

# Stanford *Lawyer*

## NEW DEAN TAKES CHARGE

Larry D. Kramer brings fresh ideas, lots of energy, and a willingness to stir things up a bit.





## Remember Stanford...



*Above: Thomas Hart Hawley (A.B. History '66, L.L.B. '69) during his junior year at Stanford.*

*Below: returning to his roots, Thomas now operates a small vineyard/winery in Carmel Valley under the Blue Heron label.*

From his family's apricot orchard in Los Altos Hills, young Thomas Hawley could see Hoover Tower and hear the cheers in Stanford Stadium. "In those days my heroes were John Brodie and Chuck Taylor," he says, "and my most prized possessions were Big Game programs."

Thomas transferred from Wesleyan University to Stanford as a junior in 1964 and two years later enrolled in the Law School, where he met John Kaplan. "I took every course Professor Kaplan taught," says Thomas. "He was a brilliant, often outrageous teacher, who employed humor in an attempt to drive the law into our not always receptive minds."

In choosing law, Thomas followed in the footsteps of his father, Melvin Hawley (L.L.B. '52), and both grandfathers. "I would have preferred to be a professional quarterback or an opera singer," he says (he fell in love with opera while at Stanford-in-Italy), "and I might well have done so but for a complete lack of talent."

An estate planning attorney on the Monterey Peninsula, Thomas has advised hundreds of families how to make tax-wise decisions concerning the distribution of their estates. When he decided the time had come to sell his rustic Carmel cottage, he took his own advice and put the property in a charitable remainder trust instead, avoiding the capital gains tax he otherwise would have paid upon sale. When the trust terminates, one-half of it will go to Stanford Law School.

"After taking care of loved ones, most people enjoy hearing they can save taxes and give back to those institutions that made their lives so much better," says Thomas. "That's one bit of advice I never tire of giving."

Thomas Hawley also is a recognized lecturer and author on estate planning. His amusing, down-to-earth book, *The Artful Dodger's Guide to Planning Your Estate* (published by Adams Media, Boston, February, 2004) is dedicated to the memory of John Kaplan.

*To learn more about bequests and gifts such as charitable remainder trusts and charitable annuities that pay income to donors, please contact us.*

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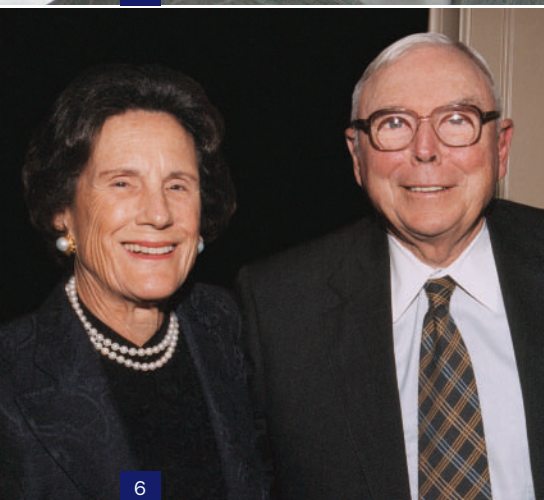
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Stanford Lawyer welcomes letters from readers. Letters may be edited for length and clarity.

## Letters

### Gay Marriage: Not So Fast

I wish to respond to Pamela Karlan's article "Critics of Gay Marriage: 'You're Out!'" in the latest issue of *Stanford Lawyer* [summer]. While her analogy to baseball was a clever means to help us rethink gay marriage, I objected to Karlan's logic in drawing the conclusion that "same-sex marriages are likely to benefit rather than harm children, as well as the adults who enter into them." She compares [laws against] gay marriage to banning blacks from professional baseball as perhaps just a tradition that needs to be overturned; implies that since so many heterosexuals change their marriage partners that we shouldn't "judge people's relationships by appearances"; implies that since children produced by gay couples are acquired in more costly and cumbersome manners, gay couples somehow want their children more than heterosexual couples do; and lastly cites social science evidence that children produced by couples in gay relationships fair just as well as those in traditional homes.

Irrespective of my personal views on gay marriage, I take issue with Karlan because of her unsupported statements and her bad conclusions. To say, for instance, that gay marriage should be embraced just because it goes against tradition is to infer that all traditions should be opposed regardless of their basis. Also, to suggest that heterosexuals have no basis for objecting to a change in the marriage institution just because it is being misused by a handful of heterosexuals is fallacious reasoning. As to the begatting of children, I have acquired five children in the traditional way and object to anyone implying that I want or love my children less because it was easy for me to conceive. Last but not least, Karlan fails to cite her social science evidence regarding the rearing of children but leaves it as a point of fact, unsupported by names, dates, or reference.

While I believe in the right of gay couples to live as they wish, before we



upset the traditional marriage institution by adopting same-sex marriage, we should do a little better than Karlan does in providing sound reasoning for such a change.

KATHRYN MONSON LATOUR '90  
*Oosterbeek, The Netherlands*

**Pam Karlan's reply:** Kathryn Monson Latour's letter seems addressed to an article I never wrote. For example, I suggested that tradition without reflection is what *Moneyball* teaches us we should rethink, which hardly corresponds to her claim that I proposed that same-sex marriage should be embraced just because it goes against tradition. Similarly, Latour transformed my observations that the children of gay parents who went to great lengths through adoption, artificial insemination, or surrogacy to have a child are likely to enjoy the advantages that come to any child from being wanted into a charge that somehow she loves her children less because it was easy for her to conceive. Finally, as *Stanford Lawyer* noted, the piece was originally published as an op-ed in the New Orleans *Times-Picayune*. Given the limitations of the form, op-eds virtually never include citations, so I'm baffled at Latour's criticism that I didn't include any. If she is actually interested in the social science data, I suggest that she consult, among other sources, the working paper by my colleague Michael Wald to which I refer: *Same-Sex Couples: Marriage, Families, and Children*, available at [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=203649](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=203649).

**Fiction, Not Fact**

Interesting summer reading recommendations from the faculty in summer '04 of *Stanford Lawyer*; but *The Balkan Trilogy* by Olivia Manning, recommended by Assistant Professor Amalia Kessler, is not a memoir, as listed, but a set of novels. (An adaptation with Emma Thompson and Kenneth Branagh was televised on Masterpiece Theatre as *Fortunes of War* 15-plus years ago.)

I loved [then] Dean Kathleen Sullivan's recommendation of the brilliant and outrageously funny *Kitchen Confidential* by Anthony Bourdain, a totally engaging read. I've recommended it lots of times myself.

BETHAMI AUERBACH '74  
Falls Church, Virginia

**Editor's note:** Auerbach is correct; *The Balkan Trilogy* is a novel. The error was the editor's, not Kessler's.

**Clinical Faculty Deserve More**

Although I was thrilled to see clinical education featured in the summer '04 edition of *Stanford Lawyer*, the way in

which the subject was discussed forces me to raise two issues.

While I have the utmost respect for Kathleen Sullivan, I could not disagree more strongly with the comments she made about the abilities of clinical teachers. [Then] Dean Sullivan suggests that the great lawyers and teachers who comprise the clinical faculty at Stanford and, I would assume, other law schools, can't possibly be expected to write scholarship worthwhile of earning them tenure.

Luckily for me and other clinical professors (great lawyers, teachers, and writers all), many law schools don't share her view. These schools have found, in fact, that while the duties of clinical professors may be more time-consuming than those of their colleagues (given that we spend a great deal more time in one-on-one interactions with our students as well as representing our clients in a huge array of legal matters), we are still quite capable of producing cutting-edge legal scholarship on both doctrinal and pedagogical matters.

I feel fortunate to have joined the faculty of an institution that appreciates me

as a lawyer, a teacher, and a scholar and will consider me for tenure in the future [University of Baltimore School of Law]. I hope that Stanford will someday extend the same honor to its clinical faculty.

Additionally, while *Stanford Lawyer* quite rightly highlights the achievements of the Stanford Community Law Clinic since its inception in 2003, that clinic is not the first project staffed by Stanford law students to serve East Palo Alto. Dedicated students and lawyers, with the support of members of the law school faculty, provided legal services to the residents of East Palo Alto through the East Palo Alto Community Law Project for many, many years before the clinic came into being. The failure to acknowledge the end of the East Palo Alto Community Law Project and the excellent training that many of us received by working there—at a time when Stanford Law School offered no other clinical alternatives—is unfortunate.

LEIGH GOODMARK '94  
Vienna, Virginia

**Regional Alumni Events in Honor of Dean Larry D. Kramer****Boston**

Sept. 10, 2004, 12 p.m.  
Hosted by Epstein Becker & Green P.C. (Special thanks to Thomas I. Elkind '76)

**Chicago**

Nov. 3, 2004, 6 p.m.  
Hosted by Mayer, Brown, Rowe & Maw LLP (Special thanks to Alvin Katz '77)

**Dallas**

Feb. 2005  
Location, date, and time to be determined.

**Houston**

Feb. 2005  
Location, date, and time to be determined.

**Los Angeles**

Jan. 13, 2005  
Location and time to be determined.

**New York**

Nov. 4, 2004, 6 p.m.  
Hosted by Skadden, Arps, Slate, Meagher & Flom LLP (Special thanks to Vaughn C. Williams '69)

**Orange County**

Jan. 28, 2005  
Location and time to be determined.

**Philadelphia**

Dec. 3, 2004  
Location and time to be determined.

**Phoenix**

Oct. 7, 2004, 6 p.m.  
Hosted by Richard '54 (BA '52) and Alice (BA '54) Snell

**Portland**

Oct. 15, 2004, 12 p.m.  
Hosted by Tonkon Torp LLP (Special thanks to Brian G. Booth '62)

**San Diego**

Jan. 27, 2005  
Location and time to be determined.

**San Francisco Bay Area**

Sept. 28, 2004, 6 p.m.  
Hosted by John '63 (BA '59) and Jill (BA '63) Freidenrich

**Seattle**

Oct. 1, 2004, 12 p.m.  
Hosted by William H. Neukom '67, Preston Gates & Ellis LLP

**Washington, D.C.**

Dec. 2, 2004  
Location and time to be determined.



PHOTO: LINDA A. CICERO

Formal invitations to these events will be mailed. Please contact the Office of Alumni Relations at 650-723-2730 or alumni\_relations@law.stanford.edu for more information.

*"Copyright is property, but like all property, the rights it grants are limited. 'Fair use' is one such limit, constitutionally compelled, giving critics such as Greenwald the right to use a limited amount of copyrighted material without asking permission first. Democracy depends upon such criticism. . . ."*

—LAWRENCE LESSIG, C. Wendell and Edith M. Carlsmith Professor of Law, writing in the July 14 issue of *Daily Variety*. Lessig is advising Robert Greenwald, the director and producer of the documentary movie *Outfoxed*, which takes a critical look at Fox News.

*"We don't want to live in a country where every company, large and small, for-profit and nonprofit, must ask every Antonio Romero, including me, to prove every day that he is not a terrorist because his name happens to appear on a list."*

—ANTHONY ROMERO '90 (AKA Antonio Romero), executive director of the ACLU,

writing in the *Washington Post*. His August 17 column argued against the proliferation of government watch lists. The name Antonio Romero appeared on a U.S. Treasury Department watch list.



PHOTO: STEVE GLADFELTER



PHOTO: STEVE GLADFELTER

*"The idea that you don't have to give your name to the government has been one of the defining characteristics of American freedom. That's the sense in which this is a big inroad."*

—BARBARA ALLEN BABCOCK, Judge John Crown Professor of Law, Emerita, speaking on NPR's *All Things Considered*. The June 21 interview concerned the Supreme Court's ruling in *Hiibel v. Sixth Judicial District Court of Nevada*, which found that the police were acting properly when they arrested Dudley Hiibel for not identifying himself when asked to do so.



PHOTO: ROBERT MARCH

*"It will be viewed as another instance of the courts saving the entertainment industries from their own shortsightedness. Because a century of experience has demonstrated that new technologies end up making more money for copyright owners, once they've adjusted their businesses to take advantage of it."*

—FRED VON LOHMANN '95 (BA '90), senior staff attorney, Electronic Frontier Foundation, as quoted in the August 20 edition of the *San Jose Mercury News*. The United States Court of Appeals for the Ninth Circuit unanimously ruled in *Metro-Goldwyn-Mayer v. Grokster* that distributors of peer-to-peer software, including Grokster and StreamCast, could not be held liable for any illegal uses of the software by its users, including copyright infringement. Von Lohmann represented StreamCast.



*"Many observers are hoping that this case will set standards that can be used to constrain 'unreasonable' executive pay—even in the corporate world. They shouldn't hold their breath. Courts have long been wary of acting as arbiters of whether an executive's pay is excessive. They much prefer to resolve these disputes by finding some flaw in the process by which the compensation was negotiated."*

—JOSEPH A. GRUNDFEST '78, W. A. Franke Professor of Law and Business, and former commissioner of the Securities and Exchange Commission, writing in *The New York Times*. His May 28 op-ed raised doubts about the importance of New York Attorney General Eliot Spitzer's lawsuit against former New York Stock Exchange Chairman Richard Grasso.



PHOTO: ROBERT MARCH

*"Literally dozens of law review articles have been written on the significance of the O.J. trial. . . . The truth about O.J. is that for one brief moment, the law and the media went crazy and had a lot of sex, and gave birth to a vast sprawling beast that ate us all. With the trial over, life, law, and television returned us to our previously scheduled broadcast. It was all a mistake, really."*

—DAHLIA LITHWICK '96 writing in *Slate*, where she is a regular columnist. Her June 9 column, titled "We Won't Get O.J.-ed Again," marked the tenth anniversary of the June 12, 1994, slayings of Nicole Brown Simpson and Ronald Goldman.





# Building on Excellence

BY LARRY D. KRAMER

Richard E. Lang Professor of Law and Dean

I am truly honored to become the 12th dean of Stanford Law School. It is a daunting task to succeed people of the caliber of Kathleen M. Sullivan, Paul Brest, and all of the other great deans who served before me. It is also an exciting task. There is so much we can—and, I hope, will—do together. But conversations about the future can wait, at least for now. In this, my first communication to you, I want instead to say a few words about what drew me to accept the position of dean.

One reason should seem obvious: Stanford is a great law school. One does not need rankings to see what a remarkable institution this is. Just read the books and articles Stanford's faculty publish; or talk to the lawyers and judges, clients and businessmen who hire its graduates; or look at the vibrant intellectual life the faculty and students have together created. As for Stanford's alumni, they are everywhere in wildly disproportionate numbers—from the U.S. Supreme Court to the U.S. Congress, from leading corporate and commercial law firms to major public interest and public advocacy organizations, from the executive boards of blue-chip corporations to countless start-ups that embody and reflect Stanford's innovative, entrepreneurial spirit.

Yet for all its impressiveness, the quality and prestige of the law school would not alone have induced me to abandon the life of a full-time teacher and scholar. I loved being in the classroom, just as I loved having the time and freedom to read and write about whatever interested me. Certain other features of Stanford, in conjunction with its quality, drew me here—features those of you who studied here may take for granted.

There is, to begin with, the school's size. Stanford is a small school—indeed, a very small school. And speaking as someone who has spent time at much larger institutions, it is hard to overstate the importance of this quality. Stanford's smallness fosters an intellectual and educational intimacy that cannot be matched, and is perhaps no longer even remembered, in the large factories that many top law schools have become. Its smallness means that students can get to know *all* of their classmates, sharing the exhilarating experience of discovering law while developing lifelong personal and professional bonds. Students and faculty get to know each other as well, creating a community that nurtures everyone's work. From the perspective of a dean, smallness means having an opportunity to be a genuine part of this community. Deans at many schools today are less and less

participants in the intellectual life of their institutions. The modern dean is more like a corporate manager, responsible for overseeing sprawling operations of which students and faculty have become only a part—and an increasingly small one at that. As dean of Stanford, I can have time to teach, to walk the halls and discuss ideas with students and colleagues, and to attend a goodly portion of the school's many workshops, colloquia, and conferences. I can expect to meet and get to know a substantial share of the alumni.

A second feature of the law school was equally important to me in defining its uniqueness. Legal education and scholarship, like education and scholarship generally, have been radically transformed in recent decades. Old disciplinary boundaries have dissolved, producing a crisis of confidence among legal scholars. The upshot has been a change in the academy that has led to charges, too often justified, that law schools have abandoned their primary mission and become overly scholastic institutions whose work is no longer relevant to law.

But whatever its merits elsewhere, I do not believe this indictment applies to Stanford. Certainly its faculty do interdisciplinary work. Indeed, the work done here exemplifies the best of the new scholarship. But the Stanford faculty have retained a clear and strong commitment to the idea that what we do should be relevant to the working world of lawyers, judges, and policymakers. Stanford is a law school where theory meets practice, where new techniques and new disciplines have been introduced in order to make better lawyers.

We are an interdisciplinary institution—and will become more so in the coming years. But interdisciplinary study at Stanford Law School is done in the service of legal analysis, not to replace or avoid it.

None of this should be grounds for self-satisfaction or complacency. The world continues rapidly to change, and Stanford Law School must change with it. My task, or rather our task, will be to meet the challenges ahead without sacrificing the qualities that have made, and continue to make, Stanford special. I look forward to working with all of you to make this happen.



PHOTO: LINDA A. CICERO

## STANFORD LAW SCHOOL RECEIVES LARGEST GIFT IN HISTORY OF LEGAL EDUCATION

Mr. and Mrs. Charles T. Munger donate \$43.5 million for residential hall.

