

# Stanford *Lawyer*

## Technology's Field Generals



**The general counsels at Microsoft, Google, Cisco, eBay, Yahoo!, Qualcomm, Autodesk, and Oracle—Stanford Law School alums, all—have changed the face of the technology industry and redefined the role of the general counsel.**



## 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.

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

## Letters

### Kudos from Visiting Scholar

**D**uring the fall semester of last year I was a visiting scholar at Stanford Law School. I audited lectures by Professors Lawrence Friedman and Robert Weisberg '79, and during the spring semester audited lectures by Professors Pamela Karlan and Weisberg. The lecture on constitutional law should be mandatory to those who come to the United States and seek to understand its laws.

There were many events at Stanford Law School, such as conferences and seminars, that I enjoyed taking part in. The Ninth Circuit Court of Appeals in Stanford Moot Court Room was especially impressive.

Without the help from the supportive faculty of the law school, my stay would have been much less pleasant. For this, I am grateful and would like to thank you.

I and the other judges from South Korea are especially indebted to Professor Friedman for his longstanding support. Professors Weisberg and Karlan have also given me a precious gift to take back home: their inspiring lectures. Furthermore, Professor John Merryman gave valuable experiences to my wife and me by stretching his hospitality and showing his ongoing affection for his field.

Last but not least, Jonathan Greenberg '84 made my life at Stanford more energetic and meaningful. I would also like to add that the law school is lucky to have such dedicated and excellent staff as Diana Jantzen. And the librarians at Robert Crown Library have also been friendly.

The generosity of the United States—the ability to understand and accept vari-

ous races and cultures and turn those into its own virtues—made the U.S. what it is today. The history of the U.S. has been that of integration versus separation from foreign countries, racism, and slavery. No other country in history has become a role model in every aspect of human society like the United States has. It is likely that this will continue.

History tells us that the more the United States accepts and involves itself with what the U.S. regards as non-American values, the more stable and harmonious the U.S. community becomes. During my stay here at Stanford I have noticed that such changes have also taken place for the better of the law school and the university.

I hope that Stanford Law School will continue to be the source of intellectual power in the legal system of the United States.

Thank you again!

JUDGE KIM, JUNG WON  
*South Korea*

### Rehnquist & Friends

**O**n page 26 of the spring issue of *Stanford Lawyer* there was a photograph of Chief Justice William H. Rehnquist '52 (BA '48, MA '48), accompanying the article "One-on-One With the Chief." The caption identified Rehnquist, along with "some of his friends from Encina Hall in 1948." The person at the far left is Martin Anderson '49 (BA '46); I'm the one next to Rehnquist, who is far right. We were sponsors in Encina that year.

TED NORTON '49 (BA '47)  
*Los Gatos, California*

## Stanford Libraries Open to Law Alumni

Stanford Law School alumni now have free access and borrowing privileges at the law library, and free access to all other Stanford University libraries. To gain access to the libraries, alumni need a plastic, bar-coded ID card.

To obtain a library ID card, please contact J. Paul Lomio, director, Robert Crown Law Library, at [plomio@stanford.edu](mailto:plomio@stanford.edu), (650) 725-0804; or Naheed Zaheer, access services librarian, at [nrz@stanford.edu](mailto:nrz@stanford.edu), (650) 736-1951.



# Leading the Way in Law and Technology

BY LARRY KRAMER

Richard E. Lang Professor of Law and Dean

**H**istorians have identified two economic upheavals that reshaped the world: the agricultural revolution and the industrial one. We are now living through a third such upheaval: an information/technology revolution that is remaking our lives and our world in ways every bit as profound as its predecessors. Stanford University and its law school, located in the heart of the Silicon Valley, lie at this revolution's epicenter. And this issue of *Stanford Lawyer* touches on just a few of the myriad ways in which Stanford Law School has become the world's premier place for teaching and scholarship about the legal dimensions of new technology and the astonishing, often perplexing, society it is creating.

Our importance in shaping that society is evident on the cover, which vividly portrays the central role of Stanford law alumni in the world of high-tech business—from William Neukom '67, a pioneer at Microsoft, to David Drummond '89, who helped bring Google into existence. Nor does Stanford's dominance in the world of technology end in-house. Stanford alumni are also CEOs and managing partners of the leading law firms that serve the technology industry, including John Roos '80 at Wilson, Sonsini; Gordon Davidson '74 at Fenwick & West; Stephen Neal '73 at Cooley, Godward; Mary Cranston '75 at Pillsbury, Winthrop; and many others.

There is a reason Stanford law graduates have risen to such prominence, and it has to do with more than location. The law school's position as the unquestioned leader in law and technology rests on a substantive program that melds theoretical insight and practical experience in unique ways. That program begins with what is by far the best intellectual property faculty in the world, including John H. Barton '68, international patent and technology law; Paul Goldstein, copyright and competition law; Henry T. "Hank" Greely (BA '74), biotechnology, biomedical ethics, and health law; Mark A. Lemley (BA '88), patent, copyright, and antitrust law; Lawrence Lessig, cyberlaw, copyright, and constitutional law; and Margaret Jane Radin (BA '63), e-commerce and property theory.

These faculty have extended their work and enlarged their influence by establishing centers and programs that bring scholars, practitioners, and policymakers from around the world to work together and with our students. Under the umbrella of our flagship Program in Law, Science & Technology, directed by Professor Lemley, the law school also sponsors the Center for E-Commerce, directed by Professor Radin; the Center for Internet and Society, directed by Professor Lessig; the Center for Law and the

Biosciences, directed by Professor Greely; and the Stanford Center for Computers and Law, a multidisciplinary research laboratory (the first of its kind) run jointly by the law school and the Department of Computer Science.

These centers hold conferences, symposia, and seminars; sponsor fellowships and speakers' series; support cutting-edge scholarship; and engage in important public policy and legislative work—making Stanford Law School an unparalleled hub of activity in the world of technology and the law. In addition, the Center for Internet and Society runs a clinic that offers Stanford law students the chance to work on litigation projects that are already reshaping the legal landscape.

Nor is our reach limited to the United States, as evidenced by the new Transatlantic Technology Law Forum, a joint venture with the University of Vienna School of Law that develops innovative solutions to European Union–United States technology law and policy challenges; and by the project to study intellectual property infrastructures in Asia. This project, guided by Professor Goldstein, teams Stanford students and scholars with students and scholars from Asia and from Germany's Max Planck Institute for Intellectual Property.

I cannot possibly do justice to all these flourishing activities, or even adequately describe them, in a short letter. But there is more, or rather more coming, for the law school has only just begun to explore ways in which to collaborate better with other parts of the university, including Stanford's top-rated School of Engineering and School of Medicine, the multidisciplinary Bio-X initiative, and the new Department of Bioengineering. We are, for example, planning to create innovative courses that team law students with students from business and engineering to work through the process of creating a new product or company from invention to market. We are looking into the possibility of joint degrees with engineering, bioengineering, and possibly medicine—degrees that could be modeled on our successful JD/MBA but completed in less time. And scholars and students from other parts of the university have begun talking to us about joint research and teaching.

With a year under my belt, I can report that I have loved being at Stanford Law School for the seriousness and integrity of the faculty and students and for the ambition and adventurousness of the university. Though ranked as one of the top universities in the world, this is not a place where people sit on their laurels or on tradition. Amazing things are going to happen here in the next decade, especially in law and technology. We want you to be part of them.

## CHIEF JUSTICE REHNQUIST '52 AND JUSTICE O'CONNOR '52

**A Tribute by Kathleen M. Sullivan, Stanley Morrison Professor of Law and Former Dean**

**T**he late Chief Justice William H. Rehnquist '52 (BA/MA '48) and Justice Sandra Day O'Connor '52 (BA '50), who retires this year, had much in common besides their seats on the Supreme Court.

They were both Arizonans: O'Connor grew up there on the Day family's Lazy B Ranch while Rehnquist, who lived there before moving to Washington, D.C., liked the state's warm climate better than the snows of his childhood Wisconsin.

They were both Reagan appointees: The president chose O'Connor to make history as the first woman on the Supreme Court, and Rehnquist to head the Court 14 years after President Nixon first made him associate justice.

And they were both Stanford graduates—doubly so as each received both a bachelor's and law degree from Stanford. As law school classmates in the class of '52, they even went out a time or two before the young Sandra Day met and married another Stanford law student, John O'Connor '53.

The future justices' parallel tracks separated dramatically, though, at law school's end. While Rehnquist rocketed to a Supreme Court clerkship with Justice Robert H. Jackson, O'Connor was offered jobs only as a legal secretary—despite grades that placed her right behind Rehnquist at the top of the class. A time when half of Stanford Law School graduates would be women, and when these women would receive the same job offers as men, lay far in the future.

O'Connor turned to public service as a prosecutor and later as an Arizona senator, rising eventually to the post of senate majority leader. She also ran a storefront legal practice. When President Reagan tapped her for the high court in 1981, she was a justice on an Arizona appeals court.

Rehnquist also devoted much of his career to public service, serving as an assistant attorney general in the U.S. Department of Justice's Office of Legal Counsel. There, he attracted the attention of Nixon, who thought Rehnquist was exceptionally bright and reliably conservative, although Nixon had trouble remembering his name and disapproved of his colorful paisley ties and the sideburns he then sported.

Once Rehnquist and O'Connor were on the Supreme Court, the two justices together framed a set of constitutional rulings protecting the autonomy of the states against

ever-expanding federal power. Perhaps shaped by their experience in the former frontier states of the West, their opinions evinced a preference for local self-help over reliance on distant bureaucrats in the nation's capital.

Under Rehnquist's leadership, the Court invalidated federal statutes regulating gun possession and violence against women, ruling, as it had not since the New Deal, that Congress had acted beyond the bounds of its commerce power.

And O'Connor wrote for the Court that federal laws may not "commandeer" state officials to carry out federal mandates. She wrote that to do so "blurs the lines of political accountability"—a problem she understood as her Court's only former elected official.

While the two Stanford classmates forged a united front on issues of state

autonomy from federal power, they diverged in other pivotal cases involving privacy, equality, and church and state. In 1992, for example, O'Connor cast the decisive vote to reaffirm *Roe v. Wade*, while Rehnquist remained in steadfast dissent from a line of decisions he always thought wrong. The late chief also dissented from two decisions in which O'Connor sided with the majority in favor of gay rights.

And last term, in what turned out to be their last cases together, Rehnquist voted to uphold two Ten Commandments displays on public property while O'Connor would have struck them both down as establishments of religion.

If there was one thing that always brought the two justices together, it was Stanford Law School. They returned to campus in 1997 to preside before an overflow alumni crowd at a mock retrial of the infamous parricide Lizzie Borden, cheerfully assuming the unaccustomed role of trial judges.

They returned to Stanford again to preside over a grand reargument of the Steel Seizure case in Memorial Auditorium in 2002, at a time when the issue in that case—the scope of presidential power in times of national security crisis—had taken on new urgency in the wake of September 11.

That same weekend, the two justices helped attract classmates to their 50-year reunion in record numbers—charming them with modesty and humor while giving them immense pride, shared by us all, that these two great American figures from Stanford Law School played such remarkable roles in shaping the history of the nation's highest court.



Stanford law classmates O'Connor and Rehnquist at their 45-year reunion.

## CITES



PHOTO: STEVE GUADALTELLER

“The lesson to be drawn from the Vioxx case is that if the Vioxx award is writ large, it will probably do more harm to consumers than good—presumably not the intention of the Vioxx jury.”

—A. MITCHELL POLINSKY, Josephine Scott Crocker Professor of Law and Economics, writing in the August 23 issue of *The Boston Globe*. Polinsky co-authored the column, “Vioxx Verdict’s Dark Side,” with Harvard Law School professor Steven Shavell. In the op-ed Polinsky and Shavell argued that the \$253 million jury award against Merck & Company Inc. could cause pharmaceutical firms to increase the price of drugs, halt the development of some new drugs, and withdraw existing drugs from the market.

“The reason we’re allocating dollars to this sector (alternative energy) is we think we can deliver attractive returns. . . . When you’re talking about energy, when you’re talking about water, you’re talking about the largest markets in the world.”

—IRA EHRENPREIS JD/MBA '95, general partner at the venture capital firm Technology Partners in Palo Alto, California, as quoted in *The New York Times*. The June 22 article, “Green Tinge Is Attracting Seed Money to Ventures,” surveyed the reasons venture capital firms are investing more money in alternative energy companies. His firm invests roughly half of its money in alternative energy startups.



PHOTO: MISHA BRUK

Michael Jackson is “so extra-planetary, so bizarre,” that the jury may have believed his claim that he slept with boys without doing anything illegal. “If a jury viewed Michael Jackson as simply a rather aberrant type of human being, that could work to his benefit or detriment, and maybe this time that’s what worked to his benefit.”

—ROBERT WEISBERG '79, Edwin E. Huddleson, Jr. Professor of Law, as quoted in Bloomberg. The June 13 article, “Michael Jackson Cleared of Child Molestation Charges,” explored the reasons the pop music star was acquitted.

“The death of King Fahd this week is not likely to lead to greater freedom and serious democratic reform, in part because of the Bush administration’s unwillingness to alter its approach.”

