

Stanford *Lawyer*



BEYOND NAPSTER:

Copyright, Fair Use, Intellectual Property Collide in Cyberspace

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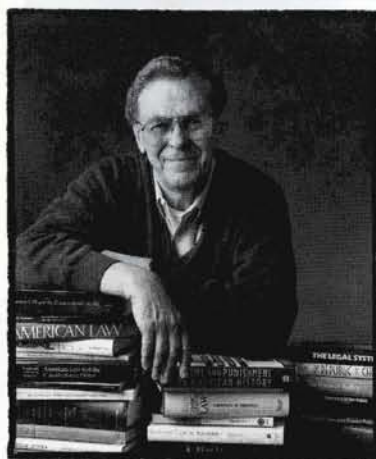
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By Doug Fine

Copyright, Fair Use, and Intellectual Property Collide in Cyberspace

P2P networking technology has revolutionized file swapping, but now new business models are emerging to beat down the legal challenges faced by upstarts like Napster. Here's what the experts see in our digital future.



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PROFESSOR
LAWRENCE
LESSIG

20 ELECTION REVIEW

By Mel Taylor

Stanford Law School was very well represented during Election 2000. Professor Pamela Karlan led the way through the media blitz, Dean Kathleen Sullivan played a role in the first election case brought before the U.S. Supreme Court, the Robert Crown Library won a national award for its election reference database, and Election 2000: Epilogue was presented as an open forum to examine this important chapter in election history.

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COVER ILLUSTRATION by Ron Chan

Major Classroom Renovation Will Support Integration of Information Technology with Legal Pedagogy

BY KATHLEEN M. SULLIVAN

SUMMER MAY BE A QUIET TIME across the rest of campus, but here at the Law School, things are humming—and drilling and sawing and hammering—as construction crews undertake the first major renovation in the history of the “new” law school. Built in 1975 as a classic example of the architectural style known as “brutalism,” our buildings have remained physically unaltered ever since.

Next fall, the F.I.R. Classroom Building will leapfrog over the last quarter of the twentieth century directly into the twenty-first, with each of its 16 classrooms gutted and fully renovated. Our newly modernized classrooms will free our faculty to teach not only with markers and whiteboards, but also with Internet access, digital projection, and state-of-the-art audiovisual technology. New power, lighting and ergonomic seating will enable our students to work comfortably on the laptop computers they now nearly all bring to class. And the opportunity for new forms of interactive and collaborative learning will be unlimited.

This transformation of our classrooms, made possible by the generosity of our alumni and friends in our last capital campaign, symbolizes Stanford’s distinctive approach to legal education. On the one hand, we are frugal, practical, and more focused on our ideas and our human capital than our physical infrastructure; we really wore those classrooms out before deciding to rebuild them. By waiting, we avoided many wasteful errors made by law schools who renovated before we did; for example, in all classrooms but one, we will deliver Internet access by high-speed wireless connections rather than by already obsolete wire.

On the other hand, we aim to be the most forward-looking of law schools, preparing our students for the law practice, business environment, and public policy challenges of the future. The world our students will work in fifteen or twenty-five years from now will be marked by exponential changes that we think it is our job to anticipate and prepare for.

In that future world, legal knowledge will be enhanced by a vast universe of digital resources accessible by wireless devices from anywhere, not limited to books and reporters standing on library shelves. In that future world, instantaneous communication among offices, firms, markets, and courtrooms around the globe will require new sophistication and flexibility in our professional relationships. And in that future world, the need for new approaches to problem-solving will place a premium on the ability to collaborate, negotiate, and work productively in groups.

Our new classrooms will enable us to bring the excellent legal education we already offer into



LORI EANES

line with that new world. They will be beautiful and pleasing, to be sure, but their reason for being will be function, not form. They will enable our faculty to speak the legal language of our students.

Our students already do most of their research on line. Our students already gain wireless access to Westlaw over their Palm Pilots because those two companies chose Stanford Law School as the site to test exciting legal applications for the future.

And our students already take their studies far beyond the limits of Socratic real time, e-mailing their professors any time of day or night with thoughtful questions about the issues covered in class.

Our new classrooms will facilitate new forms of curricular creativity that take advantage of such digital tools. I hope you will visit them at Alumni Weekend this October. And they will pave the way for other physical renovations that will be necessary in the next several years as we convert a law school of the 1970s to a model of legal education for the new millennium.

Our classrooms are only one setting, however, in which the Law School participates in shaping the legal future. As made clear by the fine articles in this issue on the Napster controversy and the aftermath of Election 2000, Stanford Law School faculty continue to make important contributions to policy debates over the most vexing and important issues of the day.

The Napster controversy presents one aspect of the issue of how to balance copyright protection and freedom of speech in the digital age. This interface has long been thought settled by the exceptions in copyright law for fair and non-infringing uses that help preserve a public expressive domain. But does the speed of transmission over the Internet threaten copyright holders with new dangers of theft warranting new forms of legal protection? Or does the balance need to be struck the other way to make sure speech is not locked up in new types of digital straitjackets?

These are issues that Professors John Barton, Paul Goldstein, Lawrence Lessig, and Margaret Jane Radin, our faculty's copyright and cyberspace experts, regularly explore in their teaching and scholarship, and that many of our high-tech alumni like Alex Alben '84 of RealNetworks face daily in their practices and businesses. Next year, our students will have the chance to work with our faculty to influence these policy questions directly through clinical work at our newly launched Center for Internet and Society under the direction of Lecturer Jennifer Granick.

Our faculty also contribute impressively to policy formation in a host of other high-tech areas, from the digital divide at home addressed by a major conference at the Law School that Professor Radin helped organize last

December, to the digital divide abroad that Professor Barton will address over the next year as a member of the United Kingdom's prestigious six-member Commission on Intellectual Property Rights.

The 2000 presidential election—and the Supreme Court's novel decision that Florida's recount violated the Constitution's equal protection clause—present

the very different public policy issue of whether federal election procedures should be left to existing state and local variation, or be governed instead by more uniform federal standards. Such issues have been grist for students taught by our nationally televised voting rights expert Professor Pamela Karlan, and for the many alumni who attended our "Election 2000: Epilogue" forum or other events.

Our public debates about the election are a reminder that the Law School is as committed to contributing to the intersection of law and public policy as it is to the intersection of law and business, and we are very fortunate to have faculty members who have gained national and international recognition for doing so. I hope you will agree that this is a vital part of what being a great professional school is all about. ■

**The world our students will work
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job to anticipate and prepare for.**

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Letters

Miranda Revisited

It was sad to read that Utah Law School Professor Paul Cassell is dissipating his Stanford Law School education on a crusade against the *Miranda* decision and sadder still to see *Stanford Lawyer* glorifying him for doing so. ("Keeping the Bad Guys Caught," Fall 2000)

By requiring that police advise a suspect of his or her rights and respect a request to consult a lawyer, the *Miranda* decision was intended to end the era of rubber hoses and harsh lights.

If, as Cassell contends, the confessions of 26,000 violent felons, or anything like that, are suppressed annually because of failure to comply with *Miranda*, he could make a worthwhile contribution to society by working to eliminate such persistent policy misconduct.

James R. Madison '59

Frankly, it grieves me that the fellow trying to bust the *Miranda* rule came from Stanford; obviously, he did not have Stanley Morrison for Constitutional Law. For my own two cents worth, the states have all the power in criminal matters and the accused need all the rights they can get.

Mr. Cassell is obviously not sympathetic to that message. The victims are victims and that fact cannot be undone. As I saw so movingly done in *Dead Man Walking* at the opera the other night, killing the killer does not bring back the killed; I am not sure it really makes the survivors feel any better.

Mortimer H. Herzstein '50

If Paul Cassell thinks violations of a defendant's constitutional rights are merely "technical matters," it is clear he never represented a client charged with a crime.

That he is of the view that *Miranda* rule should be abolished makes it equally clear that he never represented a client charged with a crime before the

Warren Court declared *Miranda* to be the law.

Mr. Cassell's concern for "victims' rights" overlooks the fact that before we start depriving a defendant of his constitutional rights, let us make sure we have the right defendant and that his rights are not lost to him because they are merely "technical." One man's technicality is another man's substantive right.

Whether someone is a victim of a crime is not an excuse to take away from the accused, who is also a citizen, his constitutional rights. "Tilting justice toward the aggrieved" should not be a device to deprive a defendant of a fair trial.

Jerome F. Downs '49 (AB '47)

CORRECTIONS

We apologize for an error that appeared in the Law School's 1999-2000 *Annual Report of Giving*. Inadvertently, an asterisk was placed next to the name of Thomas C. Rubin '88, indicating that he was deceased. Happily, he is not. We are sorry for any inconvenience caused to Mr. Rubin because of this oversight.

We also would like to correct an error that appeared in the Fall 2000 issue of *Stanford Lawyer*. In our sidebar story on Jose Cardenas '77, we indicated that a case involving Kaiser Steel in the 1980s was handled pro bono. It was not. Furthermore, Mr. Cardenas was not interviewed by the *New York Times* regarding pro bono hours. We regret these errors.

Stanford Lawyer

Welcomes Letters from Readers

Submissions may be edited for length and clarity. Send to Editor, Stanford Lawyer, Stanford Law School, Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA

94305-8610, or by e-mail to:

law.alumni.pubs@forsythe.stanford.edu

President Bush Picks Bolten As Deputy Chief of Staff

JOSHUA B. BOLTEN '80, who served as policy director during the Bush-Cheney campaign, was named by President George W. Bush as assistant to the president and deputy chief of staff for policy in December.

During the presidential campaign, Bolten

COURTESY OF THE WHITE HOUSE



Joshua B. Bolten '80

worked closely with among others, former Stanford Provost Condoleezza Rice, who is now the administration's National Security Adviser.

The new deputy chief worked for Goldman Sachs International in London from 1994 to 1999. Under President George H. W. Bush, he served as general counsel at the Office of the U.S. Trade Representative from 1989 to 1992, and then as deputy assistant to the president in charge of legislative affairs during the last year of the administration.

Bolten served as international trade counsel at the Senate Finance Committee from 1985 to 1989. He also worked at the law firm of O'Melveny & Myers and the legal office of the State Department after graduating from Princeton University and Stanford Law School.

his practice full time when the crisis is over.

Kahn represents companies and individuals in complex environmental, antitrust, securities, lender liability, employment, and breach of contract cases, with an emphasis in multiparty and class-action litigation.

At Stanford, Kahn took a master's degree in political science, studied the presidency during law school, and completed

course work for a doctorate in political science. He served as national chair of the Stanford Law Fund from 1997 to 2000 and has been a member of the Law School's Board of Visitors since the early '90s. Kahn was also recently elected chair of the state Commission on Judicial Performance, and he has published more than 20 articles on a variety of law-related subjects.

With the state's energy problem so rich in symbolism, Kahn will have the opportunity his new post provides to add to his collection of political cartoons—one of the largest such private collections in the country.

U.S. News Ranks SLS Second in Nation

U.S. *News & World Report*, for the second year, has named Stanford Law School as the No. 2 law school in the country. Yale was No. 1 and Harvard No. 3.

The rankings of 174 accredited law schools, published annually, are based on a weighted average of the 12 measures of quality established by the magazine.

"Our position attests to

Stanford Law's overall reputation for providing an outstanding curriculum delivered by an absolutely first-rate faculty committed both to research and to practice," said Dean Sullivan.

Sullivan Named to National Election Commission

Kathleen M. Sullivan, Dean and Richard E. Lang Professor of Law and Stanley Morrison Professor of Law, has been named a vice chair of the National Commission on Federal Election Reform created in the wake of the November 2000 election.

Former Presidents Gerald Ford and Jimmy Carter, who serve as honorary chairs, oversee the bipartisan commission. Chairs are Lloyd Cutler, former White House counsel, and Robert Michel, former minority leader in the U. S. House of Representatives.

The commissioners, who are serving on a voluntary basis, were chosen because they are able to provide a wide range of insights, from academia to practical politics, that are needed to evaluate the growing number of federal election reform proposals.

The commission is focusing on the future of federal elections, and not re-fighting the Florida contest. Issues include: voting techniques and ballot design; the timing of federal elections and communicating results; absentee and overseas military votes; contesting and recounting; new technology for voting; and new institutions, such as a national elections commission or strengthened Office of Election Administration of the

California Governor Taps Kahn for State Energy Post

San Francisco litigator Michael A. Kahn '73 (AM '73) was appointed by California Governor Gray Davis (AB '64) in February as board chairman for the powerful state-sponsored California Independent System Operator in the midst of the state's severe energy crisis.

In response to dwindling power

supplies and skyrocketing costs, Davis and the legislature reorganized the ISO to make it more responsive to California's needs while the state tries to pull out of the worst electricity and natural gas crisis in decades.

Prior to his "being parachuted in" to lend assistance, Kahn was already quite busy as senior partner and head of litigation at Folger Levin & Kahn LLP in San Francisco. Kahn, who considers himself a "serial conscriptee" in the state's energy war, will return to



Michael A. Kahn '73 (AM '73)

Federal Election Commission.

Commissioners include William Barr, Griffin Bell, William T. Coleman, Jr., John Danforth, vice chair Slade Gorton, Hanna Holborn Gray, Colleen McAndrews, Daniel Patrick Moynihan, Leon Panetta, Deval Patrick, Diane Ravitch, Bill Richardson, and John Seigenthaler.

"We're holding hearings at presidential libraries throughout the country," Sullivan ex-

plained, "to explore the issue of how the technology and procedures of elections can be reformed to make them as fair and equal as possible, while minimizing fraud."

The work of the commission will be developed into a September 2001 report that, according to Ford and Carter, "will be of real use to the 107th Congress and the Bush administration as they move forward." (Please see page 22 for more on the aftermath of the November election.)

Thompson and Team Win NSF Grant

Barton H. Thompson, Jr., JD/MBA '76 (AB '72), Vice Dean and Robert E. Paradise Professor of Natural Resources Law, is a member of the four-person Stanford team awarded \$1 million as part of the National Science Foundation's first round of major funding to spur fundamental research and support the innovative application of information technology. The Stanford project vied with more than 1,400 proposals.

Thompson teamed up with Stanford civil and environmental engineering and computer science faculty to develop a distributed information management framework, named REGNET, that will make governmental regulations available online.

REGNET, as an information technology infrastructure, will initially work on regulations related to hazardous waste management by gathering repositories for regulatory information and then developing tools to locate, merge, compare, and analyze information, an extremely complicated task until now.

Distinguished Jurist Cordell Named Stanford Vice Provost

Santa Clara County Superior Court Judge LaDoris Hazzard Cordell '74, who served as assistant Dean for

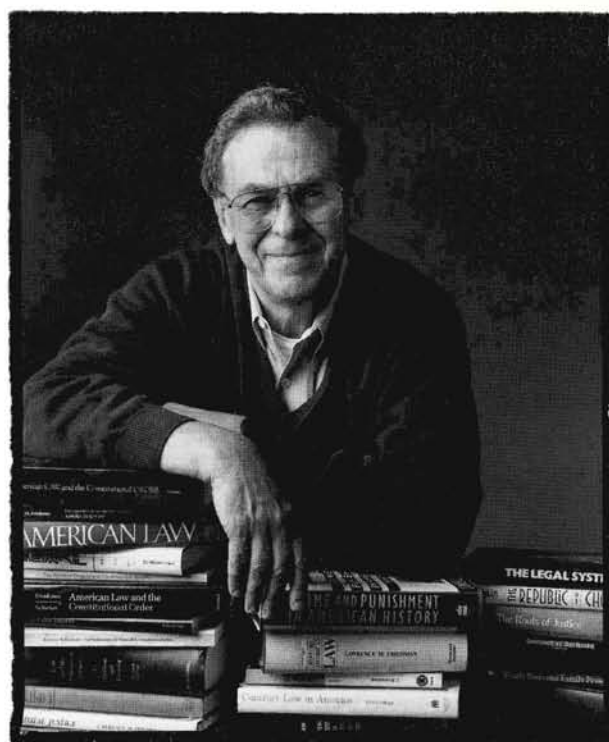
Student Affairs at the Law School from 1978 to 1992, has been named Vice Provost and Special Counselor to the President for Campus Relations.

