites, and also provides a convenient gateway to Internet resources everywhere.

Also worth checking out is the student-originated *Stanford Technology Law Review*, now celebrating its first anniversary.

All this and more are accessible through Stanford Law School's new and improved home page. Details follow.

Electronic Motions Practice

This prototype pretrial motions system is designed to save time by reducing the number of court appearances, while also providing all parties more time to consider and hone their arguments. Developed in collaboration with the local bench and bar for the U.S. District Court for the Northern District of California, the website provides support for certified motion filings and e-mail notification of the court and opposite party. Database content for the website includes forms, local court rules, and individual judges' standing orders and chamber rules.

Joseph Grundfest, the School's W. A. Franke Professor of Law and Business, is the driving force behind this pilot project.

Website: <http://ndcal.stanford.edu/>

E-mail: support@ndcal.stanford.edu

Don't Ask, Don't Tell, Don't Pursue Database

This collection contains primary materials on the U.S. military's policy on sexual orientation from World War I to the present. Useful to journalists as well as attorneys, it includes legislation, regulations, internal directives of service branches, relevant cases, commentary, and links to other Internet resources. Professor Janet E. Halley, the School's Robert E. Paradise Faculty Scholar, is the faculty founder and adviser.

<http://dont.stanford.edu>

Stanford Technology Law Review

Stanford students—many of whom arrive with strong science and technology backgrounds—last year launched the nation's first exclusively online journal in law and technology. *STLR* provides leading-edge scholarship, working papers, virtual symposia, and recent news and commentary about law and technology. Interested readers can register for e-mail notification of new papers and site updates. Submissions are also invited.

<http://stlr.stanford.edu/>

Crown Library research access

Thanks to the wonders of technology, graduates of Stanford Law School can once again turn to the Law Library for their research needs. Stanford has built an Internet resource containing rich original content—e.g., legal research guides, faculty/student/librarian collaborative work products, and special collections—as well as links to the wealth of valuable legal and other information found on the Internet.

You can reach the Library through the above-mentioned School home page, or directly by bookmarking the following URL:

<http://www.stanford.edu/group/law/library>

Stanford Law School home page

In March 1998, the School launched a comprehensive new site on the World Wide Web. More user-friendly than its predecessor, the new website gathers online news and resources for alumni, students, applicants, journalists, and the scholarly community at large. Links are provided to the Law Library and other School resources and information, including most websites noted in this and other articles.

Here, then, is the one Stanford Law School URL you absolutely need to know:

<http://lawschool.stanford.edu/>

Upward and outward

The circle of involved alumni and friends continues to expand

- "Celebration Chicago '98"—a Stanford-wide gala—was held on May 28 in downtown Chicago. The dinner gathering gave Midwestern alums an opportunity to celebrate the progress of the Law School and its Campaign and to enjoy a special panel: "Sneak Preview: 2020 and Beyond." (More in the next issue.)

- The Environmental and Natural Resources Law & Policy Program has received a gift of \$400,000 from the William & Flora Hewlett Foundation. The donation provides, among other things, for a lecture series honoring the late Robert Minge Brown, AB '31, Law '34. (An article on this gift appeared in the May 1998 *Campaign Brief*.)

- Reunion classes are looking to set records on three fronts: Alumni Weekend attendance, participation in reunion class giving, and class gift collective totals. The Class of '73 gift effort, headed by Steve Neal and John Levin, has been inspired by the example of classmates who led off by doubling their already substantial Campaign gifts. And the '58 drive, led by Guy Blase, has been energized by pledges from Bob Keller and Don Crocker to match any increase in a classmate's 40th-year gift compared to his or her 35th-year gift. Reunion class gifts will be announced and gratefully acknowledged during Alumni Weekend this October.

① Campaign news: <http://lawschool.stanford.edu/campaign>

To make a gift: 650/723-3085



Environmental law today

Problem-solving program offers inviting ways to help



The name—Environmental and Natural Resources Law & Policy Program—says it all.

Environmental law at Stanford has progressed from passionate consciousness raising to practical problem solving. The goal, however, remains the same: To conserve a healthy world in which living things—both human and nonhuman—can thrive.

"Environmental progress is a lot more difficult today than it was 25 years ago, because we have already taken the simple steps," says Barton J. (Buzz) Thompson, JD/MBA '76, the School's Robert E. Paradise Professor of Natural Resources Law, who spearheads the environmental law program. "Students today must learn to bridge diverse interests and to use innovative approaches like markets and partnerships."

To train the next generation of environmental lawyers, Stanford has reformed environmental education. Students develop their problem-solving skills with situational case studies, learn effective teamwork through the interdisciplinary Stanford Environmental Clinic, and take special classes in mediation and multiparty negotiation.

Here are four ways that alumni and friends of the School can be involved:

- Become a Founder of the Stanford Environmental Law Society Handbook Project (see inside front cover).

- Purchase EcoClassics CDs that benefit the Stanford Environmental and Natural Resources Law & Policy Program. There are four. Two, performed by the esteemed Muir String Quartet, contain Beethoven works: Opp. 132 and 133 (*Grosse Fuge*); and 130 and 135. A third album by the same ensemble features Dvorak's *American* and Schubert's *Death and the Maiden* quartets. The fourth and latest release offers Bach's complete suites for solo cello played by Michael Reynolds. The funds for recording and producing all four CDs were donated by Dean Paul and Iris Brest.

① EcoClassics, Inc.: P.O. Box 6834, Holliston, MA 01746. Phone and fax: 508/429-6977

- Subscribe and contribute to the *Stanford Environmental Law Journal*. For \$30 a year you receive two issues containing articles, essays, and book reviews.

① Journal: 650/723-4421

- Become involved in the School's innovative, consensus-building Environmental and Natural Resources Law & Policy Program.