—J.P. SCHNAPPER-CASTERAS '08, writing in the August 3 issue of *The Philadelphia Inquirer*. Schnapper-Casteras, who was a research associate at the Center for American Progress, co-authored the column with Brian Katulis, director of democracy and public diplomacy on the national security team at the center. In the op-ed, “House of Sand and Oil: Saudi Succession Is Our Chance to Kick Our ‘Tyrant Addiction,’” Schnapper-Casteras and Katulis argued that the Bush administration needs to push more aggressively for democratic reforms in Saudi Arabia.



PHOTO: JOE NETO



PHOTO: LAUREN SHAY

“There is a small window of opportunity here, and we’re trying to get people excited about what could happen. They’re leaving. We’re staying. And it’s time to rebuild.”

—DIANA BUTTU JSM '00, JSD '05, legal advisor to Palestinian National Authority President Mahmoud Abbas, as quoted in *The New York Times*. The August 12 article, “After Decades of Disappointment, Gazans Are Preparing to Rejoice,” considered the future of Gaza as Israel prepared to close its settlements and withdraw from the area.

Over time, U.S. Supreme Court Justice Sandra Day O'Connor '52 (BA '50) “became a pretty good barometer of what people in the country think the Constitution means.”

—PAMELA S. KARLAN, Kenneth and Harle Montgomery Professor of Public Interest Law, as quoted in the *Los Angeles Times*. The July 2 article, “Vacancy on the Supreme Court,” examined Justice Sandra Day O'Connor’s role as the swing vote on many of the important issues that came before the Court.



PHOTO: LINDA A. CICERO



## DIRECTORS' COLLEGE BRINGS BUSINESS LEADERS TO CAMPUS

The 11th annual Directors' College, held at Stanford Law School in June, attracted a large crowd of lawyers, senior business executives, and directors of publicly held companies. The three-day event featured panel discussions and keynote speakers on a range of topics, including director liability, Sarbanes-Oxley compliance, executive compensation, and best boardroom practices.



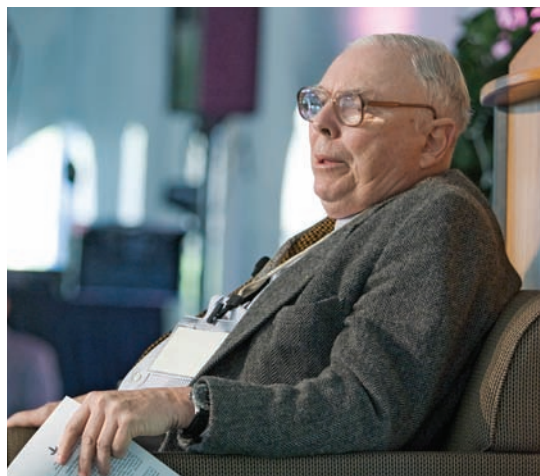
Safrat Catz, president and then-chief financial officer of Oracle Corp., discussed her company's legal battle with the federal government stemming from Oracle's acquisition of PeopleSoft Inc.



Directors' College codirector Joseph A. Grundfest '78, W. A. Franke Professor of Law and Business, welcomed attendees to the three-day gathering.



Conference attendees were engrossed by Charles T. Munger's breakfast talk.



Charles T. Munger, vice chairman of Berkshire Hathaway Inc., offered some of his trademark wit and business wisdom during one of the general sessions.



Eric Schmidt, chief executive officer of Google Inc., explained how an iconoclastic company like Google approaches corporate governance.



Four Stanford Law School graduates are clerking at the U.S. Supreme Court for the 2005–06 term. (Left to right) Daniel Lerner '02 is clerking for Justice John Paul Stevens; Benjamin Horwich '03, for Justice Sandra Day O'Connor '52 (BA '50); Kathryn Judge '04, for Justice Stephen G. Breyer (BA '59); and David Cooper '04, for Justice Anthony M. Kennedy (BA '58).

## ANIMAL RIGHTS ENDOWMENT

Bob Barker, the host of the long-running game show, *The Price Is Right*, has funded a \$1 million endowment at Stanford Law School for the study of animal rights law. Stanford was one of several law schools that received gifts.

"Animal rights is an emerging and controversial area of the law," said Barton H. "Buzz" Thompson, Jr., JD/MBA '76 (BA '72), Robert E. Paradise Professor of Natural Resources Law and director of the Stanford Institute for the Environment. "His gift will help us advance the field in the thoughtful manner it deserves."

The Bob Barker Endowment Fund

for the Study of Animal Rights will be used to pay for courses, workshops, conferences, public lectures, and seminars on animal rights law. Bruce Wagman, a partner at Morgenstein & Jubelirer LLP, and an expert in animal law, is teaching a course this term titled Animal Rights.

Barker is known for his outspoken support of animal rights. In 1987 he resigned as host of the Miss Universe and Miss USA pageants because they required contestants to wear animal furs. He has also spent millions of dollars to finance clinics that specialize in the spaying and neutering of pets.



## RAY YBARRA '05: TAKING ON THE MINUTEMEN

Last spring, while his Stanford Law School classmates prepared for graduation, Ray Ybarra found himself on a windswept bluff at the U.S.-Mexican border, watching retired men and women with handguns and binoculars scan the desert for illegal immigrants. A group of vigilantes, called the Minuteman Project, had descended on southern Arizona to try to stop illegal Mexican migration. Ybarra '05, who is on a two-year leave from the law school, was there to make sure they did not violate the rights of migrants. The desert that divides Mexico and the United States claims the lives of hundreds of immigrants every year. He didn't want gun-toting activists to add to the toll.

"Last year one girl died right by this road," Ybarra said in April, referring to a victim of dehydration. He was looking down on a stretch of dust that serves as an international boundary near the border town of Douglas, Arizona. The Minuteman Project had set up encampments every 50 yards or so, dressing their trucks in American flags and laying out lawn chairs. Ybarra stood a stone's throw away with a half dozen of his own volunteers, including two Stanford Law School students, Matthew Liebman '06 and Jason Tarricone '06.

Ybarra is intimately familiar with the border area and the plight of the migrants. His father hailed from Douglas. His mother was born a few hundred yards to the south, in the Mexican town of Agua Prieta. "We'd literally play on the border," Ybarra said. "My brother and I had this game of running as far into Mexico as we could and then running back."

At the age of 26, Ybarra's efforts have catapulted him into a leading role as an advocate for migrant rights. "He really is quite a star to not only have thought of this project but to go to the border and make it happen," said Jayashri Srikantiah, associate professor of law (teaching) and director of Stanford Law School's Immigrants' Rights Clinic. "The border is the location of a major civil rights struggle for immigrants right now."

Minuteman organizer Chris Simcox has a somewhat less generous view of Ybarra's work. "I tolerate Ray," said Simcox. "As a father, I am always impressed with youthful idealism." That idealism is what brought Ybarra to Stanford

Law School in the first place. After his first year at Stanford, Ybarra spent the summer working in Arizona for the ACLU to raise awareness of vigilante activity against migrants. Less than a year later, he was awarded the ACLU's Ira Glasser Racial Justice Fellowship, which has allowed him to take a two-year leave of absence to work on the border.

With a small salary, Ybarra moved to his grandfather's house in Douglas, where he set up an office in the laundry room. Within months he had helped file a federal civil lawsuit against one rancher, Roger Barnett, who had allegedly held a group of 16 migrants at gunpoint. He distributed open letters to the local sheriff's office, explaining the rights of migrants and the legal limits of citizen patrols. On behalf of the ACLU, he traveled the country lecturing legal groups

on the hazards of the current border policy, and recently completed a video documentary of the role racism plays in border disputes.

None of it was easy—he temporarily resigned from the ACLU after a dispute over tactics—but he has been unwavering in his commitment. "Ray is kind of a force of nature," said Michele Landis Dauber, associate professor of law and Bernard D. Bergreen Faculty Scholar, who had him as a first-year law stu-

dent at Stanford and later visited him on the border. "I think he has the potential to become as important a civil rights leader in the Latino community as Cesar Chavez."

Simcox and other advocates of closing the border are now planning armed border patrols in Texas, New Mexico, and California, including a new patrol in California in which volunteers will carry long arms. Ybarra is hoping to help get legal observation posts set up in time. He moved in July to El Paso, Texas, to set up a legal monitoring program there.

Ybarra plans to return to Stanford in the fall of 2006 to complete his final year of law school, before he returns to the border to continue what he considers his life's work. He will no doubt find many supporters on campus. "He is an amazing role model in the way that he lives by what he believes," said Olivia Para '07, who volunteered during the Minuteman protest. "I think ultimately what Ray is trying to do is to let people know what is happening."

— Michael Scherer



(Left to right) Ray Ybarra '05, Matthew Liebman '06, and Jason Tarricone '06 stand watch in the desert near Douglas, Arizona, monitoring the activities of the Minuteman Project, a group of citizen soldiers committed to stopping illegal Mexican migration into the United States.

PHOTO: PETER HOLDENESS

## GARTH HARRIES '00: SHAKING UP NEW YORK'S SCHOOLS

From New York City's venerable Tweed Courthouse, which now houses the New York City Department of Education, Garth Harries '00 helps lead one of the nation's boldest education reform initiatives. This fall Harries will oversee the opening of 73 new schools in the city's campaign to boost student achievement.

Harries is among a cadre of young Turks, many from investment banks and management consulting firms, who were recruited by education chancellor Joel I. Klein to bring professional management to the sprawling bureaucracy. As chief executive officer of the city's Office of New Schools, Harries works with educators, parents, and politicians to transform the nation's largest school system.

"It's a wonderfully stirring thing we are doing," said the 32-year-old Harries, who lives in Greenwich Village with his wife, Dina. "The challenge is to create a system of great schools, in an urban setting, where many kids come to us with lower skills and higher needs."

That challenge is all-encompassing for Harries, who arrives at the courthouse at 7 the morning of June 15 on a workday that won't end until 9 that night. First, there's a morning meeting with Klein, followed by another with his staff to discuss plans for charter schools. Then Harries takes the subway to the Bronx to discuss sites for new schools with borough president Adolfo Carrión. After returning for an afternoon meeting in Manhattan, it's back to the Bronx to confer with parents over the location of a new school which has yet to be finalized.

Klein says Harries has played a crucial role in moving the city's ambitious reform agenda forward. "Garth is an extraordinary manager," Klein said. "He is also a caring, committed leader. Our city is lucky to have him."

Harries wasn't sure what his career path would be when he arrived at Stanford Law School in the fall of 1997. After graduating from Yale University in 1995 with a BA in ethics, politics, and economics, he taught private school in Vail, Colorado, campaigned for the 1996 Democratic ticket, and worked on economic development projects in Philadelphia.

During the summer following his first year at Stanford, he realized that his legal training might not lead him to practice law. While working for Brancart & Brancart, a fair housing litigation firm located in Loma Mar, California, he was

assigned to a case involving a landlord in Bismarck, North Dakota, who was accused of discrimination. But what Harries found most interesting during his stint in the upper Midwest was helping Fair Housing of the Dakotas reorganize its strategy.

Upon returning to Stanford, he took classes in nonprofit management at the business school. The next summer, he worked at the U.S. Department of Justice Civil Rights Division, and the consulting firm McKinsey & Company. "Stanford was a place where I could experiment and think about different disciplines," said Harries. "I could use my legal skills for issues that were broader than just legal analysis."

Though he passed the Pennsylvania bar exam, Harries never practiced law. Instead, he went to work for McKinsey in New York City. While there, Harries coordinated an efficiency program that saved a major insurer \$80 million, and helped a large U.S. regional bank devise its corporate strategy.

After three years at McKinsey, Harries grew restless. So he jumped at the offer from Klein, a former assistant attorney general in charge of the Antitrust Division of the U.S. Department of Justice. Klein was brought in by Mayor Michael R. Bloomberg to revamp New York's educational system.

At the Office of New Schools, Harries is leading the effort to break up some of the city's huge, and often failing, high schools. Only about half of the city's public school students complete high school in four years. The new schools Harries is helping to create will have fewer than 500 students and provide the kind of personalized instruction that can help improve student performance. Harries is also helping parents create charter schools—experimental public schools that operate outside the dictates of local school boards but are accountable for student progress on statewide tests.

Harries wants New York to be known as a city where educational experimentation can flourish. In a public school system with 1,350 schools, 140,000 employees, and 1,100,000 students, Harries acknowledges that his task is not easy. "Turning around an organization this large takes time," said Harries. "It's like moving a flywheel. First you lean your shoulder in, you push, and you generate some motion. You push some more, and there's movement. And before long you've generated real momentum."

—David McKay Wilson



PHOTO: MELANIE GRIZZEL



## MAKING THE GRADE

**KUDOS:** In June, **Mary B. Cranston '75 (BA '70)**, chair of Pillsbury Winthrop Shaw Pittman LLP, was named one of five winners of the Margaret Brent Women Lawyers of Achievement Award. The annual award is presented by the American Bar Association Commission on Women in the Profession. **Jerome I. Braun '53 (BA '51)**, cofounder of Farella Braun + Martel LLP, was selected the 2005 recipient of the John P. Frank Award, given by the Ninth Circuit Advisory Board and the Circuit's Judicial Council to the outstanding lawyer practicing in the federal courts of the western United States. **Mi-Hyung Kim '89**, executive vice president and general counsel of Kumho Asiana Business Group, was selected to Yale University's World Fellows Program, 2005. In May, **Deborah Sivas '87**, director of Stanford Law School's Environmental Law Clinic, was named one of three winners of Stanford University's Graduate Service Recognition Award. All five of Stanford Law School's nominees for the Foundation of the State Bar of California's Law School Scholarship program were awarded scholarships: **Jonathan Cantu '06**, **Adair Ford '07**, **Matthew Liebman '06**, **Olivia Para '07**, and **Jason Tarricone '06**.