"Almost 20 years ago, LaDoris Cordell left her job at Stanford to start her career as a



JOSEPH PINEIRO

Dean Sullivan delivered the inaugural Justice Ruth Bader Ginsburg Distinguished Lecture on Women and the Law at the Association of the Bar of the City of New York on November 15. Praising Ginsburg's "pioneering career" as a women's rights litigator and comparing the American constitutional law of sex equality with more specific and detailed provisions in other nations' constitutions, Sullivan called Ginsburg's successes under the equal protection clause "a little like cooking when there's nothing in the kitchen."



STEVE GLADFELTER

Friedman Recognized For Scholarly Influence

LAWRENCE M. FRIEDMAN, the Marion Rice Kirkwood Professor of Law, was awarded the Fellows of the American Bar Foundation award for outstanding research in law and government at the organization's annual meeting in February.

In a biographical sketch of Friedman prepared for the event, Rayman L. Solomon, dean of the Rutgers University School of Law-Camden, wrote, "[Friedman] is internationally recognized as the preeminent socio-legal scholar of his generation. In a scholarly career that has spanned over 40 years, and so far has produced over 20 monographs and 200 articles, Professor Friedman has deepened our understanding of the ways in which law and social, political, economic, and cultural forces have interacted in American history. . . . His books and articles have shaped a generation of scholars. . . ."

Established in 1955, the Fellows of the American Bar Foundation encourages and supports research that focuses on the improvement of the legal system.



LaDoris Cordell '74

judge,” said University President John Hennessy, “and in the ensuing time, she has not only distinguished herself on the bench, but she has also become a noted community leader and impassioned advocate for social justice.”

In 1982, Cordell became the first African-American female judge on the bench in Northern California. She served on the Municipal Court of Santa Clara County until 1988, when she won a countywide election, making her the first African-American Superior Court judge in Santa Clara County.

The new Vice Provost reports to the President and oversees five offices that focus on quality of life and equity issues.

In addition to her new duties, Cordell hopes to develop and teach a course on judging that will include hands-on training for second- and third-year Stanford law students.

Zumwalt Named Stanford Counsel, Fenner Advanced to Deputy Post

Adding to Stanford Law School alumni's presence in top University ranks, President John Hennessy has named Debra L. Zumwalt '79 University General Counsel.

Zumwalt, who has served as Acting General Counsel since February 2000, was Senior University counsel from 1987 to 1993. Prior to her new post, she was a partner at Pillsbury Winthrop LLP and managing partner of its Silicon Valley office. Much of her

work at Pillsbury was Stanford-related. Zumwalt is also president of the Santa Clara County Bar Association.

Zumwalt named Thomas Fenner '76 (AB '73) deputy general counsel for the University. Fenner, who has served as counsel for the University for 16 years, was most recently senior university counsel.

Michael Hudnall '68, who

served as counsel for 28 years, was named deputy general counsel, emeritus. Hudnall, who was honored with the Kenneth M.

Cuthbertson Award for exceptional service to the University, retired in January.

Dean Sullivan served on the



Debra Zumwalt '79 and Thomas Fenner '76

panel to evaluate Zumwalt's work and qualifications for the permanent position. She said, “Zumwalt offers a rare combi-

Public Forum Highlights Gaps Among Users of Technology

ON DECEMBER 9, STANFORD LAW SCHOOL hosted a public forum that examined the disparate use of technology throughout the state.

“Bridging the Digital Divide” was part of the Hitachi California Public Affairs Forum series. Cosponsors included Hitachi; the Stanford Program in Law, Science & Technology; the California Council on Science and Technology; and the Stanford Institute for Economic Policy Research.

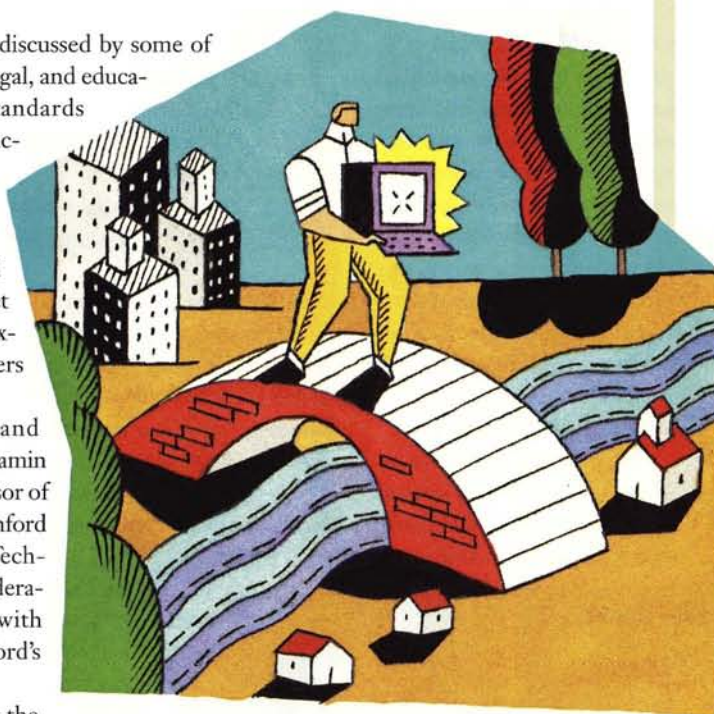
Thought-provoking issues discussed by some of the state's leading technology, legal, and education experts included what standards should be applied to Internet access; what policies will directly influence the distribution of computers to elementary schools; and whether combined telecommunications and Internet service providers will be less expensive than individual providers for low-income groups.

Dean Kathleen Sullivan and Margaret Jane Radin, Wm. Benjamin Scott and Luna M. Scott Professor of Law and Co-Director of the Stanford Program in Law, Science & Technology, were co-chairs and moderators of the conference, along with Professor Roger Noll of Stanford's Department of Economics.

Among those presenting at the event were alumnus Larry Irving '79, former Assistant Secretary, U.S. Department of Commerce, who delivered the keynote speech, and Stanford Law Professor Lawrence Lessig, who examined the relationship of equal access to democracy. Education, universal service, and equal access were discussed during a town hall meeting moderated by Sullivan.

One of the broad conclusions reached at the event was that bridging the gap would require the coordinated efforts of technology innovators, government regulators, communications providers, and skilled teachers. Policy recommendations from the forum are included in CCST's Critical Path Analysis of California's Educational System which was published in May.

For more information visit: <http://ccst.ucr.edu/cpa/bdd/bddbome.html>



DAVE BLACK

nation of strengths—as seasoned litigator, knowledgeable counselor, and energetic and stalwart defender of Stanford's interests across a wide range of matters over the last decade. We could not have found a person better suited to serve as Stanford's chief lawyer than the highly respected, incredibly hard-working person who was already serving in that role on an interim basis."

Nosanchuk Steps Up To National Chair

Mathew S. Nosanchuk '90 (AB '87) has been named Stanford Law School's first National Law Society Chair.

In his new role, Nosanchuk is responsible for increasing committee member participation in planning and facilitating law society activities; assisting regional chairs in developing varied program offerings that appeal to a broad constituency; and working with chairs to develop strategies to increase attendance from a wide cross-section of alumni. He had been the co-chair of the Stanford Law Society of Washington, D.C.

Nosanchuk and the Law School have developed listservs for the major regional alumni areas: Chicago, Los Angeles,

Cyber Expert Lessig Finds Center for Internet and Society

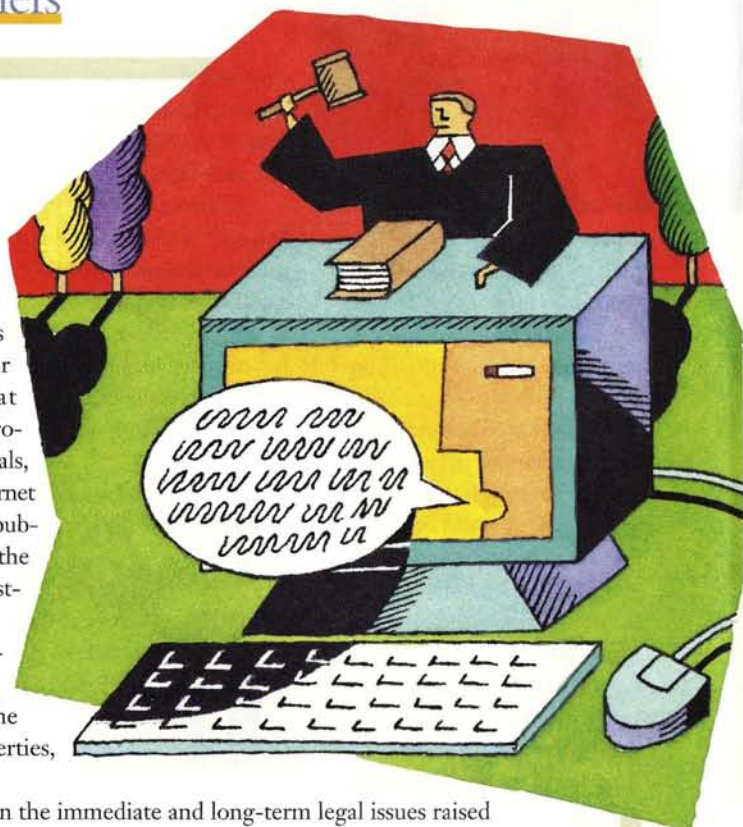
RENOWNED Internet rights expert Professor Lawrence Lessig has founded the Center for Internet and Society at Stanford Law School to provide legal representation to individuals, explore the relationship between Internet architecture and constitutional and public policy values, and help protect the intellectual marketplace of ideas existing in cyberspace.

"The general focus of the center is to help students analyze the developing relationships between the architecture of cyberspace, civil liberties, and innovation," Lessig said.

Stanford Law School focuses on the immediate and long-term legal issues raised by new technologies and their impact on society.

The center has established a clinic led by lecturer and experienced cyberspace litigator Jennifer Granick as director, through which Stanford Law students can work on cutting-edge legal issues in cyberspace.

(For more on the center, please see the sidebar on page 18.)



DAVE BLACK

New York, San Diego, San Francisco, Seattle, Silicon Valley, and Washington, D.C. If you are interested in communicating with fellow alumni in your region, please subscribe to a regional listserv by visiting http://lawtalk.stanford.edu/~alumni_relations.

In this national position, Nosanchuk joins John Levin '73 (AM '70), who has served as National Reunion Chair

since 1999. Levin is responsible for recruiting individual reunion chairs; developing strategies for Alumni Weekend programming; assisting in recruiting notable speakers; and maintaining ongoing communications with alumni in the development of Alumni Weekend. He was the very successful gift co-chair for the Class of 1973's 25th reunion. His class was the first to raise more than \$2 million to honor its reunion. Levin also serves on the Stanford Board of Trustees.

MARK YOUR CALENDAR

Alumni Weekend 2001 is October 11—14. Watch for the brochure describing the exciting programs and activities to arrive in the mail in August. Register using the printed materials or the secure online registration form at <http://www.law.stanford.edu/alumni/alumni-weekend/registration>. This is a weekend not to be missed!

SLS Associate Dean Named Assistant To the President

Julie Lythcott-Haims (AB '89), former Associate Dean for Student Affairs at the Law School, has been named Assistant to Stanford President John Hennessy. Prior to serving at the Law School, Lythcott-Haims practiced intellectual property law in the Bay Area. She received her law degree from Harvard in 1994.

"Her devotion to Stanford and the local community, professional training as a lawyer, and a truly collegial approach to work will make her a pleasure to work with," Hennessy said.

Cathy Glaze '85, who served as Acting Associate Dean for Student Affairs from September



John Levin '73 and Mathew Nosanchuk '90 (AB '87)

2000 through May 2001, has now been named for the post.

International Prize Honors Renowned Chinese Scholar

Last October, one of China's most highly respected legal scholars and jurists, Ni Zhengyu '29, was presented with the inaugural Ni Prize in International and Chinese Law, established in his honor at Stanford Law School.

In her welcoming remarks, Dean Kathleen Sullivan recognized Professor Ni as "one of the most distinguished law graduates in the School's history."

An internationally recognized scholar, teacher, jurist and public servant, Professor Ni has served as a World Court judge; legal counsel to China's Ministry of Foreign Affairs; arbitrator to China's Maritime and Foreign Trade Arbitration Commissions; and director of the China Society of International Law. He also served in key United Nations positions, including the International Law Commission, and as legal counsel to numerous Chinese diplomatic missions to the U.N.

In his remarks, Professor Ni said he hoped that the prize "would serve the purpose of enabling lawyers to be better equipped for rendering legal services beyond national boundaries."



Ni Zhengyu '29

Ten SLS Alumni, Faculty Make the Top 100 Lawyers List

California Law Business named 10 Stanford Law alumni and faculty members to its list of the top 100 most influential lawyers in California in October.

The survey ranking, conducted for the third year, was based on 850 personal interviews conducted with law firms, law schools, and public interest organizations throughout the state.

Named to the list were Warren M. Christopher '49; Donald S. Chisum '68 (AB '66); Mary B. Cranston '75 (AB '70); Gordon K. Davidson '74 (BS '70, MS '71); Ronald M. George '64; Joseph A. Grundfest '78, W. A. Franke Professor of Law and Business; Craig W. Johnson '74; J. Terence O'Malley '75; John E. Place '85; and Dean Sullivan.

Three Venture Investor Alumni Make 'Midas List'

Entrepreneurs who steer clear of tech wrecks and other market implosions have what venture investors call the "Midas Touch."

Three SLS alumni who have it were named to *Forbes* magazine's "Midas List of 100" for last year. Included were James C. Gaither '64, managing director of Sutter Hill Ventures; Gordon K. Davidson '74, chair of Fenwick & West; and Craig Johnson '74, chairman of Venture Law Group.

According to *Forbes*, "Midas members include entrepreneurs and angel investors who nurture the ideas, venture capitalists who fund them, technical advisors who judge the technology,

Students Travel to The Hague For Global Warming Summit

ANJAY RANCHOD '01 AND LOUISE WARREN '03 traveled to the Netherlands over last Thanksgiving with fellow Stanford Law students Grady Jackson '02, Gwen Parker '03, Tauna Szymanski '03, and Aimee Christensen '01 to participate in international discussions and negotiations involving global warming.

The SLS group, whose trip to The Hague was made possible by Greenpeace USA, joined with 200 other American college and graduate student environmental leaders to express their views on the crisis.

The objective of the summit, which drew 10,000 government officials, environmentalists, industry lobbyists, and media representatives, was to write rules to implement the 1997 Kyoto protocol, an agreement under which the U.S. and other industrialized nations agreed to cut emissions of carbon dioxide and other heat-trapping gasses below 1990 levels.

"While European countries worked to strengthen the treaty, the United States, Japan, Saudi Arabia and other countries pushed for loopholes to water down the Kyoto Protocol," according to Ranchod and Warren. Ranchod is national chair of the Sierra Club's Global Warming and Energy Committee. He said "the American negotiating position was strongly influenced by the oil and coal industries and their political allies who want to delay transitioning to cleaner energy sources."