① Program brochure and information: Meg Caldwell, Program Director, at 650/723-4057; e-mail: megc@leland.stanford.edu

Giving opportunities: Catherine Nardone, Director of Development, 650/725-8115; e-mail: rinnie@stanford.edu

For a good cause

Alums join students and faculty at lively fund-raising events

RUSS CURTIS



Bid for Justice

Sixth Annual SPILF Benefit Auction

March 7, 1998, Kresge Auditorium

Beneficiary: Stanford Public Interest Law Foundation

Raised: \$40,000 plus

Max Ochoa (3L) and Lela Getzler (2L) were part of a cast of hundreds—alumni, faculty, and students—who participated in this fun-filled affair. The more than 150 silent and live auction items included San Francisco 49er tickets, a ride in the Goodyear blimp, lunch with Mario Cuomo, dinner for eight, a grand piano, five nights in a Taos condo, two rounds at the posh Chardonnay Golf Club, and a selection of fine wines. Thanks go to auctioneer/professors Joe Grundfest and Joe Bankman, and to sponsors Bar-Bri Bar Review, Fenwick & West, Lexis-Nexis, Morrison & Foerster, Shearman & Sterling, and Wilson Sonsini Goodrich & Rosati.

The \$40,000 raised by the event will fund grants to students for summer work in public interest positions.

① SPILF: 650/723-3017

All-Campus Faculty Showcase

January 30, 1998, Dinkelspiel Auditorium

Beneficiaries: Stanford students (law included) taking music lessons

Raised: Nearly \$4,000



Dean Paul Brest participated in what may be the first-ever Music Department concert featuring Stanford faculty from outside the Department. A dedicated viola player, Brest (right) was joined onstage by University Provost Condoleezza Rice on piano, Law School graduate Andrea Chavez '96 and staff member Karen Lindblom on violins, and Walter Hewlett, director of the Center for Computer-Assisted Research in the Humanities, on cello. The group, which calls itself the Surprise Ensemble, performed the first and final movements of Robert Schumann's Piano Quintet in E-flat Major, Op. 44.

① Videotape of concert: 650/723-5100

Or visit <http://tsc.stanford.edu/tsc/>

Battle of the Brains

February 27, 1998, Kresge Auditorium

Beneficiary: East Palo Alto Community Law Foundation

Raised: \$15,000 plus

The happy crew at right includes the finalists and organizers of the School's second annual student vs. faculty trivia contest. Though the faculty/staff team won the trophies, all were winners when it came to the ultimate goal of raising money for the law clinic in low-income East Palo Alto. Credit goes to the Stanford Law Students Association for organizing the popular event and to the law firms who contributed financial support.

① <http://lawschool.stanford.edu/students/brains.html>

Stanford Law Students Association: 650/723-1669;

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RUSS CURTIS

from the Dean

Stanford-educated lawyers become leaders
in many fields. Now a special task force is considering
an expanded approach to legal education

by Paul Brest

Richard E. Lang Professor of Law and Dean

In the fall of 1997, I established a Task Force on the Mission of Stanford Law School, composed of faculty, staff, students, and alumni. The central question addressed by the Task Force is:

How can Stanford Law School better prepare students for the broad range of professional careers that our graduates pursue in law, business, and the public sector; expand our students' career opportunities; and prepare them to be skilled and ethical statesmen and stateswomen for positions of leadership throughout society?

This is no small order. That we are able seriously to reexamine the scope of legal education at Stanford is due in large measure to the progress and promise of the Campaign for Stanford Law School.

When the Campaign was planned over five years ago, our overriding concern was the *essential*: to secure our base and close a serious gap in resources. Now, with the gap narrowing, we can think about what lies beyond the horizon and

begin planning for the *optimal*: training the best possible leaders for the coming century. (I needn't remind you that we are still a good distance from our goal, and that the School's ability to sustain and strengthen the curriculum will depend on your continued support during and after the Campaign.)

Here, then, is a brief description of the background and agenda of the Task Force, with an invitation to give me your thoughts about the directions in which the Law School should be heading.

Our graduates' varied careers

Besides practicing law in a wide variety of contexts, Stanford Law School graduates pursue careers in business, public policy-making, and teaching. Indeed, in the course of their professional lives, many graduates move among these different areas. In recent years, the Law School has not only focused considerable attention on improving the education of students for law practice, but also undertaken initiatives that encompass these other careers as well.

Thus, the School has begun to supplement the traditional law curriculum with courses that include the skills and knowledge typically associated with other professional schools. Law remains at the core and permeates the curriculum—not only because we are a law school, but also because well-crafted legal rules are essential to a just society and a productive economy, and because legal analysis teaches rigorous habits of thought that are valuable in any profession that requires careful planning and reasoning.

At the same time, we believe that law schools have much to learn from business schools, which offer quantitative and collaborative skills and an understanding of organizational behavior necessary to manage both private and public organizations; and from schools of public policy, which offer an overview of governmental processes and the empirical methods necessary to formulate and evaluate policy.

Our objective is to provide a broad and integrated set of professional skills by bringing the

strengths of these three disciplines together under one roof within an overarching educational framework. Put most ambitiously, we hope to prepare a new corps of skilled and ethical statesmen and stateswomen for positions of leadership throughout society.

The Task Force will review and recommend improvements in the Law School's curriculum and related programs in terms of this expansive mission. It will focus particularly on skills, bodies of knowledge, and other foundations that are common to the variety of careers pursued by our graduates.

Why Stanford?

Several factors place Stanford Law School in a uniquely strong position to develop and implement this ambitious mission.

Stanford University has a world-renowned school of business, as well as a leading law school. The University also has exceptional strengths in public policy, centered in the Hoover Institution, the Institute for International Studies, the School of Education, and the Departments of Economics and Political Science. Stanford is one of the very few major universities with a strong commitment to interdisciplinary teaching and research, and the Law School has been active in developing close relationships with relevant parts of the University, including

the Stanford Center on Conflict and Negotiation and the Program in Ethics in Society.

Just as the walls within Stanford are permeable, so too are the walls between the University and its neighbors—both the industries, financial institutions, and law firms that have made Silicon Valley one of the most vibrant economies in the world; and East Palo Alto, one of the most impoverished cities in the Bay Area. Stanford contributes to both communities, while in turn they provide excellent opportunities for students to engage in public service and to test their academic learning through real-world experiences.