**I**N AUGUST, Berkshire Hathaway Inc. Vice Chairman Charles T. Munger and his wife, Nancy B. Munger (BA '45), donated \$43.5 million worth of Berkshire Hathaway stock to Stanford Law School. It is the largest individual gift ever given outright to a United States law school.

The money will be used to build a new graduate student residence that will house several hundred law students along with graduate students from other parts of the university. The apartments will be built adjacent to the existing law school, creating an integrated campus for the school. There will also be common facilities available to the entire graduate student community.

"The Mungers' extraordinary generosity will enable future generations of students to live together in a vibrant community that integrates living with learning," said Kathleen M. Sullivan, Stanley Morrison Professor of Law and former dean. The gift was finalized just days before the end of her tenure as dean. "When Charlie first saw our strategic plan that called for a new residential hall for law students, he thought it was a no-brainer," said Sullivan.

Law school students are currently housed in a variety of on- and off-campus housing. A large percentage of law students now reside off campus. "We were in danger of becoming a commuter law school," said Sullivan. The new facility will probably open in the fall of 2007, allowing the law school to guarantee every student housing for each of the three years.

"In recent years there have been few more pressing

issues at Stanford than the need to construct student housing, especially for graduate students," Stanford President John Hennessy said. "This magnificent gift of Charlie and Nancy Munger is especially meaningful because it will so directly benefit our students. We are deeply appreciative of their tremendous generosity." The Mungers' gift is larger than the total of all previous gifts to Stanford University for student housing.

"If you build really good housing it will be a huge advantage for Stanford," Charles Munger told the *Stanford Daily* earlier this year. "It will form a community that doesn't yet exist in American education. The students will educate each other."

Charles Munger, 80, was founder of the law firm Munger, Tolles & Olson. He and Warren Buffett are managing partners of the holding company Berkshire Hathaway in Omaha, Nebraska.

Nancy Munger is an alumna of Stanford University and has served on its board of trustees. The Mungers' daughter Emilie Munger Ogden (BA '82) graduated from Stanford Law School in 1989 and daughter Wendy (BA '72) is a university trustee.



**Nancy B. Munger and Charles T. Munger donated \$43.5 million to Stanford Law School.**

PHOTO: NATHANSON'S PHOTOGRAPHY

**On June 13, U.S. Supreme Court Justice Sandra Day O'Connor '52 (BA '50) delivered her second Stanford University commencement address, urging students to strive for equality and devote some portion of their lives to public service.**



PHOTO: LINDA A. CICERO



PHOTO: WILLIAM K. GEIGER

**Four Stanford Law School graduates are clerking at the U.S. Supreme Court for the 2004–05 term. (Left to right) Aimee Athena Feinberg '02 is clerking for Justice Stephen G. Breyer (BA '59); Roberto J. Gonzalez '03, for Justice John Paul Stevens; Kathryn Rose Haun '00, for Justice Anthony M. Kennedy (BA '58); and Joshua A. Klein '02, for Justice Sandra Day O'Connor '52 (BA '50).**



## STANFORD OPENS ENVIRONMENTAL INSTITUTE

Law Professor Buzz Thompson JD/MBA '76 (BA '72) named codirector.

During one of the first meetings of the new Stanford Institute for the Environment (SIE), a member of the engineering faculty reported that he was researching new water treatment technology for rural areas and developing nations. An economist at the gathering piped up that he would be willing to study the economic viability of the treatment technology. Then an anthropologist added she'd be interested in studying the societal issues of adapting to the new technology.

"Previously, these people worked in silos," said Barton H. "Buzz" Thompson, Jr., JD/MBA '76 (BA '72), Robert E. Paradise Professor of Natural Resources Law and codirector of the institute. "By working together, they realize their common interests, and they develop solutions that are more sustainable." Thompson calls this sort of interdisciplinary interaction "the future of education."

The selection of Thompson, along with Professor Jeffrey R. Koseff of the School of Engineering, to head SIE will boost Stanford Law School's Environmental and Natural Resources Law & Policy Program (ENRLP) by strengthening its link to other disciplines. ENRLP, which Thompson has headed for more than ten years, encompasses research projects, the law school's Environmental Law Clinic and Environmental Workshop Seminar, and classes open to graduate students throughout the university.

"The institute will give law school students more opportunities to learn about all aspects of environmental policy," said Thompson, noting that environmental lawyers must understand science, technology, politics, economics, and psychology as well as the law to practice effectively. He added that at the same time, the law school's

strong connection to SIE is critical to the institute's success. "You can have the best science and engineering, but unless you have law professors and students looking at environmental issues, the solutions are likely to fail."

SIE faculty plan to develop interdisciplinary case studies that law, business, engineering, and other departments can use in the classroom. SIE will also provide seed funding and support for interdisciplinary environmental research projects. In January, the institute solicited proposals for projects and received 40 from six of Stanford's seven schools in such varied fields as music, classics, and pediatrics.

Another goal of the institute is to draw to campus key environmental leaders such as members of Congress, nonprofit executives, business officials, and representatives from the World Bank. "We're 3,000 miles away from the major decision makers in government," Thompson noted. "We want to create a variety of programs to bring policymakers and private leaders to work with us."

Finally, SIE will extend its learning to the local community. "For example, we hope to have a monthly forum open to the public," Thompson said, on such issues as restoration of the San Francisco Bay salt ponds, the proposed hydrogen highway, and marine reserves.

Thompson said he accepted the post of codirector because he "can't imagine a more exciting or more productive thing to do besides interdisciplinary research and teaching." He added that interdisciplinary work is where he sees higher education headed: "The universities of the future will be much more integrated. We're breaking down walls and bringing the whole university together."

—Mandy Erickson

## DIRECTORS' COLLEGE DRAWS HEAVY HITTERS

In June, the tenth annual Directors' College was held at Stanford Law School to discuss the critical issues facing boards of directors.



Directors' College Codirector Joseph A. Grundfest '78, W. A. Franke Professor of Law and Business, and former commissioner, U.S. Securities and Exchange Commission



U.S. Securities and Exchange Commission Chairman William Donaldson



William S. Lerach, chairman, Lerach Coughlin Stoia Geller Rudman & Robbins LLP



The Goldman Sachs Group, Inc. Chairman and CEO Henry M. Paulson, Jr.

PHOTOS: ROBERT MARCH

## STANFORD LAW SCHOOL NEW VISITING FACULTY, 2004–05

**Daniel P. Kessler '93**, *Professor*

(by courtesy) of Law

Professor of Economics, Law, and  
Policy, Graduate School of Business,  
Stanford University  
(Antitrust)

**Christopher R. Leslie**, *Visiting*

*Associate Professor of Law*

Associate Professor of Law, Chicago-  
Kent College of Law, Illinois  
Institute of Technology  
(Sexual Orientation and the Law)

**Lawrence C. Marshall**, *Visiting*

*Professor of Law and Interim*

*Director, Clinical Programs*

Professor of Law, School of Law,  
Northwestern University  
(Wrongful Convictions)

**R. Anthony Reese '95**, *Visiting*

*Professor of Law*

Thomas W. Gregory Professor of  
Law, School of Law, University of  
Texas at Austin  
(Intellectual Property)

**Norman W. Spaulding '97**, *Visiting*

*Associate Professor of Law*

Acting Professor of Law, School  
of Law (Boalt Hall), University of  
California at Berkeley  
(Civil Procedure)

**Eugene Volokh**, *Edwin A. Heafey, Jr.*

*Visiting Professor of Law*

Professor of Law, School of Law,  
University of California  
at Los Angeles  
(Constitutional Law)

## LAW SCHOOL NAMES NEW DIRECTOR OF DEVELOPMENT

**Scott Showalter (BA '94)** became  
Stanford Law School's new director  
of development in June. He joined the  
law school from Stanford University's  
central Office of Development, where  
he most recently served as associate  
director of development, major gifts.

## MAKING THE GRADE

**KUDOS:** In June, Chief Justice of California **Ronald M. George '64** received the William O. Douglas Award from Public Counsel, the nation's largest public interest pro bono law firm. **Severa Keith '01 (BA '93)** was the first recipient of the Thelton Henderson Fellowship, an award created in the name of Judge Thelton Henderson of the United States District Court, Northern District of California. The fellowship, awarded in May, provides financial support for the recipient to work at the Legal Aid Society of San Mateo County and the Stanford Community Law Clinic. **Tyler Doyle '05** was one of 11 Stanford University students to receive the James W. Lyons Award for helping improve campus life.

**APPOINTMENTS:** **Frank H. Wu, JSM '97**, was named dean of Wayne State University Law School, Detroit. **Robert L. Rabin**, A. Calder Mackay Professor of Law, was appointed to the Institute of Medicine's Committee on Reducing Tobacco Use: Strategies, Barriers, and Consequences. The institute is a branch of the National Academy of Sciences. In May, **John K. Van de Kamp '59** was elected president of the State Bar of California. **Margaret R. Caldwell '85**, lecturer in law and program director, Environmental and Natural Resources Law & Policy Program, was appointed by Governor Arnold Schwarzenegger to the California Coastal Commission. In August, **William S. Kirsch '81** was named president and CEO of Conseco, Inc. **Gerhard Casper**, professor of law, president emeritus, and Peter and Helen Bing Professor in Undergraduate Education, was appointed by Defense Secretary Donald Rumsfeld to the Technology and Privacy Advisory Committee. **Tony West '92** was elected to a 12-year term on the board of directors of the University of California Hastings College of the Law in San Francisco.

**THE PRESS ANOINTS:** **Robert M. Daines**, Pritzker Professor of Law and Business, and **Ronald J. Gilson**, Charles J. Meyers Professor of Law and Business, were both cited as authors of one of the "Top 10 Corporate and Securities Articles of 2003" by the journal *Corporate Practice Commentator*. Daines was author of "Incorporation Choices of IPO Firms," and Gilson coauthor of "Understanding Venture Capital Structure: A Tax Explanation for Convertible Preferred Stock." **Carlos Watson, Jr. '95** was named one of the "50 Hottest Bachelors" in the June 28 issue of *People*. **Fred von Lohmann '95 (BA '90)** is among "The A-List Entertainment Lawyers Who Are Shaking Up Tinseltown," according to *California Lawyer's* August issue. **Evan Tager '85** was named one of the 12 leading appellate lawyers in Washington, D.C., by *Legal Times* in its July 19 issue. **Richard M. Pachulski '79**, **Gordon Davidson '74 (BS '70, MS '71)**, and **Louis Eatman, JD/MBA '73**, made *California Lawyer's* list of the 46 top California business lawyers in its August issue. **Brian G. Booth '62** was named one of the "Leaders in Their Field" by *Chambers USA: America's Leading Lawyers for Business—2004 Edition*.

## LAW SCHOOL DEANS

**Mark G. Kelman**, William Nelson Cromwell Professor of Law, is the new vice dean, responsible for overseeing the general administrative operations of the school.

**Michael Klausner**, Nancy and Charles Munger Professor of Business and Professor of Law, is the new associate dean for research and academics, responsible for promoting the intellectual life and culture of the school. **G. Marcus Cole**, professor of law and Helen L. Crocker Faculty Scholar, is continuing in his post as associate dean for curriculum.



## ERIC FINGERHUT '84 FIGHTS UPHILL BATTLE FOR OHIO SENATE SEAT

Democratic nominee challenges incumbent Republican senator.

**E**RIC FINGERHUT '84 has taken on a tough opponent. As Ohio's Democratic nominee for the U.S. Senate, he's running against Republican George Voinovich, a former Ohio governor, former mayor of Cleveland, and current U.S. senator. According to The Ohio Poll, in March of this year, 97 percent of registered voters knew of Voinovich, while only 52 percent recognized Fingerhut's name. "Challenging such a well-known incumbent is very difficult," Fingerhut conceded. "There are buildings named after him all over Ohio. Just yesterday I attended a rally in Voinovich Park."

But Fingerhut said he's encouraged by *Columbus Dispatch* polls that show his support is increasing while Voinovich's is dropping: The spread narrowed from 21 points in July to 14 points in August. Fingerhut is also helped by the fact that Ohio is considered a key state in the presidential election. John Kerry and John Edwards are making plenty of appearances around Ohio, Fingerhut is joining them, and the press is there to record it. "It gives me a lot of opportunities to get my name out," Fingerhut said.

After graduating from Stanford Law School, Fingerhut moved to Cleveland to work for the Legal Aid Society, Hahn Loeser + Parks LLP, and Cleveland Works, a welfare-to-work program. He then managed the campaign of Michael White, who won his bid for mayor of Cleveland. Fingerhut ran his own race for the Ohio Senate in 1990, served one term, then in 1991 won a seat in the U.S. House of Representatives.

Voted out in 1994 after one term, Fingerhut served as senior fellow at the nonprofit Federation for Community Planning in Cleveland before returning to the state senate in 2001, where he was reelected in 2003.

In Washington, Fingerhut was a freshman congress-

man at the same time as Hon. Xavier Becerra '84 (BA '80), a Democrat who represents California's 31st Congressional District in Los Angeles. The two worked together on the assault weapons ban as well as President Bill Clinton's economic development plan. "He has achieved what many Americans and Ohioans

aspire to—the American Dream," Becerra said, noting that Fingerhut is the grandson of immigrants and was the first person in his family to go to college. "I wish him luck."

Fingerhut said he chose to run for the U.S. Senate this year both because of Ohio's crumbling economy and because of national defense issues. "I felt that the response to 9/11 should be to design a long-term military and diplomatic capability to isolate and defeat the radical movement in the world," he said. "We're not doing it the right way."

Fingerhut describes campaigning as "enormously hard work," but he's grateful to his alma mater. Fellow alums Paul Harris '83, his campaign treasurer, and Micah Berman '01, his political director, are assisting him. And he credits the education he received at the law school for making him a better speaker. "What sticks in my mind the most is the legal writing class, when the instructor ripped me apart and put me back together again," he said. "I learned how to keep my speeches to what's important and to make sure that people will walk away with something that matters to them."

—Mandy Erickson



Eric Fingerhut, with wife Amy and son Sam

### LAW SCHOOL FACULTY PROMOTED

**R. RICHARD BANKS (BA/MA '87)**, formerly Associate Professor of Law, was named Professor of Law and Justin M. Roach, Jr. Faculty Scholar.

**MARIANO-FLORENTINO CUÉLLAR (MA '96, PHD '00)**, formerly Assistant Professor of Law, was named Associate Professor of Law and Deane F. Johnson Faculty Scholar.

**MICHELE LANDIS DAUBER**, formerly Assistant Professor of Law, was named Associate Professor of Law and Bernard D. Bergreen Faculty Scholar.

**LANCE DICKSON**, formerly Professor of Law and Director of Robert Crown Law Library, was named Professor of Law, Emeritus, and former Director of the Library.

**GEORGE FISHER**, formerly Professor of Law and Robert E. Paradise Faculty Scholar, was named Judge John Crown Professor of Law.

**RICHARD THOMPSON FORD (BA '88)**, formerly Professor of Law and Justin M. Roach, Jr. Faculty Scholar, was named George E. Osborne Professor of Law.

**HENRY T. "HANK" GREELY (BA '74)**, formerly C. Wendell and Edith M. Carlsmith Professor of Law, was named Deane F. and Kate Edelman Johnson Professor of Law.\*

**LAWRENCE LESSIG**, formerly Professor of Law and John A. Wilson Distinguished Faculty Scholar, was named C. Wendell and Edith M. Carlsmith Professor of Law.

\* Pending approval of the Stanford University Board of Trustees

# FROM THE BIG APPLE TO THE FARM

Larry D. Kramer left New York University to become Stanford Law School's new dean. The 46-year-old constitutional scholar is respectful of the school's past, but he's not afraid to try new things.

BY ERIC NEE



PHOTO: GLENN MATSUMURA

Larry D. Kramer didn't waste any time settling into his new life. Within weeks of being named dean of Stanford Law School, he and his wife, Sarah Delson, flew out to the Bay Area and, after a brief look around, purchased a home in the sprawling faculty neighborhood on campus. Then it was back to New York City to pack up their belongings, tie up a few loose ends, and say goodbye to friends and colleagues before heading west.

Their new suburban home is a far cry from the circa 1814 Washington Mews carriage house they occupied in New York's Greenwich Village. Kramer's office at New York University School of Law was a five-minute stroll across Washington Square from their home. The two could walk, or take a cab, anywhere they needed to go. Now they have a pair of cars, along with the requisite car seat for their 4-year-old daughter, Veronika, affectionately called Kiki, befitting their new California lifestyle. But all of this upheaval doesn't concern Kramer in the least. "They

are both great places to live, just different."

The fact is, Kramer is used to adapting to new environments. He even thrives on it. Stanford is the fourth law school at which the 46-year-old Kramer has held a tenured professorship. At each of the first three he had the good fortune of being hired by, and working with, the most gifted deans of that generation: Gerhard Casper, then dean of the University of Chicago Law School, went on to become president of Stanford University; Casper's successor, Geoffrey Stone, became provost at Chicago; Lee Bollinger, then dean of the University of Michigan Law School, is now president of Columbia University; and John Sexton, then dean of NYU School of Law, is now president of NYU.

Working for such esteemed deans was an educational experience for Kramer. "I learned an incredible amount from each of them," said Kramer in an interview shortly before assuming Stanford's deanship on September 1. "If there is one thing I came away with, it is to be generous



—generous to faculty and generous to students. They all viewed their job as making it possible for the faculty and students to pursue the things they wanted to pursue.”