**APPOINTMENTS & ELECTIONS:** New Mexico Governor Bill Richardson appointed **Hilary Tompkins '96** as his general counsel. Tompkins, a member of the Navajo Nation, is the first Native American to hold the position. **Rex Heeseman '67** was appointed in June to the Los Angeles Superior Court. Also in June, **William Barnum Jr. JD/MBA '80 (BA '76)**, a general partner at Brentwood Associates, was one of five university alumni elected to Stanford University's board of trustees. **George Lichter '93**, former president of Ask Jeeves Intl., was named chief executive officer of InfoSearch Media, Inc. **Victor Vilaplana '73**, a partner at Seltzer Caplan McMahon Vitek, was appointed to the San Diego Port Commission.

**THE PRESS ANOINTS:** In August, *Time* named **Anthony Romero '90**, executive director of the ACLU, one of the "25 Most Influential Hispanics in America."

**Brooksley Born '64 (BA '61)** was given one of the eight "Lifetime Achievers 2005" awards by *The American Lawyer* in its May issue. Born is the former chair of the U.S. Commodity Futures Trading Commission and a retired partner at Arnold & Porter LLP. In July, *Forbes* named U.S. Supreme Court Justice **Sandra Day O'Connor '52 (BA '50)**, and **Penny Pritzker JD/MBA '84**, president and chief executive officer of Pritzker Realty Group and chairman of Classic Residence by Hyatt, to its list of the "100 Most Powerful Women" in the world. **Jenny S. Martinez**, assistant professor of law, and **Thomas C. Goldstein**, lecturer in law, made the *National Law Journal's* May list of the nation's top 40 lawyers under the age of 40.

## LAW SCHOOL DEANS

**Lawrence C. Marshall**, professor of law and David and Stephanie Mills Director of Clinical Education, is assuming the newly created post of associate dean for public interest and clinical education, responsible for the school's clinical and public interest programs. **Pamela S. Karlan**, Kenneth and Harle Montgomery Professor of Public Interest 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, responsible for the school's curriculum. **Mark G. Kelman**, William Nelson Cromwell Professor of Law, is continuing in his post as vice dean, responsible for overseeing the administrative operations of the school.

## NEW LIBRARY DIRECTOR

J. Paul Lomio, a specialist in legal research and the development of digital reserves, was appointed director of the Robert Crown

Law Library. Lomio, who joined the law school staff as a reference librarian in 1982, served as acting director for the 2004–05 academic year following the retirement of Lance E. Dickson, professor of law, emeritus, and former director of the library.

Along with overseeing the library's collection of 500,000 books and 8,000 periodicals, Lomio will spearhead moves to make the library's holdings "the best collection of online material of any law library in the world," he said.

Lomio has been instrumental in the launch of many of the law library's online resources. He played a key role in developing the Stanford Securities Class Action Clearinghouse, and the Women's Legal History Biography Project.

Lomio earned a bachelor's degree from St. Bonaventure University, a law degree from Gonzaga University, and a master's degree in law from the University of Washington School of Law. He went on to earn a master's degree in library science from the School of Library and Information Science at Catholic University of America.

## FACULTY ON THE MOVE

**At the end of the 2005 academic year, two members of the law school faculty left Stanford. MAUDE PERVERE, senior lecturer in law and director of the Gould Negotiation and Mediation Program, has retired. MICHELLE ALEXANDER '92, associate professor of law (teaching), has moved to the Michael E. Moritz College of Law at Ohio State University, where she is an associate professor of law.**

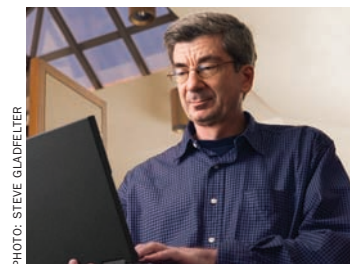


PHOTO: STEVE GLADFELTER

# GRADUATION 2005

"IT IS DAUNTING ENOUGH to have to speak at graduation, but you have given me an even more daunting task—to 'charge' you," said Robert Weisberg '79, Edwin E. Huddleson, Jr. Professor of Law, in his May 15 address to the Class of 2005 during the school's graduation ceremony. "In one sense my task is already moot: we've already 'charged' you \$161,112 for a full load," he said as the graduates and their loved ones chuckled.

"As you embark on your careers," Weisberg continued on a more serious note, "I charge you to respect what each other does, because no one owns the concept of the public interest. All of you—in your own way—will be striving to reconcile the varieties of public and private interests that you will represent," he said. This year's John Bingham Hurlbut Award for Excellence in Teaching was awarded to Weisberg, a two-time winner of the coveted prize. Issuing the class a final homework assignment, Weisberg said, "Dig out your original application essay. Read it—it will remind you of what you aspired to do when you applied to law school. And it will remind you to keep aspiring."

This year's law school ceremony marked the first for Larry Kramer, Richard E. Lang Professor of Law and



Peter Lamb '05 (above) leads the procession of faculty and students into Stanford's Memorial Hall to begin the graduation ceremony.

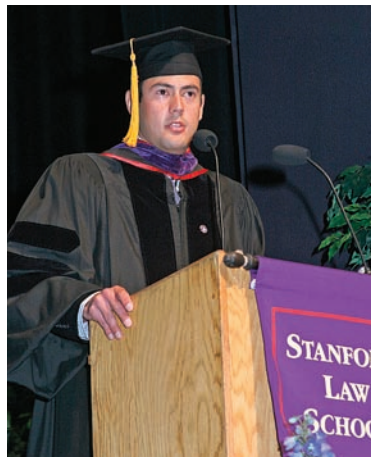
Oluriyike Ojediran '05 (far left) receives congratulations from her father, Makin Ojediran, and her mother, Funmi Ojediran, following the ceremony.

Peter Michael Koski (left), copresident of the Class of 2005, delivers the student remarks during the graduation ceremony.

PHOTOS: MISHA BRUK



PHOTO: COURTESY OF OLURIYIKE OJEDIRAN '05







Robert L. Rabin, A. Calder Mackay Professor of Law, and Michele Landis Dauber, associate professor of law and Bernard D. Bergreen Faculty Scholar, enjoy a relaxing moment before the graduation ceremony.



Shirin Ebadi (right), winner of the 2003 Nobel Peace Prize and featured speaker at graduation, took time to talk with graduates, family, and friends. (Left to right) Julie Wilson, doctoral student at Stanford University School of Education, Gitanjali Duggal LLM '05, Mineko Mohri LLM '05, and Protima Pande, a friend of Duggal's.

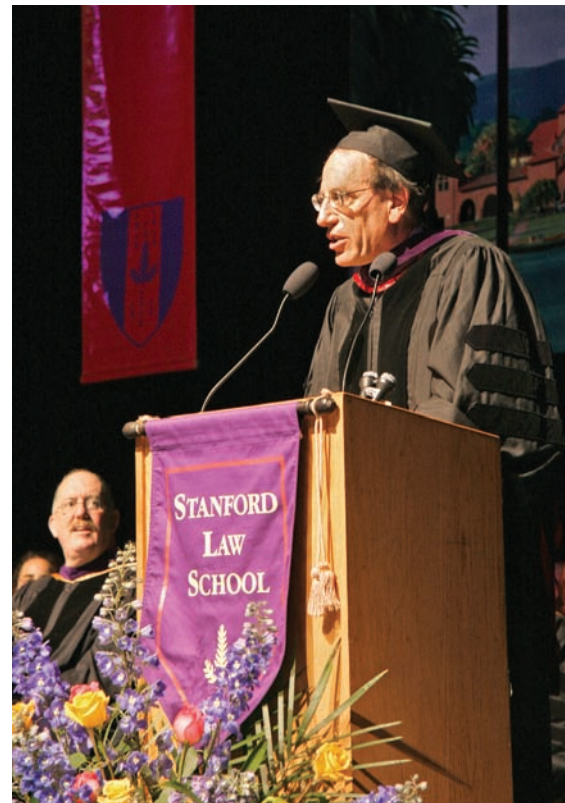
Dean, who told the graduates, "Law is a powerful tool, used for good, used for ill, and sometimes used with indifference. We hope that we have helped you see the difference between those uses. . . . Set high goals for yourself. We need great lawyers to solve tomorrow's problems. Go out there and do the impossible because you can. And go out there and live great lives."

Also speaking at the ceremony was Shirin Ebadi, winner of the 2003 Nobel Peace Prize. Ebadi, an Iranian human rights lawyer, was awarded the 2005 Jackson H. Ralston Prize in International Law by the law school. The prize is awarded for distinguished contributions to the establishment of international peace and justice through arbitration, diplomacy, the peaceful settlement of disputes, and the promotion of world order. Past recipients include Jimmy Carter, former president of the United States, and Václav Havel, former president of the Czech Republic and leader of the Velvet Revolution.

Ebadi urged the newly minted Stanford lawyers to use their education and professional skills to promote human rights. "I see a world free of poverty, discrimination, violence, war, ignorance, and oppression," Ebadi told the assembled crowd of some 1,600 friends and family. "I hope we can deliver a world in a better form than what was delivered to us by our fathers." (See p. 12 for an extended interview with Ebadi about Iran, Islam, and United States policy in Iran.)

Among those who participated in the ceremony were 167 candidates for the degree of Doctor of Jurisprudence (JD); 18 for the degree of Master of Laws (LLM), with 8 focusing on corporate law and business and 10 focusing on law, science, and technology; 12 for the degree of the Master of the Science of Law (JSM); and 4 for the degree of the Doctor of the Science of Law (JSD).

—Judith Romero



Robert Weisberg '79, Edwin E. Huddleson, Jr. Professor of Law (above), the winner of the John Bingham Hurlbut Award for Excellence in Teaching, addresses the Class of 2005.

Miguel A. Méndez, Adelbert H. Sweet Professor of Law (right), talks with Raul Torrez '05 (center) and his father, Presilliano Torrez, assistant U.S. attorney in New Mexico, at the dean's reception the evening before graduation.

# Reforming Iran

**A discussion with Shirin Ebadi, the Iranian human rights lawyer who was awarded the 2003 Nobel Peace Prize**

**Shirin Ebadi** has been at the forefront of progressive change in Iran for many years. She received a law degree in 1969, and that same year became the first female judge in the history of Iran. After the fundamentalist revolution in 1979, she and other women were forced to resign as judges. Since the revolution, Ebadi has fought to bring greater democracy and human rights to Iran. Her efforts were recognized by the international community when she was awarded the 2003 Nobel Peace Prize. Ebadi was the featured speaker at Stanford Law School's graduation ceremony held in May. She was also awarded the 2005 Jackson H. Ralston Prize in International Law by the law school, an award that has previously been given to the late Olof J. Palme, former prime minister of Sweden; Jimmy Carter, former president of the United States; and others. The following discussion between Ebadi and Eric Nee, editor of *Stanford Lawyer*, took place the day before graduation.

**You were the first woman to become a judge in Iran. What inspired you to think you could achieve that?** Ever since I was a child, I was in love with the concept of justice. Whenever I'd see children fighting I'd try to go to the defense of the one who was being beaten. And I was beaten several times without even having anything to do with the fights. Also, my father was a lawyer, so we discussed legal issues constantly at home. It was my interest in justice that compelled me to go to law school and try to become a judge immediately after I finished law school. I felt that by becoming a judge I could actually help promote justice.

After the revolution I was told that because I was a woman I could no longer serve as a judge. So a number of other women judges and myself were forced to give up our posts. I was given the job of secretary of the same court that I used to preside over. But I could not accept it, so I left the Ministry of Justice. I then went to the bar association and requested a license to become a lawyer, but the license wasn't granted. The reason was that I had written a number



PHOTO: MISHA BRUK

of articles criticizing some laws that had been passed after the revolution. Finally, seven years later, I was able to get a license to practice law. So I set up my own firm and started advocating human rights.

**Why were you allowed to be a lawyer but not a judge?** In the beginning of the revolution, through a misinterpretation of Islam, they ruled that women cannot be judges because women are emotional and can't make fair judgments. But a group of colleagues and I started writing and campaigning against this ruling. We wrote a lot of articles, attended a lot of seminars, and published books on the issue. Fortunately, 13 years after I left my job as a judge, the judiciary finally ruled that Islam does allow women to become judges. So we now have women judges again in Iran.

**Why don't you become a judge once again?** When I was a judge the laws were different. Today I would find it impossible to enforce the laws. For example, people can be stoned, we have juvenile executions, and individuals can stay in prison for long periods of time simply for being in debt. Since I disagree with these laws I can't become a judge.