In contrast to many other law schools, Stanford does not draw boundaries between practice and theory, but is deeply committed to their integration. Stanford Law School views itself as an integral part of the academy, the professions, and the society they serve. As an example, Stanford Law School has played a key role in partnership programs that bring business executives, policymakers, and scientists together to address environmental problems through mutually satisfactory solutions.

Similarly, Stanford Law School does not draw

boundaries between the practices of law, business, and policy. At the same time as the School has deployed existing resources to develop what could well become the strongest business program of any law school in the country, we are planning to incorporate into the curriculum an understanding of legislative and administrative processes and the policy assessment skills long associated with graduate schools of public policy.

Our expanded mission is the natural outgrowth of these and other initiatives, including the development of an extraordinary curriculum in problem-solving and negotiation skills—a curriculum important equally to practicing lawyers, business executives, and government officials—and an innovative approach to teaching the fundamental professional ethics we have a right to expect of our leaders.

As mentioned above, law schools are unique among professional schools in the rigor of the analytic methods that characterize the curriculum. As insights from other disciplines are incorporated into the law school curriculum, they are subject to the same stringent standards. Thus, Stanford Law School is optimally situated to provide the integrated professional

education to which the task force process might lead.

Subjects of inquiry

The subjects being addressed by the Task Force include:

- Communication and counseling (writing, oral advocacy, presentation, listening, and understanding the client's point of view)
- Collaboration, teamwork, leadership, and management
- Problem-solving and decisionmaking
- Organizational behavior and economics
- Professional ethics and responsibility
- Quantitative skills (economics, finance, statistics, accounting)
- Multinational and transnational institutions and practice
- Preparing for careers in business and public policy
- Expanding career opportunities in law, business, and government
- Increasing public service opportunities during the academic year and through summer placements

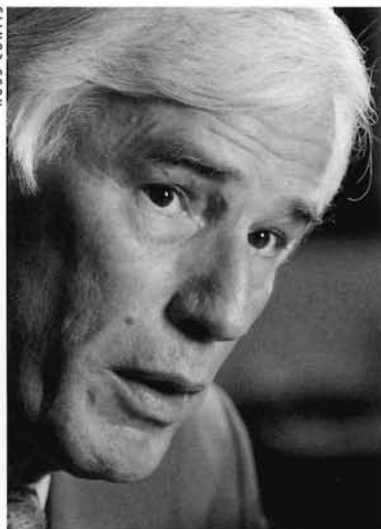
Leadership qualities

As the Task Force examines these specific areas, it will also consider two more general themes:

- What are some of the salient qualities of particular lawyers who have had productive, interesting, successful, and even admirable careers in law, business, the public sector, or several of these areas? The inquiry must go beyond skills or

WHAT DO LEADERS NEED TO KNOW?

Continued on page 49



Current battles over the Independent Counsel law and line-item veto raise constitutional issues. For expert analysis, we turned to Stanford's scholar/president

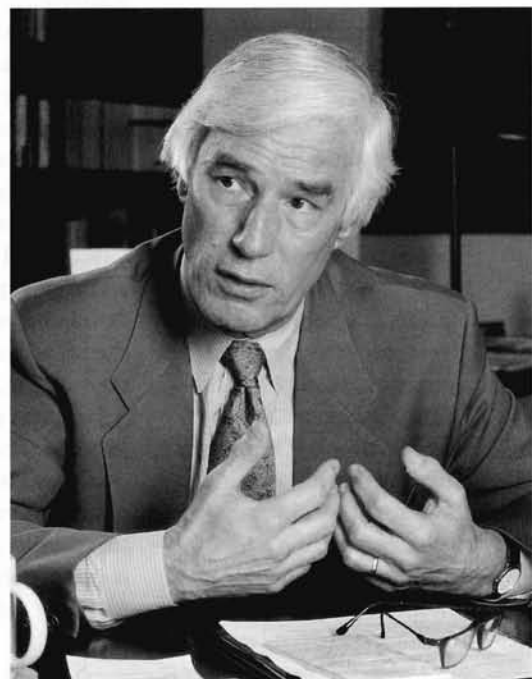
Power Struggle

An interview with **Gerhard Casper**, *President, Stanford University, and Professor, Stanford Law School.*

PRESIDENT CASPER is widely known as the distinguished head of Stanford University. Less known, at least outside of constitutional law circles, is the fact that he has long been a leading scholar on separation of powers doctrine here and abroad.

The doctrine has become quite visible in recent years, lying at the core of a wide spectrum of issues, from independent counsels and presidential immunity to the line-item veto and congressional accountability. Casper's passion for the subject is evident in his recent book, *Separating Power: Essays on the Founding Period* (Harvard University Press, 1997).

Stanford Lawyer (SL)—represented by former Supreme Court reporter and then JSD candidate Richard C. Reuben—invited President Casper to discuss current doctrine and its modern applications.



WHAT IS THE MOST IMPORTANT thing to understand when thinking about the separation of powers doctrine?

CASPER: Perhaps the most important point is to stop thinking we know what the separation of powers is all about. The notion that somehow the legislative, executive, and judicial powers should be separate seems the most logical thing in the world. Yet in practice they are really not separate at all. They are thoroughly intertwined, particularly the legislative and executive branches. Therefore, very quickly the question becomes: What do we really have here, and how strictly should it be interpreted?

SL: *What inspired your interest in this area?*

CASPER: My specific interest began in the 1970s, when separation of powers became a growth industry in American constitutional law because of issues arising from the Vietnam War and the Nixon presidency. I was frequently asked to testify before congressional committees.

There was one occasion that I recall particularly well. I testified before the Senate Intelligence Committee on the question of whether the so-called Statement and Account Clause in Article I of the Constitution mandates the disclosure of intelligence budgets.