For more information, visit <http://els.stanford.edu>; <http://unfccc.int>; <http://iisd.ca/climate/cop6>; and <http://sierraclub.org/globalwarming/>



Grady Jackson '02, Sanjay Ranchod '01, and Louise Warren '03.

lawyers who do the patent work, and investment bankers who promote the product."

Ruby Slaps Government Supplier in \$80M Whistle-Blower Case

It was a big-time slap down for heavyweight litigator and one-time wrestler Allen Ruby '68, taking on the U.S. Government and one of its top defense manufacturers, FMC Corporation. Ruby won.

After 14 years, 100 motions, and 1,000 boxes of supporting material, the protracted battle fought in federal trial and ap-

pellate courts ended in U.S. District Court in San Jose in January with a unanimous court jury award of \$139 million, and



Allen Ruby '68

an \$80-million post-verdict settlement.

Ruby's team included former classmate J. David Black '68 of White & Case, Phillip G. Svalya of Cupertino, and Roy Bartlett.

The government false claims whistle-blower case, *United States of America ex rel Henry Boisvert v. FMC Corp.*, began in 1986 with a lawsuit filed by Boisvert, a former employee of FMC, manufacturer of the U.S. Army's Bradley Fighting Vehicle.

The all-terrain vehicle was designed to carry troops and equipment through water and on land, but it leaked, according to Boisvert, an FMC test analyst, who continued to report the deficiencies. Ruby proved Boisvert was wrongfully terminated by FMC after he filed suit under the False Claims Act.

Ruby, a partner in the San Jose firm of Ruby & Schofield, has practiced criminal and civil law since graduating from Stanford. He says he learned a lot about law between high school and law school while on the professional wrestling circuit in the Midwest, following in the footsteps of his father. "I learned how to get beat and not whine about it, and that was the most valuable lesson I could have learned as a trial lawyer."

Law Review Event Revisits State Sovereign Immunity

A two-day symposium, presented by the Stanford Law Review in February, addressed the Supreme Court's changing understanding of state power and the future implications of recent, key federalism decisions.

Seth Waxman, former U.S.

Solicitor General, delivered the keynote address. His comments were followed by a series of panels featuring a Who's Who of the key academics and practitioners in the field, including former Acting Solicitors General Walt Dellinger and Barbara Underwood, Ninth Circuit Judge William Fletcher, former Boalt Hall Dean Jesse Choper, former Ohio Solicitor General Jeffrey Sutton, as well as Stanford faculty member and visiting faculty member Akhil Amar of Yale and Roderick Wills, Jr., of Michigan.

Participants' articles will appear in the *Stanford Law Review*, Vol.53 Issue 5. Visit the *Law Review's* website at <http://www.law.stanford.edu/lawreview>

SLS Among Top Schools In LRAP Spending

A report by the National Association for Public Interest Law has found that Stanford is one of only six law schools that make up 70 percent of loan repayment assistance program funding nationwide.

LRAPs, such as the Miles & Nancy Rubin Loan Forgiveness Program at Stanford Law School, are credited with enabling more graduates to enter the lower paying public service area of law, despite substantial educational debt incurred by many law students.

The report listed Stanford along with Yale, NYU, Harvard, Columbia, and Georgetown. According to the report, although the number of loan assistance programs is down slightly since 1994, the pay out has risen from \$3 million to \$7.6 million in 1999.

Stanford Sweep Fellowships

Each year post-graduate fellowships are awarded to students who have chosen careers in the public interest sector. This year a record number of Stanford law students won these coveted national awards, including:

Angela Chabot '01, who received the Natural Resources Defense Council environmental fellowship cosponsored by the Altschuler, Berzon, Nussbaum, Rubin & Demain public interest law firm in San Francisco. She will be working with physicians and scientists against polluters and toxic waste producers.

Helen Chen '01 received the National Association for Public Interest Law award sponsored by the Asian Law Caucus in San Francisco. She will be working to promote the health and safety of Asian immigrant workers, particularly in sweatshop work environments.

Heba Nimr '01 received the Soros Post-Graduate Justice Fellowship from the Center for Crime, Communities and Culture of the Open Society Institute. She will be working with INS Watch/La Raza Centro Legal in San Francisco to organize and mobilize Bay Area immigrants for the protection of their civil rights, including immigration proceedings involving detention because of criminal histories.

Jeffrey Snipes '01 received a Rockefeller Brothers Fund award and will work at the Vera Institute of Justice in New York, under general counsel and special counsel on legal programs to address legal, business, and organizational issues facing members of Vera.

Sunshine Sykes '01 re-

ceived a National Association for Public Interest Law award and will work with California Indian Legal Services, Oakland, Calif., to ensure that Native American Indians gain full access to social, educational, and economic services.

Alexander Thier '01 received a Skaaden Fellowship Foundation award to work with the Silicon Valley Affordable Housing Project at the East Palo Alto Community Law Project to mitigate the regional housing crisis and advocate for affordable housing in Silicon Valley communities.

Jennifer Wedel '01 received the Ruth Chance Law Fellowship sponsored by Equal Rights Advocates in San Francisco, where she will be working. She will provide litigation support for staff attorneys in class-action and individual-representation cases; participate in a full range of community outreach programs, including offering training sessions at employment centers on workers' rights; and supervise the staff of the ERA's nationwide advice and counseling hot line.

Campbell Returns to Teaching After Congress

Tom Campbell, who last fall attempted unsuccessfully to unseat incumbent Senator Dianne Feinstein (AB '55) (D-Calif.), has returned to the Farm and his post full-time as a tenured member of the Stanford Law School faculty.

In his first semester back in the classroom, the former member of Congress is teaching a course on antitrust law and conducting a seminar on the separation of powers. In the fall, he will also teach administrative law and international jurisdictions.



Professor Tom Campbell

In campaigning against Feinstein, Campbell was said to be at his best before students, with whom he discussed the issues of the day, the values of public service, and the importance of being involved in government.

"I'm very happy about be-

ing a teacher again," Campbell said. "On balance, it's an overwhelmingly happy moment. I'm at a job I love."

Suit Quashes Use of stanfordlawyer.com

La Jolla attorney Craig Gillooly—calling himself a "big fan" of Stanford—gave up his claim to the *stanfordlawyer.com* domain name after being sued by Stanford last year for "cybersquatting" and trademark infringement.

The solo practitioner, who is not an alumnus, used the site to direct visitors to another site that offered legal consultation services. Gillooly initially refused to transfer the domain name last year when asked, and,

instead, registered additional names containing the name "Stanford."

Gillooly ultimately agreed to transfer *stanfordlawyer.com*, *stanfordlawyer.net*, and *stanfordlawyer.org* to the University.

'The Mole' is Alumna, Now Writing Novel

Just when you thought it was safe to go back into your living room, reality TV has opened a new window on life in the Outback, on an island of temptation, and in boot camp sharing quality time with drill sergeants.

In one such show, *The Mole*, a series of nine episodes, put five men and five women through mental and physical challenges to win a jackpot of

\$510,000, while the unidentified Mole was sabotaging their efforts.

The arch-saboteur, whose identity was kept secret even from her fiancée, was Kathryn Price '98, who successfully siphoned money from the pot, monkey-wrenched the tests, and kept her identity hidden.

Price didn't win first prize. She did receive a flat fee for being *The Mole*, which turned out to be the perfect assignment.

Price is now writing a screenplay based on a novel she wrote while at SLS.

Incidentally, the last time we reported on Curtis Kin '96 in *Stanford Lawyer*, he was in contention for \$500,000 on the TV show *Big Brother*. He didn't win the top prize, but still got \$50,000 for living with 10 strangers. Better or worse than boot camp?

Students Launch Online Journal Designed to Push Boundaries

STANFORD AGORA: *An Online Journal of Legal Perspectives* (formerly the *Stanford Journal of Legal Studies*) recently became the second Stanford Law journal available solely on the Internet. While other journals distribute their text via traditional channels, *Agora* and the *Stanford Technology Law Review* have turned to the Web to publish scholarly work.

According to *Agora*'s editorial board, the name change "not only reflects the new format evolution but also the publication's recommitment to pushing the boundaries of legal education."

Agora's first issue included "Socratic Perspectives on American Constitutionalism"; "Subversive Speech in the Trial of Socrates and in the Redistricting Cases"; "Socrates the Cosmopolitan"; and "The Quest for the Historical Socrates," among other articles. The Web-based journal is published at <http://law.stanford.edu/agora/>

Stanford Technology Law Review is described by its editorial board as "an innovative forum for intellectual discourse on critical issues at the intersection of law, science, technology, and public policy." It was first published online in spring 1997 and is available at http://stlr.stanford.edu/STLR/core_page/index.htm



DAVE BLACK

A FOND FAREWELL

William Hewlett, Law School Friend

While most Stanford graduates have some idea of the tremendous impact technology pioneer William R. Hewlett (AB '34, Engr. '39) had on Stanford University over the course of his lifetime (see *Stanford* magazine, March/April 2001 issue), far fewer are aware of his generosity toward Stanford Law School.

Hewlett, who died on January 12, 2001, at age 87, and the William and Flora Hewlett Foundation made possible the establishment of the Judge John W. Ford Professorship in Dispute Resolution by matching the gift of the late Thomas W. Ford, a Menlo Park real estate developer.

Ford established the professorship to support teaching and research in alternative methods of dispute resolution and honor his father, the late Honorable John W. Ford, who presided for more than 20 years in the Court of Common Pleas in Youngstown, Ohio. Hewlett supported the professorship based on his belief that learning to solve disputes without litigation was a sound business strategy.

In assisting in the establishment of the professorship, Hewlett and the foundation each gave \$500,000 gifts to match Ford's pledge of \$1 million. The chair—the first endowed at the School in the area of dispute resolution—is currently held by Deborah R. Hensler.

Reflecting on Hewlett's support of the School, Dean Kathleen Sullivan said, "William Hewlett and the

SEC Chair Levitt Addresses Market Issues

In his last major public address as outgoing U.S. Securities and Exchange Commission Chairman last January, the widely respected Arthur Levitt provided faculty, students, alumni, and neighbors of Stanford with a broad perspective on today's rapidly changing securities market in a public address at the Law School on January 8.

"Congress established the framework for a national market system to connect the growing number of different markets twenty-five years ago," Levitt said. "This framework, set forth in the 1975 amendments, has served our markets well."

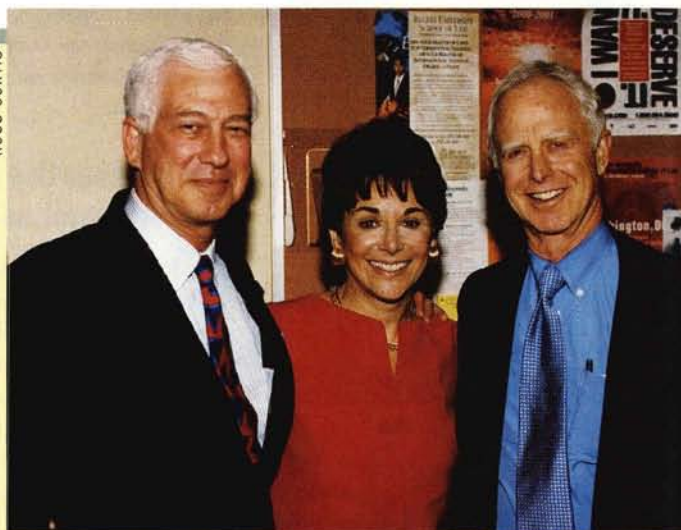
The chairman explained the results of a recent SEC study that found that investors who placed orders for stocks at prices better than the prevailing market price (limit orders) were significantly less likely to have their orders executed on Nasdaq than they were on the New York Stock Exchange.

"It is essential to keep in mind the very significant strides Nasdaq has made in recent years," Levitt said. "At the same time, price competition must remain at the core of their focus."

The chairman, whose talk generated lively debate, closed by saying, "Prudence is critical as we consider changes to a market system that must never cease to function . . . for the benefit of America's investors—not for any one institution or interest."

Chairman Levitt's address can be viewed on the Web at <http://law.stanford.edu/courses/levitt.sbtm1>

RUSS CURTIS



John Freidenrich '63 (AB '59), Congresswoman Anna Eshoo (D. 14th District, Calif.) Chairman Arthur Levitt

Hewlett Foundation have been important supporters of the Law School and its teaching mission. We appreciate all that they have done for the School, and particularly in promoting our outstanding curriculum in dispute resolution, mediation and negotiation."

Volk Revised Corporate Securities

Robert H. Volk '58 (AB '54), a former state commissioner of corporations who worked to bring corporations to California, died on January 2 in Los Angeles at age 68. The attorney and businessman led Unionamerica, the holding company of Union Bank, and also managed airport facilities for executive aircraft.

He is survived by his wife, Barbara; children Christopher, William, Lauren, and Elizabeth Volk Lawler; and 10 grandchildren.

Governor Ronald Reagan named Volk Corporations Commissioner in 1967. Among other initiatives, he coauthored a revised California Corporate Securities Act that simplified procedures for corporations to issue stocks in California and also exempted securities listed on the New York Stock Exchange from state registration.

Volk resigned his position in January 1968 when the new securities law and accompanying regulations went into effect, saying that he had reached his goals.

Wives of SLS Faculty Remembered

Ruth K. Franklin, curator at Stanford's Cantor Center for Visual Arts and the wife of Marc A. Franklin, the Frederick I. Richman Professor of Law, Emeritus, died December 18 in San Francisco of complications from pneumonia. She was 64.

Mrs. Franklin was curator of the arts of Africa, Oceania, and the Americas. She and her husband often traveled to Africa, the Pacific Islands, Indonesia, and the Americas to study the role of art in those cultures.

Between 1962 and 1966, Mrs. Franklin worked with Carl Spaeth, former dean of the Law School, on the

University's Committee on International Studies. Mrs. Franklin, began volunteering in the late 1980s at what was then the Stanford Museum of Art and is now the Cantor Center.

She is survived by her husband and children, Jonathan of Seattle and Alison of Cambridge, Mass.; sister Diana Korzewnik of Newton Highlands, Mass.; and two grandchildren.

Margaret McDonough, the wife of former Acting Law School Dean John R. McDonough, died February 7 at her Cupertino home at age 85.

Mrs. McDonough emigrated with her family from the Netherlands to the United States in 1930. The McDonoughs were married in 1944 and settled at Stanford, where her husband joined the Law School faculty.

Mrs. McDonough, an accomplished oil painter, was active in the First Congregational Church of Palo Alto, as a Red Cross volunteer, and as a member of the Stanford Women's Club.

She is survived by her husband; daughter Jana of Deerfield, Ill.; son John of Mountain View; and sister Geraldine Block of Levittown, N.Y.

John McDonough served as Assistant Professor of Law from 1946 to 1949, Professor of Law from 1952 to 1970 and Acting Dean from 1962 to 1964. He taught courses in the conflict of laws and trade regulation and helped found the Stanford Law Review in 1948. He served as assistant and associate deputy attorney general of the U.S. Department of Justice from 1967 to 1969.

Virginia Merle Thompson Williams, the wife of Howard R. Williams, Robert E. Paradise Professor of Natural Resources Law, Emeritus, died on December 15 after a lengthy illness. She was 82.