**You mentioned that you were able to get the law changed so that women could become judges once again. Was this an isolated vic-**



### **tory, or has the status of women improved in Iran in recent years?**

The feminist movement in Iran has had some remarkable achievements. I'll explain the most important one. After the revolution, a law was passed that in cases of divorce the mother was given custody of a girl until the age of 2, and a boy until he was 7. After that the child was taken forcibly from the mother and given to the father.

Iranian women could not accept this law. Finally, in the last parliament, this law was overruled and a new one was passed. However, the Guardian Council, which sits above the legislature, vetoed the bill. The reformists in parliament objected, so it was sent to a higher council, the Expediency Council, for arbitration. The law remained pending there for two years until I won the Nobel Peace Prize.

When I returned to Iran after receiving the prize, about 1 million people showed up at the airport to greet me. All the streets leading to the airport were blocked. Most of the people who came to greet me were women. That was a signal that Iranian women were not satisfied with their status. That night was a very sensitive period. The police were on emergency call because they were afraid of a riot. Later, the government tried to find a way to pacify the women. The same bill that was pending for two years was passed within 15 days. Now, under the new law, after divorce the boy *and* the girl remain with the mother until the age of 7. Afterward the court decides, based on the interests of the child, whether the child should remain with the mother or go to the father. If the child remains with the mother, the father has to pay for the child.

**Having a million people turn out for your arrival must have been amazing. Has that outpouring of support made it easier or more difficult for you to make reforms?** It has actually made it more difficult. The last time I spoke at a university, a group of fundamentalists arrived and a clash broke out with the students attending my lecture. Since then I've been forbidden to talk at universities. I haven't even been allowed to give a talk at my own school in Tehran. The law students petitioned for me to go several times, but the university disagreed. I'm glad to be part of the graduation ceremony of your school tomorrow. But part of my heart is in pain. It saddens me to see that I have greater freedom outside Iran.

**What role have other nations played in making things better or worse in Iran?** Military threats from the outside provide a reason for the government to harden its position and put down freedom-seeking movements within the country. We experienced this during the war with Iraq. When Iran was at war with Iraq, the government had good reason to restrict dissent, saying that it violated the national security of the country. It's the same now. Whenever people object, they're asked

whether they want to turn into another Iraq. It makes people fearful of criticizing the government. The government says that if you criticize us, it's an excuse for the Americans to attack us and turn this country into another Iraq.

### **What can the United States do to help facilitate change in Iran?**

First and foremost, the United States can't compromise with undemocratic groups inside Iran. It made this mistake in the coup which led to the overthrow of the former Iranian prime minister, Mosaddeq, in 1953. It replaced him with the Shah, who represented an undemocratic system. It was that event that led to the Islamic revolution. Secondly, it needs to understand that military strikes will not resolve anything. What I suggest is that the U.S. administration give genuine support to democracy and human rights. And whatever pressure it wants to exert on Iran has to be done through the United Nations, not through weapons and bombs.

### **Are you optimistic or pessimistic about your country, and the growing tension between Islamic fundamentalists and the United States and other Western countries?**

I have to be optimistic. The day I and the Iranian people lose hope is the day when everything's lost. The United States has to understand what true Islam represents. Unfortunately, the United States has supported the kind of Islam that was fundamentalist. It used the Taliban forces to prevent the spread of the Soviets. When America was giving money to the Taliban, did it ever imagine that that same group would attack the United States on September 11? When the Taliban were cutting women's breasts off because they were trying to go to school or because they were not veiling their faces, the United States remained silent. When it remained silent, did it know that one day its own embassies would be bombed? Rest assured, democracy will serve the United States' long-term interest if it is enhanced and promoted in Islamic countries.

**Many Americans would be surprised that you're able to be as outspoken as you are and still move freely inside of Iran and make visits to the United States.** I have been to prison once and just narrowly escaped two assassination attempts. In the past three months I've been summoned to court in Iran twice. They wanted to take me to court and then to prison. Fortunately, the reaction of the people of Iran and the international community was so strong that they weren't able to do that. The Iranian government knows that I do not have a political party of any sort. I have announced on numerous occasions that I have no intention to run in the political arena. The Iranian government knows that if I'm criticizing them, it's not because I want to sit in their place. So for this reason and because of international support, so far they've left me alone. Nobody knows of tomorrow. ■

# Technology's Field Generals

**The general counsels at Microsoft, Google, Cisco, eBay, Yahoo!, Qualcomm, Autodesk, and Oracle—Stanford Law School alums, all—have changed the face of the technology industry and redefined the role of the general counsel.**

WRITTEN BY JOSH MCHUGH  
PHOTOGRAPHS BY PETER STEMBER

William Neukom '67 looked up from his desk in the Seattle offices of Shidler, McBroom, Gates & Baldwin. William H. Gates, the firm's managing partner, had just popped his head into Neukom's office to ask him something: "My son's coming to Seattle. Would you be the lawyer for his company?"

"I don't know why he asked me. I wasn't an expert in any particular area—kind of a country lawyer, doing a little bit of everything," recalled Neukom 26 years later. "But when the managing partner says, 'Will you?' you say 'Sure!'"

Six years after that conversation, Neukom went back to his managing partner to make the case that it was time for their client, Microsoft Corp., to have its own legal department. Some of the partners might have been concerned about losing a client, an experienced lawyer, and lots of billable hours. They may also have been mystified that a partner would want to alter the trajectory of his career path to go in-house—especially with a company that, at the time, cast a relatively short shadow on the national corporate landscape. But Gates senior agreed with Neukom's recommendation, as did Microsoft, which then formed a legal department and asked Neukom to head it.

The rest is history.

Twenty years ago, the title of general counsel often evoked a cozy sinecure, a haven far from the high-pressure partner track, a semi-retirement spent vetting corporate documents and keeping regular hours. But a group of Stanford Law School graduates at the legal helm of some of the world's most powerful technology companies has played a critical role in redefining the job. Today's high-tech general counsels have a hand in nearly every major strategy decision their companies make, from designing the legal infrastructure underlying the new markets their companies are creating to shaping international policies on technology and intellectual property. They are the field generals of their companies' senior executive teams, experts in the tactical execution of high-level strategies.





David Drummond '89  
Vice President, Corporate Development, and General Counsel, Google



William Neukom '67  
Chair, Preston Gates & Ellis; former Executive Vice President  
of Law and Corporate Affairs, Microsoft

In 2002, Neukom returned to private practice where he is chair of his old firm, now known as Preston Gates & Ellis LLP. Microsoft's legal department had grown from a four-person office to a staff of more than 600, 250 of whom were professionals. But even now Neukom remains arguably the technology industry's most recognizable general counsel, thanks to Microsoft's extended battles with the U.S. Department of Justice and other regulatory adversaries. He's also the elder statesman of an all-star lineup of Stanford Law School graduates who are making corporate and legal history as general counsels for technology's ranking heavyweights:

- Daniel Cooperman JD/MBA '76, who marshaled an army of lawyers through Oracle Corp.'s bitterly fought hostile takeover of PeopleSoft Inc. from June 2003 to January 2005;
- Michael Jacobson '80, who spends his days crafting legal approaches to the previously unheard-of situations created by eBay Inc.'s entirely new system of commerce;
- Mark Chandler '81, who guides Cisco Systems, Inc.'s global push to stay atop the high-speed networking game;
- Marcia Sterling '82, who travels the world as a spokesperson for the Business Software Alliance, representing her company, Autodesk, Inc., as well as the entire software industry;
- John Place '85, who took pains to preserve Yahoo! Inc.'s fun-loving startup mojo as its first general counsel, while preparing it for adulthood as a public company;
- Louis Lupin '85, who stands guard over Qualcomm Inc.'s teeming trove of mobile communications patents; and
- David Drummond '89, who has shepherded Google Inc.'s youthful executive team through one of the most meteoric rises in the annals of technology.

### From the Outside In

In addition to their shared alma mater, most of the field generals (with the exception of Chandler) have something else in common: they started as outside counsels but ended up going in-house. Their stories differ, but follow a similar pattern: the company retains a law firm to help it through a stock offering, a major acquisition, or an important piece of litigation; the head lawyer on the firm's team becomes intimately familiar with the company, its strategic objectives, and its senior executives; he or she joins the company as full-time general counsel. They all describe the allure of the executive suite—the rush of being involved in major

deals, the prospect of participating in the kind of rapid wealth creation that characterizes the tech industry, and the satisfaction of being part of a team that creates something permanent.

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**"The biggest challenge as a general counsel was finding ways to explain the technology and business of Microsoft, particularly to government officials and other influentials."**

**—William Neukom, Microsoft**

"In-house' was almost a derogatory term," said Marcia Sterling, who left her partner perch at Wilson Sonsini Goodrich & Rosati to become general counsel of Autodesk in 1995. "I thought I was going to work less hard," she said with a laugh. "Going from being a partner at a big firm to being a general counsel, you have no training for being an executive," said Sterling. "As most employees work their way up the corporate ladder, they learn about sharing power, building consensus, how to push an agenda ahead. We come in cold at the executive level."

As a newly minted executive, Sterling was unprepared for the challenge of frequent public speaking engagements. In her first week on the job, Sterling found herself on a panel in front of an audience of 150 mid- and upper-level Autodesk managers. That's when it hit her that being an executive meant having something more profound to say than expressing a legal opinion. It's also when she first noticed the symptoms of spasmodic dysphonia, a neurological condition that affects control over the vocal cords. After several speaking engagements, Sterling approached Autodesk CEO Carol Bartz to discuss whether her vocal-cord condition was hurting her job performance.

"She told me, 'I didn't hire you for the sound of your voice,'" recalls Sterling. "I hired you for the quality of your thinking and your judgment." Her confidence bolstered by Bartz's support, Sterling not only stayed on as general counsel and continued to speak at Autodesk events, but has since

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Josh McHugh is a contributing editor at *Wired*. The San Francisco-based writer's articles have also appeared in *Outside*, *Fortune*, *Small Business*, and *Slate*.





**Daniel Cooperman JD/MBA '76**  
Senior Vice President, General Counsel, and Secretary, Oracle



**Marcia Sterling '82**  
Senior Vice President, General Counsel, and Secretary, Autodesk

become a frequent speaker abroad for the Business Software Alliance, an industry group that advocates for strict anti-piracy laws. "The kind of work you do as outside counsel is limited," said Sterling. "You get in late, after the major decisions have been made. You're detached from the heart and soul of the business."

"Going in-house has become a wonderful career path," said John Roos '80 (BA '77), CEO of Wilson Sonsini, a Palo Alto, California, law firm that has been intimately involved with the technology industry since the early years of Silicon Valley. "Now, general counsels are a core part of the senior teams at the companies we represent. I don't think that was the case 20 years ago."

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**"These are situations where law is unsettled—no one has a clue as to how it's going to apply. What you do know is that, in all probability, it's going to be a lawsuit involving you that will establish the law."**  
—Michael Jacobson, eBay

Losing some of his firm's best and brightest lawyers to clients on an increasingly regular basis stings a little, Roos admits. But the firm has found a way to turn the phenomenon to its advantage: It created an alumni association of current and former members of the firm that holds frequent networking events. These events often lead to career opportunities for young Wilson Sonsini lawyers who are impatient about making partner. Rather than going to other firms, these young lawyers sometimes move in-house to work with Wilson Sonsini alumni. Stronger relations with Wilson Sonsini alumni, of course, also lead to more business for the firm.

"Sometimes you lose people you'd rather not lose, but overall, [the popularity of the in-house career path] has become an advantage to us. Witness the former partners who are now general counsels at major companies," Roos said. "The legal departments of a significant percentage of our clients are run by former attorneys of ours. When I

give speeches to our first-year associates, I talk about career paths, and going in-house is one of them."

### **The Government vs. Tech Icons**

One indicator of any general counsel's value is whether the company's business continues to function well under the glare and pressure of regulatory investigations and actions. And nowhere is that more important than in the technology industry, where the government has been quick to step in to stop acquisitions, curtail the use of new technologies, and force companies to alter their business practices.

"The biggest challenge as a general counsel was finding ways to explain the technology and business of Microsoft, particularly to government officials and other influentials," explained Neukom. Most people think of Microsoft's antitrust battle—the highest-profile case brought by the government against a corporation since the breakup of Standard Oil in 1911—exclusively in terms of the five-year struggle over Microsoft's decision to make its browser technology part of the Windows operating system. Neukom, however, sees it as a continuous 12-year campaign with regulatory agencies, which was fueled primarily by the government's long-running solicitation of complaints from Microsoft's competitors. "In those days, there was a lot of envy and suspicion in the technology business; companies and careers and fortunes were being made and lost in real time," said Neukom.

One of Microsoft's old adversaries, Oracle, faced a bit of karmic comeuppance in 2003 when PeopleSoft invoked antitrust law in its attempt to block Oracle's \$6 billion hostile takeover. "PeopleSoft's antitrust defense was to actively lobby regulators," said Daniel Cooperman, Oracle's general counsel since 1997. "Even though the company itself was the target of a tender offer made directly to shareholders, PeopleSoft's officers put their thumb on the scale by visiting the major states to lobby state attorneys general and representatives in Congress to oppose the deal on antitrust grounds. They spent time at the Department of Justice and with European Commission regulators too, encouraging them to oppose the deal."