That clause, which is fairly obscure, basically says that from time to time a statement and account of all government expenditures shall be published. I did some research into its history and the early appropriations acts to learn more about it. That led me to a 1790 measure that appropriated to the President money to be spent on "intercourse between the United States and foreign nations," for which he did not have to specifically account. By 1794, an appropriation for this purpose reached \$1 million, which was almost half as much as regular 1794 appropriations for government and the military.

I also found that this money was subsequently spent for ransoming hostages in Algiers. Congress met behind closed doors to debate these issues and vote on them.

So the whole attitude toward governmental secrecy then was rather different from what we are used to these days, and is obviously relevant to the question of what the Founders could have possibly meant by the Statement and Account Clause. The more I read, the more any certainties about separation of powers doctrine that I may have had fell by the wayside.

SL: *There is a rich debate in the cases over whether the doctrine should be applied categorically or more flexibly tied to particular facts and circumstances. Any thoughts?*

CASPER: Yes. As I have indicated, when you really begin to look at the doctrine, it becomes impossible to say that the approach can be categorical. Rather, I think flexibility has characterized constitutional practices from the very beginning.

Of course, the way you look at particular issues will be influenced by your views about other matters of constitutional interpretation. The most important among these are the sweeping powers granted Congress under the Necessary and Proper Clause. The question is: To what extent can Congress use those powers, for instance, to set up special prosecutors?

I was asked to testify before the House Judiciary Committee on that issue in 1973, when the Special Prosecutor law was first proposed. Now, the fact that Congress can set up a special prosecutor, to my mind, doesn't necessarily mean that Congress should, or that it is wise, or that it should be continued forever. But I rather firmly concluded that Congress does have the power to establish such an office.

SL: *And that view was later affirmed by the Supreme Court in Morrison v. Olson. There is obviously a lot of controversy now over independent counsels. Do you see additional issues for the Court to consider?*

CASPER: I think that *Morrison* did pretty much settle the main constitutional issue—separation of powers. But I do think there are issues in *Morrison* that may very well come up in the due process category. Justice

[Antonin] Scalia called attention to the fact that ordinarily prosecutors begin with the crime and look for the criminal, while with independent counsels you sometimes have the impression that they begin with the criminal and look for the crime. Those are really due process issues.

SL: *There have been a lot of questions raised about the propriety of the use of the Special Prosecutor law—primarily, but certainly not exclusively, related to Judge Kenneth Starr's investigation. Do you have any thoughts on that?*

CASPER: Yes, I do. I have great reservations about the institution. If I were a member of Congress now and this was presented as an issue, I would probably vote against the authorization of a Special Prosecutor, or against renewing such a law.

The problems are obvious and have been around for quite awhile. They have to do with the fact that special prosecutors are really not accountable to anybody. The Attorney General cannot control much about them, especially not their budgets. Independent counsel investigations can go on for a very long time, and special prosecutors begin to think of themselves as independent agencies. This lack of accountability worries me, because it carries to extremes what is already inherent in the role of U.S. attorneys, who are very powerful.

Consider the present debates about Mr. Starr's investigations. He defends himself by saying he is not doing anything that a U.S. attorney doesn't routinely do. In that respect he is right, except there's even less of a possibility of a check on what he does than there is on what U.S. attorneys can do, which makes it all the more frightful.

SL: *Do you think the institution of Special Prosecutor could be eliminated in light of reactions to the way some of the current investigations have been conducted?*

CASPER: I rather doubt it. Once you have established an institution like that, it's very difficult to undo it. What is possible is that the scope of the

Special Prosecutor may be sharply limited, perhaps to actual malfeasance in office, as they used to say when they adopted the Impeachment Clause. I think that is a possibility.

SL: *On another topic, the U.S. Supreme Court recently heard arguments in the line-item veto cases Clinton v. City of New York and Rubin v. Snake River Potato Growers, Inc. Decisions are expected by this summer. As a scholar, what will you be looking for regarding the separation of powers issue—assuming the justices get over the standing hurdle?*

CASPER: I think there are a couple of issues. First, what are the constitutional arrangements about the appropriation and spending of money?

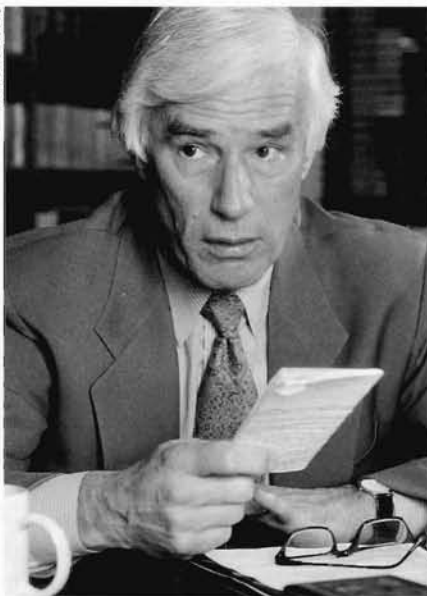
In historical terms, we have to start from the fact that those of the Framers' generation—both at the state and federal levels—simply assumed that money was under the control of the legislature, and that the executive could spend whatever money it was appropriated. Surely the President could veto an entire appropriations act, although early presidents rarely exercised that option. But the notion that the President could rewrite the law would have been considered completely alien by the Framers. The Framers were frugal people, and they were always worried that the executive branch would spend the money too freely. Therefore, legislative control also meant frugality as a matter of public policy.

Today we probably see it the other way around. We view the Congress as spendthrift and rest our hopes for spending controls on the executive branch. That is why the President got the line-item veto—because people thought presidents would be more responsible. Maybe the assumptions of the Framers were wrong, but there was no question that they thought financial control was a legislative responsibility.

Therefore, I must confess that I am very dubious about the constitutionality of the line-item veto.

Now you could, perhaps, argue this as a delegation issue, but it is not. Ordinarily we talk about delegation of

RUSS CURTIS



legislative powers when we say Congress has laid broad outlines and asked the executive branch to fill in the details. That is not the case with appropriations. When the President uses the line-item veto against an expenditure, it is gone. The statute is actually *rewritten*.