Mrs. Williams was born in Providence, R.I. She graduated from Barnard College in 1941 and married Howard Williams in 1942. While he served in the armed services, Mrs. Williams was employed as a librarian in Louisville, Ky. His teaching ca-

reer took them first to the University of Texas, then to Columbia, where he held the Dwight Professorship, and eventually to Stanford in 1963. Professor Williams, an expert in oil and gas law, became the first holder of the Stella W. and Ira S. Lillick Professorship in Law in 1968.

Mrs. Williams is survived by her husband, son Frederick of San Francisco, and granddaughter Elisha Williams Alvarado of San Francisco.

New Editor

Mel Taylor is the new editor of *Stanford Lawyer*, replacing Kevin Cool, who was named editor of *Stanford* magazine last fall.

Taylor holds degrees in journalism and communications from Duquesne University and the University of Pittsburgh. He has a background in corporate communications, public relations, and advertising. ■

Value of Ecosystem Services Lauded

A GROUP OF 30 scientists, lawyers, conservationists, economists and policy-makers met at Stanford last fall to discuss ways of publicizing the importance of ecosystem services in an effort to protect the ecosystem itself.

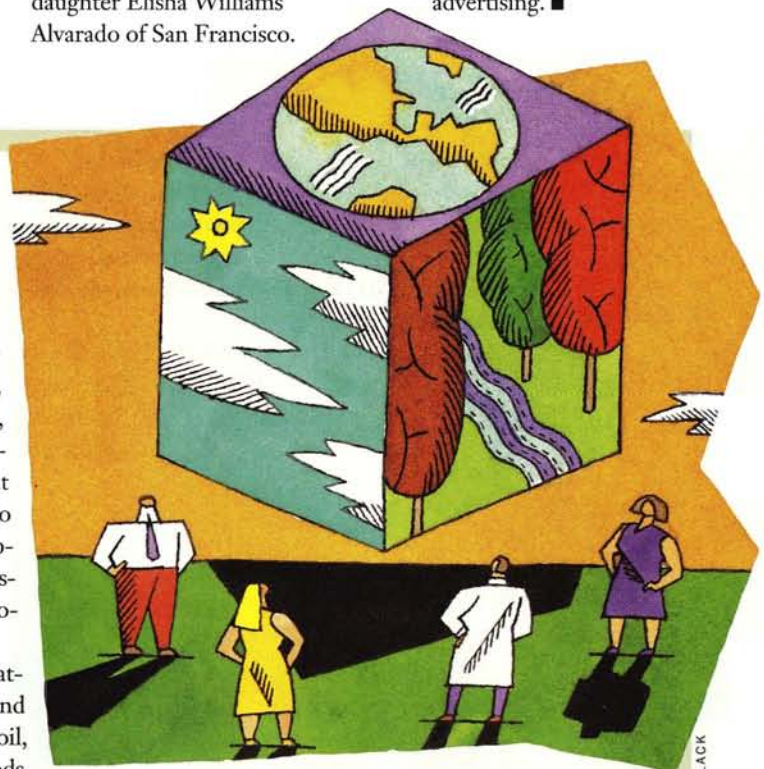
Ecosystem services are natural systems that purify air and water, detoxify waste, renew soil, regulate climate, prevent floods, control pests, and pollinate plants. Examples are watersheds, soil formation, gas regulation, nutrient cycling, and erosion control.

Among the conference hosts was Vice Dean and Robert E. Paradise Professor of Natural Resources Law Professor Barton H. Thompson Jr., JD/MBA '76 (AB '72). In explaining the importance of ecosystem services, Thompson focused on watersheds and showed that the clear demand for improving water quality has resulted in a call for protecting watersheds throughout the country.

Thompson explained that the New York City Water Department's decision to allocate \$1.5 billion to preserve the Catskill and Delaware watershed, and not spend \$6 billion to construct a new water treatment system, was a successful way of providing New Yorkers with a better understanding of the importance of watershed conservation, which includes the protection of a wildlife habitat.

Suggesting that we could generalize from New York City's experience, Thompson pointed out that Salt Lake City, Seattle, and Portland, Maine, have already begun investing in watershed protection projects.

Thompson contributed to a special issue of the *Stanford Environmental Law Journal* published in June that presents results of the workshop. Visit <http://elj.stanford.edu>



DAVE BLACK

NAPSTER BEYOND

Copyright, Fair Use, and Intellectual Property Collide in Cyberspace

By Doug Fine

Illustration by Ron Chan

STUDENTS KNOW NAPSTER ALL TOO WELL. Thirteen-year-olds are downloading 1.5GB worth of MP3 files in two days—their favorite music and everyone else's in the universe—for free. Cyber friends call it swapping; music companies call it copyright infringement.

For music lovers it's been great, almost too good to be true. But times are changing, and in a big way. The outcome of the Napster lawsuit is bound to affect other forms of digital media in the entertainment, education, and information sectors of the economy.

To protect copyright holders, in 1998 Congress lengthened copyright protection, initially 14 years, to 70 years from the death of the author for individual works and 95 years for corporate works.

New Wave critics say that only by loosening current copyright laws will we make sure that the marketplace receives a steady flow of creative work, and not just from artists promoted by their respective industries. Their argument: Current industrial-age copyright law does not translate into the digital age (read "cyberspace"). Which brings us to Napster.

P2P Sets Off the Alarm

When Napster founder Shawn Fanning revolutionized the recording industry in 1998 by allowing computer users worldwide to share MP3 files directly from their hard drives (called "peer-to-peer" or "P2P" networking technology), he set off a chain



ND

reaction. Thanks to a market saturation rate several times faster than that of the VCR, almost all players agree that Napster is helping propel worldwide industry and society from the factory age into the digital age faster than you can say "download."

Stanford legal experts are on top of (and in some cases, in front of) the changes caused by the revolution, which has business and legal ramifications far beyond the movement of just sound files. With millions of Napster users pile-driving the marketplace into new sales and distribution models whether current rights holders are ready or not, the once stable arena of copyright itself is becoming a hot and cutting edge field.

One week music lovers had to fork over \$16.95 at the chain record store for a CD of the latest hits (even if they only liked one or two of the songs); the next they could download pretty much any song ever recorded. So the question became: "Are conventional interpretations of copyright dead in the digital age?"

One knowledgeable observer doesn't think so. "Napster is one of several instances where a new technology has intersected copyright," explains intellectual property expert Paul Goldstein, Stella W. and Ira S. Lillick Professor of Law at Stanford and author of the acclaimed 1995 book *Copyright's Highway: From Gutenberg to the Celestial Jukebox*. "At the beginning of the twentieth century people asked whether a pianola roll infringed copyright. The Supreme Court addressed this, as it has other technological innovations. But the courts are only half the story. As it has before, Congress will become involved and ultimately the conflict will be resolved through licensing and other business solutions in the marketplace."

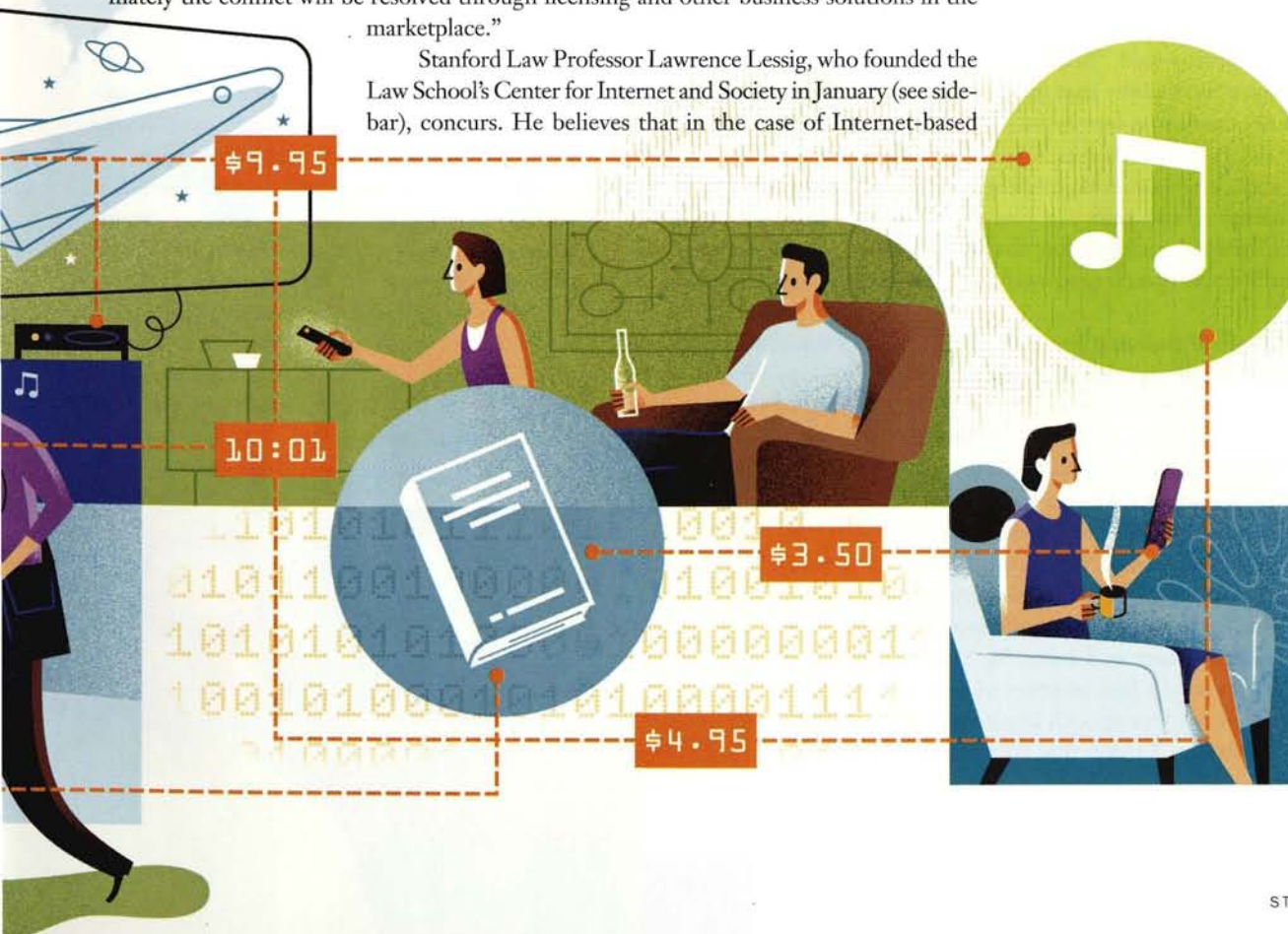
Stanford Law Professor Lawrence Lessig, who founded the Law School's Center for Internet and Society in January (see sidebar), concurs. He believes that in the case of Internet-based

RUSS CURTIS



"AT THE BEGINNING OF THE TWENTIETH CENTURY PEOPLE ASKED WHETHER A PIANOLA ROLL INFRINGED COPYRIGHT. THE SUPREME COURT ADDRESSED THIS, AS IT HAS OTHER TECHNOLOGICAL INNOVATIONS."

—PROFESSOR PAUL GOLDSTEIN



SLS Establishes Center for Internet and Society, Will Provide Students with Cyberlaw Case Experience

PROFESSOR LAWRENCE LESSIG has been watching the digital world take shape, and he wants to make sure that civil liberties and free speech don't get trampled as it develops. In January, he founded the Center for Internet and Society at Stanford to raise the public's awareness of rights issues raised with the expansion of technology. In addition to litigating cases and directly representing clients, the center's staff will lobby and write amicus briefs.

"Students will work with me and the clinical director of the center, Jennifer Granick, in providing clients with representation, which will help them develop their practical skills," Lessig said. "We will assist clients who might not have the resources to hire a civil attorney."

Lessig gained notoriety by advising U.S. District Judge Thomas Penfield Jackson in the Microsoft antitrust case. Lessig has addressed audiences around the world on cyberlaw topics, including a well-received keynote address at the national Peer-to-Peer Conference in San Francisco last year. He is a prolific writer and speaker on behalf of individual rights issues in cyberspace.

"There's something about the climate now," the cyber rights expert says, "that indicates a lot is changing in law and society. Our mission is to make sure that a framework is established that will allow creativity to flourish."

Of the first cases under review by the center, one challenges the constitutionality of the copyright term extension act; the second, a free speech case, involves a client who is being sued by CNN for putting up a spoof website.

Granick—a criminal defense attorney who earned her stripes defending young computer experts—said, "Students will work directly with litigators on these cases, because we believe that the value of practical experience in this fast-changing field cannot be overestimated."

The center offers a limited-enrollment seminar, Law and Technology, which Granick explained is a work-in-progress. "We'll be doing a lot of case work over the summer, and next year we expect to be involved in a greater number of cases," she said, adding that the center will be responsive to a wide range of issues. "We will match cases with our students based on their interests and ability."

Lessig said Stanford students generally display an "extraordinary amount of energy" when it comes to individual rights and technology. However, he makes clear that the center is not exclusively for certified digital activists. "We won't choose people because of their point of view," he said, "but rather on their ability to work. This type of experience can be a valuable tool for any student planning on joining a Silicon Valley firm."

Those who become involved with the center most assuredly will become well versed in digital civil liberties law. "I don't want to underestimate what would happen if people got aroused about these issues," attests Lessig's colleague Margaret Jane Radin, Wm. Benjamin Scott and Luna M. Scott Professor of Law, who taught Stanford's first courses in cyberlaw. "If people who really care about free speech begin to push for legislative and judicial decisions, I think that could make a difference in our future." ■

KEEPING THE INTERNET AT
LEAST AS FREE AS THE REST OF
OUR LIVES IS ONE OF LESSIG'S
POLICY GOALS.

sound recordings, whatever the result of Napster's litigation, "Congress can issue compulsory licensing regimes, so innovation and distribution aren't the exclusive domain of the record companies." In cases like Napster, "the courts right now are allowing current copyright holders to leverage their power in cyberspace. When cable stations rebroadcast content, they use compulsory licensing. It's a very sensible system Congress has established. A similar system needs to be established [for digital information dissemination technologies]."

Lessig and Goldstein, who were interviewed in March, have since been proven correct: Congressional hearings on the subject of digital licensing began April 3.

Napster began blocking songs in March after the U.S. Ninth Circuit Court of Appeals revised an earlier court injunction, and thereby let the company continue the swapping service as long as it took all "reasonable steps toward blocking copyrighted songs identified by the record labels."

Hank Barry '83, CEO of Napster, said in referring to his own company, "The Ninth Circuit Court of Appeals clearly said that P2P is not an architecture that is inherently illegal."

Other Industries Affected

By early 2001, every sector in the entertainment and media industry was already thinking what P2P technology would mean for its business, says Stephen Sharf '75, a film entertainment attorney who represents studios and production companies, among them Sony Pictures Entertainment and Walt Disney Productions.

In the film industry, Sharf says, the Napster fallout and the possible future it suggests are "prime topics at every convention and seminar. The biggest concern is the piracy issue [with digital DVDs]. People spend \$50 million to manufacture a motion picture. At the moment it's only a bandwidth problem that is preventing the same kind of downloading we see with sound files on Napster."

Digital age companies are not unaware of this future. "This is not something that ends in music;

STEVE GLADFELTER



it's absolutely going to happen in the film area too," confirms Heather Bell Redman, '90, executive vice president, strategy and development at AtomShockwave Films, an Internet-based film and game provider.

She said, "Our whole angle is now about thinking, 'How do you become a major media company with the changes that are happening in the marketplace as a result of technology? You look at what a Disney does: They've got TV, film in theaters and dolls in stores down better than we ever will. They've been working these models for years. But then you ask, 'Does Disney know how to take advantage of the Internet, of mobile communications, of what people want to do on their cell phones?' The answer is, 'No, not better than we do.'"