In February 2004, Oracle upped its bid to more than \$9 billion, PeopleSoft rejected it, then Oracle suffered a setback that looked like it might kill the acquisition. "The Department of Justice sued us to enjoin the transaction, joined by seven states," Cooperman said. Stymied by the U.S. Department of Justice and facing an adverse staff recommendation of the European Commission, Oracle mounted an aggressive defense of the transaction in federal court. After a federal judge found no basis to block the transaction





Louis Lupin '85  
Senior Vice President and General Counsel, Qualcomm



Mark Chandler '81  
Vice President, Legal Services, General Counsel, and Secretary, Cisco Systems

and the European Commission withdrew its opposition, PeopleSoft's shareholders overwhelmingly agreed to tender their shares, and the acquisition was completed in January 2005, a year and a half after it had been launched.

"Managing this process, from a legal perspective, was really fascinating," said Cooperman, "because there was so much more going on than just the corporate aspects of the transaction." Cooperman, who came to Oracle from McCutchen, Doyle, Brown & Enersen (now Bingham McCutchen LLP), commands a 175-person legal department, including 130 lawyers, a little more than half of whom are in the United States. During the battle for PeopleSoft, he deployed more than 100 lawyers from outside firms. "The PeopleSoft transaction required very comprehensive coordination among our legal team," he explained. "In addition to the challenges of the tender offer and the antitrust approval process, we faced active litigation on corporate, commercial, and regulatory issues."

### **At the Vanguard of New Law**

Navigating antitrust attacks while staying at the top of an industry is no mean feat, but neither is navigating the often-lawless wilds of the Internet. "What we're doing is brand-new," said Michael Jacobson, general counsel at eBay. "These are situations where law is unsettled—no one has a clue as to how it's going to apply. What you do know is that, in all probability, it's going to be a lawsuit involving you that will establish the law."

Jacobson has seen more than his share of unprecedented legal situations, and prefers to preempt precedent-setting cases whenever possible. Jacobson lays claim to the distinction of heading up a legal department that includes the country's foremost experts in an extremely obscure field: mastodon law. When an eBay auctioneer wanted to put up a mastodon tusk, Jacobson's team had to figure out whether the sale of the prehistoric prong would violate an international ban on the ivory trade. Another time, someone in Siberia listed a section of mastodon pelt, and Jacobson dispatched the company's resident expert to pore through tomes of trade law to determine if regulations governing international fur trade applied to mastodon fur. In each case, eBay allowed the auction to proceed.

On a more mundane note, eBay increasingly finds itself in the middle of cases involving virtual or software-based entities and items, another area with little or no legal precedent. Over the last few years, gaming-software companies have repeatedly objected to the sale of virtual characters and items that gamers put up for auction on eBay.

"We have spent an awful lot of time doing things that were not legally required, so that once we're in front of the

trier of record we can say, 'Wherever you're going to draw the line, we're on the right side of it,'" said Jacobson, "rather than approaching things in a more traditional way, saying, 'We know where the line is, let's talk to the business people about how close we can get to it.'"

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**"One of the most challenging parts of my job is navigating the legal regimes of all the countries of the world, some of which are not particularly well developed."**

**—David Drummond, Google**

Over at Google, general counsel David Drummond often finds himself charting legal precedent as well. He has his hands full with a controversy over the Google Print Library Project, which entails scanning and digitizing the collections of some of the world's foremost libraries, including those of Oxford, Harvard, and Stanford universities.

Several publishing-industry groups have objected to Google's plan to scan copyrighted works. And the Authors Guild, together with three individual authors, have filed suit against Google claiming copyright infringement. It's the first situation of its kind, so it's unclear whether copyright law precludes scanning and indexing works owned by libraries. In August, Drummond and Google decided to postpone the scanning of library books currently covered by copyright, giving rights-holders an opportunity to provide Google with a list of works that should be excluded. Google intends to resume scanning any copyrighted works not specifically excluded by their copyright owners.

### **Intellectual Property: The Crown Jewels**

Companies like Google may on occasion find themselves fighting against copyright restrictions, but most of the time these high-tech general counsels are busy drawing a legal line of ownership around intangible assets like software code and engineering designs. That's because patents and copyright are the bedrock on which technology businesses are built.

"Technology companies are intellectual property companies—those are their assets," said Neukom. "It's not like owning a quarry of scarce minerals or shelf space. It's about





**Michael Jacobson '80**  
Senior Vice President and General Counsel, eBay



**John Place '85**  
Former Vice President, General Counsel, and Secretary, Yahoo!

people coming to work, creating useful technology, getting it out to users, and engaging in a constant feedback cycle with customers. In order for the work of that brain trust to have commercial value, you have to find ways to convey that value and protect against its unauthorized use. You do that by establishing and enforcing legal rights in that intellectual property by means of patents, copyrights, trademarks, and trade secrets.”

In the software industry, success in the marketplace often precedes the establishment of a de facto standard (à la Windows). The telecommunications industry, however, relies on pre-established standards around which to deploy its multibillion-dollar capital expenditures on network equipment. Here, patent law is all-important.

Qualcomm general counsel Louis Lupin joined the wireless powerhouse in 1995 after representing the company as a partner at Cooley Godward Castro Huddleson & Tatum in a pivotal patent-infringement lawsuit that threatened to derail Qualcomm’s drive to establish its CDMA (code division multiple access) technology as the standard for cellular

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**“In my demeanor and approach, I tried not to reinforce the stereotype of a typical authoritarian lawyer. I made sure I could communicate with them on a more collaborative level.”**  
—John Place, Yahoo!

phones. Qualcomm prevailed, and Lupin, a former border patrol agent for the U.S. Immigration and Naturalization Service and agent for the U.S. Drug Enforcement Administration, joined Qualcomm’s legal team.

“That case had everything,” said Lupin, “IP rights, standardization, technology advancement, and commercial adoption. It’s a particularly important intersection for us because we not only make chipset products, but we derive a substantial portion of our profits from licensing.” In 2004, Qualcomm pulled in \$1.3 billion in licensing revenue from Sony, Motorola, Nokia, Ericsson, LGE, Kyocera, Samsung, and every other major handset manufacturer.

Lupin heads up a 70-lawyer legal department that includes 30 internal patent lawyers and another 70 people in patent support roles, working with an equal number of

lawyers in outside firms. “At any given time,” Lupin said, “there are about 200 people working on patents for us.” Lupin is responsible for coordinating the work of as many as 70 firms worldwide each time Qualcomm files for a major new patent—which is quite often. Qualcomm holds more than 6,900 patents around the world and has more than 18,000 pending.

### **Navigating International Waters**

“One of the most challenging parts of my job is navigating the legal regimes of all the countries of the world, some of which are not particularly well developed,” said Drummond, who joined Google in 2002 from Wilson Sonsini. “The level of regulation varies from place to place, so you try to learn as much as possible, and you get strong local expertise.”

One of Google’s more controversial interactions with regulators in another country occurred in 2002, when the Chinese government shut down the country’s access to Google to prevent its citizens from accessing banned sites. While other search engines brayed defiantly about resisting censorship, Google remained quiet, and Google China was soon back online, although the results were filtered to exclude results on topics sensitive to the Chinese government. “We made no changes to our service, and any filtering scheme was, as far as we know, implemented by the Chinese government,” said Drummond. “We didn’t feel that we were subject to their laws which would require us to filter our results, because at that time we didn’t have any Chinese presence. Our approach is certainly that we’re going to comply with the laws of the countries that we’re in. The interesting thing is that the question of when you’re doing business in a particular country is not so clear-cut.”

For Cisco’s Mark Chandler, the general counsel’s toolkit has to combine law with statecraft and an eye to the way the company’s actions will be perceived. Chandler faced his own China-based challenge in 2003, when Cisco alleged that Shenzhen-based Huawei Technologies was using Cisco source code in its routers, specialized computers that move data across networks. “Our salespeople around the world were happy to compete with companies who developed their own products,” said Chandler, “but they felt they were being asked to compete against our own development team’s results.”

If the offending company had been based in the United States or Europe, Cisco could have initiated an intellectual property lawsuit against it in a traditional and aggressive manner. But since China’s burgeoning technology industry is relatively young and the country’s business climate more defensive than in some countries, Chandler knew that he had to tread carefully—and that, in the long run, diplomatic



success would be every bit as important to Cisco as winning the case in the courts.

“We have customers in China who were concerned about our litigating with a competitor in China,” said Chandler. “We had to make sure that our customers in China knew that what we were doing was not an attack on Chinese industry, but a dispute over a legitimate issue between two enterprises, one of whom happened to be Chinese.”

In the end, Huawei agreed to modify its products, Chandler said. In June 2004, a year and a half after Cisco sued Huawei in the United States, the companies reached a resolution that Cisco characterized as a victory for intellectual property rights. Huawei agreed to revise source code and technical documentation that Cisco objected to, and to stop selling products based on patents Cisco said had been infringed. The deal allowed Huawei to save face and let Cisco stop competing against its own products while still preserving its image and relationships with its Chinese customers.

“Cisco believes in standards-based approaches, and generally does not take an aggressive intellectual property stance,” said Chandler. “For instance, we offer to license, with no royalty, any Cisco patent that relates to a standard. From an overall strategy perspective, therefore, the key was making sure it was understood that we were doing what any company in a similar position would do to protect itself.”

## Culture Creators

As a company’s resident arbiter of regulations and corporate conduct, general counsels have a significant impact on the company’s culture. That’s especially true at tech startups, where it’s not unusual for everyone on the senior management team to be under 40, and where general counsels tend to be viewed as the token adult, the ultimate “suit.” A surprisingly easygoing bunch, our field generals tend to defy that stereotype.

In 1994, two years after John Place left the now-defunct Brobeck, Phleger and Harrison LLP to work in Adobe Corp.’s legal department, Adobe’s general counsel asked him to do some research into something called the World Wide Web and figure out what it might mean for the company’s legal strategy. “I was struck by the democratizing potential of the medium,” said Place. “Almost immediately, I had complete passion for it. After my first day online, I got home and told my wife, ‘My life has changed.’”

Place left Adobe to join Yahoo! in 1997, when Yahoo! consisted of founders Jerry Yang and David Filo and 170 employees. “I was the first lawyer they hired,” Place recalled. “Jerry said that having to hire an in-house lawyer

was the scariest moment he’d faced.” The scary part: adding an “adult” to the mix at a young-thinking startup. Yang and his cohorts were understandably worried that having a “suit” on the scene might alter the high-energy chemistry and enthusiasm that had powered Yahoo!’s rapid growth. But Place, who rarely wore anything more formal around the office than jeans and denim shirts, made sure he didn’t mess with the easygoing vibe—at least not much.

“In my demeanor and approach, I tried not to reinforce the stereotype of a typical authoritarian lawyer. I made sure I could communicate with them on a more collaborative level,” Place said. “I tried to approach it not as a top-down, policy-making role, but more as one member of a team trying to collectively decide what the smart thing to do was. So instead of saying ‘You have to do this,’ I’d say, ‘This is what might happen if you don’t do this.’”

One powerful motivational ally: Yahoo!’s soaring stock. “In those days, any hiccup in the business meant a large shift in market cap,” Place said. It was important that all the employees use their best judgment in the myriad circumstances no one could predict. It would be impossible to make “rules” to cover all these situations. “So the way I’d put it was usually something like: ‘I’d hate to be the person whose poor judgment was responsible for making my colleagues’ net worth drop by one-third in a day.’”

Working collaboratively and exercising good judgment are traits that these eight general counsels have demonstrated throughout their careers. In doing so, they’ve blazed highly unconventional paths, using the background and analytical skills they honed at Stanford Law School to get their companies to the top of the tech industry and keep them there.

One additional trait each of the field generals cited when reflecting on his or her successes: thinking on one’s feet while handling a continuous stream of legal challenges that are, in the majority of cases, unprecedented. While the law school has changed with the times, adding a raft of intellectual-property and business-focused options for students, the core emphasis on thinking creatively to solve problems for clients—and most of these general counsels still refer to their companies as clients—has been part of the curriculum since the beginning.

“There may have been an intellectual property course when I was there, but if there was, it didn’t get much attention from the students,” said Neukom. “It was my impression that Stanford Law School was not in the business of preparing people to be prosecutors, senators, CEOs, M&A specialists, or trial lawyers—we could be any of those things—but rather that the mission was to graduate people who would be imaginative problem solvers.” ■

# Faculty Changing the World

**Stanford Law School faculty spend a large portion of their time pursuing scholarly research and teaching students. But most of the faculty also devote a substantial amount of energy to projects outside of academia. This past year was no exception.**



## THOMAS HELLER: CURBING GLOBAL WARMING

This December, some 10,000 delegates from 160 countries will descend on Montreal for the 11th United Nations Conference on Climate Change. Their aim: to devise a new international framework for controlling greenhouse gas emissions after 2012, when the Kyoto accord will have run its course. Among the people present will be Thomas C. Heller, Lewis Talbot and Nadine Hearn Shelton Professor of International Legal Studies.

Heller, an authority on international business transactions in developing economies, has been working on global warming since 1992, when he served as an advisor to delegates at the Earth Summit in Rio de Janeiro. Since then, as a member of the U.N.'s Intergovernmental Panel on Climate Change, he's been writing papers and traveling the world to promote creative and practical solutions to the problem.