That leads me to a second issue, and what I think is the most fundamental, the most dubious aspect of the line-item veto: It goes almost completely against any reasonable understanding of the legislative process. Members of Congress who vote for an appropriations act that is subject to the line-item veto don't know what they are ultimately voting for, or what will become of the bargains they have struck. In terms of public choice theory, they have no clue how it will all come out and therefore they are actually abdicating legislative power, not just delegating it. That has to be unconstitutional.

SL: *Has your experience as the head of a major university influenced your view of executive power?*

CASPER: That is a very interesting question. I have come to believe more than ever that my powers as president of Stanford are altogether the powers of a fiduciary. I have a task that involves fiduciary duties and I try to do it as best I can. I may not get it right at all times, but I do not really believe that I have any mandate other than doing what I

believe to be in the best interest of the University.

I think this is very much the way in which Thomas Jefferson approached his task as President. When he left office, he was happy to be free from the shackles of power. He, of course, exercised power, but I think he worried about the appropriateness of it, the possible results of it, and felt very liberated when he didn't have those responsibilities anymore.

SL: *The international democratization movement is flourishing. Countries in Europe, Africa, the former Soviet Union, etc., are moving toward democracy at a pace that may be unprecedented. What advice would you give to drafters of constitutions in those countries with respect to the separation of powers?*

CASPER: Well, I would first advise that arrangements should be as simple, straightforward, and comprehensible as possible.

I think we do not have such arrangements in the United States anymore. Because of our distrust of the exercise of any governmental powers, we have carried separation of powers to such an extreme that we have lost all sense of accountability, really. Let me elaborate on this branch by branch.

In the Congress, we have two houses. In these two houses we have committees. These committees have chairs. In other words, a lot of congressional power is diffused to the point that it is actually exercised by a single chair or a majority or plurality of a committee without much accountability to the chamber or the Congress as a whole. Just think of how judicial appointments, as an example, can be blocked *ad infinitum*—and sometimes *ad nauseam*—by a single powerful committee chair. Congress's powers were given to the majority of the body, not to individual members. We have lost sight of that completely, and have developed a process in which things can be so controlled by tiny minorities that accountability has disappeared. I find that very, very troubling.

With regard to the executive branch, we have a system where in theory the President is accountable for the executive branch. But in reality, most govern-

ment agencies are immune to presidential influence. And I'm not even including the so-called independent agencies that are segregated from presidential control.

SL: *Wouldn't the appointment of a Cabinet-level secretary be fairly influential upon an agency?*

CASPER: Well, it is true that one would hope that a secretary, on behalf of the President, could set the policies for his or her department. But the fact of the matter is that most of the time they cannot, because the underlying empowerments are so complex and are subject to so many checks and balances that there isn't much room.

I think many presidents, regardless of party, may at first believe they can make the executive branch move, but ultimately they realize that it may be harder for them to make the executive branch move than even the Congress. You have a civil service that frequently will disagree with presidential objectives and, indeed, will engage in guerrilla warfare. Again, I'm not even referring to independent agencies—just ordinary departments.

Finally, there is the extraordinary power we have given to the courts, and I am speaking only about the federal government. Congress essentially has taken the position that it can avoid much responsibility by passing vague statutes and leaving them to the courts to flesh out. This in turn makes the courts genuinely the legislators—not because the judges are power hungry or power grabbing, but because Congress has avoided settling the issues. Now we repeat all of that at the state level. And, of course, within states we often have highly autonomous local governments.

In short, our system has become so costly and so cumbersome that I would advise no country to adopt it as is.

SL: *That's a rather scathing indictment.*

CASPER: We need more accountability and more clarity than we have.

SL: *Would you suggest to new nations that they have lifetime judicial appointments, as we have here?*

CASPER: No, I would set an age limit at, say, 70, or 65—something like that. But I would have absolutely the same level of independence as we have here. Once judges are appointed, it should be very, very difficult to remove them, and it should be only by impeachment.

SL: *If you could make any other changes in our current system with respect to separation of powers, what would they be?*

CASPER: If I could, I would set the rules so that Congress would have to act by majorities. That is a tremendous concern to me. I think the most important measure of a democracy is whether you can "throw the rascals out." In order to do that, you have to know who the "rascals" are, and we do not.

SL: *Anything else?*

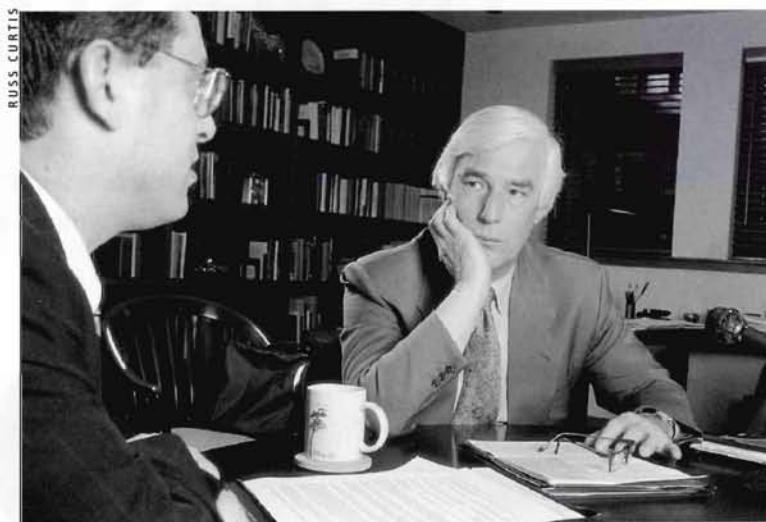
CASPER: I would also elect the House of Representatives every four years and move the Senate to an eight-year term.

SL: *What's the advantage of longer terms?*

CASPER: Congressmen today just never stop electioneering. No sooner do they get elected, settle down, and begin to develop some expertise about issues that come before them, then they have to start worrying about getting reelected again. The judgment they are supposed to exercise as representatives "of the people" gets immediately subjected to second-guessing by the voters, possibly converting that judgment into mere political calculation. It also means, of course, that the members of Congress, and the House in particular, have a tremendous incentive to collect money all the time—and money, no doubt,

gives special interests extraordinary influence, and that is something I am very dubious about.

