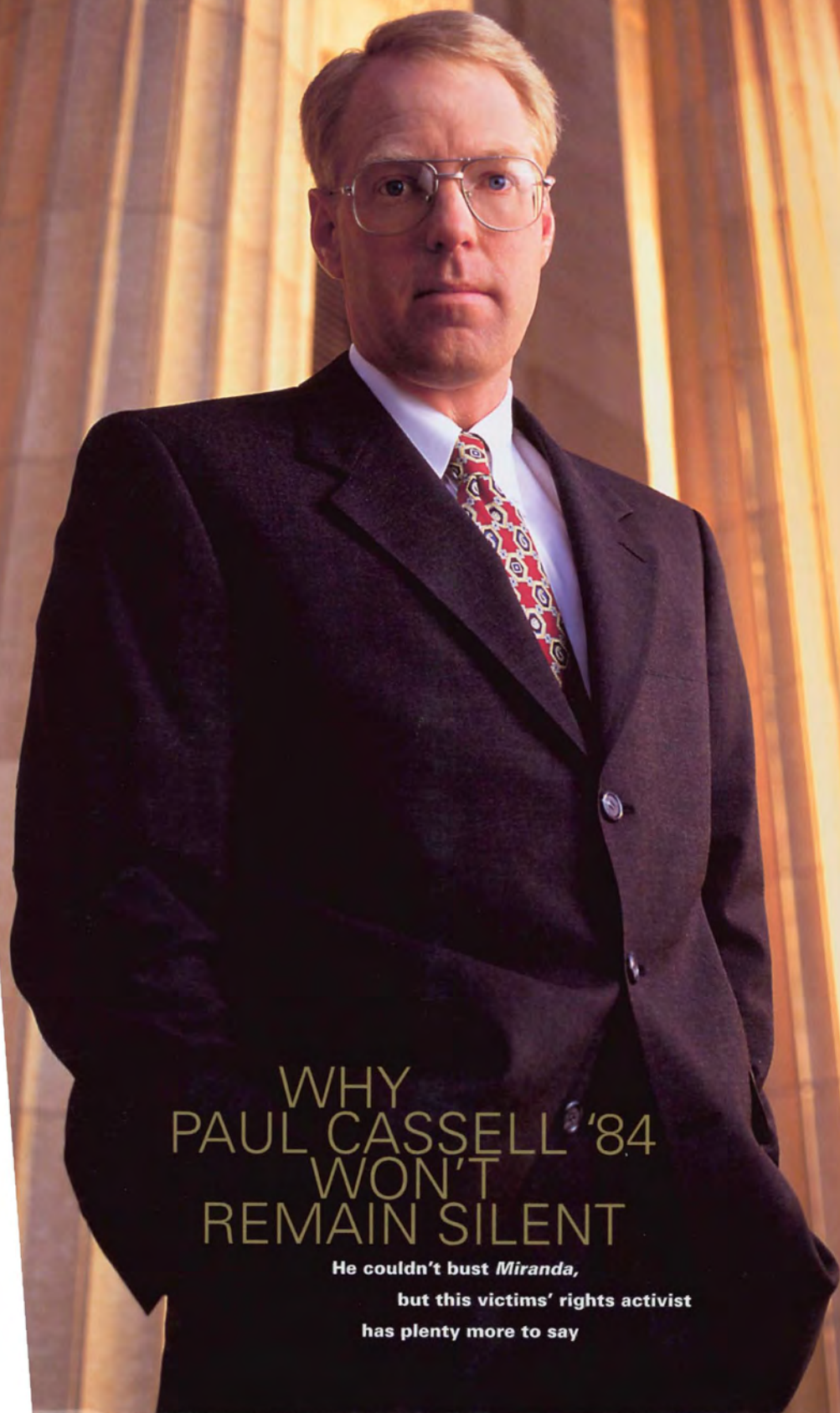


# Stanford *Lawyer*



WHY  
PAUL CASSELL '84  
WON'T  
REMAIN SILENT

He couldn't bust *Miranda*,  
but this victims' rights activist  
has plenty more to say



“Overall,  
best seminar  
of its kind  
I ever  
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COVER PHOTO by Skip Schmiert



# The Legal Profession:

Where We're Going, and How We'll Get There

BY KATHLEEN M. SULLIVAN

**W**

**HEN WE GATHER AT** the law school for what is certain to be a rich and provocative Alumni Weekend this October, the theme of our discussions will be nothing less than the future of the legal profession.

We will ask what changes our profession faces as a result of the digital revolution that has so dramatically lowered the cost and increased the speed of transmitting and using information around the globe. We will ask what changes we face from the ensuing globalization of labor markets and capital markets. We will ask what competition we face from other professions and from multidisciplinary practice. And we will ask how we can maintain our traditional commitment to public service and equal

access to justice in the face of peak demand for legal services in the private sector.

The theme of this year's Alumni Weekend will be that these changes are an extraordinary source of excitement and opportunity for our profession. Consider them in turn.

Digital technology has already transformed many of your business practices. It also has the capacity to transform the justice system and the practice of law. It may enable new mechanisms for managing mounting caseloads, increasing access to public records, equalizing resources among litigants, and facilitating dispute resolution outside courtrooms.

That the litigant of the future will file electronically, the judge of the future read a simultaneous transcript of hearings on a laptop, and the jury of the future look at evidence on individual video screens is just the beginning. Over time, new information technologies may also alter our understanding of forums and jurisdiction, of harms and the means for their correction, of the reach of markets, and the principles of governance.

Forward-thinking and technologically sophisticated lawyers will play a key role in both the intellectual and institutional fashioning of this future.

Similarly, the internationalization of legal practice will make fascinating intellectual and institutional demands on lawyers. Lawyers are increasingly important as borders are less so.

That is because our distinctive contribution is the anticipation, prevention, and resolution of conflict. Conflict is, if not inherent in the human condition, certainly inherent in a nation as large and diverse and democratic as ours. The potential for conflict grows exponentially in a world that is increasingly networked and international. And so does the need for its management.

Lawyers are also the necessary architects of the rule of law in transitional and developing economies—helping to ensure that courts are independent, administrators and law enforcement non-corrupt, and property rights secure.

Competition with accountants, management consultants, and financial planners is not something





our profession ought fear. Indeed, one point often lost in recent debate over new forms of competition from multidisciplinary practice is just how multidisciplinary lawyers already are.

A lawyer is often part economist, statistician, game theorist, finance expert, historian, architect, philosopher, ethicist, psychologist, rhetorician, or physical scientist. We require such disciplinary flexibility, because no legal problem ever walks in the door neatly labeled with the topic headings of a casebook.

A toxic waste site might be a tort problem, an environmental regulatory problem, or a bankruptcy problem in the making. A property or marital dispute might be a legal problem or a candidate for private mediation. An accounting error or product defect might call for administrative negotiation or public relations repair as well as legal research.

Law firms thus are already examples of multidisciplinary practice under a single roof. Balancing considerations of ethics and efficiency in an increasingly competitive environment will demand creativity and care. But we will distinguish ourselves in this new environment by our versatility and quality, not by asserting a disciplinary autonomy that is no longer practical.

Finally, lawyers will continue to serve public interests no matter how hot the private legal market. Many of us will do so explicitly by choosing jobs in public service for shorter or longer portions of our careers.

But all lawyers, public or private, have a public dimension to their practice. We think about precedent and consequences. Our job is to translate into countless cases and transactions the restraints that have been applied to similar matters in the past, mindful always of the public trails our own private arguments leave behind. Our job is also to anticipate and provide for any calamities that might arise long after the champagne of the signing has lost its fizz or the cheers faded from

the jury verdict. In short, we take the long view, which means we always have one eye on the public good.

Our goal at the law school is to keep an eye on all four of these developments in the legal education we provide. We aim to produce technologically sophisticated lawyers who will have the creativity and wisdom to refashion law in an increasingly digital world—a goal that will be boosted greatly by the arrival this fall of our newest professor, cyberspace expert Lawrence Lessig (see story on page 24).

We have greatly increased our international course offerings. We now have courses not only in international institutions and international business but also in international copyright, international tax, and international environmental law. And with the generous aid of Microsoft and its general counsel William Neukom '67, we have launched an ambitious three-year program of research and teaching devoted to the preconditions across different societies for the embodiment of the rule of law.

We have multiplied our public law offerings, and with the generous help of alumni led by Miles Rubin '52 and his wife Nancy, provided our graduates with a generous loan repayment assistance program designed to let them continue to work in government and public interest jobs.

And we remain, as Stanford Law School has been for generations, devoted to a multidisciplinary conception of law. We teach quantitative analysis along with

the reading of statutes, simulated deals along with the theory of capital markets, cultural theory along with the Constitution, and case studies along with parsing of judicial opinions. Our faculty is as multidisciplinary as the profession we teach students to serve.

I hope to see you at Alumni Weekend or elsewhere during the course of this new academic year, and as always, welcome your thoughts and suggestions about how to make Stanford Law School the best that it can be. ■

**Our job is to translate into countless cases and transactions the restraints that have been applied to similar matters in the past, mindful always of the public trails our own private arguments leave behind. Our job is also to anticipate and provide for any calamities that might arise long after the champagne of the signing has lost its fizz or the cheers faded from the jury verdict. In short, we take the long view, which means we always have one eye on the public good.**



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STANFORD LAWYER

(ISSN 0385-0576)

is published for alumni and friends  
of Stanford Law School.

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Stanford Junior University.

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publisher, is prohibited.

*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.

Printed on recycled paper

## The Future Really Is Now

Tech heavyweights are using the law school as a proving ground

**K**ATHLEEN SULLIVAN TOLD MITCH DAVIS TO DREAM BIG, and he did. As a result, her vision of a "21st-century law school" is starting to come true. Davis, the law school's chief information officer, has teamed with seven leading technology companies—IBM, Sun, Cisco, Hewlett-Packard, Palm, Philips, and Sprint—to leapfrog mainstream applications and develop the law school as a testing ground for technological innovation in the teaching and practice of law. The product of this collaboration may prove revolutionary not only for how students learn, but for how attorneys practice.

IBM, the law school's original technological alliance partner, is working with the law school to build a digital video server and then, using IBM's Video Charger software, to stream video over the network and the Internet to locations around the world. By using voice recognition to build a database of the spoken information in the video, IBM's new software can create a text-sensitive, searchable digital video database. Using this technology, a lawyer researching a deposition could go immediately to the video segment he or she needed by typing in a key word or phrase, according to Davis. IBM also is working with the law school to help test and develop enterprise applications that run on a Linux platform. The law school is beginning to deploy Domino, Lotus Notes, and Learning Space using a Linux-based network to create an online simulated classroom. Students could simultaneously work on documents, exchange messages, check their schedules in real time, and discuss an issue brought up in class—all online.

Sun Microsystems is working with the law school on a number of projects related to web access, so-called "thin clients," and remote authentication using Sun's technology. With the Sun system, Davis says, students working at externships away from Stanford could enter their Java wireless network authentication and encryption card into a computer, which would authenticate the students' network identities, log them into a wireless network, and immediately pull up their own desktop and e-mail on the screen.

Davis has arranged for the law school to serve as a beta site for Palm handheld computer applications, including WestLaw, Lexis, Martindale-Hubble, NetAlive, and Nearspace. When the system is in place, students and faculty will be able to access on their Palm pilots WestLaw's database, online books, and a map of the Stanford campus and law school.