Betamax Revisited

The real wrestling match in the digital information transfer debate thus far has been in the always nebulous space between intellectual property and fair use. Napster fans say that because there are public domain recordings and other licensed works accessible through the service, there are "substantial non-infringing uses." This is language the Supreme Court used in 1984 to usher in VCRs in the famous Sony Betamax case *Universal City Studios, Inc. et al. v. Sony Corporation of America Inc. et al.*, despite the infringing uses (home taping) that were admittedly going on. The Ninth Circuit agreed that the Napster system is "capable of substantial non-infringing uses."

Napster hasn't had much success battling contributory infringement accusations on these fronts thus far, although Barry says he believes the Sony argument will fall on kinder ears as Napster's case moves up the federal judicial ladder. "We have appealed the decision of the Ninth Circuit because we believe there was a misreading of the Sony case," Barry said.

Even though the recording (and motion picture) giants are bristling at and suing over alleged violations of current copyright law, many of those delving deepest into the media delivery debate are predicting that current rights holders don't have that much

to fear from a "Napster-esque" economy.

"History shows that new innovations like the record player and the VCR created new marketplaces and revenue bases for copyright holders," says Alex Alben '84, vice president for government affairs at RealNetworks, Inc. "And the videocassette not only opened up a new marketplace, but on a real-dollar basis, theatrical-based revenues have increased since 1980. The core market continued to grow as two new ones did: video rental and video sales."

Get Closer to the Artist

So what are current copyright holders to do? Simply sit back and allow piracy? "With sound recordings, for example, a lot of people believe that you can make more money by loosening your control on the music," says Fred von Lohmann '95, a copyright lawyer and visiting researcher at the Berkeley Center for Law & Technology. "You forge closer relationships with the artists. Pay Prince \$20 a year and get whatever he puts out. There are many possible business models waiting to be tried, this argument goes, if only you let go a little bit. Don't worry about keeping track of every copy of every song. Take advantage of access to artists and gather marketing information. Think of how valuable it would be to know what CDs people like. This is one theory."

Not surprisingly, current copyright holders and their attorneys don't necessarily see it that way. "We're talking about Copyright 101 here," said Adrian White '79, addressing current Napster-like file sharing. White is executive vice president of business and legal affairs at the independent record label Sheraton Square Entertainment, LLC/Artemis Records, and works with artists such as Steve Earle and Ricky Lee Jones.

Linda Newmark '88, senior vice president of acquisitions at Universal Music Publishing Group, agrees with White. "The main danger that we face is that there are music consumers who do not really understand or care about the concept of copyright. Many people who would never consider going to their local record store and walking out with a CD without paying for it may be very

willing to go on the Internet to get copies of that CD without paying anything to the artists, songwriters, and copyright owners. The reality is that many songwriters and artists are paying their rent and putting food on the table based on the royalties that they receive from the sale of CDs and tapes."

Software Industry Similarities

But are there ways for copyright holders to make money even with a different interpretation of copyright? RealNetworks' Alben points out that, "there are industries that have thrived with high rates of piracy. The one that is most relevant is the software industry, which faces a 20 to 30 percent rate domestically, and 80 to 90 percent in some foreign countries. Does that mean that it should stop making software products? What the software industry did was realize that it could operate in an atmosphere of high piracy. The way to get consumers to buy products when it is easy to counterfeit is to offer an array of benefits, like customer support and upgrades. These are tangible benefits to the consumer."

Along these lines, AtomShockwave's Redman says that if her company became the target of Napster-like alleged pirating, "We'd probably try to co-opt the process and use it as a tool for promotion. We'd likely take the position that if you work with consumer demand, there is always a way to profit from it."

Why do current copyright holders and next generation companies see things so differently, especially when profits for everyone are literally guaranteed? As von Lohmann explains, "Why should we expect record companies to be eager to embrace change? After all, their profits have been growing in the last few years. They face challenges, they have bad years and good years, but there's no crisis with the basic business model, as far as the executives are concerned. They know it has to change, but they feel they can manage and be in charge of the transition."

Another reason is that no single model has yet emerged that guarantees copyright holders what they believe is their justified piece of the pie.

"THE COURTS RIGHT NOW ARE ALLOWING CURRENT COPYRIGHT HOLDERS TO LEVERAGE THEIR POWER IN CYBERSPACE. WHEN CABLE STATIONS REBROADCAST CONTENT, THEY USE COMPULSORY LICENSING. IT'S A VERY SENSIBLE SYSTEM. . . ." —PROFESSOR LAWRENCE LESSIG



Neither the Medium Nor the Message, It's the Business Model that Counts

Alex Alben '84 (AB '80)

ACCORDING TO ALEX ALBEN '84 (AB '80), vice president of government affairs for RealNetworks, Inc., hard-line business decisions will eventually dictate which model(s) of distribution will be chosen to bring music to the masses. The following excerpt is taken from a longer article by Alben titled *Copyright in the Post-Napster Universe*. Alben is a member of Stanford's Law, Science & Technology Advisory Board.

"While consumer behavior is in flux and the legal standards are far from clear, solutions are emerging on the digital horizon. The same technologies that Internet users have widely embraced can also drive a legitimate market for music. . . . What will these new models look like?

"To be successful, the businesses that sell online music will have at least the following elements: 1) They will offer a wide choice of music content to consumers (one of the killer features of Napster); 2) They will make it super easy for consumers to find and subscribe to music, without jumping through onerous authentication and anti-piracy procedures; 3) The consumer will perceive 'value' in the product that is delivered.

"While it is evident that online music distribution is incredibly convenient for music lovers, we should recognize that retail distribution of records serves a large market very well. People like the physical touch and feel of CDs, and appreciate the ability to stack them on their shelves and play them both in home stereos and portable CD players. High-speed Internet and vast online databases will not erase the advantages of the CD. Rather, distribution of music over the Internet will supplement the retail market and create brand new music products that don't have equivalents in the physical world. . . .

"The challenge for new methods of distribution, in fact, lies more with the established business models of the recording industry than with the creation of new technologies to serve new markets. For the past 20 years, the CD's 600 megabyte storage capacity has enabled music producers to give users 10 to 12 tracks of high quality digital audio in the Redbook CD format. Consumers recognize the value of getting a dozen songs for \$15 at the record store. Consumers remained loyal to this price point, even when it became apparent to music critics and music consumers alike that very few recording artists were making albums that were wanted by fans for each and every track.

"However, the 'one-hit wonders' of the record world still

sold for \$15, allowing the record company to retain roughly \$4 after manufacturing and distribution costs and markup by the wholesaler and retailer. Furthermore, on every record with at least ten tracks, the music publishers representing the authors of the underlying songs earn 7.5 cents per track, which they distribute to the writers in their repertoire. So, the CD as a format is a boon for both record companies and music writers, as it guarantees the sale of 10 to 12 songs with each basic unit.

"Online distribution threatens the established CD business model because interactive technologies allow consumers to pick and choose which songs they want to stream or download. Few consumers, even with high bandwidth connections and lots of hard drive storage space, will select all 12 songs on a digital album. In fact, building your own playlist and mixing and matching songs by different artists (or by the same artist from different albums) is one of the joys of using a digital jukebox.

"The sale of songs in single units, however, breaks the CD unit and the CD price point. More than any other factor, this is the obstacle for online music distribution. Once the record companies and music publishers are convinced that they will sell a high volume of songs online—unbundled from the traditional package of 10 to 12 per CD—rapid progress will be made and the legitimate problems of secure music distribution will be solved. To accomplish this, online companies will need to work with record companies to establish new units of sale that create a fair 'value proposition' in the minds of consumers who have become accustomed to free online distribution.

"Given the forces unleashed by digital distribution, it is in everyone's interest to establish a market that benefits both users and owners of copyrighted works. Until then, we will continue to suffer the shocks of life in the digital earthquake zone, where the energies of consumers and content owners collide in unpredictable ways." ■



Are Laws Too Restrictive?

While technology and consumer demand are pushing the legal and business models for media distribution in one direction, elements in the judicial world could well be moving in the other. Property and cyberlaw expert Margaret Jane Radin, Stanford's Wm. Benjamin Scott

and Luna M. Scott Professor of Law, believes that recent additions to copyright law, such as the Digital Millennium Copyright Act, have resulted in intellectual property rights becoming overextended. "From an economic point of view, we only need enough copyright to get the material out there," said Radin, who pioneered courses in cyberlaw

at Stanford and offered the school's first course on the Web. "Any more than that is monopoly. Legislation like the Digital Millennium Copyright Act increases property rights. If there's not enough new stuff out there that we can use to make new things, people will slow down making things. And that's contrary to the purpose of copyright law. The re-

"THE INDUSTRY CAN THEORETICALLY SURVIVE THE ARCHITECTURAL
READJUSTMENT OF \$10-PER-MONTH INSTEAD OF \$16-PER-CD."

—PROFESSOR MARGARET JANE RADIN



vision of the Napster injunction said something like this—that the original injunction went too far. I think that's a step in the right direction."

While almost everyone agrees with entertainment attorney Lee Eastman '97, that an "enormous shake-up of traditional business models" is under way throughout the industry, exactly what kinds of models will emerge is, in 2001, a matter of considerable speculation.

"Right now almost all of our revenue comes from syndicating the content," says Redman. "[We sell] to other businesses who need content to attract visitors: broadband providers, cellular folks, TV stations, and new-technology folks who are trying to build readership. The other part of the business is ad driven. We are definitely looking at and experimenting with subscription and pay-per-view models as well."

The future is so up in the air, no one seems to have an answer to this basic question: After learning that they can receive content, legal or not, for free, is the Napster generation willing to pay for its trip-hop jams?

Although it's hard to compete with free, many pundits point to early research that appears to indicate that Napster users often download music as a free sample, which in turn spurs them to buy albums. But Lusan Chua '03 offers a perspective that those in the industry might not like to hear: "A lot of Napster's appeal is that it's free. People say it's not, but the fact is students are poor. A five-dollar subscription model doesn't sound like a lot, but that's lunch."

Indeed, one of the challenges to the record industry is "to give the consumer incentives to purchase the online product," says RealNetworks' Alben. "One might be very simple: On Napster you don't really know what you're getting in terms of quality. The product might be mislabeled, the wrong version, too short, or the wrong format. One of the key benefits of legitimate digital distribution is that the content provider will be there to stand behind the product. In fact that's a key feature of any buyer/seller transaction. In terms of what these systems will look like, there is some attraction

in the marketplace to subscription services for online content. My company has a very popular program (GoldPass) that offers streaming music and video to subscribers, for a monthly fee of \$9.95. There are 200,000 subscribers. You get a specified set of content. For example, access to major league baseball games."

Starting at Zero May Be An Advantage

As for whether the traditional media powerhouses will be necessary in the decentralized, Internet-based near future, Redman, as most everyone else in the arena, can't predict. But she says, "We have the luxury of building from the ground up and can grow as consumer demand grows, whereas a traditional media company is used to packaging product in a box and selling it in a store. It sees itself as less flexible. There's also the possibility that the successful new media ventures will be the target of buyouts."

Can the established media players adjust to new rules, to new interpretations of copyright, to new business models, to an absence of factories and a tangible shrink-wrapped product? "The industry can theoretically survive the architectural readjustment of \$10-per-month instead of \$16-per-CD," Radin says. "I don't know if they can exactly turn on a dime."

Universal Music Publishing Group's Newmark is certainly aware of the changes that are afoot in the very near future. "In the music field, I think we will have subscription services where consumers will pay a monthly fee in order to get either a certain number of downloads or streams of music per month, or, for a higher fee, an unlimited number of downloads or streams for that month. I also think we will continue to have pay-per-download sites. I don't think traditional record stores are going to go out of business, but they are likely to incorporate kiosks or other computer terminals that consumers can use in the stores to buy music. I'm sure there will be things that we rely on in five years that we can't even imagine today."

Napster's Barry isn't so sure traditional copyright owners can adjust as quickly as con-

sumers demand. "The record companies and publishers have promised that they would license these kinds of uses for five years; hundreds of millions of dollars have been invested in anticipation of those licenses, and they have never materialized."

What of the artists? Many players in the debate, from the Recording Industry Association of America leadership to the regulars in Napster chat rooms, claim to speak for the actual creators of the content. But here again the legal and business models are still evolving. Michael Hausman, manager for musician Aimee Mann, points out that any new model has to consider complex issues of divvying up performance, songwriter, and copyright fees. "And many older artists didn't have digital distribution clauses in their contracts."

Von Lohmann believes that the features of copyright law a society adopts influence the kinds of artists the society gets. He says that some potentially emerging models would eliminate the Britney Spearses and the "Titanics" of the world, but might foster independent artists whose sales numbers now just don't spell pay dirt for major distributors. "In the patronage days we got Beethoven and Mozart, and there was no copyright law," he points out. "We had music. Some people even think it was good music."

[Editor's Note]: In late spring, RealNetworks, AOL Time Warner Inc., EMI and BMG teamed up to form the joint venture MusicNet, a new licensing subscription technology for online services companies. Napster may be an affiliate.

Yahoo! Inc. announced Duet, the online subscription service that will offer music from major record labels Universal Group and Sony Music Entertainment. The service will be part of the Yahoo Music site.

Vivendi Universal, the world's largest music conglomerate, bought the streaming audio company MP3.com, which may provide technical contributions to Duet. ■

Work by Doug Fine, AB '92, has appeared in the Washington Post and in Salon. His book, Not Really an Alaskan Mountain Man, is due out next year.

Election 2000 Coverage

Karlan Leads Stanford Law
Through Media Blitz

Sullivan in Supreme Court
Case Over Florida Electors

Library's Database Proves
Major Resource

Election 2000: Epilogue
Provides Public Retrospective

By Mel Taylor



TWO-IN-ONE—Professor Pam Karlan (left) relied on Erika Wayne to provide updates on litigation and breaking news during the election. Wayne—who has the picture-in-picture feature on her TV—said that on one evening, Karlan appeared on MSNBC and CNN simultaneously.

AT THE TURN OF THE CENTURY, satirist Finley Peter Dunn created a fictional character by the name of Mr. Dooley. Records show that Dooley was a Chicago bartender who had an exceptionally keen understanding of how the political process worked.

One summer evening, after a considerable time of bending the elbow with his friend, Mr. Hennessey, Dooley reached over the bar, drew his best mate close, and whispered what he knew to be an ultimate truth:

"Hennessey," he said "no matter whether th' constitution follows th' flag or not . . . th' supreme coort always follows th' illiction returns."

Sorry to say, Mr. Dooley, but *Bush v. Gore* turned that one inside out, for this time the election returns followed the Supreme Court, whose pivotal December 12 decision *Bush v. Gore* helped seal the victory of President George W. Bush in Florida and thus the nation.

For a clear understanding of the legal circumstances surrounding what has been called the case of the decade, we highly recommend Professor Pamela S. Karlan's casebook, *When Elections Go Bad: The Law of Democracy and the Presidential Election of 2000* (Foundation Press, 2001), from which Mr. Dooley was borrowed, quite liberally.

Karlan, the Kenneth and Harle

Montgomery Professor of Public Interest Law, wrote the first casebook on the election early this year, working with Samuel Issacharoff, Professor of Law at Columbia Law School, and Richard H. Pildes, Professor of Law at New York University School of Law.

"This has to be the fastest case book ever published," Kathleen M. Sullivan, Dean

and Richard E. Lang Professor of Law and Stanley Morrison Professor of Law, said introducing Karlan at a post-election forum in February at the Law School. "And you can be sure the CD-ROM and autographs are right behind it," she said without missing a beat. The audience laughed.