One of Heller's favored approaches, encapsulated in the 1997 Kyoto Protocol, allows developed countries to meet their emission targets in several ways: They can reduce gas emissions through the promotion of more fuel-efficient cars and the like, they can purchase emissions credits from nations that don't need them to stay below their emissions quotas, or they can earn emissions credits by investing in reforestation projects or environmentally friendly power plants in developing countries.

As Heller explains, such trading mechanisms go a long way toward making international agreements more palatable to industrialized countries, which often find it costly to reduce emissions on their home turf. They also encourage responsible development in rapidly developing nations such as China and India, which aren't bound by the Kyoto targets. "The concept of international trading in emissions is an academic's dream that still needs to be refined in upcoming international agreements to be credible and effective, but it is a start down the proper road," said Heller.

"I spend a huge amount of my time on back-channel negotiations with governments, especially in China and India," he said. "That's time consuming, but I think it has had some impact on their negotiating positions and their willingness to consider untraditional ideas of trying to deal with these problems."

Elliot Diring, director of international strategies at the Pew Center on Global Climate Change, says Heller's scholarly work and volunteer efforts to engage developing countries have done a lot to strengthen the international climate change effort. "What I prize most about Tom," he said, "is his ability to think across disciplines and cultures. He understands not only the legal dimensions, but also the politics, the economics, and the business perspective. And he pulls them all together. I think that's what makes him such an original thinker."—*Theresa Johnston*





PHOTO: LINLY HARRIS

## DEBORAH HENSLE: REFORMING ASBESTOS LITIGATION

In her work on asbestos litigation, Deborah R. Hensler, Judge John W. Ford Professor of Dispute Resolution, says she often hears the question, “Asbestos? Isn’t that in the past?”

Quite the contrary: because asbestos-related diseases have a latency period of up to 40 years, the injuries—and the lawsuits—have multiplied in recent years. And because asbestos lined the pipes and ceilings of so many buildings throughout the United States, and was used in myriad products, Hensler said, “There’s an almost unlimited number of business entities that had some responsibility for workers’ exposure.”

So Hensler’s work on a RAND Corporation study released May 10 of this year, “Asbestos Litigation,” is only too timely. Hensler joined the law school faculty in 1998 from RAND, where she was director of the Institute for Civil Justice, the pre-eminent center for non-advocacy research on civil justice policy.

The most disturbing findings of the report, Hensler says, are that people with minor or no injuries are now filing the majority of the lawsuits, and more than half the money spent is going to lawyers and legal expenses.

“There are lots of people who have X-rays that show damage but have no symptoms,” Hensler said. “My hope is that through congressional or other

action, the system will be reformed so that more of the money will go to the people who’ve been most seriously injured.”

In the RAND report, Hensler and her co-authors discuss recent proposals for reforming the asbestos compensation system, including using medical criteria to screen tort claims, and removing asbestos litigation from the tort system entirely, substituting a trust fund for asbestos victims.

This spring, the U.S. Senate voted legislation that would establish a trust fund—SB 852—out of committee. But whether it will make it into law is still unclear; asbestos litigation reform has been proposed many times before, only to fail.

“Deborah is the neutral party who tries to provide objective information to the policymakers so they can sort out their issues,” said Stephen Carroll, a senior economist at RAND. “She is very concerned about fairness and equity, and a part of her concern is to alert policymakers that the court system does not handle mass litigation well.”

Hensler, who has been studying asbestos litigation since the 1980s, said that the subject never fails to interest her. “Asbestos litigation provides a prism through which to view the strengths and weaknesses of the tort system,” she said. “Whenever I think there is nothing further to learn from the asbestos saga, I am proved wrong.”—*Mandy Erickson*



PHOTO: LINDA A. CICERO

## PAMELA KARLAN: EXTENDING VOTING RIGHTS

The Mississippi and Arkansas Deltas share similar history and demographics. But there is a subtle difference. In Mississippi, on the eastern bank of the Mississippi River, the local government must receive federal approval before it makes any changes to registration requirement, voting procedures, or electoral districts. In Arkansas, on the western bank, “preclearance” doesn’t apply. As a result, said Pamela S. Karlan, “If you look at Mississippi, the black community there has been much more successful at electing representatives of its choice than comparable communities in the Arkansas Delta.”

The preliminary research, which Karlan compiled with student help, is just one piece of evidence the Kenneth and Harle Montgomery Professor of Public Interest Law hopes to use this fall as part of a concerted effort to reauthorize the Voting Rights Act. Passed in 1965 at the height of the civil rights movement, the groundbreaking federal legislation permanently outlawed such practices as poll taxes and literacy tests that were designed to prevent African-Americans from voting.

But the act also included some temporary provisions that will expire in 2007 unless Congress acts. Among them is Section 5, which requires that certain states and counties receive preclearance from the feder-

al government before making any changes in their voting laws. As Karlan explained, "The requirement makes it much harder to get away with the kind of discrimination that these places engaged in for a century."

A Yale graduate and Stanford faculty member since 1998, Karlan has been involved in voting rights issues since the mid-1980s, when she took a job as assistant counsel to the NAACP Legal Defense & Educational Fund. Today, the constitutional law expert works on pro bono cases for a variety of national civil rights organizations, including the Leadership Conference on Civil Rights. Julie Fernandes, senior policy analyst and special counsel to the LCCR, called Karlan "a touchstone" with an unmatched understanding of the law in

this area. "She also understands our community, and can therefore serve as a useful bridge between the academic and the nonprofit world."

Karlan anticipates little trouble getting Congress to reauthorize the temporary provisions of the Voting Rights Act. Whether the Supreme Court will uphold the law, though, is another matter. Already, three Justices—Anthony Kennedy, Antonin Scalia, and Clarence Thomas—have expressed doubts about the act's constitutionality. "I always plan for the worst," she explained. "Whatever statute we get, somebody is going to claim that Congress exceeded its power. Our job is to figure out how to respond to that claim."  
—Theresa Johnston



PHOTO: STEVE GLADFELTER

## MARK LEMLEY: OVERHAULING PATENT LAWS

**W**hen an 8-year-old can acquire a patent for a method of twisting a playground swing, as one recently did, it's a clear sign the U.S. patent system is broken, says Mark A. Lemley (BA '88), William H. Neukom Professor of Law.

"The scrutiny isn't all that rigorous," Lemley said, noting that probably any kid who has spent time on a swing has twisted it the same way. "Many of the truly innovative companies feel like the patent system is more often getting in the way of innovation."

Lemley has worked to improve the system, both as of counsel at Keker & Van Nest LLP in San Francisco, and in his research and writing as a Stanford professor. In *Phillips v. AWH Corp.*—described by Lemley's colleague at Keker, Daralyn Durie, as "the most important patent case in years"—Lemley filed an amicus brief on behalf of Intel, Google, Microsoft, Micron, and IBM. The July 12 en banc decision, in which the Federal Circuit set the rules for determining the meaning of patent claims, followed much of Lemley's analysis, which argued for a greater focus on what the patentee invented rather than the dictionary meaning of terms.

Lemley also testified June 14 before the Senate

Judiciary Subcommittee on Intellectual Property in favor of HR 2795, which would both give companies greater opportunities to challenge a patent and restrict those patent holders who sue for infringement on a patent they've never used. The House bill has received bipartisan support; Patrick Leahy (D-Vermont) plans to introduce a companion Senate bill soon. "On balance, this bill is definitely an improvement for the patent system," Lemley said.

Lemley has also produced a number of studies; one of these examined the rule that allows people to file an unlimited number of applications in trying to get a patent, making it harder for the U.S. Patent and Trademark Office to reject bad applications. And an article he wrote in the December 2003 issue of the *Berkeley Technology Law Journal* describes how people who were ignorant about a patent and developed the same technology on their own are often subject to the damages intended for people who intentionally infringed.

"Mark has contributed enormously to the field of patent law," said Durie, a Keker partner. "He has a foot in three worlds—litigation, academia, and legislation. It's an unusual and effective combination."

—Mandy Erickson



## JENNY MARTINEZ: ENDING SEXUAL TRAFFICKING



PHOTO: STEVE GLADFELTER

Assistant professor of law Jenny S. Martinez had hoped that the case she argued for amici curiae, *Hwang Geum Joo v. Japan*, would provide a small consolation to a group of women who experienced a nightmare 60 years ago.

No such luck: the U.S. Court of Appeals for the District of Columbia decided June 28 that the case, in which World War II “comfort women” were asking Japan for reparations, was a matter for politicians, not the courts. The court cited the political question doctrine, saying that the postwar treaty the United States signed with Japan negated lawsuits arising from the war.

The 15 appellants, from China, Taiwan, South Korea, and the Philippines, were among thousands of women kidnapped during the war, enslaved, and forced to work as prostitutes for the Japanese military. Japan has never formally apologized for its actions.

“These women are very brave to come out and talk about an extremely painful experience,” Martinez said. “Some are in their 90s now, and they wanted some acknowledgement of what happened to them before they died.”

Martinez first argued the case in 2000, when she was an associate at Jenner & Block LLP in Washington, D.C. Though the court dismissed the case, the U.S. Supreme Court summarily reversed its decision based on another World War II case and sent it back to appeals court, at which point Martinez picked it up again.

Though the women are pursuing their goal through diplomacy and other tactics, Martinez said their fight in the U.S. court system—which allows individuals to sue foreign governments under the Alien Tort statute—is very likely over.

However, Martinez added that the ruling did contain a silver lining, as the court left open the possibility that other victims of sexual slavery could sue foreign states in U.S. courts under the Alien Tort statute. “One of the reasons I thought the case was important was that sex trafficking today is a big problem and governments are involved in it,” Martinez said.

“Jenny contributed an enormous amount to this case,” said Martina Vandenberg, a Jenner & Block associate, who was previously an expert on sex trafficking at Human Rights Watch. “Jenny’s legal work definitely blazed a trail. The legal arguments have been made to allow other victims to sue.”—*Mandy Erickson*

## KATHLEEN SULLIVAN: CREATING A PRACTICE



PHOTO: LINDA A. CICERO

Three months after stepping down as dean of Stanford Law School, Kathleen M. Sullivan received an unusual package in the mail. Inside were a new laptop, a BlackBerry, a stack of business cards imprinted with her name, a bottle of fine champagne, and a case file. The sender, Los Angeles-based Quinn Emanuel Urquhart Oliver & Hedges, LLP, had an intriguing proposal: Would Sullivan be willing to use part of her sabbatical to help the commercial litigation firm build a West Coast appellate department that would rival the established players in Washington, D.C.?

It didn’t take Sullivan, Stanley Morrison Professor of Law, long to accept. Before she

became one of the nation’s premier constitutional scholars, Sullivan had developed a passion for litigation and has cultivated that interest throughout her academic career, handling two or three appellate cases a year. In May she won a major victory for California vintners in a case before the U.S. Supreme Court, arguing that wineries should be allowed to ship directly to consumers living out of state. “I’ve always viewed my litigation sideline as not only compatible with, but a huge contributor to my teaching and research,” she explained. “You cannot possibly overestimate how much students love having real world experiences imparted to them in the classroom.”

Since becoming of counsel to Quinn Emanuel in January, Sullivan has kept up with the academic

lecture circuit while arguing two cases for the firm's clients in federal district court and working on a variety of appeals, including one defending truth-in-labeling laws for California winegrowers and another defending Barbie's copyrighted head for Mattel. She's also focused on recruiting highly respected lawyers who can keep Quinn Emanuel's new appellate department running after she returns from a yearlong sabbatical to teaching four days a week. "One of my goals," she said, "is to hire as many Stanford students over the summer and Stanford alumni as I can."

Bill Urquhart, who worked with Sullivan years

ago in Alabama on a civil rights case when they were both young lawyers, says he and his partners couldn't be more pleased by Sullivan's contributions. As he explained by phone, clients are "almost star-struck" when they meet her, the firm's seasoned lawyers are comfortable relying on her judgment, and young female practitioners have found her to be a particularly inspiring role model. "We've had four or five superstar law clerks accept jobs with us, and I'm 100 percent sure that they wouldn't have come to us before Kathleen," he said. "She's like the Lance Armstrong of the law."

—Theresa Johnston



PHOTO: LINLEY HARRIS

## MICHAEL WALD: PROMOTING CHILD WELFARE

In the spring of 2000, Michael S. Wald received a phone call from San Francisco's Grace Cathedral. Would the Stanford law professor—a nationally recognized authority on child welfare—be willing to come and speak to the Episcopal congregation about the likely effects of Proposition 22, a ballot initiative to deny recognition of same-sex marriages in California? With little hesitation, he accepted the invitation.

Wald, the Jackson Eli Reynolds Professor of Law and a former executive director of San Francisco's Department of Social Services, was invited to speak because he has an unusual perspective on the subject. After years of research, he's come to the conclusion that same-sex couples should be allowed to marry—because marriage of any kind tends to stabilize families, and that's a good thing for kids. Most children living in same-sex-couple households are the biological offspring of one partner, with no legal relationship to the other. So if one adult becomes ill or dies, there are all kinds of potential problems relating to custody, social security benefits, and parental leave.