SL: *Do you have any other suggestions for change?*



Richard Reuben, JSD'98, interviewed the president in his Main Quad office. *Opposite page:* Casper with his ever-handly pocket U. S. Constitution.

CASPER: Yes—but as far out on the limb as I already am, I think I'll leave it at that. ■

① Related publications by President Casper: *Separating Power, Essays on the Founding Period*, Harvard University Press (1997); "Executive-Congressional Separation of Power During the Presidency of Thomas Jefferson," 47 *Stanford Law Review* 473-97 (1995); *Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law* (coeditor with Philip B. Kurland until 1995, Gerald Gunther since 1996), University Publications of America (1975—).

Richard C. Reuben, while studying for his Stanford JSD, has for two years served as associate director of the Stanford Center on Conflict and Negotiation. An experienced reporter, as well as lawyer and scholar, he moderated the recent Stanford Lawyer dialogue between Professors Barbara Allen Babcock and George Fisher ("Juries on Trial," Spring 1998).

professors in Print

On race, gender, executive compensation, copyright, professional ethics, and more.
A concise bibliography of faculty writings published between November 1997 and April 1998



Donohue



Polinsky



Ford

Imprisonment and crime

"Incapacitation as a solution to the crime problem has a certain intuitive appeal. One thing we clearly know how to do is build prisons and house people in them. If nothing else, criminals who are in prison cannot commit any crimes against the rest of society. Unlike social programs, the 'technology' of incarceration is well proven, begins to work immediately in reducing crime, and requires little except money to accomplish its primary goal—keeping convicted criminals off the streets.

"But while incarceration may be a low-risk strategy of fighting crime, it is not inexpensive: One needs to prevent a lot of crime to justify the roughly \$36 million it costs to lock up an extra 1,000 prisoners. Unfortunately, close examination suggests that the incapacitative effect of prison is much less powerful than one might at first imagine. . . ."

—John J. Donohue III and Peter Siegelman
"Allocating Resources Among Prisons and Social Programs in the Battle Against Crime" (See Articles)

Punitive damages

"One of the more controversial features of the American legal system is the imposition of punitive damages. . . .

"Our goal in this Article is to develop a coherent and relatively simple set of principles for determining when punitive damages should be awarded and, in circumstances in which they are appropriate, what their level should be. We separately consider two social objectives: deterrence and punishment. Our methodology is economic in the sense that we organize our inquiry around an examination of how rational parties will respond to the threat of punitive damages, and whether their response will promote, or fail to promote, social welfare. . . ."

—A. Mitchell Polinsky and Steven Shavell
"Punitive Damages: An Economic Analysis" (See Articles)

Racial segregation

"It is now passé to speak of racial segregation. In an America that is facing the identity crisis of multiculturalism, where racial diversity seems to challenge the norms and values of the nation's most fundamental institutions, to speak of segregation seems almost quaint. . . . But even as racial segregation has fallen from the national agenda, it has persisted. Even as racial segregation is described as a natural expression of racial and cultural solidarity, a chosen and desirable condition for which government is not responsible and that government should not oppose, segregation continues to play the same role it always has in American race relations: to isolate, disempower, and oppress.

"Segregation is oppressive and disempowering rather than desirable or inconsequential because it involves more than simply the relationship of individuals to other individuals; it also involves the relationship of groups of individuals to political influence and economic resources."

—Richard T. Ford
"The Boundaries of Race" (See Chapters)

faculty publications, 1997-98

BOOKS

Gerhard Casper, *Separating Power: Essays on the Founding Period*. Cambridge, Mass.: Harvard University Press, 1997.

Gerald Gunther and **Gerhard Casper**, eds., *Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law*. Bethesda, Md.: University Publications, 1997.

Mark Kelman and Gillian Lester, *Jumping the Queue: An Inquiry into the Legal Treatment of Students with Learning Disabilities*. Cambridge, Mass.: Harvard University Press, 1998.

CHAPTERS

John Barton, "California's Future Workforce: Those Who Leave the Laboratory," in *Graduate Education in the Biological Sciences in the 21st Century: Meeting the Challenge*. Symposium proceedings, October 2, 1996, University of California, San Francisco, Laurel Heights Campus, sponsored by the Executive Committee of the University of California Systemwide Biotechnology Research and Education Program. Susanne Huttner and Joa Rubaloff, eds. San Francisco: University of California, 1997.

Richard T. Ford, "The Repressed Community: Locating the New Communitarianism," in *Cultural and Literary Critiques of the Concepts of "Race"*, E. Nathaniel Gates, ed. New York: Garland, 1997.

Richard T. Ford, "The Boundaries of Race: Political Geography in Legal Analysis," in *The Judicial Isolation of the "Racially" Oppressed*, E. Nathaniel Gates, ed. New York: Garland, 1997.

Henry T. Greely, "The Ethics of the Human Genome Diversity Project: The North American Regional Committee's Proposed Model Ethical Protocol," in *Human DNA: Law and Policy—International and Comparative Perspectives*, Bartha Maria Knoppers, ed. Boston: Kluwer Law International, 1997.

Henry T. Greely, "Introduction," in *Cancer and Genetics: Answering Your Patients' Questions*, by Randi Londer Gould. Huntington, N.Y.: PRR, 1997.

Deborah L. Rhode, "The Professional Responsibilities of Professional Schools: Pervasive Ethics in Perspective," in *Teaching and Learning Professionalism*. Symposium proceedings, October 2-4, 1996, Oak Brook, Illinois, sponsored by the ABA section of Legal Education and Admissions to the Bar Professionalism Committee and the Standing Committee on Professionalism and Lawyer Competence of the ABA Center for Professional Responsibility. Chicago: ABA, 1997.

WORKING PAPERS

Janet Cooper Alexander, "Rethinking Damages in Securities Class Actions," Stanford Law School, John M. Olin Program in Law and Economics Working Paper No. 125 (1996).