It was a light-hearted moment preceding what would be a serious discussion by a panel of nationally well-known legal scholars, including Sullivan and Karlan, who were brought together for "Election 2000: Epilogue." The open forum, sponsored by the Law School and the Stanford Law Society of Silicon Valley, would examine the difficult legal issues that Americans most wanted sorted out and analyzed after the nation's 36-day emotional roller coaster ride in electing the 43d president of the United States. More on the forum later.

What really added the extra measure of humor to Sullivan's introduction was the fact

that during the election and its aftermath, Karlan served as the Law School's on-air, on-line, up-linked, in-print media expert. To this day, columnists and news producers continue to choose her for expert analysis of a wide range of election and voting rights issues. In April, her op-ed on North Carolina redistricting appeared in the *New York Times*. In May, she was featured with Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit in an election cover story in *Harper's Magazine*.

"Pam Karlan is an expert who learned voting rights law as a litigator in the trenches for the NAACP Legal Defense and Education Fund," Sullivan told the forum audience in Kresge Auditorium. "She is truly one of the top voting rights experts in the United States."

The media agree. During the election, Karlan appeared 15 times on top-rated network broadcasts, and was interviewed by major publications at least that many times. She appeared on *The NewsHour with Jim Lehrer* and *Nightline*, and was quoted often by Henry Weinstein of the *Los Angeles Times*. Legal correspondents for the *New York Times*, as well as other national reporters and columnists, sought her out for her expert analysis. Karlan made it into their databases because she knows her subject cold, she thinks clearly, and she speaks plainly. Also, she's a tad irreverent, all of which adds up to making her an interviewer's dream. She's an on-air natural.

"We jokingly said they should start sending a golf cart for her every morning," said hall-mate Robert Weisberg, the Edwin E. Huddleson, Jr. Professor of Law. During the election, Karlan was doing a lot of taping for national shows at Stanford's TV production studio right across campus. One morning, not a cart but a limousine pulled up to whisk her to a San Francisco TV station for a network broadcast.

"It was a total blast," Karlan said. "You know, you think you have a special-

ty, one that might be a little obscure, but then something like this hits. I felt as if I had invested in the right thing—the Haloid [now Xerox] Corporation of legal specialties."

She weighed in when the heavy political guns came and went. She weighed in on the butterfly ballots and the Votomatic machines, why voters vote and how voters vote, disenfranchised voters and privileged voters, undervotes, overvotes, and why voting procedures "should probably not be standardized" for the nation's 180,000 voting precincts.

Karlan closely followed the more than 30 lawsuits filed in Miami-Dade, Broward, Palm Beach, Leon, and Volusia counties alone and provided analysis for many. She did the same for the litigation erupting in Georgia, Illinois, New Mexico, and Texas.

"I felt that part of my responsibility as a legal expert was to explain how a particular case fit into the context of other court decisions—lower courts for contested election recounts and Supreme Court decisions for broader issues," she said.

Her response to what was most challenging about on-air analysis: "I made sure that I separated my description of what was happening from my judgment as to how and why it was happening . . . I worked hard to keep the two separate, but that's not always easy, you know—there's always a gray area there, where the two overlap at the margin."

Just One of Those Days

It was the middle of November. Karlan had chosen the second and third week for make-up classes, figuring it would be down time. In addition to everything else going on, she had bumped up her normal teaching load from 8 to 15 hours. "My students were very sweet throughout the whole thing," Karlan said affectionately. "They really were."

On one of those not frantic but still hectic days, her students made the day. She had scheduled a makeup class for a

Election 2000 Chronology

The following chronology of events, which appeared in *Harper's Magazine* (May 2001), was prepared by Erika Wayne of the Robert Crown Law Library staff.

NOVEMBER

7 Voters go to the polls to elect their 43d president. At 7:49 p.m., EST, NBC is the first television network to name Al Gore the winner of Florida. The other three networks soon follow suit. At 10 p.m., CBS is the first network to retract the call.

8 At 2:16 a.m., the Fox Network's Decision Desk, managed by George W. Bush's first cousin John Ellis, calls the presidential race for Bush. At 4:05 a.m., the call is retracted. By late morning, Bush's nearly 6 million-vote lead is reduced to 1,784 votes. Neither candidate concedes.

9 Gore asks for a hand count of presidential ballots in Volusia, Miami-Dade, Broward, and Palm Beach counties.

11 Bush sues in federal court to stop manual recounts in these counties.

13 Volusia County files suit in Leon County Circuit Court seeking to extend the Tuesday deadline for a final vote count.

Florida's secretary of state, Katherine Harris, says she will not extend the 5 p.m. November 14 deadline for certifying election results.

U.S. District Judge Donald M. Middlebrooks refuses to stop manual recounts in Florida.

Palm Beach County seeks advisory opinions from the Division of Elections, which is under the secretary of state, and from the Florida attorney general to determine if it should proceed with a hand count.

14 Bush appeals Judge Middlebrooks's ruling to the Eleventh Circuit Court of Appeals in Atlanta.

Secretary of State Harris sets a deadline for November 15 at 2 p.m. for counties seeking a manual recount to submit a written justification.

Leon County Judge Terry Lewis denies the request for an injunction and upholds the Florida deadline to submit election results by 5 p.m., but rules that counties may notify the secretary of state that recounts are pending, and are allowed to continue recounting and to file updated or corrected returns.

After receiving conflicting advisory opinions, Palm Beach County asks the Florida Supreme Court if it should proceed with the hand count.

"It was exciting, interesting, and the kind of event you're glad when it's over . . . but I wouldn't have missed it for the world."

—PROFESSOR PAM KARLAN

Library Database Wins Law Library Publications Award for 2001

THE LAW SCHOOL'S ELECTION 2000 website, which proved to be an invaluable resource during the election, recently won the Association of Law Libraries publications award in the nonprint division. The award will be presented at the annual AALL conference this July in Minneapolis. Accepting will be Erika Wayne, Reference and Internet Services Librarian, who developed the website.

Election 2000 served as a leading resource during the election, drawing hits from a wide range of users—from legal scholars and the media to national search engines and the Department of Justice. During the 15-day period leading up to the final Supreme Court decision, the site was accessed 1,400 times. On December 12, the day of the decision, it received 763 hits.

Wayne credits faculty and staff with helping her put Election 2000 together. "For example, Paul Lomio [the library's Assistant Director for Information Services], who is the biggest news junkie in this whole building, was first in the office each day," she said. "When I came in, he would ask me if I knew about such-and-such a case or did I hear the latest about a breaking news story?"

The librarian said Professor Pam Karlan and other faculty members would drop by on their way to class to provide her with updates and new leads. "Even my father, who lives in central Florida, would send me news clips from local papers in Seminole County before they made the national radar," Wayne said. "Truthfully, the database project turned into a Law School team project."

She followed a morning ritual: Check CNN, the *Orlando Sentinel*, the *Miami Herald*, the *Palm Beach Post*, the *Tallahassee Democrat*, and the *Atlanta Constitution*. "At least they had the news stories, then I had to search out the legal references," she said.

Wayne admitted that gathering the legal information sometimes took a bit of sleuthing, but most often "it just took being friendly and talking to lots of clerks and assistants. One clerk even took the time to fax me 300 pages."

Faculty, staff, students, alumni, and friends who use the site can't say enough good words about Wayne, Lomio, and the entire library staff.

"As much as our library is closed to the general public, when you put up a good website that's made available to everyone and they find it useful . . . that's quite a service," Wayne said. Visit the site at <http://election2000.stanford.edu>

time during which she was supposed to tape for *The NewsHour*; so she asked her students if she could do the first 20 minutes of class, go to the studio, and return. "Well, of course," they replied.

When she got back, one of them had written on the board in big letters: "Pam, while you were out, your mom called. We told her you were in the library, but we can't keep covering for you like this."

As a legal scholar, Karlan took a broader look than most at the overall effect of the election, and particularly how it might influence legal education.

"We were provided with a wonderful teaching vehicle—wonderful for teaching students about civil procedure and federal courts issues," Karlan said. "There were a lot of first-years in the class who hadn't had constitutional law yet, so it was a great opportunity for

them to discuss constitutional law in an intense kind of way by focusing on a particular issue."

At the same time, she pointed out that there was a lot of "hand-wringing" among certain members of the professoriate-at-large who thought *Bush v. Gore* was the worst opinion ever. "But make no mistake, this case was not *Korematsu*, nor was it *Dred Scott*," Karlan said. "It was bad in craftsmanship, but not unprecedented."

Understanding why the court decided the way it did, and what it did wrong in terms of judicial craftsmanship, she said, is something people will spend time working through in constitutional law and political process courses for years to come.

Technology: Help or Hindrance?

The roles of the media and the newer technologies were discussed by political pundits and national news anchors ad infinitum after the election. Was their overall effect good, bad, or neutral?

"Five years ago, this story couldn't have been covered this way," Karlan said. The ability to get copies of documents literally as they were filed, in effect, changed how these events were described. "I was better informed on briefs and expert opinions coming out of Florida, economics and political science departments, and law schools than I ever could have been in the past. The desire for instant results still remains problematic for the media, but I have to say from the point of view of a scholar commenting on what was going on, the immediacy offered by the new technology was one hundred percent positive."

Karlan underscored the fact that reporters often asked for comment on a decision too soon after it was handed down. More surprisingly, she said a lot of experts "shot from the hip" and responded without having reviewed the case or decision in question. "I never spoke on a decision or case that I hadn't actually read," she added.

And therein, as Mr. Dooley would say, lies a tale.

Get it First, Get it Right

It was almost 7 p.m., PST, Tuesday, December 12, when Erika V. Wayne had decided enough was enough. The Robert Crown Library reference and Internet services librarian was tired after several weeks of tedious work compiling a monster database on



“This case was not *Korematsu*, nor was it *Dred Scott*.” —PROFESSOR PAM KARLAN

Election 2000. This powerful resource tool would eventually list 700 sources, court documents, findings, articles—all efficiently broken down into 64 sections, some with more than 250 references. Then and now, it is the site for election issues. If *Forbes*’s “Best of the Web” issue ever names the top election site, this will be it.

“That night, we suspected the court was going to hand down its decision but I was tired of waiting,” Wayne said, “so I decided to pack it in and go home. I had just reached Campus Drive and Junipero Serra Boulevard when NPR announced that the court was going to make a statement.” She turned her Mitsubishi around and headed back to the library.

Wayne said the Supreme Court website had been getting hammered all day, and it was nearly impossible to get on. But, because librarians are part detective, Wayne had spotted something about the way the Supreme Court Web people were fashioning their URLs. “There was a certain way they wrote the

docket number and then the decision,” she said, “so I decided to type in what I thought the decision name would be using their style.”

Karlan was in her office working on something else when she got a call from legal correspondent Henry Weinstein of the *Los Angeles Times*. He told her the decision was imminent. “I tried to pull it down from the Web, but I couldn’t, so I went down to the library. Erika had already gotten it and printed it out. And, you know, within a minute and a half, I’d say we got forty calls. But before I returned any of them, I took the time to read it.” Wayne said Karlan got it first and got it right.

“Election 2000: Epilogue”

After the prolonged election process, while many Americans were believed on even jubilant, many others relieved that the strength of their voice in government had been weakened. In cities across the country, Americans expressed their need for a contextual framework

Election 2000 Chronology

(November continued)

15 The Florida Supreme Court denies Secretary of State Harris’s motion to halt manual counting of ballots. Harris says she will not accept results of any hand recounts when it is time to certify the Florida vote on November 18.

16 Gore files an emergency motion in state court to prevent Secretary of State Harris from certifying the results until the manual recounts have been completed.

The Florida Supreme Court issues an interim order that Palm Beach County can proceed with a manual recount of ballots.

17 The Eleventh Circuit Court of Appeals denies Bush’s request to stop manual recounts on constitutional grounds.

Leon County Judge Lewis rules that Secretary of State Harris’s decision to exclude hand-recounted votes was not an abuse of discretion and allows the decision to stand.

The Florida Supreme Court orders Harris not to certify the Florida vote until it can rule on whether hand recounts will be added to the final tally.

21 The Florida Supreme Court unanimously rules that state election officials must include the results of manual recounts in Florida’s final presidential tally.

22 Palm Beach County Judge Jorge Labarga rules that election officials must consider dimpled chad ballots.

Miami-Dade County Canvassing Board stops the recount of ballots.

Bush files a certiorari petition with the U.S. Supreme Court, asking the Court to block the Florida Supreme Court decision allowing hand counts.

23 Florida Supreme Court declines to order Miami-Dade County to resume recounting ballots.

24 The U.S. Supreme Court agrees to hear Bush’s appeal of the November 21 decision of the Florida Supreme Court.

26 Secretary of State Harris announces the certified vote totals with a 537 vote lead for Bush, thereby ending the protest phase and beginning Florida’s contest phase.

27 Gore files a complaint in Leon County Court to contest the election.

29 Leon County Judge N. Sanders Sauls orders the 14,000 ballots contested by Gore to be brought to his courtroom along with the voting booths and tabulation machines.

Sullivan Played Role In Florida Case

Helped Establish Federal Election Reform Commission

"NO LAW SCHOOL was more caught up in the election and the post-election fever than Stanford Law School," Dean Kathleen M. Sullivan said, "whether it was Warren Christopher '49 leading the Gore forces down in Florida or Pam Karlan appearing literally every night as the voice of reason and clarity on the nightly high-quality news shows."

Sullivan served as co-counsel with Harvard Law Professor Laurence Tribe, on the first election-related case that went to the U.S. Supreme Court [*Bush v. Palm Beach Canvassing Commission*]. The case involved a challenge to Florida's recount procedures, and ultimately, to the authority of the Florida Supreme Court.

"I got involved," she said, "because of my litigation experience working with Tribe and my connection through the school with Warren Christopher. . . . I thought it was very important to the rule of law and respect for the law to defend the Florida Supreme Court from a kind of court-bashing that was beginning to sweep the country, and also to make the argument that, in the first round, the Florida Supreme Court was trying to interpret the law, not make the law." Tribe, in describing Sullivan, has said she "has a great sense of mission."

She explained that the issue in the case was whether there existed a federal statute that required Florida to decide who its presidential electors were by a particular time. "And on that issue, we basically won nine-to-zero," she said. "In both *Bush v. Palm Beach* and the second round, *Bush v. Gore*, the Supreme Court decided that federal law was a safe harbor provision. Little did we know that the two lurking issues of Article II were, first—was there a federal constitutional bar on Florida judicial involvement in deciding who the electors were, and, second—was there some requirement in the Fourteenth Amendment equal protection clause that recounts by a state be decided in some uniform fashion? Those two sleeper issues came to life in the second round of the case."

Sullivan said it was fascinating to sit in the second chair watching Stanford Law graduates Chief Justice William H. Rehnquist '52 (AB '48, AM '48) and Associate Justice Sandra Day O'Connor '52 (AB '50) play a crucial role in the ultimate decision. "The most exciting part about it was to see the importance of law to our national political health. This is a country in which, as [Alexis] de Tocqueville said, 'The most important controversies eventually get decided by lawyers.'"

Sullivan said that whatever you might think of the election outcome as a political matter, you have to be impressed with "the energy and vitality of the profession that produced it, the power of the advocacy, the remarkable speed and quality with which the briefs were produced, and the arguments prepared, and the array of lawyers who vol-

unteered their time pro bono on both sides of the aisle."

Asked how the case will affect the teaching of the law, she said, "For a constitutional lawyer, you can't just teach *Bush v. Gore* as garden variety equal protection case. You have to teach it as something more momentous, more about the relationship between the court and the political process, something closer to teaching about *Brown v. Board [of Education]* and the relationship between the court and the political process."