Kramer became an exceptional teacher, earning awards at both NYU and the University of Michigan for his teaching. “He had very high standards,” said Richard L. Revesz, the current dean of NYU School of Law. “He expected a lot out of students, which scared some people off. He cultivated that persona, but underneath he’s very sweet.” Kramer also spent a good portion of his ten years at NYU helping to recruit and nurture young faculty and working with colleagues to invigorate the intellectual life at the school.

“He [Kramer] is one of the three or four most exceptional legal minds that I’ve ever dealt with,” said Andrew Frey, a partner at Mayer, Brown, Rowe & Maw LLP. Frey met Kramer about 20 years ago, when Kramer was a law student working as a summer associate in the solicitor general’s office, where Frey was then deputy solicitor general. While at NYU, Kramer was a consultant to Mayer Brown’s Supreme Court practice, working on a wide range of cases. “He’s fast and insightful, and has a tremendous range of expertise,” said Frey. “He’s an extraordinary lawyer.”

It wasn’t always obvious that Kramer would end up as the dean of a major law school. He spent his early years in the near northwest Chicago suburb of Niles, a working class town made up mostly of Polish, German, and Italian neighborhoods. The family moved to the nearby suburb of Morton Grove after his father’s restaurants—the Pickle Barrel—took off. “Those were relatively affluent years for us,” said Kramer. Nevertheless, Kramer worked during his teens: first at his father’s restaurants, where he did just about everything, and then as a caddie, a gas station attendant, a short-order cook, a Kmart clerk, and a shoe salesman. Just as Kramer was entering college his family’s restaurants went belly-up, and he had to put himself through college and law school.

In high school, Kramer was a good student, but not at the top of his class. On a lark he applied to and was admitted to Brown University. “I think I was only the second or third person in the history of my high school to go to an Ivy League college,” said Kramer. He graduated from Brown in 1980 with a BA in religious studies and psychology, and promptly moved to New York. Kramer had fallen into the New Wave music scene his senior year at Brown, and what better place to pursue that than Soho. He and some friends rented a loft at Broadway and Broome Street for \$350 a month, and proceeded to have the kind of fun young people could be expected to have in New York.

At the time, Kramer worked as a paralegal. Not because of any interest in the law, he explained, but because “it paid reasonably well and was a relatively easy job. I was going

to be an artist or a writer. I was going to change the world somehow, but not with any of those bourgeois professions.”

But Kramer’s mother continued to prod him to become a doctor, or at least a lawyer. During his freshman year at Brown, Kramer had tried, and rejected, pre-med. As for the law, “My sister went to law school before me. I held her in utter contempt for going.” But finally Kramer relented, and to satisfy his mother applied to law school. “I sort of agreed to go to law school, thinking in the back of my mind that if I hated it, as I expected to, I would drop out and then I could say to her, ‘I tried, now leave me alone. I’m going back to New York.’”

Well, law school turned out a lot differently than Kramer thought it would. He entered the University of Chicago Law School in 1981, and that first semester had the good fortune to take a class taught by Edward H. Levi, one of the university’s most illustrious figures. “I stayed in law school because of Edward Levi,” said Kramer. Levi was a former president of the University of Chicago, a former dean of its law school, and a former U.S. Attorney General under President Gerald R. Ford.

Levi’s class, *Elements of Law*, “opened my eyes to how interesting the law was,” said Kramer. “I had the typical lay person’s view of law school, that you learned a bunch of rules that weren’t very interesting, and then spent your life lying and manipulating the rules to make a bunch of money.” Instead, Kramer discovered that the law was a fascinating way to look at society. “Levi’s course was designed to show the way in which everything met at the law. We started with Socrates and ended at *Roe v. Wade*, with a little bit of everything in between.” Kramer was so inspired that he became one of Levi’s research assistants that first year.

What intrigued Kramer most was “the idea that people had been having a set of arguments for hundreds and hundreds of years, and that you could trace these arguments from the beginning up to today,” he said. “To this day I don’t come across many legal questions that I don’t find interesting.”

Needless to say, Kramer did not drop out of law school. In fact, he graduated magna cum laude and Order of the Coif in 1984, and was comment editor of *The University of Chicago Law Review*. After graduation Kramer clerked for two renowned jurists: Judge Henry J. Friendly of the U.S. Court of Appeals for the Second Circuit, and Justice William J. Brennan, Jr., of the U.S. Supreme Court.

Clerking for Friendly “was the single best learning experience I ever had in law,” said Kramer. “He was brilliant, open-minded, and dedicated to law. He wasn’t completely impervious to the outcomes of his decisions, but he didn’t let that shape them. It was a wonderful process to watch.”

Friendly was also the most demanding person Kramer has ever worked for. "He caught every single mistake I made. He was that smart. The thing that was most depressing was that he was always right. Always."

After clerking for Brennan, Kramer planned to become a federal prosecutor. He had lined up a job with the U.S. attorney's office in Boston, but before he could begin work, Gerhard Casper at the University of Chicago Law School invited Kramer to join the faculty. He accepted and in 1986 began his academic career. Three years later, at the age of 31, Kramer became a full professor.

At the University of Chicago, Kramer focused on conflict of laws. He developed a new approach to state-state conflicts, using game theory to help explain competition between states with overlapping interests. Many of his ideas are now incorporated in the leading casebook in the field, *Conflict of Laws: Cases, Comments, Questions*, by David P. Currie, Herma Hill Kay, and Larry Kramer (West Publishing Co., 6th edition, 2001).

But Kramer's first wife didn't like living in Chicago, so in 1990 they left for the University of Michigan. For someone who had studied and taught law at only one institution, it was an eye-opening experience. "Chicago was an intense, small community. Everybody was focused on one set of questions," Kramer said. Michigan, on the other hand, was a much larger school, its faculty were more diverse, and the academic climate encouraged one to explore law from a multidisciplinary perspective.

"When I got to Michigan it turned out that all of the ideas that everybody at Chicago thought weren't to be taken seriously, were being taken seriously," said Kramer. "So I started to rethink a lot of things."

That is when Kramer began to study conflict of laws from a federal-state perspective, or federalism. "I very quickly discovered that I couldn't make sense of federalism without history." That initial foray into the history of federalism led to the publication more than a decade later of Kramer's most recent book, *The People Themselves: Popular Constitutionalism and Judicial Review* (Oxford University Press, 2004). (See p. 13 for a Q&A with Kramer about his new book.)

After only a few years in Michigan, Kramer and his first wife divorced. To recuperate, he took a semester sabbatical and went to New York City to reconnect with old friends. While he was in New York two important things happened: He met Sarah Delson, whom he would later marry; and New York University School of Law Dean John Sexton convinced him to leave Michigan for NYU, which he did in 1994. "He didn't try to tell me that NYU was the equivalent of Chicago or Michigan," said Kramer. "He sold me on the

idea that we could really build something, that we could change the law school."

Under Sexton's leadership, NYU moved up in the ranks of U.S. law schools. "We experimented with different kinds of things. Some good, some bad, some worked, some didn't," said Kramer. "It was the ambition, the innovation, and the willingness to take chances that was exciting." Sexton was rewarded for his efforts by being named president of NYU in 2001.

One of the keys to improving the quality of the school was hiring new faculty. Kramer chaired the hiring committee three times and was instrumental in recruiting a number of faculty. "A huge amount of the new talent at NYU was attributable largely to Larry's efforts," explained Robert M. Daines, Pritzker Professor of Law and Business. Daines joined the Stanford faculty this summer from NYU. "There is no one better at spotting talent and figuring out ways to get them to come."

Kramer also helped elevate the intellectual climate of the school. "He was one of the most important contributors to building a vibrant intellectual community at NYU," said Barbara H. Fried, William W. and Gertrude H. Saunders Professor of Law. (Fried was a visiting professor at NYU in 1998-99 and again in 2002.) "He regularly read colleagues' drafts across a wide range of subject matters, gave detailed comments, tirelessly mentored young faculty, and brought colleagues together to talk with one another," said Fried. "There is no material reward for that sort of generosity. You do it because you care about the intellectual enterprise."

It was because of that effort that Kramer was named associate dean for research and academics at NYU. It had been announced that he would be vice dean of NYU School of Law this year, before he was invited to come to Stanford. "He was hugely successful as associate dean," said Revesz. "He is someone who cares enormously about the intellectual life of the institution."

All of that experience is good preparation for being dean of Stanford Law School, but it is not a formula that can simply be imposed. "The main lesson I took out of all my experience is that you have to figure out what works best for your school," said Kramer. "What worked at NYU would not have worked at Michigan, and neither would have worked at Chicago," said Kramer. "What will work at Stanford will be what best suits our students, our faculty, and our institution."

So is Kramer going to stir things up at Stanford? Yes and no. He is highly respectful of Stanford's past, but he's also not afraid to try new things. Just ask the folks at NYU. As Kramer wrote in his "From the Dean" column in this issue of *Stanford Lawyer*, "The world continues rapidly to change, and Stanford Law School must change with it." ■



## ***The People Themselves: Popular Constitutionalism and Judicial Review***

By Larry D. Kramer, Oxford University Press, May 2004, 363 pages

In *The People Themselves*, Larry Kramer argues that Americans have come to treat the Constitution as something beyond their competence, something whose meaning should be decided by judges, assisted by a cadre of lawyers and academics. Yet this submission to a lawyerly elite is a radical and troublesome departure from what was originally the case. In the early years, ordinary Americans exercised active control and sovereignty over their Constitution. The constitutionality of governmental action met with vigorous public debate in struggles whose outcomes might be greeted with celebratory feasts and bonfires, or with belligerent resistance. The Constitution remained, fundamentally, an act of popular will: the people's charter, made by the people.

**Editor: How did you become interested in this subject?**

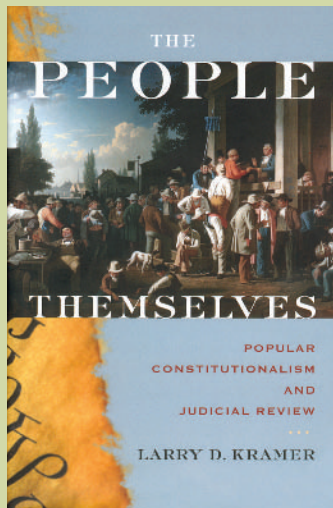
Kramer: Early in my career I studied conflict of laws. After a while I felt I had said what I had to say about state-state conflicts, which is what conflict of laws is mostly about, and I got interested in federal-state conflicts, which is federalism. But I soon realized I couldn't make sense of it ahistorically. So I started to look at the history of federalism, and I noticed something surprising in reading the sources, which was that courts were never mentioned. You read the constitutional debates and the discussion about how the Constitution was going to be enforced, and no one said "courts," which of course is what we think of first today. I thought that was curious. So I started looking deeper to understand why. This book is what emerged.

**Why do you focus so much on the early history of the nation?**

The first eight chapters of the book tell the history of constitutionalism in great detail from about 1760 to the election of 1840. That history was designed to show how the idea of popular constitutionalism was preserved under changing political, social, cultural, and economic circumstances. In each stage there were institutional adaptations to make popular constitutionalism workable in a more complicated world. This was enough to make my basic point while still keeping the book to a readable length. I hope others will be interested enough in the idea to do further work in the later periods.

**Why should one believe that the average citizen is going to be a better interpreter of the Constitution than someone who has spent years studying it?**

Do I really have a reason to think that Dick Posner or Nino Scalia is going to make a better judgment about whether women should be allowed to get an abortion than my mother? The answer, I believe, is "no." There are a whole slew of legal questions, which are highly technical, which the population at large is never going to care about or pay attention to. With respect to all those questions, the Court will hand down its ruling and that's going to stick because nobody's going to care. But to use that as a lever to say that the Court should have final say over nontechnical questions of basic principle and commitment makes no sense.



**Isn't there a danger that the general population can be more reactionary than the judiciary, particularly during times of crisis?**

For what it is worth, historically, the Court has generally been far more reactionary. But that doesn't seem to me to be the right question. These are hard questions to which there is seldom a clearly right answer. They are questions about which both elites and nonelites are divided. Look at all the important Supreme Court cases. The votes are invariably 5-4 or 6-3. The question is, do we trust the majority of nine more than the majority of 250 million on

questions over which we are going to inevitably be divided?

**What is the alternative to judicial supremacy?**

The problem is to find a proper balance between independence and accountability. The Europeans who wrote constitutions after World War II did a better job in finding this balance for their courts, because they had our experience upon which to build. So they separated constitutional adjudication from ordinary law and delegated it to a specialized court; they gave the justices on these constitutional courts limited terms; they staggered the terms; they required supermajorities to get judges appointed, which forces moderation; and they made their constitutions easier to amend. Taken together, these sorts of institutional structures produce a different balance and a different kind of court. Ideally we would think about adopting some of the European innovations. But if that's not going to happen—and it's not going to happen, because our Constitution is so hard to amend—then at the very least we should restore and preserve the system that we did develop in the first 150 years for controlling our Court, rather than just letting the justices run wild.

# SUPREME COURT CLINIC

## GOES THREE FOR THREE

BY JUDITH ROMERO

**Stanford Law School's new Supreme Court Litigation Clinic is off to a fast start. Three of the cert. petitions the clinic filed with the Supreme Court last spring were granted, and a fourth is still pending. That's a record most law firms would envy.**

### **When the Supreme Court's fall term begins**

in early October, three noteworthy cases will appear on the docket—noteworthy because the petitions for writ of certiorari granted by the Court were written by a small group of law students enrolled in a pilot clinical course.

The Supreme Court Litigation Clinic was launched last spring at Stanford Law School to teach students this highly specialized form of appellate litigation, as well as to give them intensive instruction in legal writing and working as a team. In its first semester, the clinic worked on seven cases before the Court. Three of its four cert. petitions have been granted, and the fourth is pending. That's a track record most law firms would envy.

"It's an ambitious undertaking that has enjoyed remarkable success, contrary to conventional wisdom," said Georgetown University law professor Richard Lazarus. A former U.S. Justice Department lawyer and assistant to the solicitor general, Lazarus runs Georgetown's own Supreme Court Institute. "What's impressive is that the students got cert. granted. There are so few cases granted every year . . . and so many potential pitfalls. . . . It takes some pretty outstanding students to pull it off."

Stanford's clinic was designed by two veteran Supreme Court advocates—Pamela S. Karlan, Kenneth and Harle Montgomery Professor of Public Interest Law, and Thomas "Tommy" Goldstein, a lecturer at the law school and principal at a boutique Supreme Court practice in Washington, D.C., Goldstein & Howe.

Karlan, a former clerk to Justice Harry Blackmun and one of the nation's most respected Supreme Court scholars, has successfully argued two voting rights cases before the Court, and has participated in 25 other cases involving such

issues as redistricting, employment, reproductive autonomy, affirmative action, and sexual orientation.

Goldstein has built up a small but well-respected practice focusing on Supreme Court litigation. He represents a wide variety of clients, from large corporations to individuals across a wide range of substantive areas, including taxation and First Amendment law. Goldstein has won five of the eleven cases he has argued before the Court, has gotten dozens of cert. petitions granted, and is scheduled to argue his 12th case this term. That case, *Smith v. City of Jackson*, is the first of the clinic's cert. grants.

"For years, I'd been thinking about turning our pro bono practice into a unique opportunity for students, who wouldn't otherwise have the chance to work on cases at the Supreme Court," Goldstein said. He approached Karlan and the idea caught fire.

**T**he clinic, with seven students and three faculty members, operates as a small law firm focused solely on pro bono cases. While the students meet in a tiny seminar room in the Stanford law library they have nicknamed "The Weenie Bin," their audience is 3,000 miles away—inside the marble and oak walls of the Supreme Court.

There is no other clinical offering like it in the country. Many law schools offer seminars that focus on the current Supreme Court term, conducting simulated exercises in which students act as lawyers or justices. A few schools' clinics enable students to work on Supreme Court cases, but only in a single substantive area—such as the death penalty. Stanford's is the only clinic that enables students both to work on actual cases and experience the full range of substantive areas on the Court's docket, from bankruptcy to



discrimination to maritime law.

Students participate in drafting cert. petitions, oppositions to cert. petitions, merits briefs, and amicus briefs. They also comment on drafts of briefs being filed by lawyers in other cases, and help prepare advocates for their oral arguments through moot courts.

Each year the Supreme Court receives more than 7,000 petitions for writ of certiorari, and of those, agrees to hear only about 80. That's why picking the right case is so important. Before the clinic began, Karlan and Goldstein vetted a host of cases, narrowing the list before asking the students to weigh in.

"We look for cases that the Supreme Court is likely to take, and in which the clients deserve pro bono help," Goldstein explained. "We don't care if the cause is liberal or conservative; the principle is the need for an attorney. The most important factor for the justices is that the case clearly would have been decided differently by another court of appeals, which we call a 'circuit split.'"

Using this criterion of the circuit split, the clinic zeroed in on four cases. The clinic then approached the lawyers who had handled the cases in the lower courts, offering to assist them before the Supreme Court. The task of the cert. petition is not to persuade the Court of the ultimate merits—although it lays the groundwork for doing that—but to persuade the Court that the case raises an important issue and is the appropriate vehicle for resolving it.

The first case the clinic chose, *Azel P. Smith v. City of Jackson, Mississippi*, required a cert. petition to be filed just three weeks after classes began in January. The case involves a group of older police officers who sued the city for instituting new wage scales that effectively gave smaller

increases to the more senior officers, claiming the city violated the Age Discrimination in Employment Act. A team of three students worked on the case: Michael Abate '05, William B. Adams '04, and Jennifer Thomas '04. (See p. 17 for a complete list of the spring 2004 clinic cases.)