Hewlett-Packard will also be working with the law school to provide printing solutions, network servers, software, and additional laptop options. Philips will be testing some of its latest digital flat panel displays (including a 44-inch screen in Sullivan's office), and Cisco is identifying ways to upgrade the law school's network capability, including both wired and wireless connections for faculty and students. "We are working with Cisco's general counsel's office to help bring their extensive library of corporate legal applications into the legal marketplace," Davis said.

Davis points out that while the law school clearly benefits from its early access to these innovative applications, there are significant benefits for the companies involved as well. "The law school is a perfect environment to test these applications, because our students come to Stanford from varied backgrounds and computer skill levels expecting to use some of the latest technology. If you come up with a product that will be used by future lawyers who have experience in the sciences, humanities, medicine, and many other disciplines, chances are good that you have a product that can be deployed universally," he said. ■

**Students could  
simultaneously work  
on documents,  
exchange messages,  
check their schedules  
in real time, and  
discuss an issue.**



## Two Who Stand Tall

O'Connor, Hufstedler honored with ABA's Brent awards

**U**NITED STATES SUPREME COURT Associate Justice Sandra Day O'Connor '52 and former United States Court of Appeals Judge Shirley M. Hufstedler '49 were among five women given the American Bar Association's prestigious Margaret Brent Women Lawyers of Achievement Award this year. The annual award, sponsored by the ABA's Commission on Women in the Profession, honors outstanding women lawyers who have achieved professional excellence in their area of specialty and have actively paved the way to success for other women lawyers.

O'Connor's career has been a series of pioneering successes. She served in the Arizona State Senate from 1969 to 1975, and was elected Senate majority leader in 1972. At that time, she was the first and only woman Senate majority leader in the nation. In 1975, O'Connor was elected judge of the Maricopa County Superior Court in Phoenix. She served in this position until 1979, when she was appointed by Arizona's governor to the Arizona Court of Appeals. O'Connor made history in 1981 when she became the first woman justice on the United States Supreme Court.

Dee-Dee Samet of the Arizona Women Lawyers Association said that O'Connor's achievements have "consistently shown that women have the capability to excel in positions of responsi-

bility and authority." Dean Kathleen Sullivan noted that O'Connor has been "a great friend of the law school," appearing prominently in alumni week-



**United States Supreme Court Associate Justice Sandra Day O'Connor '52, above, and former United States Court of Appeals Judge Shirley M. Hufstedler '49**

end events in recent years.

Likewise, Hufstedler's career has been marked by one path-breaking event after another. She was among a handful of women nationwide who entered law school following World War II, was the first woman elected to the Stanford Law Review, and became one of the first women to be seated on the federal bench.

In 1950, a time when few women were practicing law, Hufstedler began a successful career as a lawyer. In 1961, she was appointed judge of the Los Angeles County Superior Court.

President Lyndon B. Johnson appointed Hufstedler judge of the United States Court of Appeals for the Ninth Circuit in 1968. She served in this position for 11 years, until President Jimmy Carter appointed her United States Secretary of Education.

"Judge Shirley M. Hufstedler is a true Renaissance woman and a symbol of the highest achievements women of her generation could achieve," said ABA President-Elect Martha Barnett.

Hufstedler's accomplishments include being the first woman, in 1995, to receive the ABA Medal, the association's highest award. She currently is chairman of the U.S. Commission on Immigration Reform. ■

## Rhode Heads ABA Commission on Women

**Deborah L. Rhode, Ernest W. McFarland Professor of Law, is the new chair of the American Bar Association's Commission on Women in the Profession. First Lady Hillary Rodham Clinton was the inaugural chair of the commission, which develops programs, policies, and publications to assist women in law schools, academia, public and private practice, and the judiciary. Rhode, who expects to serve a three-year term, succeeds Karen Mathis, president and principal in the Denver law firm of Hall & Mathis.**



## Law School Taps Thompson as Vice Dean

Shell, Brucato given expanded authority in new administrative model

**A**S STANFORD LAW SCHOOL this fall embarks on a comprehensive strategic-planning process and prepares for a reaccreditation site visit in 2001, three senior administrators have taken on new duties and titles.

Barton H. "Buzz" Thompson, Jr., the Robert E. Paradise Professor of Natural Resources Law, has been appointed vice dean of the law school, a position established to augment the school's academic governance and planning processes. A member of the faculty since 1986, Thompson will assist Dean Kathleen Sullivan in day-to-day academic governance and will shepherd the development of a new strategic plan for the law school. He also will oversee the law school's reaccreditation visit by ABA and AALS representatives next spring.

Sullivan says Thompson brings experience, insight, and great ideas to the position. "Buzz has demonstrated considerable administrative skill in his direction of our environmental law program, which this year was named one of the top ten programs in the country," Sullivan said. "I can think of no better person to help us interpret the challenges and identify solutions for legal academia generally, and Stanford Law School specifically, over the next few years."

Thompson, whose research and teaching on environmental and natural resources law has won wide acclaim, will serve as vice dean for at least two years. He says he is excited about the opportunity to help shape the law school's future. "Kathleen Sullivan has bold ambitions for the law school—to become not only

the best law school in the country but also a model for legal education," Thompson said. "I'm eager and excited to help Kathleen and the rest of the faculty in achieving that vision."

"I have seen the law school from three different perspectives—student, alumnus, and faculty member," he noted. "I understand the traditions that we should build on as well as the opportunities for leadership in the future."

Thompson earned both his undergraduate ('72) and JD/MBA ('76) degrees at Stanford. He clerked for Judge Joseph T. Sneed of the United States Court of Appeals for the Ninth Circuit, and for Justice William H. Rehnquist '52 of the United States Supreme Court. From 1978 to 1986, he was an attorney at O'Melveny & Myers, where he was named a partner in 1984. He is a former visiting fellow at the Hoover Institution and a member of the board of directors of the Natural Heritage Institute. In 1993, he won the law school's John Bingham Hurlbut Award for Excellence in Teaching.

Martin Shell, head of the law school's development and alumni operations, ascends to a new position, senior associate dean for external relations and chief operating officer. In addition to continuing to supervise development and alumni relations,

Shell will take on the internal coordination of the school's administrative departments, meeting regularly with administrative associate deans and managers to address issues that overlap departments, such as calendaring, space allocation, website priorities, and support services. "The exceptional analytic, organizational, and diplomatic skills that Martin brought to our external relations operation will stand him in good stead in this new role," Sullivan said.

Shell, who came to Stanford in 1998 from the University of Pennsylvania Law School, oversaw the final years of the law school's recent fund-raising campaign, which was one of the most successful in the history of U.S. legal education, generating more than \$116 million.

Frank Brucato, a member of the law school administration since 1983, will serve in a new position with increased responsibilities as associate dean for finance and chief financial officer. "Frank's extraordinary gifts and experience in managing our budgets and solving all manner of financial problems are well known," Sullivan said. "I have asked him to take on a wide range of demanding new capital-planning and finance projects for next year and beyond, which are likely to entail significant rebuilding and new building initiatives, creation of new funds for investing gifts to the law school, and development of new sources of corporate and foundation support." ■



FROM TOP TO BOTTOM: Barton H. "Buzz" Thompson, Jr., Martin Shell, and Frank Brucato



## Labor Panel Convenes at Law School

Charles A. Beardsley Professor of Law William Gould brought together a panel of labor leaders to discuss pressing issues at a meeting at the law school in June. Among those attending were, from left, Steve Diamond, professor of law at Santa Clara; Joseph Miniace, president of the Pacific Maritime Association; Gould; Bruce Raynor, secretary-treasurer of UNITE; and Bill Lucy, secretary-treasurer of AFSCME. Not pictured is Jerry Calhoun, vice president for industrial relations for Boeing.



## Sibling Rivalry

Kin '96 survives 'Big Brother'

CURTIS KIN '96, described by a friend as "witty and affable," needed both of those qualities in abundance to survive as a contestant in CBS's latest dose of reality TV. Kin was one of 10 people chosen to compete for a \$500,000 grand prize on the show *Big Brother*, in which strangers live together and have virtually every move recorded.

The residents of *Big Brother* were not allowed contact with the outside

world for the duration of the show, which began July 4 and concluded September 30. Each week, viewers were asked to vote one member of the household off the show.

In August, Curtis and housemate Jordan (last names were not revealed) were nominated for banishment. Jordan lost in a landslide, and Curtis survived to stay on the show. At press time, he was still in the house. ■

STANFORD LAW ONE OF 10 BEST FOR HISPANICS

*Hispanic Business*, in its September issue, named Stanford to its list of top 10 law schools for Hispanic students. Stanford, which ranked fifth, was applauded for its sponsorship of a special recruiting weekend for minorities each spring, and for its Latino Law Students Association.

## Ebb, International Business Law Pioneer, Dead at 82

**L**AURENCE F. EBB, who taught at Stanford Law School for a decade, died August 4 at National Rehabilitation Hospital in Washington, D.C. He was 82 years old.

Widely admired for his expertise in international business law, Ebb directed the international legal studies program at Stanford. "Knowledgeable persons have credited Larry with pioneering the development of the area of international business transactions," said former colleague J. Keith Mann, professor emeritus.

Ebb earned his bachelor's and law degrees from Harvard, finishing first in his law class in 1946. He



Lawrence Ebb, right, was an early leader in international business law.

clerked in the United States Court of Appeals for the Second Circuit in New York City in 1946 and at the United States Supreme Court in 1947.

He taught at Stanford from 1954 to 1964 and later worked in the legal department at General Electric in New York City, retiring in the mid-'80s. He continued a part-time arbitration practice in Washington from 1988 until 1998.

Survivors include his wife, Kim, of Washington, D.C.; two sons, David, of Newton, Mass., and Peter, of Natick, Mass.; a daughter, Nancy Ebb, of

Bethesda, Md.; and six grandchildren. ■



# SUPREME BEINGS & OTHER MYTHS

By Dahlia Lithwick '96

Is insulating  
justices from  
media scrutiny  
good for the  
country?

**W**ERE THEY TO HOLD CONTESTS for such things as “Best Term Ever” in the United States Supreme Court, the 1999 edition would have made the short list. And if there were a contest for “Most Inherently Hilarious Term,” ’99 would win hands down. I wish you could have been there.

The ’99 Term saw cases ranging from grandparents’ rights to visit their grandchildren to prayer before football games. The constitutionality of a partial-birth abortion ban was challenged, as was the *Miranda* warning. (See related story, page 10.) The FDA was barred from regulating tobacco as a drug, and Congress was barred from trying to sanction rape as affecting interstate commerce. And the right of strippers to go on free expressing was rejected.

I spent the term courtside in the tiny Supreme Court press gallery (a journalist’s dream of hard benches and obstructed views). As I saw most of the cases being argued, and decisions being read, I can assert with some confidence that the soundtrack for this past term includes some songs the public never hears. Otherwise you too might have the chance to fully appreciate the tone and cadence of a Justice Scalia “Trademark Sarcastic Rejoinder.” Or the sound of “New Hampshire in Winter” under Justice Souter’s voice when his dander gets up.

Reporting on this term’s happenings for *Slate*, the online news magazine owned by Microsoft and edited by Michael Kinsley, I have become certain that these tones and hiccups, the facial ex-

pressions and hand gestures, are as important to understanding the Court’s jurisprudence as is the closest textual reading of the majority holding. These human moments—Justice Stevens’s compassion for a grandparent, or Justice Scalia’s visceral horror at abortion—animate the Court’s formal opinions as no footnote or string citation can.