ARTICLES

Janet Cooper Alexander, "Contingent Fees and Class Actions," 47 *DePaul Law Review* 347 (1998).

Janet Cooper Alexander, "Rethinking Damages in Securities Class Actions," 39 *Corporate Practice Commentator* 353 (1997).

Barbara Allen Babcock and **George Fisher**, "Juries on Trial," *Stanford Lawyer* 16 (Spring 1998).

Paul Brest, "From the Dean" (Why Professors Should Write, as well as Teach), *Stanford Lawyer* 14 (Spring 1998).

John J. Donohue III and Peter Siegelman, "Allocating Resources Among Prisons and Social Programs in the Battle Against Crime," 27 *Journal of Legal Studies* 1 (1998).

John J. Donohue III, "Executive Compensation," 3 *Stanford Journal of Law, Business & Finance* 1 (1997).

George Fisher, "The Jury's Rise as Lie Detector," 107 *Yale Law Journal* 575 (1997).

Richard Thompson Ford, "Geography and Sovereignty: Jurisdictional Formation and Racial Segregation," 49 *Stanford Law Review* 1365 (1997).

Ronald J. Gilson, "The Fine Art of Judging: William T. Allen," 22 *Delaware Journal of Corporate Law* 914 (1997).

Paul Goldstein, "Copyright and Its Substitutes: The Kastenmeier Lecture," 1997 *Wisconsin Law Review* 866 (1997).

William B. Gould IV, "Recent Decisions of the National Labor Relations Board: Some Perspectives from the Chairman about Labor Law in the '90s," 49 *Labor Law Journal* 810 (1998).

Henry T. Greely, "Genetic Testing for Cancer Susceptibility: Challenges for Creators of Practice Guidelines," 11 *Oncology* 171 (November 1997).

Mark Kelman, "Book Review: *Free Markets and Social Justice*, by Cass Sunstein," 35 *Journal of Economic Literature* 2049 (1997).

A. Mitchell Polinsky and Daniel L. Rubinfeld, "Does the English Rule Discourage Low-Probability-of-Prevailing Plaintiffs?" 27 *Journal of Legal Studies* 141 (1998).

A. Mitchell Polinsky and Steven Shavell, "Punitive Damages: An Economic Analysis," 111 *Harvard Law Review* 869 (1998).

Robert L. Rabin, "Federalism and the Tort System," 50 *Rutgers Law Review* 1 (1997).

Deborah L. Rhode, "The AALS Statement at the SALT March on Diversity," 98 *AALS Newsletter* 6 (February 1998).

Deborah L. Rhode, "The Professional Responsibility of Professional Schools," 98 *AALS Newsletter* 1 (February 1998). (Rhode delivered this speech when she was sworn in as the president of the American Association of Law Schools.) Also available at: <http://lawschool.stanford.edu/faculty/Rhode.AALS.html>

Deborah L. Rhode, "The Professionalism Problem," 39 *William and Mary Law Review* 282 (1998).

Deborah L. Rhode, "Whistling Vivaldi: Legal Education and the Politics of Progress," 23 *New York University Review of Law & Social Change* 217 (1997).

NEWSPAPER ARTICLES

Joseph Grundfest, "Walker's Charity Choice is Proper," *The Recorder*, February 20, 1998, p. 5.

Deborah L. Rhode, "Affirmative Action's a Women's Issue—And How!" *National Law Journal*, February 2, 1998, p. A19.

Deborah L. Rhode, "Can a Lawyer Insist on Clients of One Gender?" *National Law Journal*, December 1, 1997, p. A21.

Deborah L. Rhode, "Gender Inequality: Both Sexes Suffer from a Serious Case of Denial," *Chicago Tribune*, July 27, 1997, p. 8.

Deborah L. Rhode, "In Matters Sexual, Equality Still Hasn't Made It," *National Law Journal*, February 28, 1998, p. A19.

Kathleen M. Sullivan, "Subsidies for Indecent Art," *Legal Times*, March 30, 1998, p. 21.

Kathleen M. Sullivan, "Supreme Court Avoidance: On Piscataway, Strategy and the High Court," *Washington Post*, December 7, 1997, p. C1.

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Stanford Journal of Law, Business & Finance
Stanford Law School
Stanford, CA 94305-8610
Telephone: 650/723-9522
E-mail: sjlbf@lists.stanford.edu
WWW: <http://www-leland.stanford.edu/group/sjlbf>

craft, to include the values, character traits, and qualities that make for leadership and a balanced and fulfilling professional life.

- What qualities should a "Stanford lawyer" possess, and how should they be reflected in the Law School's culture and curriculum?

By examining the work and careers of exemplary lawyers, we will develop a deeper understanding of how craft and values are integrated in a professional career and gain insights that might be missed in focusing solely on particular subject areas.

Conclusion

Our society has never had a stronger need for leadership. We cannot make the world a simpler place, but we can transform the educational process to provide lawyers with an integrated set of business and policy skills. We can also strive to stimulate a stronger sense of commitment to the public good. That is the ultimate goal and mission of Stanford Law School.

① Dean Brest welcomes comments and suggestions. Telephone: 650/723-4455
E-mail: pbrest@stanford.edu

Conversation II

Globalization was the focus of a second convocation of deans and leading attorneys

The law school/law firm dialogue launched in January 1997 ("From the Dean," *Stanford Lawyer*, Fall 1997) continued with a meeting March 19–20, 1998, at Harvard Law School. Initiated by Dean Brest and his counterparts at Chicago, Harvard, and Yale law schools, the series of meetings brings together the nation's top law school deans and law firm leaders for candid discussions of shared concerns.

The 1997 meeting concentrated on the ethos of the legal profession. The 1998 meeting explored the challenges of globalization and its implications for top law firms and law schools. Here are some scenes from the 1998 conclave.



Dean Brest



Benjamin Ng '88



James Atwood '69 (speaking). Also shown (above, left) is Thomas Heller, Stanford's Associate Dean for International Programs, Lewis Talbot & Nadine Hearn Shelton Professor of International Legal Studies, and a panelist at the March event.