"The first week of class we met four times," said Abate. "We got about ten minutes on the type of work we would be doing, a rundown of the cases, and a formal lecture on cert. petitions. Then they handed us a brief and a transcript [of a prior case] that was dismissed as 'improvidently granted,' and they said, 'Go to it.' We had ten days to draft a full cert. petition."

The timing was based on the Court's calendar, and deadlines were unyielding. "The brief has to be at the printer by 9 a.m. on the day it has to be filed," Karlan observed. "It's not as if Tommy or I could grant extensions—it's not within our power. These are the Court's deadlines, and the Court is not interested in hearing 'The dog ate my homework.'"

The clinic filed the cert. petition on February 11, then waited. While they knew their petition had a chance, and they had been deliberate in their choice of cases, the students were still surprised when word came down that petition for writ of certiorari in No. 03-1160, *Smith v. City of Jackson, Mississippi*, had been granted. "It was kind of surreal. It took a while to sink in," said Eric Feigin '05. Abate tucked a copy of the April 1, 2004, edition of *The New York Times* under his arm as he walked around the school: not only was the cert. petition granted, but an op-ed in the *Times* endorsed the clinic's side of the case.



PHOTOS: MISHA BRUK



Professor Pamela Karlan (left) and Lecturer Thomas Goldstein (above) coteach the Supreme Court Law Clinic.

In addition to filing four cert. petitions during the semester, the clinic also conducted several moot courts for attorneys who were preparing to argue cases before the Supreme Court. During these sessions, the students and faculty members played the role of Supreme Court justices, and the attorneys played themselves.

The most notable moot court the clinic conducted was for Michael Newdow, an emergency room doctor with a JD who was preparing to argue before the Court in *Elk Grove Unified School District v. Michael A. Newdow*. Pursuing the case on behalf of his daughter, Newdow would argue that the words “under God” should be stricken from the Pledge of Allegiance because it violated the constitutional separation of church and state.

Standing before a panel of faculty members and students, Newdow held a roster of the justices noting their religions, and proceeded to address the bench about personal faith. The panel urged him to start again, focusing on the legal issues before the Court. Newdow responded adroitly to a barrage of questions. By the time his 30 minutes were up, he’d been pumped about the constitutionality of prayer in the legislature and in the Supreme Court, as well as the words “In God We Trust” on the dollar bill. He was pushed on the issue of standing. (His daughter’s mother had primary custody, and it was unclear that the Court would recognize his standing.) And he got a clear, crisp directive to focus his argument that the recitation of the pledge was akin to prayer.

When the U.S. Supreme Court’s decision in the case came down, the justices dodged the question of whether the Pledge of Allegiance violated the Constitution, and instead ruled that Newdow did not have standing to bring the case because he did not have full custody of his daughter.

During a second moot court, this time for a case in which the Supreme Court and Environmental Law clinics had filed an amicus brief, *U.S. Department of Transportation v. Public Citizen*, students and faculty joined a team of lawyers working on the case to moot attorney Jonathan Weissglass of Altshuler, Berzon, Nussbaum, Rubin & Demain who later argued the case before the Supreme Court. At issue was the application of the National Environmental Policy Act and the Clean Air Act to Department of Transportation rules regarding cross-border licensing of Mexican trucks. The Court later held that the Department of Transportation does not have to conduct certain environmental impact studies before Mexican-domiciled trucks may be permitted into the country.

“Poor Jonathan,” said Adams, one of the student moot court participants. “There were so many of us. It was hard to get a word in edgewise. And I didn’t want to be the one to ask the dumb question.” While Adams was self-critical, Stephen Berzon of Altshuler, Berzon was quick to note that “the law students were really impressive.”



Professors Pamela Karlan (left) and Kathleen Sullivan (right) give advice to attorney Jonathan Weissglass during a moot court held at the clinic last spring.

With a third instructor, Amy Howe (Goldstein’s wife and law partner), on the teaching team, the Supreme Court Litigation Clinic is back in business again this fall. With good reason: Not only did the clinic compile a stellar track record, but the students learned a tremendous amount in the process. Most important, clinic students received unparalleled training in persuasive legal writing. While the Supreme Court’s documents are unique, “Many of the writing and analytic skills required to write a cert. petition transfer to all other forms of persuasive legal writing,” Karlan said. “We spend a lot of time on the students’ writing, going over it line by line.”

Students were divided into teams of two to three per case, and they submitted drafts to the whole group. “I’ve always hated group projects, . . . but I got a new sense of what working in a good group offers,” said Thomas, who plans to specialize in Indian law. “Given the pressure, we could have all hated each other. But the group was really dynamic and I wouldn’t have changed a thing.”

In addition to writing and collaborating, the students had to manage their own deadline schedules, working backward from the Court calendar. And they were exposed to a wide range of substantive legal subjects, including maritime law, the Americans with Disabilities Act, bankruptcy, age discrimination, and money laundering.

Students weren’t the only ones who benefited. So did the clients. Law firms used to be able to offset the cost of Supreme Court litigation, but that’s getting harder to do. More and more, “They are asking law professors and schools to participate,” said Thomas O. McGarity, professor of law at the University of Texas at Austin. McGarity participated in the Stanford moot court for the trucking case.

“The clinic’s real value-add is that the students did the legwork to get cert. granted,” explained Georgetown’s Lazarus, emphasizing the importance of the students’ role in shaping the Court’s docket. “You’re not going to get a lot of firms willing to spend that much time to get cert. granted. They’ll fall all over themselves to get the case once it’s granted. That’s an enormous public service that takes a real commitment on their [the clinic’s] part.” ■



## Supreme Court Clinic Cases

### Petitions for Writ of Certiorari:

*Azel P. Smith, et al. v. City of Jackson, Mississippi, et al.*

A group of older police officers have sued the city for instituting new wage scales that effectively give smaller increases to the more senior officers. The clinic argues that the federal Age Discrimination in Employment Act (ADEA) covers practices that have a disparate impact on older workers—that is, imposes liability without proof of a discriminatory purpose. The city, represented by Glen D. Nager '82, counters that the ADEA requires proof of intentional discrimination. The cert. petition has been granted and clinic lecturer Thomas Goldstein will argue the case before the Supreme Court in November.

*Richard G. Rousey, et ux. v. Jill R. Jacoway*

When Richard and Betty Jo Rousey filed for bankruptcy, they claimed that federal law permits them to keep the funds in their individual retirement accounts. Jill Jacoway, trustee of the estate, counters that these funds are not entitled to exemption. The clinic's cert. petition on behalf of the Rouseys has been granted, and the case will be argued before the Supreme Court in the fall.

*Haywood Eudon Hall v. United States*

Haywood Eudon Hall, president of Greater Ministries International Church, was convicted of money laundering conspiracy. The clinic submitted a cert. petition on behalf of Hall, arguing that the statute requires the government to prove commission of an overt act. The United States argues that it does not. The cert. petition has been granted. Hall's case was consolidated with the case of his co-defendant, David Whitfield. The clinic and Sharon Samek '87 have filed a joint brief along with Whitfield's lawyer, Richard Leavitt. The case will be argued before the Supreme Court in the fall.

*Douglas Spector, et al. v. Norwegian Cruise Line Ltd.*

Douglas Spector claims that the cruise line violated Title III of the Americans with Disabilities Act (ADA) by discriminating against passengers with disabilities and their companions. The cruise line argues that the ADA does not apply to foreign-flag carriers. The cert. petition is pending and scheduled to be addressed at the Supreme Court's September 27 conference.

### Opposition to Petition for Writ of Certiorari:

*Ann M. Veneman, Secretary of Agriculture, et al. v. Campaign for Family Farms, et al.*

The Campaign for Family Farms, the clinic's client, successfully argued in the court of appeals that the Pork Promotion Act violates the First Amendment because pork producers are required to pay assessments to fund generic advertising with which they disagree. The Secretary of Agriculture asked the Supreme Court to review the decision, and the clinic worked on the opposition to that cert. petition. The Court agreed to take a different case that raises similar issues. *Veneman v. Campaign for Family Farms* is being held pending the outcome of the other case.

### Merits Brief:

*Stewart v. Dutra Construction Co.*

Petitioner Willard Stewart was injured while working on a dredge for the Dutra Construction Company and sought personal injury damages as a "seaman" under the Jones Act. The district court ruled in favor of Dutra, and the First Circuit Court of Appeals affirmed. The clinic contributed to the petitioner's merits brief, arguing that a dredge is a "vessel of navigation" for the purposes of qualifying Stewart for seaman status. The case will be argued in November.

### Moot Court:

*Elk Grove Unified School District and David W. Gordon, Superintendent v. Michael A. Newdow, et al.*

Michael Newdow challenged the constitutionality of the Pledge of Allegiance on behalf of his daughter, seeking to have the words "under God" removed. The clinic held a moot court to help prepare Newdow for oral argument. The Supreme Court held that Newdow lacked legal standing to bring the case because he did not have sufficient custody of his daughter to legally represent her.

### Moot Court and Brief of Amici Curiae:

*United States Department of Transportation v. Public Citizen, et al.*

The Supreme Court and Environmental Law clinics submitted an amicus brief on behalf of three environmental groups, supporting the respondents. The case concerned the question of whether the U.S. Department of Transportation was required to conduct certain environmental impact studies before Mexican-domiciled trucks would be allowed into the United States. The clinic held a moot court to help prepare attorney Jonathan Weissglass of Altshuler, Berzon, who argued the case before the Supreme Court. The Court ruled that the Department of Transportation was not required to conduct the studies before the trucks could operate in the U.S.

# Blazing Trails

**Rick West '71 spent years championing Native American legal rights. Now he's in charge of the Smithsonian's newest museum, the National Museum of the American Indian.**

BY JEFFREY H. BIRNBAUM

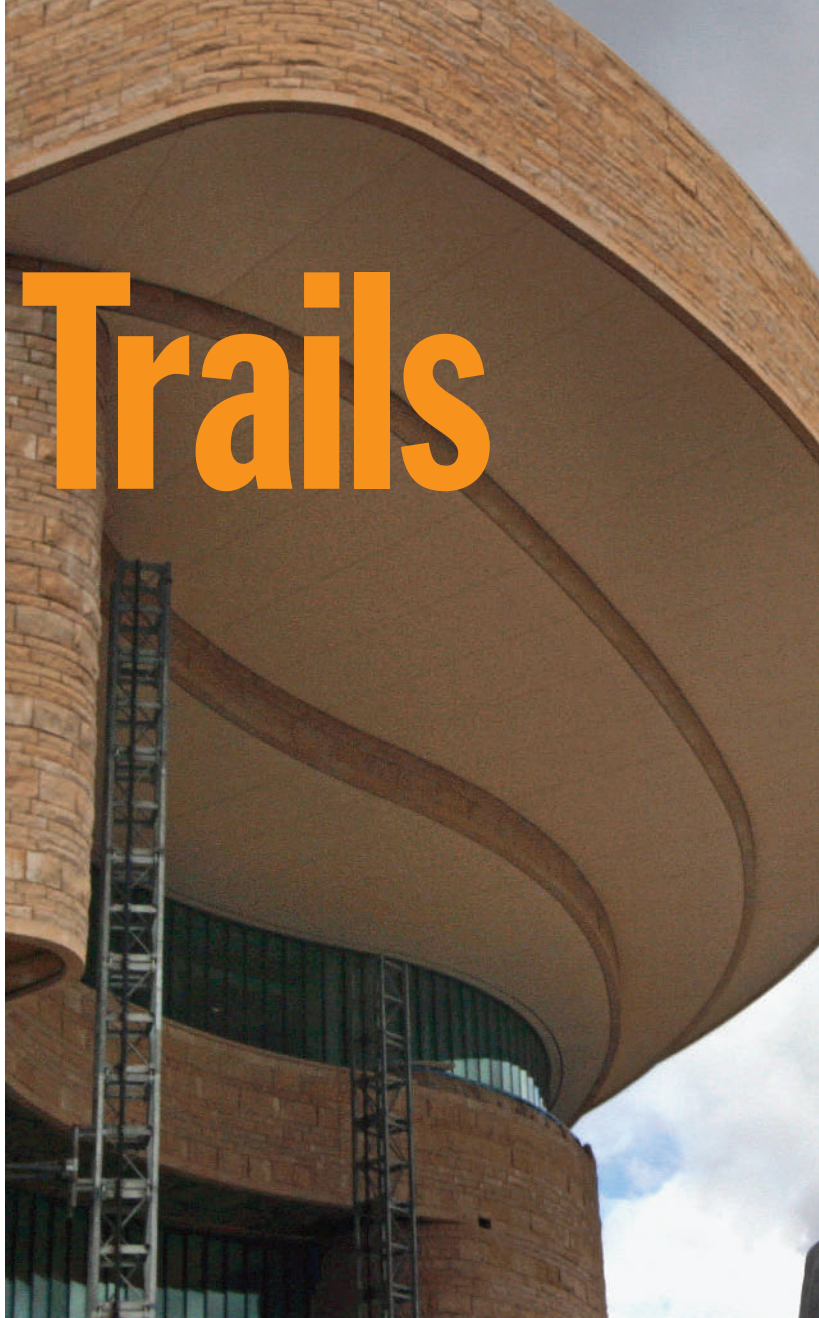
Very few people actually get the job of their dreams. Rick West of Washington, D.C., is one of those people—and it shows. He peppers his conversations with ecstatic phrases like “I love it” and “I’m thrilled!” Even his clothes are upbeat. He favors pastel-colored shirts and carefully tailored suits. In a town of bland bureaucrats and play-it-safe politicians, he stands out. “In a very singular way,” said West with characteristic verve, “my job has pulled together the threads of my life.”

W. Richard West, Jr., '71 is the director of the National Museum of the American Indian (NMAI) and he isn't exaggerating. Prior to being appointed the museum's founding director in 1990, he had already been a lawyer, a lobbyist, a fund raiser, a historian, an arts advocate, and, as an integral part of it all, a lifelong activist for his fellow Native Americans. His mother was an accomplished classical pianist and his father was one of this country's foremost American Indian artists. When a Smithsonian Institution search committee asked him whether he would consider applying for the post, West jumped at the chance.

Initially, the museum community didn't welcome him. Quite the contrary. Despite his many qualifications, West lacked the most basic credential: He had never run a museum before. The closest he had come was serving on an advisory committee to the Smithsonian about how to expand its ethnic outreach and offerings. What made the NMAI job even

more challenging was that West wouldn't be running just a single museum. The position would require him to administer three separate facilities in three different cities: New York City's George Gustav Heye Center, which is a permanent exhibition and educational facility; Suitland, Maryland's Cultural Resources Center, a research and storage facility; and the new, National Museum of the American Indian on D.C.'s National Mall next to the Air and Space Museum.

“I was not the most obvious candidate, because I did not come out of a pure museum background,” West said frankly. But the Smithsonian was looking for someone who could do more than oversee artifacts. It needed a spokesman for the nation's long-oppressed Indian minority—in fact, someone from that world—who could also speak the language of, and get along well with, white people. On paper West looked like he would fit the bill and, as the last 14 years of his sometimes-difficult tenure have proved, he definitely







went on to become the first Indian to get a master of fine arts degree from the University of Oklahoma and to make his name as a skilled artist in the Native American genre known as Plains painting. His works still hang in museums around the country.

The Wests' children, Rick and his younger brother Jim, grew up in a four-room log cabin on the campus of Bacone College, a small, mostly Indian university in Muskogee, Oklahoma, where Dick West worked as a professor. The family lived comfortably thanks to his additional income as an artist. They also hewed to their Indian roots. They frequently observed the many rites and rituals of the Southern Cheyenne people, including the famous Sun Dance. The boys were proficient enough that when Rick was 13, the Wests were invited to travel to New York City so that he and his younger brother could perform native dances in full regalia on a television show called *Off to Adventure*.

But the experience of travel in general—and that trip in particular—wasn't always a joy for the Wests. The family would occasionally be turned away from stores and motels because they weren't white. Signs at the time warned visitors, "No Indians or Dogs Allowed." And in New York, young

did. "Rick West stands proudly in both cultures," said Roger Kennedy, the former director of the National Museum of American History. "He was the right person for the job."

Almost anyone who has known West through the years agrees. "He's a real buttoned-down, meticulous lawyer who people wouldn't pick out as an Indian," said Cate Stetson, a former law partner of West's now with the firm Stetson & Jordan in Albuquerque, New Mexico. "Yet he's completely committed to the whole idea of tribal needs and tribal history. That's his mission."

West was born 61 years ago, the son of Walter Richard West, Sr., a descendant of Cheyenne chiefs, and Maribelle McCrea West, the daughter of white Baptist missionaries. West Sr., who was known as Dick, was educated at Indian boarding schools in which military discipline was designed to wring the native culture out of him. Instead, he

Rick visited musty museums that contained Indian memorabilia and got the impression that his people, whom he knew to be alive and well, were considered by the outside world to be dead and defeated. He remembers to this day how disturbed he was by that experience.

But neither he nor his brother was hobbled by discrimination and ignorance. They went on to become successful professionals. Jim became a banker and Rick, a lawyer—much to the surprise of their parents. After all their exposure to the arts at home, their mother would wonder aloud, and only half in jest, "What did I do wrong?" Rick graduated magna cum laude in American history with a Phi Beta Kappa key from the University of Redlands in Redlands, California. He then entered Harvard University's doctoral program in American history. But the history-professor business, West recalled, was in a "precipitous state of collapse at the time," so after completing a master's degree in 1968, he

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chose to switch gears and get a law degree instead. After looking around, he picked Stanford Law School.