While print reporting of Supreme Court happenings has traditionally been one of the bright lights of journalism, the reverence with which the High Court is treated by the media has always seemed somewhat excessive. I think the reverence does violence to the role of the press as democracy’s watchdog.

The courts in general, and the United States Supreme Court in particular, have had a rather prickly relationship with the press. The same Court that has climbed the highest ramparts to defend the First Amendment hasn’t always welcomed the Fourth Estate with open arms. The Court has never had an easy time justifying why, for instance, television cameras cannot cover oral argument. Nor is it easy to get a plausible justification for the Court’s rule against spectators taking notes in the courtroom. Are the justices worried about renegade caricaturists, or being attacked by a malcontent with a Bic felt-tip?

Reporters work under seemingly arbitrary constraints on their dress (absurdly archaic); their seating (absurdly hierarchical); their recording devices (not-on-your-life, mister); and their access to the justices (yeah, right). Once, on entering the courtroom, I had to abandon my copy of Kafka’s *The Trial* at the security checkpoint. Try explaining the concept of irony to the U.S. Marshal Service.

A congressman or president imposing such constraints would be denounced as a fascist. Indeed, a president who sought to immunize himself in this way from media scrutiny would be chased even more vigorously by the press. The assumption would be that the secrecy meant there was something to hide. Yet in the Supreme Court these rules are inviolate. Words like “decorum” and “stature”



suffice to silence the jesters and jugglers.

The justices resent scrutiny into their personal lives. Indeed, Justice Thomas gave a speech this year in which he castigated the press for reporting—during the tobacco regulation case—on the number of justices who smoked. Thomas deemed the attention to such personal detail “frivolous.”

What is interesting about the justices’ anxiety about media coverage that is “frivolous,” personal, or irreverent is that it suggests that the Court has bought into its own mythology. That is to say, it’s bought into the notion that these nine individuals are not merely brilliant jurists, but oracular seers who are interchangeable, faceless, inspired diviners of truth. Why is it so unthinkable that a justice’s decision to smoke might inform her opinions? It is a far cry from the Framers’ wish that the justices be apolitical, to the current state of affairs in which they are somehow a-human. Why must we believe that a justice’s ideas are less worthy when they are informed by his religion or experience? Such willful blindness to the personal beliefs of the justices does nothing to preserve “decorum.”

We live in a land in which a senator is not even a serious candidate until she has survived a good media thrashing. While the extent of the savagery in the media is excessive, can anyone really argue that it’s good for democracy when the press stops holding our leaders’ feet to the fire?

*Slate* has a wonderfully democratic message board system called The Fray, which I have ruefully dubbed The Flay insofar as some of the daily postings about my work have left me without any skin on key parts of my body. Still, I remain a zealous proponent of the interactive nature of the Internet, as compared to conventional print reporting. I believe the media ought to engage less in a monologue with reporters trumpeting to the masses the day’s events at the High Court, and more in a dialogue with readers discussing back and forth the issues in each case. How often do you read a letter to the editor about an oral argument piece in a major paper?

I am more and more persuaded by my work at *Slate* that the public is interested, informed, and passionate about the doings of the High Court. They want to understand the legal

issues and debate the policy questions. They want to participate.

So, it was to my great surprise that any number of daily postings about my Court coverage in *Slate* were critical, not of my opinions, which are usually wrong, but of this project of humanizing the Brethren and Sister-en on the Bench. “Justice Breyer is an important and brilliant legal thinker,” a typical posting will say. “How dare the author subject him to ridicule by comparing his hand gestures on the High Bench to Madonna ‘vogue-ing?’” It is difficult to imagine a similar comment being leveled at a reporter parodying the President (who, whatever his flaws may be, is an equally important and brilliant thinker). It is almost a misdemeanor for a comedian to skip the cigar joke these days. One can only conclude that the public, like the press and the Court itself, have come to believe that the justices are “different.”

But how are they different? It would seem to me that what makes them different, namely political appointments and lifetime tenure, would warrant more personal scrutiny than the other two branches of government. We do not engage in such scrutiny because, I suspect, we believe not only that the Court is a “different” branch of government, but also that it occupies a quasi-religious role in our national consciousness.

This reverence is played out at many levels, including the architectural decision to model the Court after a Greek temple (the other two branches of government operate out of a public meeting place and a pretty white “house”). In this Information Age, I cannot fathom why the Court remains swathed in unparalleled secrecy, unless it is due to a bizarre confluence of three forces. Somehow, the authority of the Court, acquiescence by the press, and the public’s need for a secular church have kept the Supreme Court insulated from the tough questions, cruel parodies, and lively interviews that make the media such a vital player in our democracy. I come to my task at *Slate*, neither to praise the justices, nor to bury them. A year of sports-writing about them has given me a far deeper sense of admiration and reverence for them than any written opinion ever could. ■

*Dablia Lithwick ’96 covers the Supreme Court for Slate.*





*Keeping the*

That's the premise  
behind the  
work of  
Paul Cassell,  
a relentless activist on  
behalf of crime  
victims

# BAD GUYS Caught

**IN THE FLURRY OF ANALYSIS** and journalistic postmortems on the Supreme Court's decision in June that the *Miranda* rule should remain as it is, long-time court watcher Tony Mauro wrote in the various *American Lawyer* newspapers that "the decision likely means the end of the road for a single-minded campaign against *Miranda* by University of Utah College of Law Professor Paul Cassell."

And when CBS's *60 Minutes* did a piece last year on the *Miranda* case and the role that Cassell has played in it—his carefully calculated work of more than a decade led both to the writ of certiorari and his selection as the one to press it because the solicitor general would not—Cassell was described as "an obscure law professor."

Rebuttal to Mauro on this being the end of the road: Don't count on it. And to *60 Minutes*: If Cassell was obscure then, he's not now.

The fact that Cassell '84—president of Stanford Law Review, Order of the Coif, clerkships at the D.C. Circuit and the Supreme Court—marched his crusade against the 34-year-old *Miranda* rule all the way to the Supreme Court is evidence of his growing influence. But his broader activism for victims' rights could produce a profound change in the way the legal system deals with criminals and their prey. Essentially his philosophy is this: bad guys really are bad, and they hurt good guys.

By Terry Carter

*Photography by Skip Schmielt*







# Cassell has argued that as many as 28,000 confessed violent felons go free each year because of technical violations of the *Miranda* rule.

Cassell has been called a zealot. He has been called indefatigable. One of his most notable opponents on *Miranda*, Michigan Law School professor Yale Kamisar, whose writings in the 1960s made him the unofficial “father of *Miranda*,” said during the battle that Cassell amounted to a full-employment act for a slew of liberal legal scholars trying to contain him. And while the High Court’s ruling on *Miranda* may appear to be the last word on the debate, Cassell isn’t about to remain silent.

Cassell has argued that as many as 28,000 confessed violent felons—a figure other scholars dispute—go free each year because of technical violations of the *Miranda* rule, and an untold number of “lost confessions” never happen because the *Miranda* warning, in effect, coaches suspects to keep quiet.

The *Miranda* matter had been dormant for many years. There had been little public discourse about it until Cassell broadened the debate from an academic exercise pressed by Joseph Grano, whose 1993 book, *Confessions, Truth and Law*, argued that the Supreme Court’s 1966 *Miranda* decision was an illegitimate venture into legislative power by the judiciary.

Whereas Grano’s argument was based on constitutional theory, Cassell took an empirical approach that studied the real-world use and effects of *Miranda*. Oddly, Cassell’s challenge to *Miranda* relied upon a law, U.S.C. 3501, that had been on the books since 1968. But,

as described by Stanford law professor Barbara Babcock—who taught Cassell—3501 “had fallen into instant desuetude.”

Enacted as a response to the social upheaval of the time by a Congress that wanted to be seen as supporting law and order, U.S.C. 3501 was an attempt to undo *Miranda* by relaxing the strict requirements for advising and warning suspects. Congress had considered the damage caused by *Miranda* when it crafted 3501, and the legislative body’s fact-finding and subsequent determinations should have held sway with the High Court, Cassell says.

Cassell had been working to remove the teeth from *Miranda* since 1986, when he finished clerking for then Chief Justice Warren Burger at the Supreme Court and moved into the Justice Department as an associate deputy attorney general. Just as Cassell arrived, Stephen Markman, then assistant attorney general in the Office of Legal Policy, was circulating a report encouraging the use





**TAKE AWAY THE STATISTICS**, the legal maneuvering, and the impassioned discourse and what you have in the victims' rights debate is Baylee Almon. Two-year-old Baylee was one of 15 children who died on April 19, 1995, when a homemade bomb destroyed the Alfred P. Murrah Federal Office Building in Oklahoma City.

The photograph of her broken body being carried away from the bomb site by a firefighter left the nation bereaved and galvanized outrage about the single worst terrorist act in U.S. history.

In all, 168 people perished in the bombing. Subsequent criminal trials resulted in convictions against Timothy McVeigh, who planted the bomb, and his collaborators, Terry Nichols and Michael Fortier. But Paul Cassell wanted more. He wanted the victims and their families, damaged beyond repair, to have their own day in court. And then some.

Working with the National Organization for Victim Assistance, and with help from Washington, D.C.'s Wilmer, Cutler & Pickering, Cassell represented the victims' interests, first during the criminal trials and later during sentencing hearings. He was instrumental in getting a \$14.5 million judgment for restitution from Nichols, and convinced a judge to increase the prison sentence that both sentencing guidelines and the government called for against Fortier.

That figure of \$14.5 million, though ostensibly for the victims, was derived from the replacement cost of the bombed building—the only tangible measure for damages in a matter in which the judge said the human suffering was incalculable. The government waived any claim so that if money is recovered—for example, if Nichols someday sells his story to Hollywood—it will go to a victims' fund.



**Cassell won a \$14.5 million judgment against Terry Nichols, one of the bombers. Victims and their families celebrated the verdict.**

defendants, Fortier. Taking into account the fact that Fortier had helped their cases against the others once he was charged with failing to alert officials of their plans for the bombing, prosecutors suggested a sentence of roughly six to seven years.

Sentencing guidelines called for just over four years, but Cassell convinced the judge that the 168 deaths were a multiplying factor, and that he could depart upward from the guidelines. "I asked him to throw the book at Fortier, and he did," Cassell said.

Cassell intends to push even harder in the future. "My long-term goal is to make the criminal justice system move much more in the direction of recognizing victims."

# *Bombing* **VICTIMS** *Get Their Day in Court*

The restitution was challenged by Nichols's attorneys, who said the 1997 Victims' Rights Clarification Act, passed by Congress primarily to help the Oklahoma City bombing victims, was *ex post facto* punishment. Cassell ultimately won by convincing the United States Court of Appeals for the 10th Circuit that the act, which called for mandatory restitution, dealt with compensation rather than a fine or punishment. The matter of restitution had come up as a side issue when Cassell was arguing that the surviving victims and the families of the deceased should be allowed to attend the trial despite being slated as impact witnesses for sentencing purposes.

And he wasn't finished there. After McVeigh received the death penalty, Cassell convinced a judge to impose a stricter sentence on one of the lesser



# Cassell had been working to remove the teeth from *Miranda* since 1986, when he finished clerking at the Supreme Court and moved into the Justice Department as an associate deputy attorney general.

of 3501 to blunt *Miranda*. The report and Cassell latched onto each other.