"In the public's mind, same-sex marriage is often seen as a battle over gay rights," Wald explained. "I see it as a rights issue also, but as the rights of children

to stable families and to adequate legal and economic protection."

Since the ratification of Proposition 22, questions about the legality of same-sex marriage in California have been thrown into the legislature and courts. So Wald is still busy speaking publicly, advising legislators, and serving as a consultant to organizations involved in same-sex marriage litigation. In addition, he continues his research about children living with lesbian and gay parents.

Shannon Minter, legal director for the National Center for Lesbian Rights in San Francisco, calls Wald one of the group's "closest and most steadfast allies" in the academic community. "He has devoted many hours of his time to meeting with us and reviewing briefs," said Minter. "He's helped put the focus where it belongs, which is on how the law can best support the children in our families."

Wald is optimistic that in time, same-sex marriage will be legal in the State of California. But he noted, "You don't change the public's mind through social science research or even court cases. Public attitudes and values change through exposure." As more and more people go to school with lesbian and gay individuals and have lesbian and gay families living in their neighborhoods, he believes, "that will ultimately lead to changes in the law."—Theresa Johnston

# New Faculty and Promotions



## Legal Ethics Professor Norman Spaulding '97 Joins Law Faculty

Growing up in Berkeley, California, Norman W. Spaulding '97 couldn't help feeling a deep appreciation for the power of law. His African-American father and his white mother were married within a year of *Loving v. Virginia*, the landmark 1967 Supreme Court ruling that declared laws against interracial marriage unconstitutional. "It was incomprehensible to me, the idea that a state could have a law

making it impossible for my mother and father to be married," the 34-year-old scholar recalls now, shaking his head. "Since then, I've always had this sense of how deep law can reach into society. It can reach into the family. It can reach into the bedroom. It can reach into marriages."

Spaulding, a nationally recognized scholar in legal ethics and the history of the profession, won rave reviews at Stanford last year for his performance as a visiting professor from the University of California at Berkeley School of Law (Boalt Hall). Now he hopes to build on that success in his new position at Stanford as a tenured professor of law and John A. Wilson Distinguished Faculty Scholar.

"I was quite happy at Berkeley," he said in a recent interview, "but the students I had here were easily the best group I've ever had the pleasure of teaching." Stanford's stimulating intellectual climate was attractive as well: "If there's one thing that really drove this decision home for me, it was the idea of getting to share work and grow as a scholar in this community."

As a Stanford law student in the mid-1990s, Spaulding served as an articles editor for the *Stanford Law Review*, a member editor for the *Stanford Environmental Law Journal*, and a member of the Black Law Students Association. After graduation, he practiced in the San Francisco office of Skadden, Arps, Slate, Meagher & Flom LLP, where he did environmental litigation. Spaulding then clerked for Judge Betty Fletcher of the U.S. Court of Appeals for the Ninth Circuit and for Judge Thelton Henderson of the U.S. District Court for the Northern District of California, before joining the Boalt faculty in 2000. Last year, the Association of American Law Schools presented him with its Outstanding Scholarly Paper Prize for an article he wrote for the *Columbia Law Review*, "Constitution as Counter-Monument: Federalism, Reconstruction and the Problem of Collective Memory."

Barbara Allen Babcock, Judge John Crown Professor of Law, Emerita, remembers Spaulding as a standout in her criminal procedure course at Stanford. "His outstanding quality was and is intellectual eagerness and thoughtfulness," she said. "He really loves the law and the study of law. That is what makes him a great teacher—his enthusiasm and passion are truly inimitable. It's just a terrific hire."

Much of Spaulding's scholarship focuses on when lawyers go wrong; he probes the causes of professional failure and malaise from a historical perspective. "We often hear the claim that the profession is in decline, that it's in crisis because lawyers have become too zealous and too client-centered," he said. "But that has never sat well with me." In fact, "when you look back at the historical record, you find that most of the problems that we take to be indicia of a crisis in the legal profession are not new. American lawyers have always wrestled with the tension between serving clients, making a living, and serving the communities in which they work." People will rightly be suspicious of lawyers and the power that they have in a society governed by law, he said. But at the same time, "they'll want a zealous advocate when their rights are on the table."

At Stanford, Spaulding will teach courses in professional responsibility, civil procedure, and remedies. He plans to continue pro bono work (he's representing a California prisoner) and is collaborating with Babcock to update her widely respected casebook, *Civil Procedure: Cases and Problems*. "You can't imagine my surprise that I'm back here. But it's wonderful and exciting, too. Everybody here does such exceptional work. It's a real inspiration just to be in the building."—Theresa Johnston





## Political Science Scholar Daniel Ho Brings Empirical Expertise to Stanford

The day in 1989 that the Berlin Wall fell, Daniel Ho was a 10-year-old living in Sandhausen, West Germany, with his parents. "There were celebrations all over Germany," he said. "It was very exciting. I remember being out on the street, throwing firecrackers."

That event, along with the experience of growing up in Germany during the Cold War, sparked in Ho a fervid interest in politics. His interest took him to the University of California, Berkeley, where he earned a bachelor's in political science, then to Harvard and Yale, where he earned, respectively, a PhD in political science and a JD.

Now it has taken him to Stanford Law School, where he will start as an assistant professor in the fall of 2006. Ho is spending this year clerking for Judge Stephen F. Williams of the U.S. Court of Appeals, District of Columbia Circuit.

Ho has made empirical research the focus of his studies. One product of his research was a series of articles on how ballot format affects voting. He and Kosuke Imai, assistant professor in the Department of Politics at Princeton, showed that roughly 3 percent of voters in California primary elections chose candidates simply because the candidates were listed at the top of the ballot. "Over 10 percent of primary races are won by margins that are smaller than such ballot effects," he noted.

Ho also examined UCLA School of Law professor Richard H. Sander's recent claim that affirmative action causes African-Americans to increasingly fail the bar. In the *Yale Law Journal*, Ho showed that Sander's analysis incorrectly controlled for law school grades. "The same student would generally earn worse grades in a higher tier law school," he said. For black students with similar qualifications upon law school admission, says Ho, there's no evidence that going to a higher tier law school will hurt their chance of passing the bar.

Ho says he is thrilled to be moving back to the Bay Area. "I'm excited to start teaching and doing research at Stanford. The university has an amazing faculty and student body."—*Mandy Erickson*



## William Koski (PhD '03) Named School's First Clinical Professor

As an incoming University of Michigan freshman, William S. Koski (PhD '03) had never taken calculus, read the classics or even heard about AP classes. "These things simply weren't available at my high school" in Ishpeming, Michigan, a small town in the Upper Peninsula, said Koski. "And I wanted to do something to fix those inequalities."

His college experience of tutoring students in a juvenile detention center, some of whom couldn't read, only enhanced his desire to level the educational playing field. "Education is a civil right," he said. "If we believe that schooling is our society's mechanism for social mobility, we must recognize the need for reform." Koski, director of the Youth and Education Law Clinic, has promoted education rights through the clinic, which helps low-income children in Bay Area school districts. And now he has received his own promotion: this fall he became professor of law (teaching), making him the first clinical professor at the law school.

Koski attended the University of Michigan Law School right out of college, always intending to fight for the underdog. Following a stint with Orrick, Herrington & Sutcliffe LLP, in San Francisco, he earned a PhD at Stanford's School of Education while volunteering at the East Palo Alto Community Law Project. After teaching Stanford law students as a clinical instructor at the Law Project, Koski was hired by the law school as an associate professor (teaching) to launch the Youth and Education Law Clinic.

As director of the clinic, Koski teaches a class on law and education policy, supervises students representing clinic clients, and oversees complex school reform litigation. In addition, he and the students influence education policy at the state and local level through research and advocacy: some of the recommendations made by his clinic were incorporated into California's Senate Bill 1895, which provided for mental health services for disabled kids. It was passed in 2004.

"Schooling has such a deep and lasting impact on people," Koski said. "Everyone deserves a first-rate education."—*Mandy Erickson*



## Environmental Expert Margaret Caldwell '85 Promoted to Senior Lecturer

Margaret "Meg" Caldwell '85, who came of age with the ecology movement, was forever imprinted with a lasting desire to fight for the environment. "I grew up in the '60s," explained Caldwell, the director of the Environmental and Natural Resources Law & Policy Program at Stanford Law School. "That was the awakening of environmentalism. I decided in the sixth grade that I wanted to be an

environmental lawyer, and I never wavered in my goal."

Not only did Caldwell become an environmental lawyer, but she now chairs one of the most powerful land use agencies in the nation, the California Coastal Commission, which has broad powers to regulate California's coastline. This fall Caldwell was promoted to the position of senior lecturer at Stanford Law School. Caldwell started her career with Bingham McCutchen LLP in San Francisco, where she represented land owners in cleaning up superfund sites. She later joined the City of Saratoga (California) Planning Commission. "That's where I cut my teeth on land use issues," she said.

Since joining the law school in 1994, Caldwell has spent much of her time compiling a collection of business-school-style case studies of environmental and natural resources law. Teaching with case studies, Caldwell said, is a more effective teaching tool: "It allows students to discover the law for themselves and learn how to become problem solvers."—*Mandy Erickson*



## International Law Scholar Helen Stacy Promoted To Senior Lecturer

In the late 1980s, Helen Stacy was a barrister in London, struggling to prosecute defendants being carted from jail to jail. Initially sent from her native Australia to extradite an alleged drug trafficker for trial, Stacy noted the differences between standards in the Australian, British, and European legal systems.

Later, as a professor in the Faculty of Law at Queensland University of Technology in Brisbane, she researched the differences between legal systems, receiving a scholarship to study in Germany and teaching in Indonesia and South Africa. "It's fascinating to watch the centripetal pull on one country's legal performance because of standards in neighboring countries," she said.

Stacy has brought this fascination to Stanford, where she has taught international human rights and international jurisprudence at the law school. Her promotion this year to senior lecturer at the law school gives her a stronger platform from which to teach. Part of Stacy's work is comparing the efforts of Romania, Mexico, and Thailand in improving their court systems and their policing. Stacy is also studying the problem of applying international standards to different cultures in a book she is writing, *Human Rights and Globalization* (Stanford University Press, 2006). "I am making the argument that regional courts like the European, Inter-American, and African systems, and hopefully one day also, an Asian system are a linchpin to better human rights," Stacy said.—*Mandy Erickson*

# Visiting Professors: 2005–2006



**Juliet Brodie**, a visiting associate professor of law, will coteach the Community Law Clinic in the autumn and spring semesters. Brodie is a clinical associate professor of law at the University of Wisconsin Law School. Her research and teaching interests include civil litigation, community lawyering, poverty law, public interest law, and skills training. Brodie earned her JD from Harvard Law School. She worked as a litigation associate at Hill & Barlow in Boston

before moving to Madison, Wisconsin, where she became assistant attorney general at the Wisconsin Department of Justice. In 1998 Brodie moved to Ann Arbor, Michigan, to launch a community-based poverty law clinic. She returned to Madison in 2000 when she joined the law faculty at the University of Wisconsin. At the university, Brodie teaches Poverty Law and directs the Neighborhood Law Project, a law clinic for low-income people in Madison.



PHOTO: JIM BLOCK

**Christopher L. Kutz** will serve as The Richard and Frances Mallery Visiting Professor of Law; he will teach Criminal Law and Theories of Rights in the autumn semester. Kutz is a professor of law at the University of California at Berkeley School of Law (Boalt Hall), where he has been a faculty member since 1998. Kutz's research and teaching interests include criminal law and moral, legal, and political philosophy. Kutz received his JD from Yale Law School in 1997,

having received a PhD in philosophy from the University of California at Berkeley in 1996. Prior to joining the Boalt Hall faculty, he clerked for Judge Stephen F. Williams of the U.S. Court of Appeals for the District of Columbia. Kutz serves as a manuscript referee for Cambridge University Press, Oxford University Press, and Macmillan Press, and for the journals *Ethics*, *Legal Theory*, and *Philosophy and Phenomenological Research*.

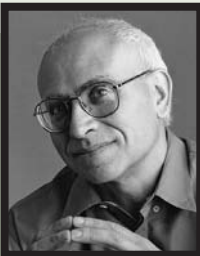


PHOTO: RHODA BAER

**David J. Luban** will serve as The Leah Kaplan Visiting Professor in Human Rights. He will coteach Legal Ethics and will teach Just and Unjust Wars during the autumn semester and International Criminal Law in the spring term. Luban is the Frederick J. Haas Professor of Law and Philosophy at Georgetown University Law Center, where he has been a member of the faculty since 1997. He earned his MA, MPhil, and PhD from Yale University. Luban's research and teaching interests

include legal ethics, the social responsibility of lawyers, law and philosophy, and jurisprudence. His recent publications include *The Ethics of Lawyers* (ed.), *Legal Modernism*, and *Legal Ethics*, co-authored with Deborah L. Rhode, Ernest W. McFarland Professor of Law. Luban has been a Woodrow Wilson Graduate Fellow, a Guggenheim Fellow, a Danforth Fellow, and a Keck Foundation Distinguished Senior Fellow in Legal Ethics and Professional Culture at Yale Law School.