Stanford was a natural choice for several reasons. First of all, he says, it was a school of excellent reputation that was located closer to his home than Harvard or other good schools in the east. Although West had liked Harvard, he yearned to return to his native west. He also loved Stanford's campus. "It was physically such a beautiful place," he said. But it was the Bay Area's left-leaning ideology and socially liberal politics that attracted him most. "If you couldn't be in Cambridge [Mass.] in the late '60s and early '70s, why not the Bay Area? It was very close."

Besides, by the time he had reached his early twenties, he knew that his life's purpose would focus on improving the lot of his fellow Indians. The political activism of the period only enhanced his desire. And thus, he said, the prospect of teaching American history "just wasn't quite close enough to the barricades for me; law was the way I saw of getting closer."

West was the only American Indian enrolled at Stanford Law School. As far as he knows, he was only the second Native American to enroll at the law school in its history. But, he said, "I knew going into law school that I wanted to practice Indian law." And Stanford was glad to help him do so. "Stanford Law School was highly receptive to the interface between law and the outside world, especially as it related to social issues," recalled West. "It was even open to having Indian law taught there. In my third year, we succeeded in convincing Stanford to hire—as a professor on an adjunct basis—Monroe Price, a very distinguished [Indian law] professor from UCLA."

West flourished at Stanford. He received a Hilmer Oehlmann, Jr. Prize for excellence in legal writing and served as an editor and note editor of the *Stanford Law*



Rick West and his father, Dick West (seated), both of the Southern Cheyenne tribe. Dick West was a prominent artist in the Native American genre known as Plains painting. His paintings still hang in museums around the country.

PHOTO: ABE FRANKLIN

*Review*. "I loved it!" he said of his experience. "It's an excellent law school. I had a fantastic legal education. It was an exciting time."

After he graduated in 1971, West clerked for a year in the United States Court of Appeals for the Ninth Circuit, in San Francisco, while his wife, Mary Beth Braden, completed her own Stanford law degree. Rick and Mary Beth met in Boston in 1966 while Rick was enrolled at Harvard and Mary Beth was working for a management consulting firm. After she graduated in 1972, they moved to Washington, D.C., where West joined the law firm of Fried, Frank, Harris, Shriver & Jacobson, which boasted one of the nation's outstanding practices in Indian law. Working for such a big-name law firm might seem like an odd place to foment revolution. But West asserts that the

work he and his colleagues did in the firm's Indian department opened vast new vistas for his people.

West occupied every day with efforts to advance his people's oft-threatened legal standing. For instance, he worked on a case that helped to prevent the loss of thousands of acres of land from the Cheyenne River/Sioux reservation in South Dakota. "That really mattered to me," he said, "and to the tribes." As hard as it may be to believe, West once had to go to court to force a county in Arizona to seat on a board of supervisors a legitimately elected Navajo. "They said he wasn't a state citizen, because he was an Indian," West said with a shake of his head.

West did more than write briefs and make arguments in court. He registered as a lobbyist in the U.S. Congress and pressed the case for Indian rights before national lawmakers. In the early 1980s he was instrumental in passing into law the Tribal Governmental Tax Status Act, which gave tribes the same powers of taxation that state governments have. That was one of many statutes that cemented the sovereignty that Native American tribes enjoy today and that



are at the heart of their rising economic well-being in the United States. West's outstanding work as a lawyer and lobbyist allowed him to become, in 1979, the first Indian to be elevated to partner status at Fried Frank and, for that matter, at any national law firm. But he never got too comfortable. He continued to use his position to help his people. At Stanford, for example, he encouraged both the law school and the university to work harder at recruiting and retaining Indians, which he says they do well to this day.

In 1988, West was ready for a change of scene. Fried Frank had de-emphasized its Indian practice, and West decided to move to Albuquerque and join the Indian-owned law firm Gover, Stetson, Williams & West, P.C. Soon after arriving, however, the Smithsonian came a-courting and he, his wife, and two children headed back to D.C. "This," he said, "was what I was born to do."

"He's very driven and committed, a perfectionist, and his integrity is unparalleled," Stetson said. "His museum is just another way for him to fight for his culture and to win."

The task of managing so large an enterprise hasn't been easy. He has had a few serious stumbles along the way. Federal funding was periodically imperiled, especially when fiscally conservative Republicans took over Congress in the mid-1990s. West's previous experience as a lobbyist came in handy when he was forced to fight to restore full funding for his project, which he eventually was able to do. He also had to change architects in the middle of construction of the \$199 million museum on the Mall. Two of the firms that he had retained for the project couldn't get along and he was given no choice but to make a switch.

The transition wasn't pretty, but it worked. The imposing, distinctively rounded limestone structure opened with great fanfare on September 21. More than 25,000 Native Americans participated in the opening ceremonies, the largest number of Indians ever assembled in Washington. "It could be the cultural event of the decade," said West with only slight hyperbole. The building occupies the last congressionally designated site for such construction on the entire National Mall.

Under West's guidance, the museum is unlike any museum you've ever seen. It has plenty of exhibitions, of course. Thanks to the tireless 587 (and often ruthless) collecting of George Heye, a New York banker who

toiled in the first half of the last century, the museum has more than 800,000 items in its collection. Among them are Sitting Bull's drum and a fringed shirt once worn by Crazy Horse. But West's is a "living museum." Along with anthropologists and other academic experts, tribal leaders themselves helped decide what to display. "The Native people themselves are the primary voices of interpretation," he said.

A great deal of what is seen there is as much performance art as static exhibitions. Unlike the museums of West's youth, this one views Native American culture, while ancient, as also ongoing. So the museum opened with a festival that celebrated the 2.5 million American Indians who still live in this country and the more than 30 million indigenous people who are scattered throughout the Western Hemisphere.

West is especially proud that Indians themselves have been major contributors to the financial success of the museum. Three tribes—the Mashantucket Pequots, the Mohegans, and the Oneida Indian Nation—donated \$10 million each to the Smithsonian to aid the project. Such riches wouldn't have been possible without the work of West and other dedicated lawyers through the years that secured for these and other tribes the rights of sovereignty. West stoutly defends the source of the tribes' riches, gambling, as something that gets a bad rap in the press but, in fact, has been a lifesaver for many once-destitute tribes.

"What is thrilling to me is that these people took 10 million bucks out of their gaming revenues and sunk it into a non-Indian venture [the Smithsonian Institution]," West said. "It's wonderful that they did that." In fact, he notes, of the approximately \$100 million in private money collected to build the museum, \$35 million came from Native

American communities, many of which, he said, are still operating "as if they were third-world countries."

Today, West is fully accepted in both the Indian and non-Indian cultures. Despite the museum establishment's original questions about him, West has served as chairman of the American Association of Museums. He's also a board member on such mainstream organizations as the Ford Foundation and Stanford University. But his greatest achievement, he says, was to have been named one of the Southern Cheyenne's 44 peace chiefs a couple of years ago. Outside of his own family, "Nothing has been more important to me." That, and the opening of his museum, have brought to completion the full circle of his life. ■

The new National Museum of the American Indian is located on the National Mall near the Capitol, seen in the distance.



PHOTO: ROBERT C. LAUTMAN

# The Annual Faculty Report

The intellectual life at Stanford Law School was particularly vibrant this past year, as evidenced by the sampling of the faculty's published work that follows.



**Janet Cooper Alexander**  
(MA '73)

*Frederick I. Richman Professor of Law*

ARTICLES: "Procedural Design and Terror Victim Compensation," 53 *DePaul Law Review* 627 (Winter, 2003)



**Barbara Allen Babcock**

*Judge John Crown Professor of Law, Emerita*

ARTICLES: "Hiibel Revisited: Apocalyptic Constitutional Moment Ahead," *Slate* (March 10, 2004)



**Joseph Bankman**

*Ralph M. Parsons Professor of Law and Business*

ARTICLES: "Terminating Tax Shelters: Has California Broken the Legislative Logjam?" with Daniel Simmons, 101 *Tax Notes* 1111 (December 1, 2003)



**R. Richard Banks**  
(BA/MA '87)

*Professor of Law and Justin M. Roach, Jr. Faculty Scholar*

ARTICLES: "Race, Policing, and the Drug War," 56 *Stanford Law Review* 571 (December 2003) • "Racial Profiling and Antiterrorism Efforts," 89 *Cornell Law Review* 1201 (2004) • "The Benign-Invidious Asymmetry in Equal Protection Analysis," *Hastings Constitutional Law Quarterly* (forthcoming)

PRESENTATIONS: "Brown v. Board of Education: 50 Years Later," (panel) 38 *Stanford Lawyer* 20 (Spring 2004) • Conservatism in Black America, (forum) (February 24, 2004), sponsored by the Black Law Students Association, Stanford Law School



**John H. Barton '68**

*George E. Osborne Professor of Law, Emeritus*

ARTICLES/BOOK CHAPTERS: "New International Arrangements in Intellectual Property and Competition Law," in *Economics, Law and Intellectual Property: Seeking Strategies for Research and Teaching in a Developing Field*,

Ove Granstrand, editor, Kluwer Academic Publishers (2003) • "Issues posed by a world patent system," 7 *Journal of International Economic Law* 341, also being published in *International Public Goods & Transfer of Technology under a Globalized Intellectual Property Regime*, Maskus and Reichman, editors, Cambridge (2004) • "The international video industry: Principles for vertical agreements and integration," 22 *Cardozo Arts & Entertainment Law Journal* 67 (2004) • "TRIPS and the global pharmaceutical market," 23 *Health Affairs* 146 (May/June 2004)



**William Cohen**

*C. Wendell and Edith M. Carlsmith Professor of Law, Emeritus*

BOOKS: 2004 SUPPLEMENTS TO CASEBOOKS: *Constitutional Law: Civil Liberty and Individual Rights*, with David Danelski, Foundation Press (2004) • *Constitutional Law Cases and Materials*, with John Varat, Foundation Press (2004) • *The First Amendment: Constitutional Protection of Expression and Conscience*, Foundation Press (2004)



**G. Marcus Cole**

*Professor of Law, Helen L. Crocker Faculty Scholar, and Associate Dean for Curriculum*

ARTICLES: "Shopping for Law in the Coasean Market," 1 *NYU Journal of Law & Liberty* (forthcoming 2004) • "Deriving Derivative Suits by Creditors' Committees in Chapter 11," *Stanford Journal of Law & Business* (forthcoming)

BRIEFS: *In re Integrated Telecom Express, Inc.*, U.S. Court of Appeals for the Third Circuit, case no. 04-2411

PRESENTATIONS: Conservatism in Black America, (forum) (February 24, 2004), sponsored by the Black Law Students Association, Stanford Law School



**Richard Craswell**

*William F. Baxter-Visa International Professor of Law*

ARTICLES: "Kaplow and Shavell on the Substance of Fairness" (Symposium on Louis Kaplow

and Steven Shavell, Fairness versus Welfare), 32 *Journal of Legal Studies* 248 (2003) • "Instrumental Theories of Compensation: A Survey," 40 *San Diego Law Review* 1135 (2003)



**Mariano-Florentino Cuéllar**  
(MA '96, PhD '00)

*Associate Professor of Law and Deane F. Johnson Faculty Scholar*

ARTICLES: "The Mismatch between State Power and State Capacity in Transnational Law Enforcement," 22 *Berkeley Journal of International Law* 15 (2004) • "How Much Do We Give Up for Security?," *San Jose Mercury News*, (op-ed) p. 11B (March 27, 2003) • "Casualty of Tax Cut: Domestic Spending," *San Jose Mercury News*, (op-ed) p. 11B (July 10, 2003) • "Tribunals Diminish Legitimacy," *San Jose Mercury News*, (op-ed) p. 4P (July 20, 2003) • "Reflections on Sovereignty and Collective Security," 40 *Stanford Journal of International Law* 211 (2004)



**Michele Landis Dauber**

*Associate Professor of Law and Bernard D. Bergreen Faculty Scholar*

ARTICLES: "The War of 1812, September 11th, and the Politics of Compensation," 53 *DePaul Law Review* 289 (Winter 2003) • "The Hazards and Vicissitudes of Social Security Privatization," Center for American Progress (online) (September 3, 2004)



**George Fisher**

*Judge John Crown Professor of Law*

BOOKS: *Federal Rules of Evidence 2003-04 Statutory Supplement*, Foundation Press (2003)

ARTICLES: "A Practice as Old as Justice Itself," *The New York Times*, Sept. 4, p. 11, (September 28, 2003) • "U.S. Apes Nazi Rationale," with Allison Marston Danner, *San Francisco Chronicle*, (op-ed) p. D1 (March 16, 2003) [March 17, 2003, authors protest title written by the *San Francisco Chronicle*]

## Taking on Orthodoxy in Race and the Law

Newly tenured Professor R. Richard Banks examines policing, adoption, and marriage.

Professor R. Richard Banks (BA/MA '87) is up to his elbows in past lives. Digging his way through stacks of books and papers in his Stanford Law School office, he reaches for an accordion folder and flips through the partitions in search of old newspaper clippings—the remnants of a former life as a freelance journalist in the late 1980s. “Here’s one I wrote for the *Chicago Tribune* on the drug wars,” he said, pulling yellowed op-eds out of hiding, “and here’s a piece I did as a columnist for the old *Peninsula Times Tribune*,” a newspaper, he jokes, that went out of business a year after he began writing his weekly column.

As an opinion writer whose work has appeared in dozens of newspapers Banks tackled a wide range of subjects—from affirmative action to college athletics. His incisive and often unconventional take on issues of race, equality, and cultural values still informs his work today as a professor at Stanford Law School, where he teaches classes on property, family law, and race and the law.

The 39-year-old Banks joined the law school faculty in 1998. He was recently granted tenure and named Professor of Law and Justin M. Roach, Jr. Faculty Scholar. His path to academia was far from direct. After receiving his bachelor’s and master’s degrees from Stanford in 1987, Banks ran Stanford’s Upward Bound program, which prepares disadvantaged teens for college, and bought and sold real estate.

He developed his drive and ambition from watching his father, a Cleveland barber who always worked a second job, and from his three older sisters. (Banks’s mother died when he was nine.) His father desperately wanted him to attend Harvard University for college, but Banks refused to apply. He had his sights set on Stanford. Said Banks, “It was one of only two really big arguments we ever had.”

It wasn’t until his father passed away in 1989 that Banks decided to give Harvard a try, this time for law school. Banks was attracted to law because, he said, it “is one of the few disciplines that is intellectually stimulating, abstract, and theoretical, yet also concerned with public policy and actual controversies.”

Banks’s experience as an investor piqued his interest in real estate law, and after receiving his JD in 1994, he joined O’Melveny & Myers LLP in San Francisco, until his then girlfriend and now wife accepted a teaching post at Yale University. After moving to New Haven, Connecticut, Banks spent a year as the Reginald F. Lewis Fellow at Harvard Law School, then clerked for Judge Barrington D. Parker, Jr., U.S. District Court, Southern District of New York, before returning to Stanford.

Banks has recently started work on a book that revisits the concern with family formation and racial equality that marked his first scholarly article. “Compared with other groups, African-Americans are much less likely to marry and much more likely to divorce,” he said. While most scholars have explained the lack of marriage among blacks in terms of the lack of marriageable black men, Banks has another influence in mind: the commitment of black women, far beyond that of any other group, to marry within their race. Banks plans to show that such racial solidarity may, ironically, undermine the formation and stability of African-American families and, by extension, hinder racial progress.

“The black community would be well served if more black women considered marrying non-black men,” he said. “People have all sorts of queasy feelings about interracial relationships. I want to reorient that debate.”

Banks’s ideas are sure to provoke spirited reactions. Yet he never tires of grappling with difficult issues. Now a father of three young boys, Banks draws inspiration from his oldest son in particular. He incessantly questions conventional wisdom, he said of his 6-year-old son, Ebbie. “He asks good questions,” said Banks. “And that’s the beginning of good scholarship.” —Nina Nowak



PHOTO: STEVE GLADELTER



## Corporate Finance and Governance Expert Joins Law Faculty

Robert Daines plans to build bridges between law and business schools.

**M**ost people don't go into investment banking as a shortcut into academia, quips Robert M. Daines, the inaugural Pritzker Professor of Law and Business. But Daines had a professorship in mind when he took a job at Goldman, Sachs & Co., where he advised firms on bond and bank financings. "I wanted to learn about how business transactions were actually done. I felt it would give me a different perspective on teaching and research," explained Daines. "I had to hurry and leave before they made me rich," he added.

Daines joined the Stanford Law School faculty this summer from New York University School of Law, where he went after leaving Goldman Sachs. The Yale law graduate will teach corporate finance, corporations, deals, corporate governance, and one class a year at the Graduate School of Business, where he has a courtesy appointment.

Daines's plan to understand the business world before entering academia appears to have worked: Much of his research in the field has shattered assumptions long held by academics. One example was a study with Michael Klausner, Nancy and Charles Munger Professor of Business and Professor of Law, on protections afforded to managers during initial public offerings.

"Academics had said that when a firm goes public, it will do all the right stuff," including making managers vulnerable to a hostile takeover, Daines said. The idea was that managers who fear losing their jobs in a takeover will work harder. But about half the firms going public had takeover defenses protecting the managers' positions. The two standard assumptions—that firms will act in a way that provides the most value to investors and that takeover defenses are bad for business—can't both be right, Daines pointed out. "Either takeover defenses are good, or firms going public don't do the right thing," he said. "One assumption has to go, but we don't know which yet."

Daines, who just turned 40, decided to move his wife and five children to the Stanford campus, where they're renovating a house to fit them all, because, he said, "It was a chance to join a great school."