Attorney General Edwin Meese assigned Cassell to find appropriate cases in which to bring 3501 motions, but when he finally found one, Solicitor General Charles Fried declined to pursue it. Fried has since said that while he still believes *Miranda* is illegitimate judge-made law, cops and prosecutors have learned to live with it and the upheaval associated with overturning it would be counterproductive.

Cassell kept *Miranda* in his sights after leaving the Justice Department. United States Supreme Court Justice Antonin Scalia, for whom Cassell clerked on the United States Court of Appeals for the D.C. Circuit in his first job out of law school in 1984–85, energized Cassell with his comments on 3501 in a 1994 opinion. In that case Scalia chastised the Justice Department for not utilizing 3501 and forcing the judiciary to deal with a “host of *Miranda* issues that might be entirely irrelevant under federal law.” Scalia also noted the “acquittal and the nonprosecution of many dangerous felons.”

Yale Kamisar sees that as the moment that launched Cassell to a new level in the battle against *Miranda*. Cassell made good use of a 10th Circuit opinion in 1975 that upheld the constitutionality of 3501, but it was in the United States Court of Appeals for the 4th Circuit that he got hold of the case, *Dickerson v. United States*, that led him to the Supreme Court in April. Both Kamisar and Cassell predicted a 5-4 outcome, though each expected it to be in his favor. The vote was 7-2 to uphold the constitutionality of 3501, with only Justices Clarence Thomas and Scalia dissenting. “One thing that still bothers me is that the Supreme Court didn’t address the damage caused by *Miranda*,” Cassell said. “I’ve tried to make the case that criminals go free and victims and innocents are hurt as a result.”

If nothing else, Cassell succeeded in getting the Supreme Court to engage in some institutional intro-

spection. In a series of cases over the years, the Court seemed to chip away at *Miranda* and question its earlier opinion that the right is based in the Constitution. In one case, Chief Justice William Rehnquist ’52, at the time an associate justice, wrote that *Miranda* was not necessarily guaranteed by the Constitution but instead was a “prophylactic measure.” But Rehnquist sought to bring a different curtain down on that drama when the Court’s ruling was presented in June. The Chief Justice created a rare, theatrical moment when he opened his delivery of the majority opinion by reciting the *Miranda* warning without looking at notes—obviously to emphasize its rote significance in American society.

Scalia, in particular, was unconvinced. He wrote in dissent that until 3501 is repealed by Congress, he “will continue to apply it in all cases where there has been a sustainable finding that the defendant’s confession was voluntary.”

**CASSELL’S STRIDENCY HAS NOT** won him many friends on the other side of the debate. Although he and his main rival, Kamisar, enjoy a warm relationship, the same cannot be said for many of the other scholars who have opposed Cassell. Professor Stephen Schulhofer of the University of Chicago Law School refuses to debate him face-to-face anymore, telling the *ABA Journal*, “I don’t want to talk about that.”

It is Cassell’s penchant for the rough-and-tumble of debate that has caused friction with some of his opponents. They have complained at times that he was outcome-oriented in his mustering of facts and data. Cassell responded that the law professors opposing him liked to cite anecdote and hypothesis as fact, which others too often accepted as such. “It’s kind of an academic echo chamber,” Cassell said. “You throw your idea in and it bounces around and comes back as fact.”

Stanford law professor John Donohue says he thinks Cassell has overreached. “On the whole, I think he de-



serves credit for trying to test these things empirically, and he's obviously a smart guy with a lot of energy. But I think he's being much too zealous and much too sure of himself. I'm more of a radical skeptic and don't think data can sustain the strong conclusion he adopts," Donohue said in an interview shortly before the Dickerson case was argued at the Supreme Court.

"I don't like the debating element he's brought to *Miranda*, and I'd like a more dispassionate look at the data."

The *Stanford Law Review* asked Donohue, who has a doctorate in economics, to study the competing statistics and findings of Cassell and his opponents, particularly Schulhofer. Donohue wrote an article in the *Review* that was critical of Cassell's stance.

Cassell has a strong background in debate. After two years as a Stanford undergraduate, he transferred to Western Washington University to join its debate team, one of the best in the country. He returned to Stanford for a final summer to get his degree, becoming the third member of his family, from three different generations, to do so. His maternal grandfather, George Taylor, received a Stanford bachelor's degree and later Cassell's mother, Jeanne Taylor Cassell '66, earned a graduate degree in education.

Cassell and his wife Trish, a part-time lawyer whom he met when she worked at the Federalist Society's Washington headquarters, chose to settle in Salt Lake City, where they started their family—they have three daughters, ages 8, 6, and 4—soon after arriving in 1992. Cassell gained tenure at the Utah law school in 1996, and just as he was about to argue at the Supreme Court in April, he was named the Jerome I. Farr Professor of Law.

Despite losing, for now, on the *Miranda* issue, Cassell has plenty to do. His advocacy on behalf of crime victims has made him a kind of national resource for persons

interested in tilting the justice system more toward the aggrieved. During the interview for this story, Cassell received an urgent phone call for advice in a case concerning a murderer just released from prison. (Victims' rights advocates were trying to prevent the man from moving into a house near the victim's family.) And Cassell already has scored some big victories in his work with victims of the Oklahoma City bombing (see sidebar). He will continue to push for reform and restitution.

"The system just isn't designed to take the victim's interests into account," Cassell said. "Prosecutors and defense attorneys get into the game and battle it out. But these other people who have very real interests at stake are often forgotten.

"The victims' rights movement spans such a broad spectrum," Cassell said. That point is illustrated by the fact that he and noted liberal law professor Laurence Tribe of Harvard Law School coauthored an op-ed piece on victims' rights in the *Los Angeles Times*. But while Tribe shares Cassell's concern for victims' rights, he adamantly disagrees with the notion that Cassell has made a natural and logical segue from his work on *Miranda*.

"It is bizarre to think one can protect victims by taking away rights of criminal defendants," Tribe said.

Cassell is now working on a long-term project with Douglas Beloof, a visiting professor at the Lewis and Clark Northwestern School of Law in Portland, Oregon. They hope to publish a comprehensive book on victims' rights within five to ten years, while working all along to get a victims' rights amendment to the Constitution.

"In our book we want to bring together the law and hopefully the intellectual underpinnings," Cassell said. "We want to institutionalize victims' rights."

**Terry Carter** is a senior writer at the ABA Journal.

Advocacy on behalf of crime victims has  
made him a kind of national resource for  
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system more toward the aggrieved.



IN A POOR AGRICULTURAL REGION OF THE  
PHILIPPINES, GOLF COURSE DEVELOPERS  
WANT TO PUSH OUT FARMS AND BUILD  
FAIRWAYS, BUT THE PEOPLE AREN'T MOVING.  
A STANFORD LAW STUDENT WITH A GROUND-  
EYE VIEW OF THE BATTLE REPORTS THAT  
MURDER, CORRUPTION, AND INTIMIDATION  
HAVE BEEN PAR FOR THE COURSE

By John Hall '00

# DYING for LAND

Our 15-foot, outrigger boat—overloaded with 14 people—heaved in heavy seas off the coast of Batangas, Luzon, Philippines, and water poured over the gunwales. I had been kneeling for an hour, bailing water with the sole piece of “emergency equipment” on board: a plastic bottle. As the waves washed over us, my externship supervisor, noted human rights attorney Romeo Capulong, turned to me with a smile. “Are you enjoying your last semester of law school?” he asked.

That day, March 9, was sad and memorable, and our eventful journey by sea was merely the prelude to what would become for me an inspiring educational mission. We were on our way to a funeral. The destination was Hacienda Looc, a coastal region about 90 kilometers south of Manila, the site of an ongoing battle between poor farm families fighting to keep their land and development forces determined to take it. Two farmers, Terry Sevilla and Roger Alla, had been ambushed and murdered the previous week, bringing to seven the number of peasants killed since 1997 who had opposed the construction of a golf resort on their land.

**A SUPPORTER of  
Umalpas-Ka, a peasant  
organization fighting to  
keep farmers' land,  
demands justice for  
murdered villagers  
Roger Alla and Terry  
Sevilla at the funeral of  
the two men.**

PHOTOGRAPHY BY JOHN HALL



LUPA HINDI BALÁ  
KINA KASAMANG  
ROGER AT TERRY





I had been working for several months with the people of Hacienda Looc—home to approximately 2,000 families—as an extern with the Public Interest Law Center in Manila. Our clients, who have been peacefully farming and fishing at Hacienda Looc for four generations, were granted full legal title to their lands under the agrarian land reform programs of the Marcos and Aquino governments. However, the coastal area is one of enormous natural beauty, and in the mid-1990s large development corporations focused on the unspoiled beaches and coves of Looc as an ideal location for eco-tourism resorts and luxury subdivisions. Farmers in Looc were told that they no longer owned the land; that their hillsides were to be bulldozed to create four golf courses, designed, according to the developers, by Greg Norman and Jack Nicklaus. The farmers' cooperation was sought with promises of employment as golf caddies and groundskeepers. It all seemed perfectly sensible to those whose fortunes were about to be made by the development. As the mayor of the local town of Nasugbu told me, "If the farmers had just agreed to sell the land there would not have been a problem. They're just being stubborn."

But to the farmers, the land is what mattered. In the words of

one of our clients, "Land to us is life itself. If you take our land, you have killed us."

PILC attorneys are fighting in court the legal irregularities surrounding the cancellation of land titles. Suit has been brought by PILC on behalf of the farmers against various officials accused of abuse of office. Cease and desist orders are currently in effect concerning the disputed area.