Chicago dean Douglas Baird '79 (left) and Ambassador Richard Morningstar '70 (of whom more on page 33)

Other Stanford participants included Stephen Heard '64, Hon. Roderick Hills '55 (a panelist), Charles Koob '69, Michael Meyers '79, and Jenik Radon '71.

lawGatherings

Senior statesmen, alumni doers, innovative professors, and California's newest Stanford attorneys brightened winter 1998 get-togethers

westCoast

MARCO ZECCHIN



SAN FRANCISCO

One day before her January installation as the new president of the American Association of Law Schools (AALS), Deborah Rhode, Ernest W. McFarland Professor of Law at Stanford, outlines her plan for an AALS Commission on Pro Bono and Public Service Opportunities in law schools, at a luncheon hosted by the Stanford Law Society of San Francisco in conjunction with the annual AALS Conference.



(Left) Among the AALS luncheon guests were Barbara Allen Babcock, Stanford's Judge John Crown Professor of Law, Dennis Aftergut '77.

STANFORD

The Honorable Alden E. Danner '65 administers the judicial oath to a group of California's newest attorneys—and Stanford Law graduates—at the School's inaugural swearing-in ceremony in January. Cheering on the honorees were spouses, parents, children, and fellow Stanford Law alums.



STANFORD VISUAL ART SERVICES

SILICON VALLEY

The Valley challenged the Beltway when the Stanford Law Society of Silicon Valley hosted a panel discussion entitled "Does Washington Understand Silicon Valley?" in February at the Law School.



(Left) Spearheaded by Silicon Valley Law Society chair Robin Feldman '89, the panel featured Hon. Bruce Lehman, Hon. Clarence L. Irving '79, and Jack Quinn.



MARCO ZECCHIN

(Above) The Silicon Valley panel also included moderator Joseph Grundfest '78, W. A. Franke Professor of Law and Business at Stanford, and panelists William Baer '75 of the Federal Trade Commission, and Piper Cole of Sun Microsystems.

LOS ANGELES

O'Melveny & Myers senior partner Warren Christopher '49 gave Southland Stanford Law alumni an insider's look at international policy and relationships in his discussion of "Ten Interesting People" last January. Among the alumni who met the former U.S. Secretary of State at the Los Angeles Law Society event was John Hearne '73 (left).



MARK FELLMAN



JONATHAN MARJOR

SEATTLE

Brainstorming last February for the upcoming year of Seattle Law Society events are Ken Diamond '86 and the Society's co-chair Alex Alben '84.



'73 REUNION PREVIEW

Alumni of the Class of '73 from the Washington, DC, area gathered in March in great anticipation of their 25th reunion at Alumni Weekend October 8-11, 1998. Joining Dean Brest (back row left) were reunion boosters (left to right) Sally and Jerrold '73 Ganzfried, Jeffery '73 and Jean Yablon, Lawrence Bauman '73, Steve Neal '73, Julie Kitzes Herr '73, and Hons. Deborah '73 and Howard Chasanow.



DAVID HATHCOX

WASHINGTON, DC

On April 6, sixty Washington alumni met with Chief Justice William Rehnquist '52 (center right) at the law firm of Covington & Burling. Guests at the intimate luncheon conversation sponsored by the Stanford Law Society of Washington, DC, included Matt Nosanchuk '90 and James Atwood '69 (above) and Mary Beth '72 and Rick '71 West (right).



LINDA BARETT

(Above) At the '73 dinner Dean Brest (left) chats with 25th-reunion celebrants Jeffrey Colman '73 and Jonathan Weisgall '73.



YOU ARE INVITED TO ENJOY

Stanford Law School's

Alumni Weekend 1998

October 8-11, 1998

An abundance of Law School and University events for alumni of all class years—plus reunions for the Half-Century Club (Classes of '20 to '47), '48, '53, '58, '63, '68, '73, '78, '83, '88, and '93

PROGRAM HIGHLIGHTS

THURSDAY, OCTOBER 8

Dean's Circle Dinner

To recognize and honor annual donors of \$10,000 or more. By invitation.

FRIDAY, OCTOBER 9

Delegates' Summit

Open to all current and potential volunteers. Find out how you can put your skills to work for the Law School.

Celebration Lunch

An all-alumni gathering with the Dean, faculty, and students.

Panel Discussions

- *Who's Watching Out for Our Kids?* A look at the Internet, TV, and other media by William E. Kennard (AB '78), Chairman, Federal Communications Commission, and an expert panel.
- *Empty Suits? A Hard Look at Corporate Boards of Directors and What They Can—or Cannot—Accomplish.* Featuring W.A.

Franke (AB '59, LLB '61), Chairman, America West Airlines; and other corporate leaders.

- *Your Doctor and You: Where Are Mergers, Managed Care, and Money Taking the Health Care System?* An interdisciplinary panel on a matter of vital interest.

- *In Vino Veritas: The Unsweetened Truth about Getting into and Staying in the Wine Business.* Real-life winery owners talk about their possible dream.

All-Alumni Reception and Wine Tasting

Reunion Dinners

The not-to-be-missed opportunity to visit with classmates.

SATURDAY, OCTOBER 10

Continental Breakfast

Panel Discussions

- *Litigation, Alternative Dispute Resolution, and the Just Result.* A range of views on the trend towards private settlements.

- *How Do Judges Decide? Precedent versus Philosophy, and the Role of Law Clerks.* Insights and anecdotes from some who wear the robe.

- *Water, Water, Everywhere . . . Solving the Oceans' Growing Environmental Problems.* An interdisciplinary panel on the mother of all ecosystems.

Tailgate Celebration

Football Game

Stanford vs. Oregon State

SUNDAY, OCTOBER 11

Reunion Brunches

(for some classes)

AND MORE . . .

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

E-mail: Law.Alumni.Relations@forsythe.stanford.edu

Website: <http://lawschool.stanford.edu>