Daines is the son of a Brigham Young University business professor who graduated from Stanford with an MBA. A BYU graduate himself, Daines hails from Provo, Utah, which, he said, is "a bit like Palo Alto—probably more similar than either place would like to admit." He wanted

a similar environment for his children: "I wanted to be able to bike to work and have my kids visit me in my office."

One of the topics Daines plans to pursue at Stanford is the compensation of chief executive officers. "Some CEOs get paid a lot, and some CEOs get paid only moderately obscene amounts," he said. With Lewis Kornhauser of New York University and Vinay Nair of the Wharton School of the University of Pennsylvania, Daines hopes to learn if there's a pattern to the paychecks. "We're trying to figure out if the CEOs who get paid a lot are the most skilled," Daines said. "It might be like sports—some CEOs are Michael Jordan, and some are not. But it might also be luck."

While he's developed a reputation for shattering academic assumptions, Daines said he doesn't pick research topics with the intent of disproving theories. "I'm more interested in finding out how things actually work," he said. "It's not about sticking a finger in someone's eye."

Besides his research, Daines said one of his goals is to build a better bridge between the schools of law and business. "I'd like to encourage more cooperation, with law and business students taking classes and doing research together," he said. "Increasingly, you need to know finance to understand law, and law to understand what's going on in the financial world." —Mandy Erickson



PHOTO: STEVE GLADFELTER



**Richard Thompson Ford**  
(BA '88)

George E. Osborne Professor  
of Law

**BOOKS:** "Against Cyberspace," in *The Place of Law*, Austin Sarat, Lawrence Douglas, and Martha Merrill Umphry, editors, University of Michigan Press (2003) • *Racial Culture: A Critique*, Princeton University Press (forthcoming)

**ARTICLES:** "Bourgeois Communities: A Review of Gerald Frug's City Making," 56 *Stanford Law Review* 231 (2003) • "Love It: The Recall Is Pure Democracy," *San Jose Mercury News*, (op-ed) p. 9B (August 14, 2003) • "Recall Symptomatic of Political Ills: Loss of Political Center Led to Voters' Revolt," *San Francisco Chronicle*, (op-ed) (October 5, 2003) • "Civil Disobedience: San Francisco Chooses the Wrong Way to Flout the State," *Slate* (February 23, 2004) • "Brown's Ghost," 117 *Harvard Law Review* 1305 (March 2004) • "A Story of Love, Marriage, and Litigation Strategy," *Slate* (June 1, 2004)



**Barbara H. Fried**

William W. and Gertrude H. Saunders Professor of Law

**BOOKS:** *Pragmatic Consequences of Foundational Principles*, with Mark G. Kelman (forthcoming)

**ARTICLES:** "Left-Libertarianism: A Review Essay," 32 *Philosophy and Public Affairs* 66 (2004) • "If You Don't Like It, Leave It: The Problem of Exit in Social Contractarian Arguments," 31 *Philosophy & Public Affairs* 40 (Winter 2003) • "Ex Ante/Ex Post," 13 *Journal of Contemporary Legal Issues* 123 (2003) • "Proportionate Taxation as a Fair Division of the Social Surplus: The Strange Career of an Idea," 19 *Economics and Philosophy* 211 (2003)



**Lawrence M. Friedman**  
Marion Rice Kirkwood  
Professor of Law

**BOOKS:** *Legal Culture in the Age of Globalization: Latin America and Latin Europe*, edited with Rogelio Perez-Perdomo (2003) • *Private Lives: Families, Individuals and the Law*, Harvard University Press (forthcoming)

**ARTICLES/BOOK CHAPTERS:** "Age Discrimination Law: Some Remarks on the American Experience," in *Age as an Equality Issue*, Sandra Fredman and Sarah Spencer, editors, Hart Publishing (2003) • "Introduction," 4 *Theoretical Inquiries in*

*Law* 437 (July 2003) • "Total Disaster and Total Justice: Responses to Man-Made Tragedy," with Joseph Thompson, 53 *DePaul Law Review* 251 (Winter 2003) • "Frontiers: National and Transnational Order," in *Public Governance in the Age of Globalization*, Karl-Heinz Ladeur, editor, Ashgate (2004) • "Introduction" to *Self-Censorship and the Struggle for Press Freedom in Hong Kong*, by Anne S.Y. Cheung, Kluwer Law International (2003)



**Ronald J. Gilson**

Charles F. Meyers Professor of  
Law and Business

**BOOKS/BOOK CHAPTERS:**

"Engineering a venture capital market: Replicating the U.S. template," in *Global Markets, Domestic Institutions: Corporate Law and Governance in a New Era of Cross-Border Deals*, Curtis Milhaupt, editor, Columbia University Press (2003) • "Disputing through Agents: Cooperation and Conflict between Lawyers in Litigation," with Robert Mnookin, in *Foundations of the Law and Ethics of Lawyering*, George Cohen and Susan Koniak, editors, Foundation Press (2004) • *Cases and Materials on Corporations*, with Jesse Choper and John Coffee, Aspen Publishers (forthcoming) **ARTICLES:** "The Mechanisms of Market Efficiency Twenty Years Later: The Hindsight Bias," 28 *Journal Corporate Law* 715 (2003) • "Controlling Controlling Shareholders: New Limits on the Operate, Sale of Control, and Freeze Out Alternatives," 152 *University of Pennsylvania Law Review* 785 (December 2003)



**Paul Goldstein**

Stella W. and Ira S. Lillick  
Professor of Law

**BOOKS:** *Copyright, Patent, Trademark and Related State Doctrines*, Revised, 5th edition, Foundation Press (2004) • Supplement for *Copyright*, Aspen Law & Business (September 2004)

**ARTICLES/BOOK CHAPTERS:** "Fair Use in a Changing World," 50 *Journal of Copyright Society of the U.S.A.* 133 (2003)



**William B. Gould IV**

Charles A. Beardsley Professor  
of Law, Emeritus

**BOOKS:** "Labor Law for a Global Economy: The Uneasy Case for International Labor Standards," in *International Labor Standards: Globaliza-*

*tion, Trade, and Public Policy*, edited with Robert J. Flanagan, Stanford University Press (2003) • *Primer on American Labor Law*, 4th edition, MIT Press (2004)

**ARTICLES:** "Labor Law and Its Limits: Some Proposals for Reform," 49 *The Wayne Law Review* 667 (2003) • "Introduction" (Symposium: Sports and the Law), 15 *Stanford Law and Policy Review* 1 (2004) • "Labor Issues in Professional Sports: Reflections on Baseball, Labor, and Antitrust Law," (Symposium: Sports and the Law), 15 *Stanford Law and Policy Review* 61 (2004)

**OTHER:** *In the Matter of 2003 WGAW Election Protest: Report and Recommendations*, Los Angeles (January 5, 2004)



**Henry T. "Hank" Greely**  
(BA '74)

Deane F. and Kate Edelman  
Johnson Professor of Law\*

**BOOK CHAPTERS:** "The

Control of Genetic Research: Involving the 'Groups Between'," in *Rights and Resources*, Frances Miller, editor, Ashgate Publishing (2003) • "Procedures for EPA Review of Intentional Human Dosing Studies," in *Intentional Human Dosing Studies for EPA Regulatory Purposes: Scientific and Ethical Issues*, National Academies Press (2004) • "Prediction, Litigation, Privacy, and Property: Some Possible Legal and Social Implications of Advances in Neuroscience," in *Neuroscience and the Law: Brain, Mind, and the Scales of Justice*, Brent Garland, editor, Dana Press (forthcoming)

**ARTICLES:** "Defining Chimeras—And Chimeric Concerns," 3 *American Journal of Bioethics* 17 (2003) • "Disabilities, Enhancements, and the Meanings of Sports" (Symposium: Sports and the Law), 15 *Stanford Law and Policy Review* 99 (2004) \* Pending approval of the Stanford University Board of Trustees



**Joseph A. Grundfest '78**  
W. A. Franke Professor of  
Law and Business

**ARTICLES/BOOK CHAPTERS:**

"Prosecuting the Press," 38 *Stanford Lawyer* 5, with Robert Weisberg (Fall 2003) • "How Much is Too Much?" *The New York Times*, (op-ed) p. A23, (May 28, 2004) • "Advice and Consent: An Alternative Mechanism for Shareholder Participation in the Nomination and Election of Corporate Directors," in *Shareholder Access to the Corporate Ballot*,



Lucian Bebchuk, editor, Harvard University Press (forthcoming) • “Stock Price Response to News of Securities Fraud Litigation: An Analysis of Sequential and Conditional Information,” with Paul Griffin and Michael Perino, 40 *Abacus: A Journal of Accounting, Finance and Business Studies* 21 (2004)



**Thomas C. Heller**

*Lewis Talbot and Nadine Hearn Shelton Professor of International Legal Studies*

**BOOK CHAPTERS:** “Lawyers and Political Scientists: How much common ground?” in *Linking Politics and Law*, Nomos, Baden-Baden (2003) • “Development and Climate: Engaging Developing Countries,” with P.R. Shukla, in *Beyond Kyoto: Advancing the International Effort Against Climate Change*, Pew Center on Global Climate Change (December 2003)

**ARTICLES:** “Carbon Intensity of Electricity Generation and CDM Baseline: Case Studies of Three Chinese Provinces,” with Zhang and May, 33 *Energy Policy* 451 (2004)



**Deborah R. Hensler**

*Judge John W. Ford Professor of Dispute Resolution*

**ARTICLES/BOOK REVIEWS:** “Money Talks: Searching for Justice through Compensation for Personal Injury and Death,” 53 *DePaul Law Review* 417 (Winter 2003) • “Our Courts, Ourselves: The Transformation of the U.S. Court System,” 108 *Penn State Law Review* 165 (2003) • “Two Takes on the Civil Litigation Wars,” (book review) 87 *Judicature* 83 (2003) • “Choosing Arbitration: What Consumer Contracts Tell the ‘Average Joe’ about His Options,” with Linda Demaine, 67 *Law & Contemporary Problems* (Winter/Spring 2004)



**Pamela S. Karlan**

*Kenneth and Harle Montgomery Professor of Public Interest Law*

**BOOKS:** 2003 AND 2004 ANNUAL CASEBOOK SUPPLEMENTS: *Civil Rights Actions: Enforcing the Constitution*, with John Jeffries, Jr., Peter Low, and George Rutherglen, Foundation Press • *Constitutional Law*, with Geoffrey Stone, Louis Seidman, Cass Sunstein, and Mark Tushnet, Aspen Law and Business Publishers • *The Law of Democracy: Legal Structure of*

*the Political Process*, with Samuel Issacharoff and Richard Pildes, Foundation Press

**ARTICLES/BOOK CHAPTERS:** “Disarming the Private Attorney General,” 2003 *University of Illinois Law Review* 183 (given as the David C. Baum Lecture at the University of Illinois) • “Groups, Politics, and the Equal Protection Clause,” with Samuel Issacharoff, 58 *Miami Law Review* 35 (2003) • “Convictions and Doubts: Retribution, Representation, and the Debate over Felon Disenfranchisement,” 56 *Stanford Law Review* 1147 (2004) • “Georgia v. Ashcroft and the Retrogression of Retrogression,” 3 *Election Law Journal* 21 (2004) • “Pricking the Lines: The Due Process Clause, Punitive Damages, and Criminal Punishment,” 88 *Minnesota Law Review* 880 (2004) (given as the William B. Lockhart Lecture at the University of Minnesota) • “Critics of Gay Unions Can Look at the Stats,” *New Orleans Times-Picayune*, (op-ed) (April 1, 2004)

**BRIEFS:** U.S. Department of Transportation v. Public Citizen 541 U.S. \_\_\_\_ (2004) (brief for amici curiae Defenders of Wildlife, Environmental Defense, and Sierra Club) • Vieth v. Jubelirer, 541 U.S. \_\_\_\_ (2004) (brief for amici curiae Texas House Democratic Caucus and U.S. Representatives Chris Bell, Martin Frost, Sheila Jackson Lee, and John Lewis) • Dillard v. Baldwin County Commission (11th Cir.) (brief for appellants and appellant-intervenors) • Smith v. City of Jackson, No. 03-1160 (cert. granted, Mar. 29, 2004) (petition for certiorari and brief for the petitioners) • Rousey v. Jacoway, No. 03-1407 (cert. granted, June 7, 2004) (petition for certiorari and brief for the petitioners) • Hall v. United States, No. 03-1294 (cert. granted, June 21, 2004) (petition for certiorari and brief for the petitioners) • Spector v. Norwegian Cruise Line Limited, No. 03-1388 (cert. pending) (petition for certiorari)



**Mark G. Kelman**

*William Nelson Cromwell Professor of Law and Vice Dean*

**BOOKS:** *Pragmatic Consequences of Foundational Principles*, with Barbara Fried (forthcoming)

**ARTICLES:** “Hedonic Psychology, Political Theory and Law: Is Welfarism Possible?” 52 *Buffalo Law Review* 1 (2004)

**PRESENTATIONS:** Speaker at an American Enterprise Institute/Brookings Institution Forum on “Fairness in Education” (focus-

ing on Special Education and School Discipline)



**Amalia D. Kessler**  
(MA '96, PhD '01)

*Assistant Professor of Law*

**ARTICLES:** “Limited Liability in Context: Lessons from the French Origins of the American Limited Partnership,” 32 *Journal of Legal Studies* 511 (June 2003) • “Enforcing Virtue: Social Norms and Self-Interest in an Eighteenth-Century Merchant Court,” 22 *Law and History Review* 71 (Spring 2004) • “A ‘Question of Name’: Merchant-Court Jurisdiction and the Origins of the Noblesse Commerçante,” *A Vast and Useful Art: The Gustave Gimon Collection on French Political Economy*, Mary Jane Parrine, editor (2004)

**OTHER:** “Book Review of *Modernity in the Flesh: Medicine, Law and Society in Turn-of-the-Century Argentina*,” by Kristen Ruggiero, 14 *Law and Politics Book Review* 320 (2004) (online)



**Michael Klausner**

*Nancy and Charles Munger Professor of Business, Professor of Law, and Associate Dean for Research and Academics*

**ARTICLES:** “Institutional Shareholders, Private Equity, and Antitakeover Protection at the IPO Stage,” 152 *University of Pennsylvania Law Review* 755 (December 2003) • “Liability Risk for Outside Directors: A Cross Border Analysis,” *European Journal of Financial Management* (forthcoming) • “Outside Directors and Lawsuits: What Are the Real Risks?,” *McKinsey Quarterly* (forthcoming)



**William Koski (PhD '03)**

*Associate Professor of Law (Teaching)*

**ARTICLES:** “Of Fuzzy Standards and Institutional Constraints: A Re-Examination of the History of Educational Finance Reform Litigation,” 43 *Santa Clara Law Review* 1185 (2003) • “The Politics of Judicial Decision-Making in Educational Policy Reform Litigation,” *Hastings Law Journal* (forthcoming 2004) • “What Educational Resources Do Students Need to Meet California’s Educational Content Standards? A Textual Analysis of California’s Educational Content Standards and Their Implications for Basic



## Scrutinizing the Workplace and Regulatory Enforcement

New assistant professor uses her empirical skills to examine legal policy.

**A**s an undergraduate at Harvard University, Alison Morantz wrote her senior honors thesis on failed school desegregation efforts in Missouri. Hailing from just across the state line in Kansas, Morantz examined the decline of Kansas City's beleaguered school district in the 1980s and 1990s, despite the infusion of more than a billion dollars in state funds. "To me, Kansas City is a tragic story," she said. "It just breaks your heart to see what happened there, especially considering the incredible promise and idealism early on."

Since embarking on that research project 12 years ago, Morantz has devoted herself to empirical studies on the real-world effects of legal and policy reform. Now an expert in employment, labor, and regulatory enforcement, the 33-year-old lawyer and economist brings her expertise to Stanford Law School this fall as an assistant professor.

Morantz, a Rhodes Scholar who concurrently earned a JD from Yale and a PhD in economics from Harvard, says she is eager to share with students her experiences as a union-side labor lawyer and antidiscrimination advocate at Pyle, Rome, Lichten & Ehrenberg in Boston.

One of Morantz's current research projects focuses on the impact of devolving occupational safety and health regulation from the federal government to state governments. Meanwhile, through a grant from the National Institute for Occupational Safety and Health, Morantz and Professor David Weil of Boston University have begun trying to put regulatory theory into practice by exploring ways to improve OSHA's enforcement methods in the construction industry.