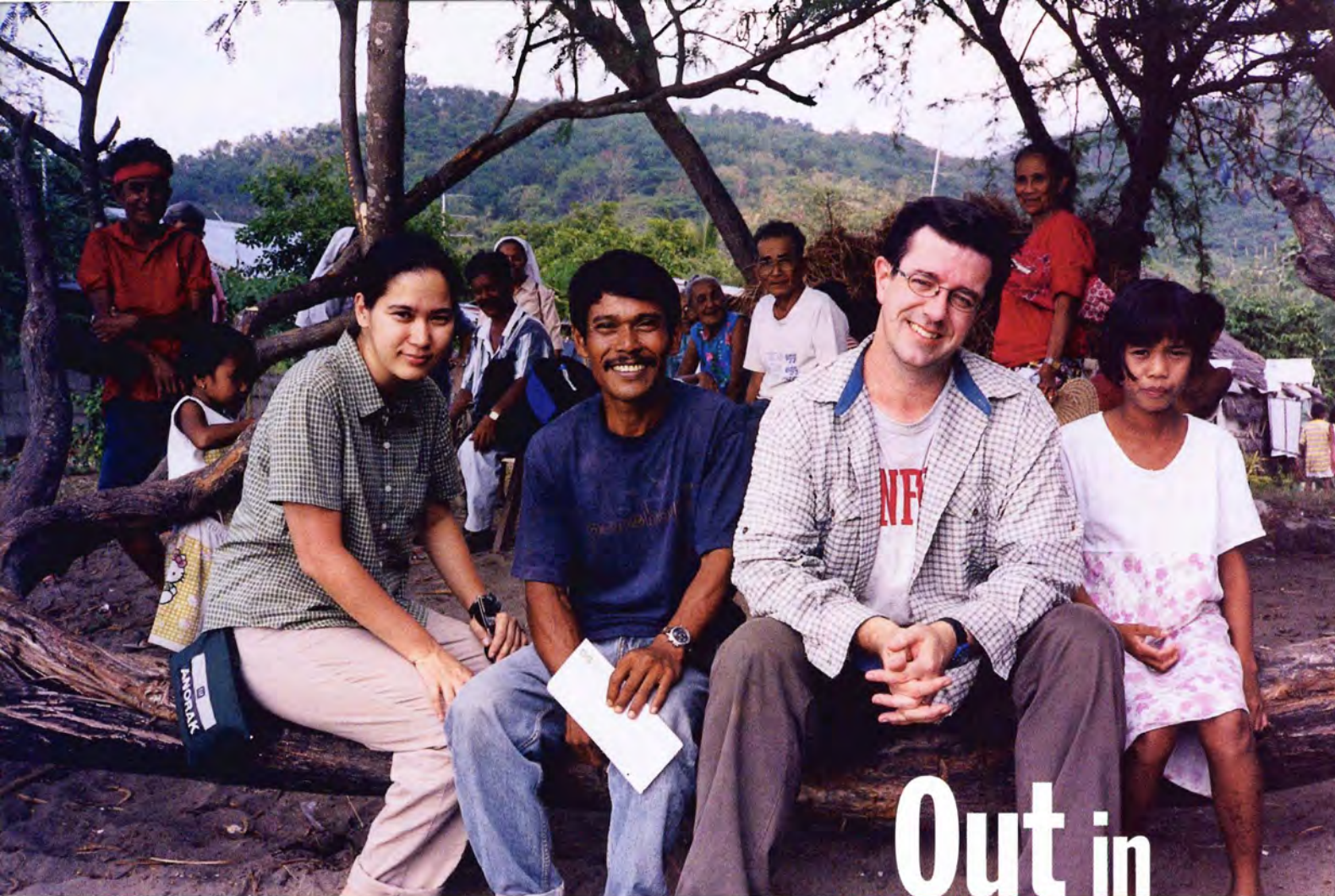
My role involved traveling to Hacienda Looc to conduct interviews and document the systematic campaign of harassment aimed at opponents of the developers. I was able to witness close up the complex and often untidy business of public interest lawyering. My fact-finding work, for example, revealed to me why my colleagues at the PILC were so tenacious. They have to be. Representatives of the developers, administrative agencies, and local officials with whom I met promised documents that never materialized, described agreements that

**Residents of Hacienda Looc have been subjected to a pattern of intimidation, including death threats. Since 1997, seven farmers who protested development on their land have been killed.**



**THE FARMERS' COOPERATION WAS SOUGHT WITH PROMISES OF EMPLOYMENT AS GOLF CADDIES AND GROUNDSKEEPERS. IT ALL SEEMED PERFECTLY SENSIBLE TO THOSE WHOSE FORTUNES WERE ABOUT TO BE MADE BY THE DEVELOPMENT.**





John Hall '00, second from right, worked closely with Umalpas-Ka leader Gimo Bautista, center, and Public Interest Law Center attorney Marie Yuvenco, far left, during his externship in the Philippines.

## Out in the FIELD

John Hall's work with the Public Interest Law Center in the Philippines is that rare example of an externship that takes a student far afield. More commonly, externships are faculty-monitored field experiences in domestic settings with established connections and long track records.

"The externship program allows students to gain experience in a field where a clinical course is not offered, pursue advanced work in an area of prior clinical experience, or explore a new practice area," said Eduardo Capulong, a lecturer in law and director of public interest and public policy programs. "Our students work alongside attorneys and in organizations, and most of them say it's the best thing they've done in law school."

Fieldwork has been an important component of the curriculum at the law school for 30 years. Students typically take jobs in one of four areas: public policy, criminal defense, federal or state prosecution, and indigent services. Those experiences are accompanied by course-

work, either Capulong's course on public interest law practice or Tom Nolan's course on local criminal law.

Although most fieldwork is done domestically, there are students whose international interests take them to remote and occasionally exotic sites, says Capulong. Those who wish to work internationally develop a proposal in concert with a faculty member, who visits the site and supervises student progress. Students must also undertake a weekly tutorial with the faculty sponsor.

Hall says he hopes the law school continues to expand its international outreach. "One challenge for Stanford in the future will be to prepare adequately its students for a global workplace," he said. "Certainly students will have reason to expect an ever greater international component both within the traditional offerings and in terms of externship opportunities. Increasingly, the global informs the local, and educational opportunities will have to reflect this."



could not be verified, and generally resisted my attempts to determine how and to what extent due process had been served in dealing with the farmers.

But it was in working with my clients that my education—and my motivation in pursuing a career in the law—came into sharper focus. At a protest in Manila, for example—where farmers had gathered on the steps of the development company and poured pig's blood to represent their murdered villagers—security officers tried to silence them and drive them away. The farmers would not be cowed. One of the most vocal was Guillermo Bautista, who rebuked the security men, saying, "The developers are intruding on our property with bulldozers and guns, yet we cannot intrude on their steps?" Later, a woman, exhausted from the day's events, sat in a makeshift shelter outside the Department of Agrarian Reform and told me, "I look forward to returning to my home in

Elderly women told me how they had had guns pointed at their heads, how their husbands and sons were beaten and abused. One woman, after testifying in regional court that her father had died long before he supposedly signed an affidavit used to cancel his land title, was chased by armed local government officials who threatened to kill her. After agreeing to testify, she was harassed, her family members beaten, her house surrounded. Police officials to whom the farmers have frequently complained, have done nothing to arrest or disarm the assailants.

The most egregious incident occurred in February 1997, when, according to local residents, two leaders of the peasant support group Umalpas-Ka, Francisco Marasigan and Maximo Carpinter, were shot to death by developers' security guards. The guards apparently had waited in Marasigan's yard for several hours, drinking gin and abusing passersby.

When the two peasant leaders arrived, the guards, without saying a word, shot them in the chest. The identities of the suspects were known. One even dropped his ID at the scene. The police, however, never charged anyone with the crimes. The fam-

**ON MY VISITS TO HACIENDA LOOC MY UNEASY  
SLEEP WAS PERIODICALLY INTERRUPTED  
BY GUNFIRE, THE PRODUCT OF ROAMING  
BANDS OF THUGS  
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TO INTIMIDATE THE  
FARMERS AND  
THEIR FAMILIES.**

Calayo. The trees are blooming. The air is clean. I can watch my grandchildren swimming in the sea. And I can touch my land with my feet. For that I would die if I have to."

On my visits to Hacienda Looc my uneasy sleep was periodically interrupted by gunfire, the product of roaming bands of thugs apparently dispatched to intimidate the farmers and their families. During the day, I saw armed men wandering the streets shooting pistols into the air with impunity. An atmosphere of fear, tension, and anxiety was pervasive.



**The beaches and coves of Hacienda Looc attracted resort developers hoping to lure foreign tourists to the Philippines. Land reform programs of earlier administrations had deeded title of the area to the farmers and fishermen who've lived there for generations.**



ilies of the victims were visited by security guards and told that, if they demanded prosecution of the suspects, they would all be killed.

Interviewing the friends and family members of the murder victims was particularly harrowing for me. Despite years of harassment and killing—or perhaps because of it—they are resolute. Bautista has had his crops destroyed and large boulders pushed into his

seriously the danger he faces. “But what alternative do I have?” he said. “If we lose our land, what future will my children have? Will they become the caddies for the rich people, or clean their swimming pools?”

The human rights attorneys who represent the farmers

**I HAVE DRAWN INSPIRATION FROM THESE CLIENTS;  
WORKING WITH THEM HAS PROVIDED ME A CAPSTONE  
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of Looc have themselves received death threats, even in Manila. Their offices have been ransacked, their houses watched. Each time they travel to meet their clients they are risking their lives. They travel by boat because of an earlier attempt to ambush them when they drove by road. Yet not once did I hear them say they should not go. As attorney Romeo Capulong told me: “We have very brave clients. They deserve brave lawyers.”

I have drawn inspiration from these clients; working with them has provided me a capstone experience that helped give shape to my education at Stanford. A first-rate legal education, I now realize, is less about

rice fields by bulldozers. He has received countless death threats, has narrowly escaped ambush by armed men, has seen his brothers assaulted, and has been told by one prospective assassin that 1.5 million pesos (\$37,000) has been offered to anyone who will kill him. His wife has had a nervous breakdown. His four young children live on a diet of salt and rice supplemented with handouts from supporters. He is almost \$2,000 in debt, a huge amount for a small-scale farmer, but has repeatedly rejected bribes to end his opposition to the developers. Interviewing him, it was clear to me that he takes

learning black-letter specifics than it is about acquiring flexible, imaginative, and creative skills. Many of us will spend our entire careers bailing out metaphorical boats. It’s reassuring to know that, if necessary, we can do it for real in a bad storm, on our knees, off the coast of Luzon, with only a plastic bottle.

*John Hall '00 has a doctorate in American history from Oxford University and was a tenured professor for ten years before deciding on a career in law. He is writing a book about the events at Hacienda Looc.*



**HERE'S A SCENE** in the last James Bond film *The World Is Not Enough* in which Agent 007 is whisked through miles of empty pipeline across an oil-producing region of the former Soviet Union. Naturally, he arrives unscathed. Jenik Radon '71 wishes his run-in with an oil pipeline had been as uneventful.

Radon, an international business lawyer who served as an advisor to Georgian President Eduard Shevardnadze, was not in the pipeline, of course. He was representing the former Soviet republic in negotiations with oil companies, primarily British Petroleum, about a proposed pipeline that would pass through Georgia, connecting the rich oil fields of Azerbaijan with refineries in Turkey. As if Radon didn't have enough motivation to broker a deal that his client could live with, he had this additional nugget of incentive—for a while, he was to be on the hook for millions of dollars if something went wrong. Attorneys for the oil companies brazenly proposed in the draft agreement that Radon himself, as well as other advisors, be liable if the pipeline was damaged. "I called it the Jenik Radon problem," said Radon, who had to fight to have the clause removed from the agreement.

"The excitement of pipeline negotiations is very un-Bond-like," Radon told students and Stanford policy analysts, including former U.S. Secretary of State George Shultz, during an address at the law school last spring.

Radon's negotiations included variables few business lawyers ever face. For example, there were concerns about stray Russian bombs—spillovers from the nearby war in Chechnya—hitting the Georgian countryside during the intense negotiations, Radon says. There were terrorist worries, nervousness about centuries-old inter-ethnic conflicts, and the ever-felt presence of Iran and Iraq a few hundred miles to the south. When the agreement was finally forged in May, Radon was pleased and exhausted, and a little wiser. To show their appreciation, the government of Georgia awarded Radon the Order of Honor, the country's highest civilian accolade. He is the first non-Georgian ever to receive it.

Born in Berlin, Radon moved with his parents to New York when he was a child. Growing up in a first-generation immigrant family gave him practice at crossing cultural boundaries, he says, and prepared him for a career in international negotiations. "If you recognize that there are two different approaches, it's an easy jump to understand that there could be a third approach, and a fourth and a fifth. It comes down to having respect—respect for people, respect for the other side," he said. He also credits his legal training at Stanford for, among other things, impressing upon him the importance of being creative as a lawyer, and Stanford's faculty for his appreciation of a lawyer as being foremost a public servant.