Sullivan said that, as a casebook author, she would place *Bush v. Gore* near those cases that are about what should be legal questions and what should be political questions, "so it belongs more with *Marbury v. Madison* than with the cases about unequal taxation and commerce among the states."

In addition to developing a deep appreciation for how the courts work, Sullivan pointed out a second positive outcome of the case: the development of the private, bipartisan National Commission on Federal Election Reform. She was recently appointed, along with former Senator Slade Gorton of Washington, as one of the vice chairs of the commission. (See NewsBriefs, page 5).

As for the election's end result, she believes that the very best outcome would be "to increase the attention that we pay to elections by increasing voter turnout and also strengthening each person's belief that each and every vote really does count. With respect to procedures, we need to make sure that, to ensure that every vote does count, those votes are counted correctly."

Sullivan said she got involved in the election reform movement by way of writing an op-ed in the *New York Times*, "One Nation, One Standard Way to Ballot" (November 15, 2000). Serendipitously, the article appeared on the day Sullivan was attending a board meeting of the Century Foundation.

In the article, Sullivan wrote, "A constitutional amendment of Article II could provide for uniform election methods simply by emulating the fail-safe clause of Article I: for example, by providing that Congress should prescribe the time, places, and manner by which electors should be included on the ballot and elected, and the method for settling disputed votes."

The coincidence of the furor over the election, the op-ed piece, and the board meeting provided the impetus needed for the foundation to become one of the major sponsors of this private election reform commission, Sullivan said.

She summarized her role in the election this way: "This is really a story of a constitutional scholar who gets involved in a constitutional case, loses, and becomes involved with constitutional reform. . . . I hope we're ultimately going to win." ■

Dean Kathleen M. Sullivan





RUSS CURTIS

SUPREMES' INTERVENTION: At "Election 2000: Epilogue," panelists Dean Sullivan (not pictured) and (from left) Professor Akhil Reed Amar, Professor Pamela Karlan, and Former FCC Chair Newton Minow debated the more controversial issues, including the timing of judicial intervention and relevance of the electoral college.

to clarify how and why this remarkable chapter in election history had played out the way it did. "Election 2000: Epilogue" examined that context, and more.

The public forum held in Kresge Auditorium featured a panel of nationally recognized legal scholars. In addition to Sullivan and Karlan, the panel included Akhil Reed Amar, Southmayd Professor of Law at Yale Law School and Visiting Professor of Law at Stanford during 2000-01, and Newton N. Minow, national public interest advocate, former Federal Communications Commission Chairman, current member of the Presidential Debate Commission, and Annenberg Professor of Communications Law and Policy at Northwestern Law School.

Amar is a leading expert in constitutional law and constitutional history, as well as the author of numerous books, including *The Bill of Rights: Creation and Reconstruction*. He also appeared often on national media during the election.

Minow was lauded by Sullivan for his "extraordinary career as a distinguished chair of the Federal Communications Commission under President Kennedy . . . and for serving as a great lawyer and great public servant as well

as father of Mary Minow '97."

Vigorous debate focused on overarching electoral themes, some philosophical, others practical: Do we truly enjoy a universal right to vote? Should the effectiveness of our vote depend on whether we do so by punch card or pencil, paper or machine? Should we switch to uniform digital voting methods? Should national elections be entrusted to local canvassing boards? What should the role of the courts, state and federal, be in deciding the outcome of disputed elections? The panel then took questions from the audience in a lively exchange. "Election 2000: Epilogue" was streamed over the Web and cable cast on Stanford's Channel 51.

The finality of the United States Supreme Court decision in *Bush v. Gore* compressed what seemed to be a lifetime of political wrangling into a 15-second sound bite—but this particular one will continue to be replayed, and often, far into the future. ■

Videotapes of "Election 2000: Epilogue" are available by calling 650/723-5100. The program is available on the Web at <http://video-tux.stanford.edu:8080/ramgen/lectures/e2k-epilogue.rm>

Election 2000 Chronology

(November continued)

30 A committee of the Florida legislature votes to recommend a special session with the intent of selecting its own slate of presidential electors.

Gore asks the Florida Supreme Court to order an immediate hand recount of the disputed ballots.

In the U.S. Supreme Court, Democrats challenge the right of Florida's legislature to select their own presidential electors.

DECEMBER

1 Oral argument in the case of *Bush v. Palm Beach County Canvassing Board* is presented in the U.S. Supreme Court.

The Florida Supreme Court affirms the decision of the Palm Beach Circuit Court that the butterfly-ballot design did not disenfranchise voters.

4 The U.S. Supreme Court vacates the decision of the Florida Supreme Court, ordering it to clarify its definition of a legal standard for recounts.

Leon County Judge Sauls rules that the vote tally for Nassau County should remain unchanged and that hand recounts of disputed ballots are not needed in Palm Beach and Miami-Dade counties.

6 The Eleventh Circuit Court denies Bush's request for an injunction to stop manual recounts in four Florida counties.

8 The Florida Supreme Court overturns Leon County Judge Sauls's decision to reject Gore's request for a recount of the undervote in a few Florida counties and orders the recount to begin immediately.

9 The U.S. Supreme Court stays the Florida recount. Justice Scalia, in a concurring opinion, writes that "[t]he counting of votes that are of questionable legality does in my view threaten irreparable harm to [George Bush], and to the country, by casting a cloud upon what he claims to be the legitimacy of his election. Count first, and rule upon legality afterwards, is not a recipe for producing election results that have the public acceptance democratic stability requires."

12 The U.S. Supreme Court reverses the ruling of the Florida Supreme Court in *Gore v. Harris*. The recounts are halted. Justice Stevens in his dissent writes: "Although we may never know with complete certainty the identity of the winner of this year's Presidential election, the identity of the loser is perfectly clear. It is the Nation's confidence in the judges as an impartial guardian of the rule of law."

22 The Florida Supreme Court issues an opinion on remand from the U.S. Supreme Court, writing: "Accordingly, pursuant to the direction of the United States Supreme Court, we hold appellants can be afforded no relief."

Professors in Print

Excerpts from faculty publications,
quotations, and commentaries

JOHN H. BARTON '68, George E. Osborne Professor of Law, as coeditor with Melanie C. Greenberg and Margaret E. McGuinness, in *Words Over War* (Rowman & Littlefield 2000):

"In making any such evaluation of a negotiation, it is important to consider the differing meanings that can be given to success and failure. Stalling disaster for a period is often valuable. In light of the real uncertainties of the world, few serious politicians will be moved by the argument that the particular peace will lead in a few years to an even worse eruption of violence. (The classic example of a peace with seeds of discord—Versailles—was certainly planned, not a matter of a failure to achieve a more balanced agreement.) Moreover, one never knows how much worse things would have been had there been no agreement."

G. MARCUS COLE, Associate Professor of Law, on bankruptcy exemption reform, in *American Banker*:

"The call for reform of the use of state property exemption law in bankruptcy has been sung by a wide range of voices, in near perfect harmony, across the entire political spectrum, from bankruptcy scholars, bankruptcy judges, bankruptcy lawyers, journalists, and even the National Bankruptcy Review Commission.

"One commentator has identified the absence of uniformity as the single most threatening aspect of the bankruptcy crisis. These voices are just the latest in a long succession of challenges to employment of diverse state property exemptions in bankruptcy."

RICHARD T. FORD (AB '88), Professor of Law, as coeditor with Nicolas Blomley and David Delaney on residential segregation, in *The Legal Geographies Reader*:

"Political geography—the position and function of jurisdictional and quasi-jurisdictional boundaries—helps to promote a racially separate and unequal distribution of political influence and economic resources. Moreover, these inequalities fuel the segregative effect of political boundaries in a vicious cycle of causation: each condition contributes to and strengthens the others.

Thus, racial segregation persists in the absence of explicit, legally enforceable racial restrictions. Race-neutral policies . . . predictably reproduce and entrench racial segregation and the racial caste system that accompanies it.

Thus, the persistence of racial segregation, even in the face of civil rights reform, is not mysterious."

PAUL GOLDSTEIN, Stella W. and Ira S. Lillick Professor of Law, in his book, *International Copyright*:

"Not all copyright principles are universal, nor are all divisions false. To take just one example, a distinctive commitment in the United States to individual autonomy in political and economic life has left a visible mark on the nation's copyright law. American fair use doctrine, permitting the free use of copyrighted works under circumstances that other countries would find hard to excuse, clearly mirrors the special place of free speech in the American constitutional scheme. In excusing certain new technological uses of copyrighted works, fair use and other statutory exemptions also reflect the American resistance to collective administration—a common institution in Europe and elsewhere—as a solution to the transaction costs that arise at the intersection of copyright and new technologies."

HENRY T. GREELY (AB '74), Professor of Law, on the federal ruling that genes can be patented, in the *Washington Times*:

"The guidelines don't speak to the political and religious concerns of whether genes should be patentable at all. . . . But they are a good move in that they are attempting to strike a balance between encouraging scientists to make discoveries, yet not give anyone an unnecessary monopoly."

GERALD GUNTHER, William Nelson Cromwell Professor of Law, Emeritus, on *Bush v. Gore*, in "A Risky Moment for the Court" in the *New York Times*:

"As I thought about what might have roused four or five Justices to take up this case, I thought back to an earlier era in which the Court was asked to expedite review—Watergate.

"In 1974, the Court had more than two weeks to reach a decision all could support. In 2000, the time to think through and agree on more esoteric legal issues is far shorter. . . . But if the Justices do rule on the case, they should strive for a unanimous, clear decision. Otherwise, this divisive election could end up corroding not only the political process, but the Court as well."

DEBORAH R. HENSLER, the Judge John



W. Ford Professor of Dispute Resolution, on curtailing litigation, in the *Los Angeles Times*:

"Starting in the 1970s, this kind of great negativism about the role of the courts ushered in an era of conciliation, in which businesses and the courts themselves promoted alternate means of resolving disputes. The emphasis on methods such as mediation was accompanied by a shift in rhetoric promoting the idea that it is bad to fight, good to compromise."

LAWRENCE LESSIG, Professor of Law, on Napster, in the *Guardian* (London):

"The courts are ratifying the ability of [the entertainment industry] to regulate cyberspace now, before we even know what it's going to look like. . . . We need the period of experimentation. Give me 10 years before we get to that conclusion, but don't restrict the innovation now."

JOHN HENRY MERRYMAN, Nelson Bowman Sweitzer and Marie B. Sweitzer Professor of Law, Emeritus, in his book, *Thinking About the Elgin Marbles: Critical Essays on Cultural Property, Art and Law*:

"If the principle were established that works of foreign origin should be returned to their sources, as third World nations increasingly demand in UNESCO and other international fora, the holdings of the major Western museums would be drastically depleted.

"The Elgin Marbles symbolize the entire body of unrepatriated cultural property in the world's museums and private collections. Accordingly, the preservation and enjoyment of the world's cultural heritage and the fate of the collections of the world's great museums

are all in some measure at stake in a decision about the Marbles.”

ROBERT L. RABIN, A. Calder Mackay Professor of Law, on regulatory compliance as a defense to product liability, in the *Georgetown Law Journal*:

“... If we are substantially dependent on the tort system to provide the educational function of revealing massive cover-ups of health information by industries like asbestos, or occasional efforts to conceal risk information from regulatory agencies like the FDA, then it is undeniably the case that tort law is serving a positive function of some consequence....”

MARGARET JANE RADIN (AB '63), Wm. Benjamin Scott and Luna M. Scott Professor of Law, on organizing an advertisement in the *New York Times* that carried the names of 660 law professors denouncing the U.S. Supreme Court decision in *Bush v. Gore*, in the *Boston Globe*:

“Law professors are generally quite conservative, and we don't do things like this frequently. But I was outraged. I thought the rule of law collapsed and that it was akin to a coup d'état. It was beyond the pale and went against all legal precedents. It was a naked power grab.”

DEBORAH L. RHODE, Ernest W. McFarland Professor of Law, with Charisse R. Lillie, on the lack of diversity in the Florida election proceedings, in the *Chicago Tribune*:

“In a profession where women constitute almost 30 percent and minorities 11 percent of the membership, is it possible that none qualified to play a prominent role in the litigation? What message does it send when the only woman professional to figure prominently in the legal proceedings, Florida Secretary of State Katherine Harris, received almost as much coverage for her choice of lip gloss as for the merits of her decisions?”

WILLIAM H. SIMON, William W. and Gertrude H. Saunders Professor of Law, on lawyers accepting stock in lieu of cash, in the *New York Times*:

“It's not the form of compensation you want to keep your eye on, but the relative magnitude. If a large fraction of a lawyer's portfolio is invested in a client, then people worry that his independence will be compromised and he'll be more likely to overlook improper practices or even encourage them in the hope of personal gain.”

BARTON H. THOMPSON JR. JD/MBA '76 (AB '72), Robert E. Paradise Professor of

William B. Gould IV Honored For National Service

—Memoir Focuses on NLRB

WILLIAM B. GOULD IV, the Charles A. Beardsley Professor of Law, has written *Labored Relations: Law, Politics, and the NLRB: A Memoir*, a work that has gained international attention. Gould served as chairman of the National Labor Relations Board from March 1994 to August 1998. He has since returned to Stanford, where he has been on the law faculty since 1972.

A member of the National Academy of Arbitrators since 1970, Gould has arbitrated and mediated more than 200 labor disputes. Upon his resignation from the NLRB, President Clinton wrote: “With a strong commitment to promoting stable labor-management relations, you have skillfully guided the NLRB through the challenges posed by today's rapidly changing work environment.”

On the occasion of Gould receiving his fifth honorary doctorate, the president of Rutgers University said, “... perhaps more than any other living American... [he has] contributed to the analysis, the practice, and the transformation of labor law and labor relations.”

In January, Gould wrote an opinion page editorial in the *San Francisco Chronicle* highlighting features of the confirmation of his appointment to the NLRB. The following excerpt is from “Borking—Then and Now”:

“... I was the third of Clinton's black subcabinet early selections (for chairman of the National Labor Relations Board), and, although confirmed, I attracted the largest number of senatorial ‘no’ votes of any administration appointee during that time.

“Opposition to Clinton nominees was said by some to be Republican vengeance for the Senate's 1987 rejection of Robert Bork for the U.S. Supreme Court. The press created a verb, ‘Borked.’ The term is now attached to the pending nominations of John Ashcroft for attorney general, Gale Norton for secretary of the interior, and the now-withdrawn candidacy of Linda Chavez for secretary of labor.

“The Borking of Clinton nominees differs from the Borking of the Bush triumvirate. Formal debate about my nomination, for instance, focused on my proposals to strengthen existing labor law. This contrasts with [Linda] Chavez, who opposes minimum wage, family leave and affirmative action legislation. The contention was that when I would adjudicate labor-management disputes, I would use my reform proposals aimed at fortifying the law.

“In 1993, today's supporters of Ashcroft derailed the nomination of those of us who supported the law. Now they support those who would radically transform it....”

Under Gould, the board sought injunctive relief more frequently than in any comparable period in its 63-year history. Gould teaches a seminar on international labor standards, and has begun a book on the subject, which was brought into focus during the 1999 World Trade Organization meetings.

Natural Resources Law, on innovations in environmental policy, in the *University of Illinois Law Review*:

“Perhaps the most pervasive, prominent, and continuing innovation in the modern environmental era has been the involvement of citizens in the enforcement of environmental laws.... Unlike their predecessors, almost all of the major laws provided for suits by private citizens to enjoin or penalize violations of their provisions. These citizen suit provisions became a defining theme of the modern environmental era.”