Morantz also is looking at the significance of homestead exemption law, a 19th-century innovation that brought into question the definitions of "family" and "head of household" in the wake of the Civil War. "The postbellum development of homestead exemption jurisprudence was a defining moment in the evolution of both family law and early social welfare policy," she said. "Many of the ideological tensions that bedeviled judicial attempts to implement these laws foreshadow current debates about the state's proper role in promoting nuclear families and alleviating economic dependency." —*Nina Nowak*



PHOTO: STEVE GLADFELTER

Educational Conditions and Resources," with Hillary Anne Weis, *Teachers College Record* (forthcoming) • "Challenge and Opportunity: An Analysis of Chapter 26.5 and the System for Delivering Mental Health Services to Special Education Students in California," with Jenna Klatell, David Kovick, Karie Lew, and Diane Thompson (May 2004)



**Lawrence Lessig**  
*C. Wendell and Edith M. Carlsmith Professor of Law*

**BOOKS:** *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*, Penguin Press (2004)

**ARTICLES:** "The Lesson Patterson Taught," *11 Journal of Intellectual Property Law* ix (2003) • "Fiber to the People," *Wired* (column) (December 2003) •

"Open-Source, Closed Minds," *eWeek.com* (October 1, 2003) • "The New Road to the White House," *Wired* (column) (November 2003) • "Law Regulating Code Regulating Law," *35 Loyola University Chicago Law Journal* 1 (Fall 2003) • "How to Unspam the Internet," *Philly.com* (May 4, 2003) • "Dunwoody Distinguished Lecture in Law: The Creative Commons," *55 Florida Law Review* 763 (July 2003) • "A Modest Proposal: Hold Hollywood Hostage Till We Kill Farm Subsidies," *Wired* (column) (January 2004) • "The Commons That Libraries Build," *Library Journal* (February 15, 2004) • "Internet Providers Must Not Dictate Content," *Financial Times* (op-ed) (February 20, 2004) • "Stop Making Pills Political Prisoners," *Wired* (column) (February 2004) • "How I Lost the Big One," *3 Legal Affairs* 57 (March/April

2004) • "Insanely Destructive Devices," *Wired* (column) (April 2004) • "Anti-trust Smackdown," *Wired* (column) (June 2004) • "The Creative Commons," *65 Montana Law Review* 1 (Winter 2004) • "The International Information Society," (keynote) 2003 Stanford Law & Technology Association Conference: Ideas without Boundaries: Creating and Protecting Intellectual Property in the International Arena, *24 Loyola of Los Angeles Entertainment Law Review* 33 (2004)

**BRIEFS:** *Brewster Kable, Internet Archive, Richard Prelinger and Prelinger Associates, Inc., v. John Ashcroft*, U.S. District Court for the Northern District of California, (Civil Complaint for Declaratory Judgment) with Jennifer Stisa Granick and Christopher Sprigman (March 2004)

## Veteran Supreme Court Litigator Brings His Expertise to Stanford

Leading public interest attorney focuses on the separation of powers.

Three years ago, Alan Morrison packed up his car and together with his wife embarked on a cross-country trek to teach at Stanford Law School as an Irvine Visiting Fellow. For three semesters, he shared with students his experiences as director of Public Citizen Litigation Group, the Washington, D.C.-based consumer rights advocacy group he cofounded with Ralph Nader in the early 1970s.

Now, as he wraps up his 32-year career at Public Citizen, Morrison is hitting the road once again, this time to join the Stanford faculty as a senior lecturer on administrative and public interest law. Regarded as one of the most respected lawyers to argue before the U.S. Supreme Court, Morrison, 66, specializes in separation-of-powers issues. He has challenged the line-item veto, sentencing guidelines, the Gramm-Rudman-Hollings budget restrictions, and federal preemption of state laws, to name just a few.

Morrison graduated from Yale University in 1959 and Harvard Law School in 1966. He joined Cleary, Gottlieb, Steen & Hamilton in New York as an associate, then worked as an assistant U.S. attorney in the Southern District of New York before moving to Public Citizen in 1972. He has been a visiting professor at several law schools, including Harvard, where Kathleen M. Sullivan, Stanley Morrison Professor of Law, was a student in two of his public interest law classes in the late 1970s.

One of Sullivan's last acts as dean was enticing Morrison to come to Stanford.

One wouldn't expect a consumer rights champion to be the consummate Beltway insider, but Morrison, who counts at least two Supreme Court Justices as friends, knows how to play on and off the court. Justice Stephen Breyer (BA '59) is a running partner, and Justice Ruth Bader Ginsburg has been a friend for years.

"One thing I've learned in Washington is that you should have no permanent friends and no permanent enemies," said Morrison. "People with whom you disagree may end up agreeing with you when you need them." —Nina Nowak



PHOTO: STEVE GLADFELTER



### Jenny S. Martinez

*Assistant Professor of Law*

#### ARTICLES/BOOK CHAPTERS:

"Towards an International Judicial System," 56 *Stanford*

*Law Review* 429 (2003) • "Liberties and Limits in the War on Terrorism," *Washington Post*, p. A16 (January 6, 2004)

• "Gender Considerations in Interpreting Elements of Crimes in International Law," 4 *Women and International Human Rights Law*, Kelly Askin, editor (forthcoming)

BRIEFS: *Donald Rumsfeld v. Jose Padilla*, No. 03-1027, United States Supreme Court (brief of respondent) (April 12, 2004) • *Jose Padilla v. Donald Rumsfeld*, 03-2438, with David W. DeBruin, United States Court of Appeals for the Second Circuit (amicus brief) (July 30, 2003)



### Miguel A. Méndez

*Adelbert H. Sweet Professor of Law*

BOOKS: *Evidence: The California Evidence Code & the*

*Federal Rules? A Problem Approach*, 3rd edition, West Group (2004)

ARTICLES: "Presumptions and Burden of Proof: Conforming the California Evidence Code to the Federal Rules of Evidence," 38 *University of San Francisco Law Review* 139 (2003) • "The Role of Judge and Jury: Conforming the Evidence Code to the Federal Rules," 37 *University of San Francisco Law Review* 1003 (2003) • "Expert Testimony and the Opinion Rule: Conforming the Evidence Code to the Federal Rules," 37 *University of San Francisco Law Review* 411 (2003) • "Hearsay and Its Exceptions: Conforming the Evidence Code to the Federal Rules," 37 *University of San Francisco Law Review* 351 (2003)



### John Henry Merryman

*Nelson Bowman Sweitzer and Marie B. Sweitzer Professor of Law, Emeritus and Affiliated Professor in the Department of Art, Emeritus*

ARTICLES/BOOK CHAPTERS: "The Commodification of Art," 160 *Apollo* 26-27 (July 2004) • "Ma la Tutela non Vuol Dire per Forza Divieto di Esportazione" 21 *Giornale della'Arte, Il Rapporto Antiquariato* 8-10 (June 2004) • "A Licit International Trade In Cultural Objects," in *Art Market Matters*, The European Fine Art Foundation (2004)



### David Mills

*Senior Lecturer in Law*

ARTICLES: "Violence Silence—Why no one really cares about prison rape,"

with Robert Weisberg, *Slate* (October 1, 2003) • "Flunking the Martha Test," with

Robert Weisberg, *The Wall Street Journal* (op-ed) p. A10 (January 16, 2004)



**A. Mitchell Polinsky**  
*Josephine Scott Crocker*  
*Professor of Law and Economics*

**ARTICLES:** "Aligning the Interests of Lawyers and Clients," with Daniel Rubinfeld, 5 *American Law and Economics Review* 165 (Spring 2003)



**Robert L. Rabin**  
*A. Calder Mackay Professor*  
*of Law*

**ARTICLES/BOOK CHAPTERS:** "The September 11th Victim Compensation Fund: A Circumscribed Response or an Auspicious Model?" 53 *DePaul Law Review* 769 (Winter 2003) • "Reliance on Scientific Evidence in Tort Litigation: The U.S. Experience," in *Scienza e diritto nel prisma del diritto comparato*, G. Comandè & G. Ponzanelli, editors,

Giappichelli (2004) • "Le prove scientifiche nelle controversie di responsabilità civile: l'esperienza nordamericana," *Danno e Responsabilità* 369 (2004) • "The Renaissance of Accident Law Plans Revisited," *Maryland Law Review* (forthcoming)



**Margaret Jane Radin**  
**(BA '63)**  
*William Benjamin Scott and*  
*Luna M. Scott Professor of*  
*Law*

**BOOK CHAPTERS:** "Information Tangibility," in *Economics, Law and Intellectual Property: Seeking Strategies for Research and Teaching in a Developing Field*, Ove Granstrand, editor, Kluwer Academic Publishers (2003) • *Intellectual Property and the Internet: Cases and Materials*, with John Rothchild and Gregory Silverman Foundation Press: Thomson/West, (2004) • *Internet Commerce, The Emerging Legal Framework*, with John Rothchild and Gregory Silverman, 2004 supplement, Foundation Press (forthcoming)

**ARTICLES:** "Property and Precision," 39 *Tulsa Law Review* 639 (2004) • "Regulation by Contract, Regulation by Machine," 160 *Journal of Institutional and Theoretical Economics* 1 (2004) • "Regime Change in Intellectual Property Law: Substituting the 'Law' of the Firm for the Law of the State" *University of Ottawa Journal of Law & Technology* (forthcoming)



**Deborah L. Rhode**  
*Ernest W. McFarland*  
*Professor of Law*

**BOOKS:** *Access to Justice*, Oxford University Press (2004) • *Legal Ethics*, with David Luban, 4th edition, Foundation Press (2004) • *Brown at Fifty: The Unfinished Legacy*, edited with Charles Ogletree, Jr., American Bar Association (2004)  
**ARTICLES/BOOK CHAPTERS:** "Professor of Desire," *National Law Journal* (January 27, 2003) • "Equal Justice under Law: Connecting Principle to Practice," 12 *Washington University Journal of Law and*

## Examining Immigration in the Post-9/11 World

Former ACLU attorney will establish an immigrants' rights clinic.

**A**s an electrical engineer educated at the University at California at Berkeley, Jayashri Srikantiah thought she would apply her love of mathematics to a job at one of Silicon Valley's high-tech firms. But after two years of working for Intel Corp., Srikantiah had a change of heart. The Bombay native, who was raised in San Jose, felt a growing political awareness she could no longer ignore. So she quit her job and applied to law school, graduating from New York University School of Law in 1996.

"It was a really good decision for me," said Srikantiah, an immigration law expert who left her post as associate legal director of the ACLU of Northern California to become an associate professor of law (teaching) at Stanford Law School. "The engineering degree gave me a familiarity with problem solving, and the transition was a lot easier than I expected."

Srikantiah will launch an immigration law clinic at the school in spring 2005. It will allow law students to represent individual immigrants as well as immigrants' rights organizations on a wide variety of cases.

Srikantiah clerked for Ninth Circuit Court of Appeals Judge David R. Thompson and practiced law at Howard, Rice, Nemerovski, Canady, Falk & Rabkin in San Francisco before moving to the ACLU in 1998. There, she covered immigrants' rights cases, including the high-profile Reddy human trafficking case, providing legal representation to young South Asian women who were trafficked into this country. To Srikantiah, it was a

question of ensuring that trafficking survivors be accorded full human and civil rights. "Trafficking is a global problem and requires a global solution, but we can start at home by fully protecting the rights of survivors here in the United States," she said.

Srikantiah said her own background informs much of what she hopes to convey to students in the hands-on clinic. "A lot of the issues faced by immigrants are ones I've had personal experience with, and my experiences have motivated me to work in this area of the law." —*Nina Nowak*



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*Policy* 47 (2003) • "Client Counseling and Moral Responsibility," with Robert Cochran and Paul Tremblay, *30 Pepperdine Law Review* 591 (2003) • "Keynote Address: The Difference 'Difference' Makes," *55 Maine Law Review* 15 (2003) • "Defining the Challenges of Professionalism: Access to Law and Accountability of Lawyers," *54 South Carolina Law Review* 889 (2003) • "If Integrity Is the Answer, What Is the Question?" *72 Fordham Law Review* 333 (November 2003) • "How Much Choice? Women and Work," *The National Law Journal* (column) (December 8, 2003) • "Midcourse Corrections: Women in Legal Education," *53 Journal of Legal Education* 475 (December 2003) • "Measuring Professionalism," with Adrian Evans and Susan Case, *54 South Carolina Law Review* 939 (2003) • "Pro Bono in Principle and Practice," *53 Journal of Legal Education* 413 (2003) • "In the Interests of Justice: A Comparative Perspective on Access to Legal Services and Accountability of the Legal Profession," *56 Current Legal Problems* 93 (2003) • "Access to Justice: Connecting Principles to Practice," *17 Georgetown Journal of Legal Ethics* 369 (2004) • "Moral Character as a Professional Credential," *Foundations of the Law and Ethics of Lawyering*, George Cohen and Susan Koniak, editors, Foundation Press (2004) • "Lawyers, Ethics & Enron," with Paul Paton, in *Enron: Corporate Fiascos and Their Implications*, Nancy Rapoport and Bala Dharan, editors, Foundation Press (2004) • "Women in the Law: Defense Quandary," *National Law Journal* (column) (March 8, 2004) • "Sex in Schools: Who's Minding the Adults?" in *Directions in Sexual Harassment Law*, Catherine MacKinnon and Reva Siegel, editors, Yale University Press (2004)

OTHER: Narrator, "Lessons from Woburn: Conduct and Settlement" (Tape 3), Seattle University School of Law and the Berkman Center for Internet and Society at Harvard Law School (2003)



**Kenneth E. Scott '56**  
*Ralph M. Parsons Professor of Law and Business, Emeritus*

ARTICLES: "The Autonomous Board: Corporate Governance Reform?" *159 Journal of Institutional and Theoretical Economics* 701 (December 2003) • "Alternative Corporate Governance Structures: The German 2-Tier Board," in *Corporate Governance: Implications for Financial Service Firms*, Federal Reserve Bank of Chicago (2003)

*Implications for Financial Service Firms*, Federal Reserve Bank of Chicago (2003)



**Jeff Strnad**  
*Charles A. Beardsley Professor of Law*

ARTICLES: "Statistical, Identifiable and Iconic Victims," with George Loewentstein and Deborah Small, *Behavioral Public Finance: Toward a New Agenda* (forthcoming)

PRESENTATIONS: "Deflation and the Income Tax," Harvard Law School Tax Policy Conference (August 2003) • "Conceptualizing the Fat Tax," Olin Foundation, Harvard Law School (October 2003)



**Kathleen M. Sullivan**  
*Stanley Morrison Professor of Law and former Dean*

BOOKS: *First Amendment Law*, 2nd edition, with Gerald Gunther, Foundation Press: Thomson/West (2003) • *Constitutional Law*, 15th edition, Foundation Press (2004)

ARTICLES: "Rethinking the Bill of Rights," *Jungle Law* (October/November 2003) • "In Memoriam: John Hart Ely," *117 Harvard Law Review* 1758 (April 2004) • "What Makes SLS Special: A Top-10 List," *38 Stanford Lawyer* 3 (Spring 2004)

OTHER: "War and Civil Liberties" (sound recording), Chautauqua Institution (Summer 2003)



**Barton H. "Buzz" Thompson, Jr., JD/MBA '76 (BA '72)**  
*Robert E. Paradise Professor of Natural Resources Law*

BOOKS: *Environmental Law and Policy*, Foundation Press (2003)

ARTICLES: "What Good Is Economics?" *37 U.C. Davis Law Review* 175 (2003) • "Answering Lord Perry's Question: Dissecting Regulatory Overfishing," *46 Ocean & Coastal Management* 649 (2003)



**Michael S. Wald**  
*Jackson Eli Reynolds Professor of Law*

ARTICLES: "Connected by Twenty-Five: Helping America's Most Vulnerable Youth," with Tia Martinez, Hewlett Foundation Working Papers (online)

PRESENTATIONS: "A New System for Vulnerable Youth," Northern California Grantmakers • "The Case for Same-Sex Couple Marriage," Hastings College

of the Law • "Disconnected Youth—A Policy Focus," National League of Cities



**Allen S. Weiner '89**  
*Associate Professor of Law (Teaching) and Warren Christopher Professor of the Practice of International Law and Diplomacy*

ARTICLES: "The Case for International Justice: The World's Concern with War Crimes Is Not Merely Ethical," *San Jose Mercury News* (op-ed) p. 9B (December 24, 2003) • "It's the Law—Even in War: The U.S. Must Abide by the Geneva Convention because Compliance Is in Its Interest—and Because It's Right," *Los Angeles Times* (op-ed) (June 9, 2004)

LECTURES/PRESENTATIONS: "The United States and the International Criminal Court," Bar Association of San Francisco (October 24, 2003) • "International Justice and American Exceptionalism: The United States and the International Criminal Court," Stanford International Law Society (November 4, 2003) • "It's a MAD, Mad World: Prospects for Security, Diplomacy, and Peace on the Korean Peninsula," Stanford Law School Alumni Weekend (panel) (October 17, 2003) • "Global Hot Spots," Stanford University Alumni Day (panel) (March 6, 2004) • "The Case for International Justice," Stanford Law Society of Silicon Valley (April 22, 2004)



**Robert Weisberg '79**  
*Edwin E. Huddleson, Jr. Professor of Law*

ARTICLES: "Violence Silence—Why no one really cares about prison rape," with David Mills, *Slate* (October 1, 2003) • "Prosecuting the Press," *38 Stanford Lawyer* 5, with Joseph Grundfest (Fall 2003) • "The Utilitarian and Deontological Entanglement of Debating Guns, Crime, and Punishment in America," by Bernard Harcourt, editor (book review), *71 University of Chicago Law Review* 333 (Winter 2004)

BRIEFS: *Larry D. Hiibel, Petitioner v. Sixth Judicial District Court of Nevada, Humboldt County, et al., respondents*, No. 03-5554, brief of the Electronic Frontier Foundation as amicus curiae in support of the petitioner, Supreme Court of the United States (December 15, 2003)

## Law School's Top-Ranked IP and Copyright Practice Grows Even Stronger

Mark Lemley (BA '88) leaves UC Berkeley to join Stanford law faculty.

**M**ark A. Lemley (BA '88) has focused much of his professional career on the intersection of intellectual property and antitrust law. Lemley joined the Stanford Law School faculty this summer as William H. Neukom Professor of Law as well as director of the Stanford Program in Law, Science & Technology. In his mind, lawyers can't practice in one field without taking the other into account. "People do it all the time," he said, "but I think it's a mistake."