Radon began his international practice in 1980, critiquing the Polish government's new joint-venture laws. The imposition of martial law voided an offer to advise the reform-minded government, but only temporarily. By the mid-1980s, his reputation cemented, Radon was handling clients ranging from Japan to Guinea to the breakaway Baltic republic of Estonia, which completely severed its ties with the former Soviet Union in 1991. Radon was an influential advisor during Estonia's independence movement, and he coauthored the country's privatization law, a key first step toward a market economy. Even before the U.S. Embassy returned, Radon had the honor of raising the U.S. flag with the inauguration of the U.S.-Estonian Chamber of Commerce when Estonia was still a Soviet province. It was the first time the Stars and Stripes had flown over Estonia since the Soviet occupation began in 1940. Radon later served as chair of the chamber and riled his present client, Shevardnadze, then foreign minister of the U.S.S.R., by publicly hosting Zbigniew Brzezinski, former national security advisor to President Carter, throughout the Baltics.

In the early 1980s Radon established and directed the Afghanistan Relief Committee for refugees and freedom fighters displaced during the Afghans' war with Russia, and he helped the fledgling government of post-communist Poland build its legal infrastructure. "I see it as a process of nation building, and it's very rewarding work," Radon said.

Radon was a founding member of Radon and Ishizumi, an international law firm in New York with affiliate offices in

FROM OIL DEALS TO PRIVATIZATION  
LAWS, JENIK RADON '71 HELPS  
FLEDGLING COUNTRIES  
TAKE FLIGHT

THE  
BUILDER



Tokyo and Berlin that specialized in representing international corporations, particularly in joint ventures and mergers and acquisitions. In January 2000, he merged his practice with the New York firm of Walter, Conston, Alexander & Green, where his wife, Heidi Duerbeck '72, was a partner for 20 years before her death last fall from breast cancer. It's a partnership that makes sense professionally, Radon says, and also honors his late wife's work. "This is really Heidi's firm," he said.

Radon still is struggling to overcome the loss of his wife, his companion since they met on her first day at the law school 30 years ago. "They were really a Stanford couple," recalled classmate Janine Dolezel '71. "They were always together."

Radon says his strong network of friends and colleagues and a busy work schedule have eased the loss. He finds particular solace in the company of the young people who are alumni of his Eesti Fellowship at Columbia University. Established by Radon in 1990, the Eesti is a prized assignment that earns undergraduates the opportunity to work closely with the Estonian president and cabinet-level officials. Eesti Fellows have gone on to become Marshall, Rhodes, and Fulbright scholars, and, in many cases, Stanford Law School students. Six of Radon's Eesti alumni have attended Stanford Law School just in the past two years. "I tell them at the outset that if they go to law school, they have to go to Stanford," Radon joked. "Those who aren't quite up to snuff are permitted to go to Harvard."

"Jenik is tremendously innovative and energetic, and gives of himself freely both to

the students he has mentored as well as to the institutions that have given him the tools to be where he is today," said Dan Chiplock '00, who participated in the Eesti program in 1994.

The Eesti students were a major source of strength for Radon as he attempted to deal with the loss of his wife. For almost three weeks following Heidi's death, a score of former Eesti students descended on Radon's house to help prepare meals, clean, and provide emotional support. "They helped me through that time. I was allowed to be sad, but not depressed," Radon said.

This fall Radon joined the Stanford faculty as an adjunct instructor. He will teach human rights at the law school and a course on international investment management at the Graduate School of Business. Whether this marks a permanent change in his career remains to be seen, says Radon. "To be honest, I'm very flexible at this point." ■



# NATION

By Kevin Cool

PHOTOGRAPHY BY JOE PINEIRO



# THE UBER

BY KEVIN COOL

**LAWRENCE LESSIG IS ALL OVER THE PLACE.**

Almost daily—and during some periods several times daily—his name appears in press accounts commenting on Internet piracy or privacy, about cyber culture, about the future of the wired world.

Reporters calling the law school don't merely ask for "an Internet expert"—they ask for Lessig by name. But it's not only in the press that Lessig's presence is ubiquitous. Since October of last fall, while working as a fellow at the Wissenschaftskolleg zu Berlin, Lessig has spoken at conferences in France, Germany, Austria, Spain, Hungary, Poland, Portugal, Switzerland, Italy, Australia, Denmark, Britain, and Brazil. Not to mention New York, Washington, D.C., Chicago, and Phoenix.

Woored from Harvard last spring, Lessig, a constitutional law as well as a cyberlaw expert, was described by the *San Jose Mercury News* as "Stanford's newest celebrity law professor." He bolstered an already strong high-technology core within the faculty that also includes copyright expert Paul Goldstein, property and e-commerce expert Margaret Jane Radin, biotechnology expert Hank Greely, and international technology expert John Barton. In Lessig, Dean Kathleen Sullivan sees "a unique combination of passion and brilliance," a combination that led her to attract him to Stanford last spring. His arrival also has emboldened the law school's ambition to be what Sullivan has described as "the country's leading law school for the study of the intersection of high technology and the law."

What Lessig brings, in addition to his scholarly firepower, is a remarkable capacity for making tangled legal dilem-

mas understandable for a mainstream audience. He writes a monthly column for the *Industry Standard*, a magazine that is attempting to make sense of the Internet and e-commerce. He used that forum this summer to admonish Microsoft founder Bill Gates to articulate more clearly the principles he believes his company represents, and to define the "threat to innovation" that Gates has said will result from the government's antitrust ruling against Microsoft. Lessig's article, "Letter to Bill," was important enough to attract attention from other media outlets, and warranted a rebuttal from a Microsoft representative. Lessig was more than a casual observer during the Microsoft case—he served briefly as a special master for United States District Court Judge Thomas Penfield Jackson and later was asked by the judge to submit a "friend of the court" brief on the liability issue.

In his 1999 book, *Code and Other Laws of Cyberspace*, Lessig laid out issues that will determine whether and how the Internet will be regulated, and how that evolution will affect us all. It has been called the definitive work on cyberspace law, and almost two years after *Code* was published, reporters and commentators still quote from it regularly. He currently is

working on a new book, tentatively titled *Open Code, Open Culture*, to be published in 2001.

The question of just how "open" the Internet will remain, and the implications of that degree of

openness on American society, drive Lessig's current research. In a lecture at a conference in Tutzing, Germany, in July, Lessig outlined why he believes the use of code to exclude can have dangerous ramifications beyond the Internet itself.

"Most people think about these issues of free software, or open source software, as if they were simply questions about the efficiency of code. Most think about them as if the

**"I THINK THE ISSUES OF OPEN SOURCE AND FREE SOFTWARE ARE FUNDAMENTAL TO A FREE SOCIETY. I THINK THEY ARE AT THE CORE OF WHAT WE MEAN BY AN OPEN SOCIETY."**



# Cyberstar Lessig is in demand around the world EXPERT



only issue that this code might raise is whether it is faster, or more robust, or more reliable than closed code. Most think that this is simply a question of efficiency.

"Most think this, and most are wrong. The issues of open source or free software are not simply the issues of efficiency. If that were all this was about, there would be little reason for anyone to pay any more attention to the subject than to the question of whether an upgrade to [Microsoft] Office really is faster than the version it replaced.

"I think the issues of open source and free software are fundamental to a free society. I think they are at the core of what we mean by an open society."

Lessig used the example of iCraveTV, an Internet company that rebroadcasts Canadian television programming online, to make his point about the power of the law to restrict the Internet's free flow of information. iCraveTV was enjoined by a U.S. federal court to stop broadcasting because, despite iCrave's efforts to block its programming to non-Canadian viewers, some Americans were able to gain access to the site. Hollywood considered this an illegal copyright circumvention and asked the court to intervene. Lessig found the move troubling. "Step back for a moment and think about the equivalent claim being made elsewhere," Lessig said at his lecture in Tutzing. "Imagine, for example, a German court entering a judgment against Amazon.com, ordering Amazon.com to stop selling *Mein Kampf* anywhere because someone in Germany had succeeded in accessing *Mein Kampf* from Amazon. Or imagine a court in China ordering an American ISP to shut down its dissidents' site, because the speech at issue was illegal in China. It would take just a second for an American to say that those suits violate the concept of free speech on the Net; that they undermine the free flow of information; that they are an improper extension of state power into the world of cyberspace. . . . This is the structure under which the closed society reemerges."

In addition to constitutional law, Lessig will teach a seminar in the spring titled "Open Sources" that deals with the same themes his research has touched upon.

Lessig's leadership in the debate about Internet freedom may soon have another outlet. In August, he was nominated for a seat on the ICANN body that administers the domain-name system—dot-com, dot-org, etc.—that lets computers on the Net locate each other. If that happens, Stanford's newest professor won't just be researching the Internet, he'll be helping to run it. ■



**1999-2000** was a typically prolific academic year for Stanford Law School faculty. Over the next four pages are capsule reviews of their scholarly activity.

### Janet Cooper Alexander

#### PUBLICATIONS

"An Introduction to Class Action Procedure in the United States," presented at conference on Debates over Group Litigation in Comparative Perspective, Geneva, Switzerland; *Class Actions for Consumer Protection*, Judicial Conference of Spain and National Institute of Consumers, forthcoming

#### LECTURES AND ADDRESSES

Program leader, "Debates over Group Litigation in Comparative Perspective," convened by Duke University and the University of Geneva, Geneva, Switzerland

### Barbara Allen Babcock

#### PUBLICATIONS

*First Woman: Clara Shortridge Foltz—Her Times and Ours*, forthcoming; "Women Lawyers and the California Supreme Court," in *California Reports, 2000*

#### LECTURES AND ADDRESSES

Guest speaker, 30th Anniversary of the *Seattle Public Defender*, Chapman Law School; guest speaker, O'Fallon Lecture in Law and American Culture, University of Oregon Law School; guest speaker, Raven Lecture, Boalt Hall, University of California at Berkeley; guest presenter of the early history of women at the California Bar, Sesquicentennial Celebration of the California Supreme Court

#### AWARDS AND HONORS

Margaret Brent Women Lawyers of Achievement Award, from the ABA's Commission on Women in the Profession

### Bernard S. Black '82

#### PUBLICATIONS

"Russian Privatization and Corporate Governance: What Went Wrong?" (with Reinier Kraakman and Anna Tarassova), *Stanford Law Review*, forthcoming; "The Legal and Institutional Preconditions for Strong Securities Markets," *UCLA Law Review*, forthcoming; "The Core Institutions

That Support Strong Securities Markets," *Business Lawyer*, forthcoming; "Corporate Governance in Korea at the Millennium: Enhancing International Competitiveness," (a report to the Korean Ministry of Justice with Barry

Metzger, Timothy O'Brien, and Young Moo Shin), *Journal of Corporation Law*, forthcoming; and also in *Journal of Korean Law*, forthcoming

### Richard Craswell

#### PUBLICATIONS

"Two Economic Theories of Enforcing Promises," in *Readings in the Theory of Contract*, Peter Benson, ed., (Cambridge University Press), forthcoming; "Do Trade Customs Exist?" in *The Jurisprudential Foundations of Corporate and Commercial Law*, Jody Krauss & Steven Walt, eds., (Cambridge University Press), forthcoming; "The Sound of One Form Battling," *University of Michigan Law Review*; "Against Fuller and Perdue," *University of Chicago Law Review*; "Freedom of Contract," in *Chicago Lectures in Law and Economics*, Eric Posner, ed., (Foundation Press); "Contract Law: General Theories," in *Encyclopedia of Law & Economics*, Boudewijn Bouckaert & Gerrit DeGeest, eds., (Edward Elgar Publishing)

### John J. Donohue III

#### PUBLICATIONS

"Nondiscretionary Concealed Weapons Law: A Case Study of Statistics, Standards of Proof, and Public Policy" (with Ian Ayres), *American Law and Economics Review*; "Why We Should Discount the Views of Those Who Discount Discounting," *Yale Law Journal*