ROBERT WEISBERG '79, Edwin E. Huddleson, Jr. Professor of Law, on whether

or not justice is served in capital punishment cases, in the *Houston Chronicle*:

Robert Weisberg... has studied capital punishment extensively and concluded it exists mostly as a symbolic issue. As long as politicians say they are in favor of it and occasionally execute someone, the public is satisfied and a “cultural equilibrium” is maintained, he said.

Voters may not reject a district attorney such as Holmes [John B. Holmes Jr., the recently retired district attorney of Harris County, Texas] who pushes through a lot of death penalty cases, he said, but neither do they demand someone like him. ■



THE SKY ON FRIDAY, OCTOBER 20, may have been a bit overcast, but the excitement and anticipation that filled the air more than made up for the weather.

Law School alumni came to socialize with fellow grads, salute members of ten reunion classes, learn about the future of legal education and how to make the most of the Internet economy, and listen to the Honorable George J. Mitchell deliver the ninth Jackson H. Ralston Lecture in International Law.

Distinguished former U.S. Senate majority leader Mitchell was honored with the Ralston Prize for his humanitarian legislative initiatives and accomplishments as an international peacekeeper.

Alumni Week

The occasion also celebrated the Warren Christopher Professorship in International Law and Diplomacy, a joint professorship with the Institute for International Studies. The creation of the chair was the inspiration of lead donor Richard L. Morningstar '70, the Ambassador to the European Union, and his wife, Faith (AB '68). Many other generous Christopher admirers and Stanford supporters ultimately joined the Morningstars in underwriting the new chair.

In May 1998, Mitchell—at the request of the British and Irish governments—served as chairman of the International Commission on Disarmament in Northern Ireland. He successfully mediated an historic accord agreed to by Ireland and the United Kingdom. For his service, he received the Presidential Medal of Freedom—the nation's highest civilian honor—in addition to the Philadelphia Liberty Medal, the Truman Institute Peace Prize, the German Peace Prize, and the United Nations (UNESCO) Peace Prize.

Mitchell's lecture, titled "Making Peace," focused on his experiences at the center of the Ireland/UK Peace process. He recalled having made little or no progress for a year and one-half, and failed to even get the two sides to sit in the same room. "Then before Christmas in

'97," he said, "I decided to try new tactic. I wanted them to agree on simple list of what each wanted." Not surprisingly, "both sides wanted the same things, and that is what led to a breakthrough in the talks and eventually led to the accord." The full text of Mitchell's speech appears in the *Stanford Journal of International Law*, vol 37:1. (To order a copy of the issue, visit <http://www.law.stanford.edu/sjil/>)

Mitchell serves as chancellor of The Queens University of Northern Ireland and chairman of the International Crisis Group, the ethics committee of the U.S. Olympic Committee, and the National Health Care Commission. Most recently, he was asked by President Bush to head the U.S.-led fact-finding committee inquiring into the use of deadly force in the outbreak of Israeli-Palestinian violence.

SALUTING ALUMS: Dean Sullivan addressed alumni gathered for their 50-year reunion on Saturday evening. Reunions were held for the classes of 1950, '55, '60, '65, '70, '75, '80, '85, '90, and '95. To properly fete the large group, individual pavilions were set up on Wilbur Field. Alumni enjoyed fine dining, socializing, and dancing.

PHOTOS BY RUSS CURTIS

50th Reunion

end 2000

**Panels on Peacemaking
and the Future of the
Profession Drew
Enthusiastic Crowds**



Alumni Weekend 2000



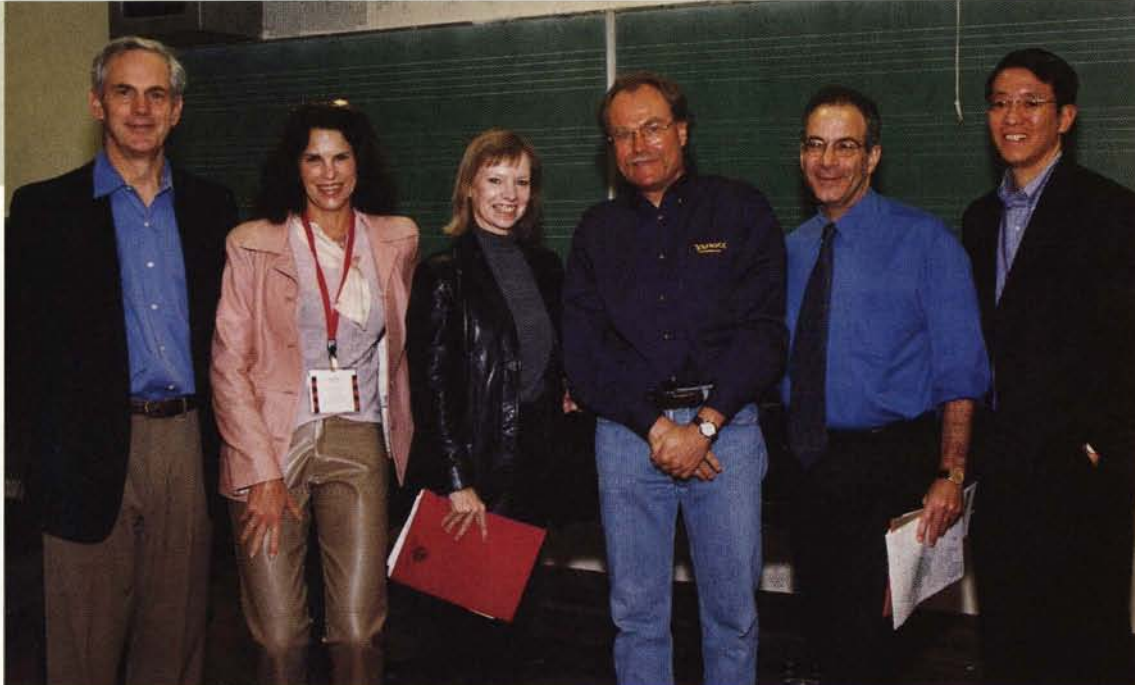
HONORED STATESMEN: The Honorable George J. Mitchell (*third from right*) former Senator from Maine and veteran peacemaker in the Northern Irish conflict, delivered the Law School's 2000 Ralston Lecture before a packed auditorium audience. Introducing Mitchell was former Secretary of State Warren Christopher '49 (*on Mitchell's right*), who was accompanied by his wife, Marie. Next to the Christophers are Ambassador to the European Union Richard L. Morningstar '70 and his wife, Faith (AB '68), the couple who started the ball rolling on the Warren Christopher Professorship in International Law and Diplomacy. Also pictured is former Senator John Glenn and his wife, Annie.



LONG VIEW: The theme of the Alumni Weekend 2000 panels and breakout sessions was the future of the legal profession. On Friday afternoon, the lawyer's role in the information economy and the way legal education should prepare graduates for the changing business and governance environment were analyzed by a panel of law school deans that included (*from left*) Daniel R. Fischel, University of Chicago; Dean Kathleen Sullivan; and Anthony T. Kronman, Yale University.



NET NET: Established businesses and start-ups operating on the Internet are raising significant legal issues in meeting challenges and taking advantage of new opportunities. Outlining the issues were Joseph A. Grundfest '78, W. A. Franke Professor of Law and Business (*moderator, second from right*) and panelists (*from left*) John Bryson (AB '65), Chairman, President, and CEO, Edison International; Candace Carpenter (AB '75), Cofounder and Chairman of the Board of Directors, iVillage.com; The Women's Network; Ann L. Winblad, Cofounding Partner, Hummer Winblad; John E. Place '85, then General Counsel, Yahoo! Inc.; and Ivan K. Fong '87, Senior Counsel, E-commerce and Information Technology, General Electric.



LUCKY DAD: C. Brooks Cutter '85 and his two lovely daughters, Margot (*left*) and Seline, both proud to be Cardinal supporters.



Robert I. Worth '55 (AB '53), Eugene B. Rauen '55, and Molly Rauen.



COVERING THE BASES: Four breakout discussions focused on changing service models, maintaining profitability, expanding career opportunities, and how public policy makers can lead the way to the future. The session on "Working in the 21st Century: How to Identify and Maximize the Expanding Variety of Career Opportunities" was addressed by Cheryl D. Mills '90 (*moderator*) and panelists (*from left*) Stanford Law Professor G. Marcus Cole, Juan Sabater '90, Russell B. Pyne, JD/MBA '80, and John J. Sabl '76 (AB '73).



Charles E. Luckhardt, Jr. '56 (*right*) having a great time with his grandson Charles Luckhardt IV, granddaughter Ally, and their friend.

Law Gatherings

LONG-LASTING EFFECTS: In February, the Law Society of Silicon Valley event "Election 2000: Epilogue" drew a responsive crowd to Stanford Law School to hear (left to right) Newton N. Minow, Annenberg Professor of Communications Law and Policy at Northwestern Law School and member of the Presidential Debate Commission; Dean Kathleen Sullivan; Stanford Law School Professor Pamela S. Karlan and Visiting Professor Akhil Reed Amar. Among the issues the panel discussed was whether the Supreme Court intervened too early in the political process.



RUSS CURTIS



ALAN DECKER

POLITICAL PREVIEW: The Stanford Law Society of Washington, D.C., gathered in December to discuss Election 2000 and the change over in administrations. Pictured are (left to right) Chris Matthews, host of "Hardball with Chris Matthews" on MSNBC; Nancy Hendry '75; Kathleen Matthews (AB '75), WJLA-TV News Anchor; Adam Rosman '95; and Eric Berson '75. Hendry and Rosman were society co-chairs.



WILLIAM GEIGER

A WARM WELCOME: Among those honoring Dean Sullivan at a Law Society of San Diego luncheon reception in September were (left to right) Hon. Norbert Ehrenfreund '59, Steve Amundson '76, and Hon. David Gill '59 (AB '56).

THE PROMISE: Stanford Law School graduates were sworn in to the Federal Bar for the Ninth Circuit and the State Bar of California in December by California Supreme Court Chief Justice Ronald George '64 and Ninth Circuit Court Judge Pamela Ann Rymer '64 (pictured at right).



MARCO ZECCHIN



MICHAEL COOPER

OPEN DISCUSSION: Stanford Law alumni and friends welcomed Dean Sullivan to Phoenix in November at a luncheon hosted by Richard Mallery '63. The Dean discussed new strategic objectives for the School and engaged in lively conversation focusing on the presidential election. Pictured are (left to right) Roger W. Hall '88 (AB '85), Barbara J. Groth '78, Dean Sullivan, Dick Mallery, and Edward F. Lowry, Jr. '54 (AB '52).

Remember Stanford Law School...



Local Couple Avoids Large Capital Gains Taxes While Helping Stanford Couple Receives Income, Too

Jon and Delia were a young married couple with a child in kindergarten when Jon finished his JD at Stanford in 1965.

They bought a house in the foothills for \$50,000, and Jon started working in the general counsel's office of a computer technology company. They accumulated a lot of stock in that company over the next 35 years along with other investments. When they turned 65 and decided to retire last fall on Delia's family farm in Oregon, they faced a classic good news/bad news situation.

The good news was their home was worth nearly \$1.5 million, and they had no mortgage. Their stock had appreciated, too. Even after recent ups and downs in the market, the stock was still valued at \$1 million. The bad news was capital gains taxes would erode those assets, if they tried to sell their home or diversify their investments.

Fortunately, an estate planning attorney told them about a charitable remainder trust (CRT). "If you put your home and your stock in a CRT," she explained, "they can be sold for full value. You won't pay a cent of capital gains tax on the sale, you'll receive annual income of at least five percent of the trust, and you'll have an income tax deduction equal to the estimated remainder value of the gift left to charity when you die."

Jon and Delia created a CRT at Stanford with their home and some of their stock that will pay them income of five percent per year for the rest of their lives (anticipated first-year income: \$100,000). The CRT resulted in a \$700,000 income tax deduction and, of course, eliminated the problem of capital gains taxes.

This story is a composite of several real-life stories. Each year, the Office of Planned Giving at Stanford helps scores of donors such as "Jon and Delia" create win-win solutions to the problem of selling appreciated assets. If you have questions concerning CRTs or other life income gifts, please contact us.

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ALUMNI WEEKEND 2001

THURSDAY TO SUNDAY OCTOBER 11 TO 14

Join alumni, friends, faculty, and students to celebrate Stanford Law School's rich tradition of excellence, renew old ties, and develop new ones. Our agenda for the weekend includes the following new events and traditional favorites:

- ◆ **Delegates' Summit and Volunteer Recognition Reception**
Dean Kathleen M. Sullivan will recognize current and prospective volunteers.

- ◆ **Business without Borders: Mapping International Legal Practice**
How are informed business decisions made in a world of legal uncertainty? Is there an enforceable rule of law in cyberspace? Where is the free market economy least viable or most threatened and why? What are the biggest barriers to transparency in international transactions? How and why does the value of intellectual property vary from country to country? Participants will examine the changes lawyers face in the competitive international business environment. Panelists will include W. A. Franke '61 (AB '59), Chairman, President, and CEO, Franke & Co., and Chairman and CEO, America West Airlines; Hon. Richard L. Morningstar '70, American Ambassador, European Union; and Stanford law faculty Thomas C. Heller, Lawrence Lessig, and Dean Kathleen M. Sullivan (moderator).

- ◆ **Peace and Justice in the 21st Century: The International Criminal Court and an International Rule of Law**
Discussion will focus on some of the larger questions, controversies, and recent cases that have fueled the renewed campaign to establish the International Criminal Court under the auspices of the United Nations. This session will address the broader and longer-standing academic and political debate over national sovereignty versus international jurisdictional concerns in the prosecution of war crimes, genocide, and crimes against humanity. Panelists will include Allen S. Weiner '89, United States Department of State, American Embassy, The Hague; and law professors Allison Marston Danner '97, Vanderbilt U.; Catharine A. MacKinnon, U. of Michigan; Abraham D. Sofaer, Stanford U. and Hoover Institution; and Thomas J. Campbell (moderator), Stanford U.

- ◆ **Alumni Reception**
A festive reception for all alumni. Reunion classes will be grouped together.

- ◆ **Dean's Circle Dinner**
This gala dinner will honor members of the Dean's Circle—annual donors of \$10,000 or more. By invitation.

- ◆ **Reunion Dinners**
Members of the classes of 1951, 1956, 1961, 1966, 1971, 1976, 1981, 1986, 1991, and 1996 will gather with classmates for delectable food and even better conversation.

- ◆ **Stanford vs. Washington State Football Game**
Show your rousing support for the Cardinal and help cheer the team on to victory!

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To foster innovation in the teaching of law ...

To sustain a standard of excellence ...

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Stanford Law School prepares leaders. Stanford graduates practice in the nation's foremost law firms, public interest organizations, government agencies, and businesses.

2. Innovative curriculum —

More than ever, society needs lawyers who are skilled and ethical problem-solvers. The Stanford Law School curriculum — emphasizing ethics, analytical thinking, and decision making and negotiation skills — prepares students to be successful practitioners and contribute to society.



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

3. World-class faculty —

Stanford Law School faculty are among the most respected scholars and educators in legal academia. They are academic innovators, designing a curriculum that will prepare students for the challenges of law, business, and public policy in an increasingly complex environment.

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- ◆ student financial aid to mitigate the debt burden of a Law School education, through scholarships and the Miles and Nancy Rubin Loan Forgiveness Program
- ◆ funding for innovative curricular and clinical programming, such as the Stanford Law and Technology Policy Center

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