Lemley should know. He has been involved in some of the most challenging legal cases in this area of the law. While working as a consultant to the Department of Justice on the Microsoft Corp. case, Lemley found himself in that fuzzy area of the law. The software giant was asserting that its copyright allowed the company to prevent computer users from changing the desktop. The government countered that Microsoft unfairly prevented customers from using competing software. "It was definitely a gray area," Lemley said. "It's not clear how far copyright extends, or even how antitrust interacts with that."

Lemley came to Stanford from the University of California at Berkeley School of Law (Boalt Hall), where he was a director of the Berkeley Center for Law and Technology. He says the move was made easier by geography: His wife, Rose Hagan, is trademark counsel for Google Inc. in Mountain View, California—a long commute from Berkeley. And Stanford's location in Silicon Valley, where technological innovation is constantly raising new intellectual property and antitrust issues, intrigued him.

"With Stanford's position in the heart of Silicon Valley, we ought to be the place in the world that people come to when they try to improve technology law," said Lemley.

The 37-year-old Lemley has produced a vast amount of scholarly work in a short period of time: six books and more than 50 law review articles. One of the books is the only comprehensive work addressing the intersection of intellectual property and antitrust law, the two-volume treatise *IP and Antitrust Law*, which he cowrote with professors Herbert Hovenkamp and Mark Janis at the University of Iowa.

An economics major at Stanford, Lemley had already developed an interest in IP when he enrolled at Boalt. After law school he held a clerkship with Judge Dorothy W. Nelson, United States Court of Appeals for the Ninth Circuit, then worked for Brown & Bain in Palo Alto, California, and Fish & Richardson P.C. in nearby Menlo Park.

Soon, however, Lemley made a career switch. "When I was in practice, I taught a class [at Boalt], and I just loved it," he said. "But it was clear to me that teaching was not something that I could do while practicing law full time. The amount of energy required wasn't going to work with full-time practice." He accepted a professorship at the University of Texas School of Law in 1994 before moving to Boalt in 2000.

Lemley retains an of counsel position at Keker & Van Nest LLP in San Francisco, where he spends about eight hours a week litigating and counseling clients. "In a field like IP that changes all the time, it's important to spend some time understanding what's going on in the real world so you're not out of date."

At Stanford, Lemley is trying to find out why it is that smaller companies and individuals use their patents by licensing them or litigating them more than larger companies. "It may be that the little guys are coming up with the really valuable inventions," he said. "Or maybe they're trolls—they sit and wait under a bridge until someone tries to do the same thing and jump out to demand a toll." The results of the study have important implications for patent law, he stressed: "We'd like to encourage innovation and discourage trolls." Lemley confessed that empirical studies such as the patent research are his favorite: "I like to sit back and look at the data and learn something that no one else knew." —Mandy Erickson



PHOTO: STEVE GLADFELTER



# The Death Penalty Dance

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

**M**aryland Governor Robert Ehrlich allowed an execution to proceed last June. Hardly big news, since the United States has averaged close to 40 executions per year over the last 25 years. What's notable is that Ehrlich changed the wording in the script handed him by his predecessor—he refused to apologize for the death penalty. In 2002, Maryland's then-governor, Parris Glendening, ordered a moratorium on all executions until a new study could satisfy him that the death penalty was not being inflicted unfairly. The University of Maryland study concluded that, yes, troublesome racial disparities still existed in Maryland. But Ehrlich was unimpressed, concluding that his own case-by-case review of death sentences could ensure their fairness.

Maryland was the second state in which a formal moratorium on executions was imposed, and arguments for moratoriums are now being made in other states. To be sure, no state death penalty law is going to be abolished in the lifetime of anyone reading this article. Instead, the public reassessment of the death penalty will continue to take the form of these episodic apologies, or short-term suspensions of its use. Politically, we can't live without capital punishment. Morally, we have some trouble living with it.

It's worth remembering how Justice John Harlan admonished the Supreme Court before it set out on its own experiment in fine-tuning capital punishment. In the 1971 case *McGautha v. California*, he warned: "To identify before the fact those characteristics of criminal homicides and their perpetrators which call for the death penalty, and to express these characteristics in language which can be fairly understood and applied by the sentencing authority, appear to be tasks which are beyond present human ability." And in *Furman v. Georgia* the next year, the Supreme Court "apologetically" struck down all existing death penalty statutes because they left juries with largely unconstrained discretion to decide whom to execute, thereby inviting both unpredictable and flagrantly racially discriminatory outcomes.

But about three-fourths of the states passed new death penalty laws to satisfy the Supreme Court. Then, after a decade under the new laws and 80 or so executions, in the 1987 case of *McCleskey v. Kemp*, the Supreme Court faced the claim that the new, better death-penalty system had failed. The defendant offered evidence that even the new statutes were racially discriminatory because death sentences were handed down disproportionately often when the victim was

white. In his majority opinion, Justice Lewis Powell seemed to concede that racial discrimination probably extends throughout all phases of the criminal justice system. Indeed, it was for that reason that Powell rejected McCleskey's claim, fearing that to reverse this particular death sentence would be to effectively declare American criminal justice wholly illegal.

And then Justice Powell's strange moral concession turned into apology. A few years later, in retirement, he confessed he wished he had voted to reverse in *McCleskey*. At about the same time, Justice Harry Blackmun dramatically announced that he would vote to reverse any death sentence that came before the Supreme Court in any form. As he put it, he would "no longer tinker with the machinery of death."

Various states worried over these questions as well, and new forms of apology emerged. In 1995 New York created a new death penalty law that set the bar so high with legal requirements for a death sentence that it created a de facto moratorium—no executions have taken place in New York in the decade since. Then Illinois stepped into line. Convinced that the prosecutorial system in Illinois was unable to ensure that innocent defendants were not convicted, and bothered by the old concerns about racism and caprice, Governor George Ryan simply commuted the death sentences of all 167 death row inmates.

The new governor of Illinois has for now sustained the moratorium, but the more interesting new form of apology has been the act of the Illinois legislature. New procedural rules in the Illinois criminal code make New York's legislative apology seem almost tepid. In what may be the most remarkable provision of the new Illinois law, the state supreme court is allowed to vacate any death sentence if it finds it "fundamentally unjust as applied to the particular case . . . independent of any procedural grounds for relief."

So while Governor Ehrlich last month gave an inverted "I'm not apologizing for what we knew all along" version of the *McCleskey* opinion, in other states we're likely to keep seeing varieties of apologies over capital punishment. To paraphrase Justice Blackmun, we're still tinkering. Some judges and lawmakers will continue to demand that we drop the whole matter and apologize for ever trying. Others will apologize for yet another manifestation of error but promise to get things right next time. And Justice Harlan? He might be inclined to mutter a few I-told-you-so's.

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(A version of this essay first appeared in *Slate* on July 7, 2004.)

# In Memoriam

## Hon. Frederick E. "Fred" Stone '33 (BA '30)

of Fresno, Calif., died June 28, 2004, at the age of 96. After receiving his bachelors and law degrees from Stanford, he served in the Navy during World War II. He was also distinguished for his superior dedication and service to the legal profession, serving as presiding judge for the California Court of Appeal 5th District, appointed by the California Supreme Court to two terms as a Superior Court representative and later to two terms as an Appellate Court representative to the California Judicial Council, and elected president of the California Judges Association. He also served as a member on the first board of directors of the California Judge's Foundation, which established a school for judges. He is survived by two sons, William '64 (BA '61) and John (BA/MA '73, PhD '81).

**Albert T. Cook '39 (BA '34)** of Woodside, Calif., died July 20, 2004, at the age of 91. Albert practiced law before he started service in the U.S. Navy during World War II. Upon completion of his service, he bought and managed the Brookdale Lodge in the Santa Cruz Mountains and founded Cook Properties, a real estate development company. Albert was a Stanford sports enthusiast and a keen golfer. He is survived by sons Gary, Bob, and Bill.

**John Richard Berrett '48** of Menlo Park, Calif., died April 24, 2004, at the age of 83. A graduate of the University of Utah, he served in the U.S. Army as an observer pilot with the artillery during World War II where he rose to the rank of captain. After graduating from Stanford Law School, he went into private practice in Redwood City and later became an unemployment insurance appeals judge. After retiring in 1990, he continued to work part time until his death. He is survived by his wife, Mary; daughter, Judith; and son, Richard.

**George L. Waddell '48 (BA '42)** of Sausalito, Calif., died in 2004. He was one of the first backers of the Stanford sailing club as an undergraduate. After 50 years of practice in admiralty and maritime law, he retired from Hancock Rothert & Bunshoft LLP, where he headed the office's maritime group. He also served on the national advisory board of the Admiralty Law Institute and was published in the *USF Maritime Law Journal*. George is survived by wife, Victoria; son, Peter; and daughter, Robin.

**Louis F. "Louie" Schultz, Jr. '50** of Grants

Pass, Ore., died July 25, 2004, at the age of 80. He served in the U.S. Army Air Corps in World War II and later started a law office with Neil R. Allen. It later became Allen, Schultz, and Salisbury. He was very active in his community, serving as chairman of the board of Family Bank of Commerce, president of the Grants Pass Rotary Club, and member of the Grants Pass City Council. He was also a member of United Way, the Four Way Community Foundation, Grants Pass Active Club, and Grants Pass Golf Club. He is survived by his son, Donald; daughters, Jana and Malinda; two grandchildren; and one great-grandchild.

**LeMoyné S. "Lee" Badger '52** of Riverside, Calif., died March 3, 2004, at the age of 79. He went into private practice at the Badger Law Corporation in Riverside and was honored with being named president of the Riverside County Bar Association and president of the Riverside Chamber of Commerce. He also worked as a campaign manager for many successful candidates to public office, including a congressman, a state senator, an assemblyman, a superior court judge, a member of the board of supervisors, and a member of the city council. He is survived by his wife, Lorna; three sons, Douglas, Larry, and Leo; and two daughters, Lynnette and Lou Anne.

**Tally P. Mastrangelo '52** of Sausalito, Calif., died July 6, 2004, at the age of 80. He served in World War II in the Southwest Pacific Theater of Operations in the Army Corps and became a lieutenant, Air Force Reserve, in 1950. Tally was passionate about politics and often assisted in the campaigns for Republican Party candidates on regional and national levels. He pursued his business interests through his sole proprietorships, Estate Management and Development Company and Syndicated Press Service. Tally was also a licensed real estate broker, investment counsel, and a life, disability, and casualty insurance agent. He is survived by his wife, Charlotte; son, Marc; sister Velda Spina; and one grandchild.

**B. Thomas Barnard '56 (BA '54)** of Solvang, Calif., died August 17, 2004, at the age of 72. He was a founding partner of Rhodes, Barnard, and Maloney in Santa Monica and served as a member of the American Arbitration Association. Tom was an avid and distinguished public servant, serving as founder and president of the Y's Men's Breakfast Club as well as president of the

Santa Monica Rotary Club. He also sat on the boards of the Santa Monica Redevelopment Agency, American Red Cross, and National Conference of Christians and Jews. Tom was recognized for his commitment to service, receiving honors from the Junior Chamber of Commerce of Santa Monica and the Rotary Clubs of Santa Monica and Santa Ynez Valley. He is survived by his wife, Mary Ellen (BA '56); daughters, Eileen and Kathryn '88 (BA '84); sons, Mark and Thomas; and his brother, John '62 (BA '58).

**Fred W. Brandt '61 (BA '55)** of Pasadena, Calif., died February 28, 2002, at the age of 68. He achieved the rank of captain while serving in the Air Force and was later a deputy district attorney in Los Angeles for a firm specializing in insurance defense litigation. He also started the firm of Heistand and Brandt, which continued for 17 years. Fred is survived by his wife, Judith; sons, Wayne and Keith; and two grandchildren.

**Elmer E. "Clay" Clabaugh, Jr. '61** of Los Osos, Calif., died March 19, 2004, at the age of 76. After graduating from Stanford, he served as city attorney for Thousand Oaks and Simi Valley and, as district attorney for Ventura County. He was in private practice for more than 35 years. Clay was dedicated to his community, participating and sitting on the boards of many public and private organizations including Community Memorial Hospital, Ojai Valley school board, Ventura County Parks Foundation, and the Ventura County Maritime Museum. He was a Mason and an active sportsman: skiing, fly-fishing, and hunting game worldwide in such exotic locales as South America and Africa. Clay is survived by his sons, Christopher and Matthew, and five grandchildren.

**Bernard M. "Bud" Wolfe '62** of Hillsborough, Calif., died August 12, 2004. A specialist in real estate, business, and probate law, he was a successful developer of property in California and Oregon. Before he attended law school, Bernard received his bachelor's of engineering from the U.S. Naval Academy and worked as a Naval architect, designing President Harry S. Truman's yacht, the *Williamsburg*. Bernard was a three-time world champion in dominoes. He is survived by his wife, Beverly; his son Douglas; his daughter, Patricia; and three grandchildren. His son Stephen predeceased him.





PHOTO: MARK FELLMAN

(Left to right) Stanford Law Society of Los Angeles Cochairs Menasche Nass '82, senior partner at De Castro, West, Chodorow, Glickfeld & Nass, Inc., and Kristen Finney '96 (BA '92), senior counsel at Fox Group Legal, welcomed Robert Cochran '74 (BA '71), Emmy Award-winning cocreator and executive producer of the TV show 24, and then Dean Kathleen M. Sullivan, in August. Cochran offered alumni a behind-the-scenes look at the groundbreaking drama.



PHOTO: ATLANTIC PHOTO, BOSTON

In September, Thomas Elkind '76 (left), partner at Epstein Becker & Green P.C., and Robert Dushman '73 (right), partner at Brown Rudnick Berlack Israels LLP, met incoming Dean Larry Kramer in Boston.

In June, Deborah Rhode (center), Ernest W. McFarland Professor of Law, celebrated with the inaugural recipients of the Deborah L. Rhode Public Interest Award, Angie Schwartz '04 (left) and Sarah Varela '04 (right), who split the prize for their outstanding public interest work.



PHOTO: ROBERT MARCH



PHOTO: ROBERT MARCH

In May, Judge Thelton Henderson (right), U.S. District Court, Northern District of California, and former assistant dean at Stanford Law School, congratulated the first Thelton Henderson Fellowship winner, Severa Keith '01 (BA '93). The fellowship enables lawyers to work at both the Legal Aid Society of San Mateo County and the Stanford Community Law Clinic.

Professor Emerita Barbara Babcock (second from left), four-time winner of the John Bingham Hurlbut Award for Excellence in Teaching, bid farewell to students of the Class of 2005 (left to right) Alexandra Wenzke, Amy Finkelstein, and Brian Link at a surprise reception on her last day of teaching in April.



PHOTO: ROBERT MARCH

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STANFORD LAW SCHOOL

# ALUMNI WEEKEND 2004

Thursday to Sunday, October 21 to 24

## PROGRAM UPDATES



### Stanford Law School Decanal Installation Celebration

Main Quadrangle, Stanford University  
Friday, October 22

U.S. Supreme Court Justice **Stephen Breyer** (BA '59) will join Stanford University President **John L. Hennessy** in making remarks as part of the formal installation of Larry D. Kramer as *Richard E. Lang Professor of Law and Dean*. Join fellow alumni, faculty, and University dignitaries for a festive reception and dinner in honor of Stanford Law School's twelfth dean.

### "Made in the USA? Probably Not: Outsourcing and the Global Economy"

Kresge Auditorium, Stanford Law School

Friday, October 22

From customer service call centers to the provisioning of our armed forces abroad, almost every sector of the American economy has been affected by offshore outsourcing. Recent research indicates that outsourcing will grow by thirty to forty percent in the next five years. How can the United States balance an increasingly interdependent global economy with concerns about domestic economic growth? What are the short- and long-term effects of outsourcing?

Join **G. Marcus Cole**, *Professor of Law, Helen L. Crocker Faculty Scholar, and Academic Associate Dean for Curriculum*, and a panel of distinguished business leaders for an in-depth discussion of these critical issues.

## ADDITIONAL PROGRAM HIGHLIGHTS

- **Stanford University Roundtable Forum: "Presidential Politics and U.S. Foreign Policy,"** featuring former U.S. Secretary of State **George P. Shultz**, former U.S. Secretary of Defense **William J. Perry** (BS '49, MS '50, PhD '55), Political Science Professor **Judith Goldstein**, and Hoover Institution Senior Fellow **Larry Diamond**. To be moderated by Stanford Institute for International Studies Director **Coit D. Blacker**. (Friday, October 22, Memorial Auditorium)
- **"The Role of Politics and the Rule of Law: Judicial Independence in the 21st Century,"** featuring U.S. Supreme Court Justice **Stephen Breyer** (BA '59), California Supreme Court Chief Justice **Ronald M. George** '64, and U.S. Court of Appeals for the Ninth Circuit Judge **Pamela A. Rymer** '64. To be moderated by Law School Dean **Larry D. Kramer**. (Saturday, October 23, Memorial Auditorium)
- **Reunion Dinners** for the Classes of 1954, 1959, 1964, 1969, 1974, 1979, 1984, 1989, 1994, and 1999. (Saturday, October 23, Reunion Pavilions on Wilbur Field)
- **Dean's Circle Dinner** (Thursday, October 21)
- **Volunteer Leadership Summit** (Friday, October 22)
- **Tailgate Party** (Saturday, October 23)

All alumni are invited to Alumni Weekend 2004 and are warmly encouraged to attend. For additional information about these and other exciting Alumni Weekend 2004 programs and reunion activities, or to register, visit our website at <http://www.law.stanford.edu/alumniweekend>.