#### LECTURES AND ADDRESSES

"The History and Current Status of Employment Discrimination Law in the United States," Unicapital School of Law, Centro Universitario Capital, Sao Paulo, Brazil; "Corporate Governance in Developing Countries: Opportunities and Dangers," Conference on Neoliberal Policies for Development: Analysis and Criticism, University of Sao Paulo Law School; MacArthur Foundation Social Interactions and Economic Inequality Network Meeting, Brookings Institution

### George Fisher

#### PUBLICATIONS

"Plea Bargaining's Triumph," *Yale Law Review*

### Richard T. Ford

#### PUBLICATIONS

"Law's Territory," *Michigan Law Review*

Janet C. Alexander  
Barbara A. Babcock  
Bernard S. Black  
Richard Craswell  
John J. Donohue III  
George Fisher  
Richard T. Ford



## Marc A. Franklin

### PUBLICATIONS

*Cases and Materials on Mass Media Law* (with D. Anderson, F. Cate, 6th edition), Foundation Press; "Of Rescue and Report: Should Tort Law Impose a Duty to Help Endangered Persons or Abused Children?" (with M. Ploeger), *Santa Clara Law Review*; *The First Amendment and the Fourth Estate: The Law of Mass Media* (with T.B. Carter & J.B. Wright, 8th edition), Foundation Press, forthcoming; *The First Amendment and the Fifth Estate: Regulation of Electronic Mass Media* (with T.B. Carter & J.B. Wright, 5th edition), Foundation Press

## Barbara H. Fried

### PUBLICATIONS

"As Compared to What? Taxing Brute Luck and Other Second-best Problems," *Tax Law Review*; "Why Proportionate Taxation?" forthcoming in *Tax Justice in Theory and Practice* (Dennis Ventry and Joseph Thorndike, eds.)

### LECTURES AND ADDRESSES

Conference on First Principles of Collective Decision Making in Public Policy Contexts, University of Buffalo; American Law and Economics Association, chair of the tax panel; faculty workshop presentations at Vanderbilt Law School, NYU Law School, and University of Virginia Law School; Quinnipiac Law School, presented paper at conference on the work of Richard Epstein

### AWARDS AND HONORS

Winner, Hurlbut Award for Teaching, Stanford Law School, and commencement speaker

## Lawrence M. Friedman

### PUBLICATIONS

"Losing One's Head: Judges and the Law in Nineteenth-Century American Legal History," *Law & Social Inquiry*; "On Stage: Some Historical Notes about Criminal Justice," in *Social Science, Social Policy, and the Law*, Patricia Ewick, Robert A. Kagan, and Austin Sarat, eds., (Russell Sage Foundation); "Crime and Punishment in American History," in *Violence in America: An Encyclopedia* (Ronald Gottesman, editor in chief); "Taking Law and Society Seriously," *Chicago-Kent Law Review*

## Paul Goldstein

### LECTURES AND ADDRESSES

"The Economics of International Copyright," at Vanderbilt Law School conference on the Law and Economics of Intellectual Property Rights; World Intellectual Property Organization meeting on implementation of the WIPO copyright and perform-

ances and phonograms treaties, Geneva, Switzerland; testimony before the Subcommittee on Courts and Intellectual Property, Judiciary Committee of the U.S. House of Representatives, in hearings on sound recordings as works made for hire; "Electronic Contracting and Licensing of Intellectual Property Rights," conference on the Management and Legitimate Use of Intellectual Property, Copyright and Neighboring Rights Unit of the European Commission, Strasbourg, France

## Henry T. Greely

### PUBLICATIONS

"Iceland's Plan for Genomics Research: Facts and Implications," *Jurimetrics*; "Breaking the Stalemate: A Prospective Regulatory Framework for Unforeseen Research Uses of Human Tissue Samples and Health Information," *Wake Forest Law Review*; "Ethical Issues in the Human Genome Diversity Project," in *The Encyclopedia of Ethical, Legal, and Social Issues in Biotechnology*; "The Overlooked Ethics of the Human Genome Diversity Project," *Politics and the Life Sciences*

### LECTURES AND ADDRESSES

"New Issues in Human Genetics Research," Conference on Social Implications of Genomics, Whitehead Institute, MIT; "After the Human Genome Project," American Philosophical Association, Albuquerque, N.M.; "Ethical Responsibilities of Human Genetics Researchers," Interactive Genomics Meet, New Delhi; "New Ethical Issues in Human Subjects Research in Human Genetics," Twenty-Fifth Anniversary Conference on the Asilomar Conference on Recombinant DNA, Pacific Grove, Calif.

## Thomas C. Grey

### PUBLICATIONS

"Cover-Blindness," *California Law Review*; "Holmes on the Logic of the Law," *The Path of the Law and Its Influence* (Stephen Burton, ed.), Cambridge University Press

## Gerald Gunther

### PUBLICATIONS

"Ruth Bader Ginsburg: A Personal, Very Fond Tribute," *University of Hawaii Law Review*; "A Tribute to 'The Sweetest Man in the World' and a Great Scholar and Teacher to Boot," *UCLA Law Review*; *Landmark Briefs and Arguments of the Supreme Court of the United States* (with Gerhard Casper), University Publications of America

Marc A. Franklin  
Barbara H. Fried  
Lawrence M. Friedman  
Paul Goldstein  
Henry T. Greely  
Thomas C. Grey  
Gerald Gunther





# the faculty

## Deborah R. Hensler

### PUBLICATIONS

*Class Action Dilemmas: Pursuing Public Goals For Private Gain*, RAND Books

## Pamela S. Karlan

### PUBLICATIONS

*Civil Rights Actions: Enforcing the Constitution* (with John C. Jeffries, Jr., Peter W. Low and George A. Rutherglen); "Politics by Other Means," *Virginia Law Review*; "A Tribute to Justice Harry A. Blackmun," *Harvard Law Review*; "Constitutional Law, the Political Process, and the Bondage of Discipline," *Loyola Law Review*; "The Hydraulics of Campaign Finance Reform" (with Samuel Issacharoff), *Texas Law Review*

### LECTURES AND ADDRESSES

"The Supreme Court Term," NAACP Legal Defense and Educational Fund Civil Rights Training Conference, Airlie, Va.

## Mark G. Kelman

### PUBLICATIONS

"Strategy or Principle? The Choice between Regulation and Taxation," University of Michigan Press; "Does Disability Status Matter?" in *Americans with Disabilities: Exploring Implications of the Law for Individuals and Institutions* (Leslie Francis and Anita Silvers eds.); "Context-Dependence in Legal Decision Making" (with Yuval Rottenstreich and Amos Tversky), reprinted in *Behavioral Economics*, Cass Sunstein, ed., Cambridge University Press

## Michael Klausner

### PUBLICATIONS

"A Comment on Contract and Jurisdiction Competition" in *The Fall and Rise of Freedom of Contract* (F. H. Buckley, ed.); "Shareholder Voting in the United States" in *Shareholder Voting Rights in the European Union* (Eddy Wymeersch and Theodor Baums eds.); "Do IPO Charters Maximize Firm Value? An Empirical Study of Antitakeover Protection in IPOs" (with Robert Daines), *Journal of Law, Economics, and Organization*, forthcoming

## Miguel A. Méndez

### PUBLICATIONS

*California Evidence: The California Code and the Federal Rules—A Problem Approach* (West Group, second edition)

## A. Mitchell Polinsky

### PUBLICATIONS

"The Economic Theory of Public Enforcement of Law" (with Steven Shavell), *Journal of Economic Literature*; "Punitive Damages" (with Steven Shavell) and "Public Enforcement of Law" (with Steven Shavell) in *Encyclopedia of Law and Economics* (Boudewijn Bouckaert & Gerrit De Geest, eds.); "The Fairness of Sanctions: Some Implications for Optimal Enforcement Policy" (with Steven Shavell), *American Law and Economics Review*, forthcoming; "Public law enforcement, economics of" (with Steven Shavell) in *International Encyclopedia of the Social & Behavioral Sciences* (Neil J. Smelser and Paul B. Baltes eds.), forthcoming

### LECTURES AND ADDRESSES

"Corruption and Optimal Law Enforcement," Economics Department, University of California, Santa Cruz; panel on criminal law, annual meeting of the American Law and Economics Association, at New York University Law School; Law and Economics Summer Institute, National Bureau of Economic Research, Cambridge, Mass.

## Robert L. Rabin

### PUBLICATIONS

"Enabling Torts," *DePaul Law Review*; *Regulating Tobacco: Premises and Policy Options*, Oxford Press

### LECTURES AND ADDRESSES

"Reassessing Regulatory Compliance," first annual Food & Drug Law Institute Symposium, Georgetown Law School; presentation on tobacco tort litigation at NYU faculty workshop and at annual meeting of the Robert Wood Johnson Foundation Substance Abuse Program

## Margaret Jane Radin

### PUBLICATIONS

"Doing Business in the Digital Era: Some Basic Issues" (with Daniel L. Appelman), in *E-Commerce: Strategies for Success in the Digital Economy*, Practising Law Institute; "Retooling Contracts for the Digital Era," in *Public Policy and the Internet* (Nick Imparato, ed.); "Humans, Computers, and Binding Commitment," *Indiana Law Journal*

### LECTURES AND ADDRESSES

"Patenting Business Methods: Has the Patent System Gone Haywire?" Alexander Watkins Terrell Centennial Lectureship, University of Texas; "Humans, Computers, and Binding Commitment," at University of Texas, at University of Michigan, and as the Harris Lecturer at Indiana School of Law; "Adapting Legal Infrastructure to New Commercial Models: Emerging Issues for E-Commerce," keynote speech at the e-commerce "boot camp" for industry executives organized by Round Table

Deborah R. Hensler

Pamela S. Karlan

Mark G. Kelman

Michael Klausner

Miguel A. Méndez

A. Mitchell Polinsky

Robert L. Rabin

Margaret Jane Radin



Group; "The Evolution of Contract in the Global E-Commerce Arena," Stanford Japan Center Conference on the International Dimensions of E-Commerce, Kyoto, Japan

## Deborah L. Rhode

### PUBLICATIONS

"Conflicts of Commitment: Legal Ethics in the Impeachment Context," *Stanford Law Review*; "The Professional Responsibility of Professional Schools," *Journal of Legal Education*; *Ethics in Practice*, forthcoming; *In the Interests of Justice*, forthcoming

### LECTURES AND ADDRESSES

"The Denial of Gender Inequality," Elizabeth Mullin Welch Lecture, Center for the Education of Women, University of Michigan; "Speaking of Sex," Jane S. Pollock Memorial Lecture in Women's Studies, University of Pennsylvania; "Legal Ethics," Legg-Crahan Lecture in Legal Ethics, Kansas University School of Law; "Cultures of Commitment: Pro Bono for Lawyers and Law Students," The Centennial Public Square Lecture, William Mitchell College of Law; "The Profession and its Discontents," Strong Lecture, Ohio State University Law School

### AWARDS AND RECOGNITION

American Bar Association Pro Bono Publico Award for encouraging pro bono efforts by law schools as president of the Association of American Law Schools

## Kenneth E. Scott '56

### PUBLICATIONS

"What Role Is There for Independent Directors of Mutual Funds?" *Villanova Journal of Law and Investment Management*; "Comments on Regulating Mutual Fund Investor Knowledge," in *Restructuring Regulation and Financial Institutions* (J. Barth, D. Brumbaugh, and G. Yago, eds.); "Institutions of Corporate Governance: Implications for Korea," in *An Agenda for Economic Reform in Korea: International Perspectives* (K. Judd and Y. Lee, eds.); "What Are the Lessons from History?" *Journal of Institutional and Theoretical Economics*; "Electronic Commerce Revisited," *Stanford Law Review*; "Corporate Governance and East Asia," in *Financial Markets and Development: The Crisis in Emerging Markets* (A. Harwood, R. Litan, M. Pomerleano, eds.); "Institutions of Corporate Governance," *Journal of Institutional and Theoretical Economics*

## William H. Simon

### PUBLICATIONS

"Virtuous Lying: A Critique of Quasi-Categorical Moralism," *Georgetown Journal of Legal Ethics*; "Three

Limitations of Deliberative Democracy: Identity Politics, Bad Faith, and Indeterminacy," in *Democratic Deliberation* (Oxford Press, Stephen Macedo, ed.)

### LECTURES AND ADDRESSES

"Moral Pluck: Legal Ethics in Popular Culture," Yale Law School, Washington & Lee Law School, and Columbia Law School; "Thinking Like a Lawyer--About Ethics," Henderson lecture, Duquesne Law School

## James Frank Strnad II

### PUBLICATIONS

"Tax Depreciation and Risk," *SMU Law Review*

## Barton H. Thompson, Jr. '76

### PUBLICATIONS

*Legal Control of Water Resources* (with Joseph Sax, John Leshy, and Robert Abrams), West Group, third edition; *Real Property* (with Paul Goldstein), forthcoming; *Concepts in Environmental Law & Policy* (with James Salzman), forthcoming; "Tragically Difficult: The Obstacles to Governing the Commons," *Environmental Law*; "The Continuing Innovation of Citizen Enforcement," *Illinois Law Review*; "The Allure of Consequential Fit," *Alabama Law Review*; "Water Allocation and Protection: A United States Case Study," in *Earth Systems: Processes and Issues* (W. G. Ernst, ed.)

### LECTURES AND ADDRESSES

"Environmental Protection through State Constitutions," Conference on Watershed Management, College of William & Mary, Marshall-Wythe School of Law; "Water Futures," invited lecture on Law & Society, University of Kansas School of Law

## Michael S. Wald

### PUBLICATIONS

*Same-Sex Couples: Marriage, Families, and Children: An Analysis of Proposition 22, the Knight Initiative* (The Stanford Institute for Research on Women and Gender and the Stanford Center on Adolescence)

## Robert Weisberg '79

### PUBLICATIONS

*Literary Criticisms of Law* (with Guyora Binder), Princeton Press; *Criminal Law: Cases and Materials* (with Guyora Binder), Aspen, 4th edition; "A Canon of the Criminal Law," a chapter in *Canons of the Law*, (Jack Balkin and Sanford Levinson, eds.); "Reassessing Complicity," *Buffalo Criminal Law Review*

Deborah L. Rhode

Kenneth E. Scott

William H. Simon

James Frank Strnad II

Barton H. Thompson, Jr.

Michael S. Wald

Robert Weisberg





# professors in print

*Excerpts from faculty publications,  
quotations, and commentaries*



the *New York Times*, on patients seeking compensation for tissue donations

"The process is changing, no question. The question is whether the government wants to impose regulatory change on an industry. If Visa tries to experiment (with exclusivity) and they don't like it, they can change it. With the court ruling this gets written in stone, and that is a very different process."

**RONALD J. GILSON**, Charles J. Meyers Professor of Law and Business, in *American Banker*, about his testimony as an expert witness for Visa in a credit card antitrust trial

"It could have huge implications for the lower Colorado River states because they have just begun to come to terms with the limited supplies available now. This suit threatens to require them also to send more down past the border to the delta of the river."

**BARTON H. THOMPSON, JR.**, '76, Robert E. Paradise Professor of Natural Resources Law and Vice Dean, in the *Las Vegas Review-Journal*, commenting on a proposed suit by an international environmental coalition to divert water to Mexican wetlands endangered by shrinking water levels

"You might think that before Europe paints its patent law with the Stars & Stripes, someone would have studied the question whether there is any good economic reason to believe that software patents will induce more innovation."

Professor of Law **LAWRENCE LESSIG**, in the *Irish Times*, urging European policymakers to be cautious in adopting U.S. patent law

"I have moved away from Pittsburgh and the difficulties of life in the projects. I don't

think however, that college and a law degree have made me any less undesirable in the eyes of the mayor. You see, my family still lives in Pittsburgh, and when I come home to visit, I sometimes fall into the nasty old habit of shopping downtown. What makes matters worse is that I'm not sure that Mayor Murphy could pick this suburban California lawyer out of a lineup composed of other African-Americans who make up 50 percent of the shoppers who frequent businesses downtown. I guess I was born 'undesirable.'"

Associate Professor of Law **G. MARCUS COLE**, in a *Pittsburgh Post-Gazette* op-ed, criticizing a mayoral plan to use eminent domain to turn downtown Pittsburgh stores over to a private developer

"For the moment, this is the realization of the industry's 50-year nightmare. And that nightmare was that when the dam burst it would burst catastrophically."

**ROBERT L. RABIN**, A. Calder Mackay Professor of Law, in the *New York Times*, commenting on a Florida jury's \$144.8 billion punitive damage award against five major tobacco companies

"It used to be that when you were a research subject, you were doing it for free and you assumed that the people on the other side were doing it for free—at least for academic research. [But now, most research has some commercial interest, so research subjects might think] look, I'm willing to do this for the good of humanity if everyone else is, too. If someone on the other side is going to make billions of dollars, I want some, too."

Professor of Law **HENRY T. GREELY**, in


"You would think that in an election year, the Supreme Court justices might cooperate with popular efforts to label them liberal or conservative, lining up the big decisions on a political scorecard. . . . But in the rich and important term that they finished yesterday, the justices defied any simple political typecasting, proving once again that the court does not simply follow the election returns, and that court-packing is harder than it looks."

**DEAN KATHLEEN M. SULLIVAN**, in the *New York Times*, commenting on the 1999-2000 Supreme Court term

"In the post-Watergate elaboration of legal ethics, I think that the relatively mechanical conception of legality has received disproportionate emphasis. The way we now tend to teach our students legal ethics in courses that have been mandated in the wake of Watergate tends to emphasize relatively mechanical, unreflective rule-following at the expense of relatively complex contextual judgment."

**WILLIAM H. SIMON**, William W. Saunders and Gertrude H. Saunders Professor of Law, from his "Conceptions of Legality," in the *Hastings Law Journal*





"Paid parental leave for all employees should become a national priority. And employers should be induced or required to acknowledge family responsibilities. Tax incentives, federal subsidies, and use of unemployment insurance for parental leave are steps in the right direction. If the society truly believes in 'family values,' it must give them more than rhetorical support."

**DEBORAH L. RHODE**, Ernest W. McFarland Professor of Law, from "Dads are Parents, Too," an opinion article in the *National Law Journal*

"The tension between individualism and collectivism at work, which has always been a barrier to union organizational activity, antedates the globalization of the mid- and late-1990s and beyond. It has always been a part of labor policy debate in the previous two centuries, particularly in a country like the United States where the Horatio Alger and frontier work ethic is viewed as peculiarly individual."

**WILLIAM B. GOULD IV**, Charles A. Beardsley Professor of Law, from "The Third Way: Labor Policy beyond the New Deal," in the *University of Kansas Law Review*

"Almost every confrontation between the entertainment industry and new technology ends in the same way: four or five years after the litigation and legislation end, the new technology—once the industry's fearsome enemy—becomes its staunchest ally. Indeed the technology ends up generating abundant new revenue for the owners of copyrights."

**PAUL GOLDSTEIN**, Stella W. and Ira S. Lillick Professor of Law, in a *New York Times* op-ed on the record industry's attempts to shut down Napster

"That sounds like one of those stories you used to hear out of Alabama or Mississippi or Georgia in the 1970s, where you hear that the state paid the

lawyer a \$200 flat fee."

**ROBERT WEISBERG '79**, Edwin E. Huddleson, Jr. Professor of Law, in the *Los Angeles Times*, commenting on the reversal of a death penalty sentence because the killer's court-appointed defense attorney did such a poor job

"The engine of ghettoization is not entirely internal to the ghetto, nor are its root causes exclusively historical. Although Fiss recognizes the responsibility of the explicitly discriminatory policies of the past for the present reality of the urban ghetto, he does not consider the salience of present-day public policy in reproducing the ghetto and reinforcing its borders. While Fiss's proposal is laudatory, it is incomplete. Without the reform of local policies that reinforced the isolation of the ghetto from outside, it would be like running the furnace with the windows open."

Professor of Law **RICHARD T. FORD**, in *Boston Review*, in a rebuttal to a proposal suggesting voluntary relocation of inner city residents to middle- and upper-class neighborhoods

"In tax (as in other fields) the devil is in the details. Most of us in tax policy would

require a great deal more thought, and debate, before giving serious consideration to an annual wealth tax. Much work remains to be done on the details of implementation before any prudent policymaker can recommend pitching the existing income tax for a wealth tax."

**JOSEPH BANKMAN**, Ralph M. Parsons Professor of Law and Business, from his commentary "What Can We Say about a Wealth Tax?" in *Tax Review*

"... mass privatization of large enterprises is likely to lead to massive insider self-dealing unless (implausibly in the initial transition from central planning to markets) a country has a good infrastructure for controlling self-dealing, and *not* the details of the privatization plan. If control is given to the current managers, as in Russian mass privatization, they often won't know how to run a company in a market economy. Some managers will loot their companies, perhaps killing an otherwise viable company."

Professor of Law **BERNARD S. BLACK '82** (with Reinier Kraakman and Anna Tarassova), from "Russian Privatization and Corporate Governance: What Went Wrong?" in *Stanford Law Review*

*New York Times* columnist Anthony Lewis quoted **GERALD GUNTHER**, William Nelson Cromwell Professor of Law, emeritus, following the Supreme Court's ruling striking down a provision in the Violence Against Women Act. "It does not seem to me unwise to have the Supreme Court as an ultimate protector of federalism," Lewis wrote. "Politics, for example, has not proved to be effective in keeping federal criminal law out of traditional state areas. Paranoia about drugs and crime has led to much unwise federalization of criminal law. For such reasons Professor Gerald Gunther of the Stanford Law School took a benign view of the violence against women decision. The Court should have paid more heed, he said, to the record made by Congress. But 'it was not a catastrophe.'"



## law gatherings

In July, the Stanford Law Society of Silicon Valley held its summer reception at ALZA Corporation in Mountain View.

Michelle Daigneault '88, left, and event cohost Sarah Anne O'Dowd '77 (AM '73) spent a moment chatting with incoming student Gary Gechlik '03.

MARCO ZECCHIN



Also in July, the Stanford Law Society of Los Angeles held a reception for summer associates and incoming students at the offices of Sonnenschein Nath & Rosenthal. George Stephens '62 and event cohost Pamela K. Prickett '79 (AB '76), above, helped welcome local alumni and students, including, at right, Class of 2001 members Eric Lorenzini, Amber Garza, and Louis Wharton.

MARK FELLMAN (2)






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## Online Services

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-- M.S., '88



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Beverly J. Watson '99 and Alejandro Cestero '99 talk with Frederick I. Richman Professor of Law Marc A. Franklin.

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