**Nathaniel Persily** '98, a visiting professor of law, will teach Election Law in the spring semester. Persily is a professor of law at the University of Pennsylvania Law School, with a secondary appointment in the political science department. He earned an MA from Yale University, and an MA and PhD in political science from the University of California at Berkeley. Following graduation, he clerked for Judge David S. Tatel of the U.S. Court of Appeals for the District of Columbia. He was an associ-

ate counsel at the Brennan Center for Justice at New York University School of Law from 1999 to 2001, before joining the faculty at the University of Pennsylvania. His research and teaching interests include law and politics, voting rights, election law, constitutional law, and administrative law. Persily is a member of the editorial board of the *Election Law Journal* and *The Forum*, and the recipient of the Robert A. Gorman Award for Excellence in Teaching.





**Joan Petersilia** will serve as a visiting professor of law; she will teach California's Prison Reform in the autumn semester and Crime and Punishment in California: Advocacy and Reform in the spring term. Petersilia is a professor of criminology, law, and society at the University of California at Irvine School of Social Ecology. She received her MA in sociology from Ohio State University, and her PhD in criminology, law, and society from the University of California at Irvine. Before joining

UC Irvine, Petersilia was a corporate fellow and director of the Criminal Justice Program at the RAND Corporation. Her research and teaching interests include policing, sentencing, career criminals, juvenile justice, corrections, and racial discrimination. Petersilia's books include *When Prisoners Come Home: Parole and Prisoner Reentry* (2003), *Reforming Probation and Parole in the 21st Century* (2002), and *Crime: Public Policies for Crime Control*, edited with James Q. Wilson (2002).



**Jane S. Schacter** will serve as The Edwin A. Heafey, Jr. Visiting Professor of Law. She will teach Statutory Interpretation and Sexual Orientation and the Law in the autumn semester, and Constitutional Law in the spring term. Schacter is the James E. & Ruth B. Doyle-Bascom Professor of Law at the University of Wisconsin Law School, where she has been a member of the faculty since 1991. She earned her JD in 1984 from Harvard Law School. Following

graduation, she clerked for Judge Raymond J. Pettine of the U.S. District Court in Providence, Rhode Island; was a litigation associate at Hill & Barlow in Boston; and served as assistant attorney general in Massachusetts. Schacter's research and teaching interests include constitutional law, legislation, sexual orientation and the law, and civil procedure. In 1998 she was awarded the University of Wisconsin-Madison Chancellor's Award for Distinguished Teaching.



PHOTO: MICHELLE LITVIN

**Alan O. Sykes** will serve as The Herman Phleger Visiting Professor of Law; he will teach Torts during the autumn semester and International Trade Law in the spring term. Sykes, who has been a member of the University of Chicago Law School faculty since 1986, was named the Frank & Bernice Greenberg Professor of Law in 1990 and Faculty Director for Curriculum in 2001. He received his JD from Yale Law School in 1982. Sykes was a National Science Foundation

Graduate Fellow in Economics from 1976 to 1979 at Yale, and received his PhD in economics from the university in 1987. Before joining the Chicago law school faculty, Sykes was an associate with the Washington, D.C., law firm of Arnold & Porter. Sykes's research and teaching interests include international trade, torts, contracts, insurance, antitrust, and economic analysis of law. He serves as an editor of the *Journal of Legal Studies* and the *Journal of International Economic Law*.



PHOTO: IAN BRADSHAW

**Timothy Wu**, a visiting associate professor of law, will teach International Law Theory and Intellectual Property: Copyright in the autumn semester. Wu is a professor of law at Columbia Law School. He received his JD from Harvard Law School in 1998. Wu clerked for Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit and for Justice Stephen Breyer (BA '59) of the U.S. Supreme Court. Before joining the faculty at Columbia Law

School, Wu worked in the telecommunications industry in international and domestic marketing. His research and teaching interests include international law, intellectual property, international trade, copyright, the Internet, and telecommunications law. Wu has been a fellow at the University of Toronto Law School and has taught at the United Nations Development Program in Katmandu, Nepal, and at Kyushu University in Fukuoka, Japan.

# Property, Intellectual Property, and Free Riding

BY MARK A. LEMLEY (BA '88), WILLIAM H. NEUKOM PROFESSOR OF LAW AND DIRECTOR OF THE STANFORD PROGRAM IN LAW, SCIENCE & TECHNOLOGY

Intellectual property law is in need of reform. Many of the problems stem from the association that lawyers and judges often make between *intellectual* property and *real* property. In fact, there are very few similarities between the two fields of law.

Intellectual property protection in the United States has always been about generating incentives to create. Thomas Jefferson was of the view that “inventions . . . cannot, in nature, be a subject of property”; for him, the question was whether the benefit of encouraging innovation was “worth to the public the embarrassment of an exclusive patent.” In this long-standing view, free competition is the norm. Intellectual property rights are an exception to that norm, and they are granted only when—and only to the extent that—they are necessary to encourage invention. The result has been intellectual property rights that are limited in time and scope, and granted only to authors and inventors who meet certain minimum requirements. In this view, the proper goal of intellectual property law is to give as little protection as possible consistent with encouraging innovation.

This fundamental principle is under sustained attack. Congress, the courts, and commentators increasingly treat intellectual property not as a limited exception to the principle of market competition, but as a good in and of itself. If some intellectual property is desirable because it encourages innovation, they reason, more is better. The thinking is that creators will not have sufficient incentive to invent unless they are legally entitled to capture the full social value of their inventions. In this view, absolute protection may not be achievable, but it is the goal.

The absolute protection or full-value view draws significant intellectual support from the idea that intellectual property is simply a species of real property rather than a unique form of legal protection designed to deal with public goods

problems. Protectionists rely on the *economic theory* of real property, with its focus on the creation of strong rights in order to prevent congestion and overuse and to internalize externalities; the *law* of real property, with its strong right of exclusion; and the *rhetoric* of real property, with its condemnation of “free riding” by those who imitate or compete with intellectual property owners. The result is a legal regime for intellectual property that increasingly looks like an idealized construct of the law of real property, one in which courts seek out and punish virtually any use of an intellectual property right by another.

The effort to permit inventors to capture the full social value of their invention—and the rhetoric of free riding in intellectual property more generally—are fundamentally misguided. In no other area of the economy do we permit the full internalization of social benefits. Competitive markets work not because producers capture the full social value of their output—they don’t—but because they permit producers to make enough money to cover their costs, including a reasonable return on fixed-cost investment. Even real property doesn’t give property owners the right to control social value. Various uses of property create uncompensated positive externalities, and we don’t see that as a problem or a reason people won’t efficiently invest in their property.

The goal of eliminating free riding is ill-suited to the unique characteristics of intellectual property. Treating intellectual property as “just like” real property is a mistake. We are better off with the traditional utilitarian explanation for intellectual property, because it at least attempts to strike a balance between control by inventors and creators and the baseline norm of competition.

## The Free Riding Model of Intellectual Property

The idea of propertization begins with a fundamental shift in the terminology of intellectual property law. Indeed, the term intellectual

property may be a driver in this shift. Patent and copyright law have been around in the United States since its origin, but only recently has the term intellectual property come into vogue. A quick, unscientific search for the term “intellectual property” in federal court opinions shows an almost exponential growth in the use of the term over the last six decades.

As the term intellectual property settles over the traditional legal disciplines of patents, copyrights, and trademarks, and encroaches as well into such neighboring bodies of law as trade secrets, the right of publicity, misappropriation, unfair competition, and idea submissions, courts and scholars increasingly turn to the legal and economic literature of tangible property law to justify or modify the rules of intellectual property.

This change may inherently affect the way in which people think about intellectual property rights. Ask a layperson, or even many lawyers or judges, what it means that something is my property, and the general answer is along the lines of “you own it, so you and only you can use it.”

The rise of property rhetoric in intellectual property cases is closely identified not with common law property rules in general, but with a particular view of property rights as the right to capture or internalize the full social value of property. In his classic work on the economics of property rights, “Toward a Theory of Property Rights” 57 *Am. Econ. Rev. Papers & Proc.* 347, 348 (1967), Harold Demsetz argued that property rights are valuable in a society because they limit the creation of uncompensated externalities. In a world without transaction costs, Demsetz argued, the creation of a clear property right will internalize the costs and benefits of an activity in the owner and permit the sale of that right to others who may value it more.

The externality-reducing theory of property has led courts and scholars to be preoccupied with the problem of “free riding.” If the goal of creating property rights is to equate private and social costs and benefits by having the property owner internalize the social costs and benefits, those who “free ride”—obtain a benefit from someone else’s investment—are undermining the goals of the property system. The fear is that property owners won’t invest sufficient resources in their property if others can free ride on that investment. To be efficient, logic would seem to suggest, we must

eliminate free riding.

If one concludes that this logic applies to intellectual property as well, the implications are obvious. The way to get private parties to invest efficiently in innovation is not only to give them exclusive ownership rights in what they produce, but to define those rights in such a way that they permit the intellectual property owner to capture the full social benefit of the invention. If the social value of innovation exceeds the private value, as apparently it does, that simply means we don’t have strong enough property rights, and too many people are free riding on the investments of innovators. Further, if one postulates that transactions involving intellectual property are costless, society as a whole should benefit, since the owners of intellectual property rights will license those rights to others whenever it is economically efficient to do so.

Intellectual property law has traditionally been chock-full of opportunities to free ride—rights didn’t protect certain works at all, were of limited duration, had numerous exceptions for permissible uses, and didn’t cover various types of conduct. But if the economic goal of intellectual property is to eliminate free riding, these limits are loopholes to be excised from the law whenever possible. And so it has gone. By virtually any measure, intellectual property rights have expanded dramatically in the last three decades. Terms of protection are longer, the number of things that are copyrightable has increased, it is easier to qualify for copyright protection, copyright owners have broader rights to control uses of their works, and penalties are harsher. Trademark law has increasingly taken on the character of a property right, with the result that trademark “owners” now have the power to prevent various kinds of uses of their marks, regardless of whether consumers will be confused or search costs increased.

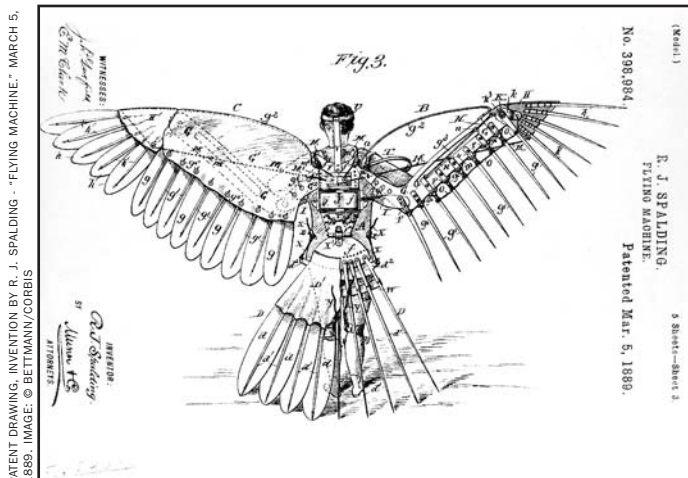
Courts applying the property theory of intellectual property are seeking out and eliminating uses of a right they perceive to be free riding. Some treat copying as free riding. They justify property-like protection for trademarks on the basis that it will prevent free riding. They debate the proper role of patent law’s doctrine of equivalents in terms of whether it permits free riding.

The focus on free riding also leads to an assumption on the part of courts that all enrichment derived from use of an intellectual prop-



erty right is necessarily unjust. Some courts see any use of a trademark by a competitor or third party as problematic, not because it deprives the trademark owner of sales, confuses consumers, or increases search costs, but because it reflects “trading on the goodwill” of the trademark owner and therefore appropriates value that properly belongs to the trademark owner. Others create new intellectual property rights (or quasi-intellectual property rights) to permit their “owners” to capture new uses of their public data online, their Web servers, and even their golf handicap system.

The rationale isn’t generally that the intellectual property owner has been harmed, but that the defendant has benefited, and that benefit involves taking something that doesn’t belong to the defendant. Anyone who benefits from the use of the intellectual property right must forfeit the benefit to the intellectual property owner.



### In Defense of Free Riding

The assumption that intellectual property owners should be entitled to capture the full social surplus of their invention runs counter to our economic intuitions in every other segment of the economy. In a market economy, we care only that producers make enough return to cover their costs, including a reasonable profit. The fact that consumers value the good for more than the price, or that others also benefit from the goods produced, is not considered a problem. Indeed, it is an endemic part of the market economy. I may be willing to pay \$100 for a copy of *Hamlet*, but I don’t have to—producers will compete to sell it to me for far less. If we were concerned with fully internalizing positive externalities in the market-

place, the ideal world would favor monopoly pricing and cartels over competitive markets, because monopoly increases the returns to producers, bringing them closer to capturing the full social value of their goods, reducing the free riding in which all consumers engage every day.

Tangible property law also implicitly rejects the idea that owners are entitled to capture all positive externalities. If I plant beautiful flowers in my front lawn, I don’t capture the full benefit of those flowers—passersby can enjoy them, too. But property law doesn’t give me a right to track them down and charge them for the privilege—though owners of property once tried unsuccessfully to obtain such a right. Nor do I have the right to collect from my neighbors the value they get if I replace an unattractive shade of paint with a nicer one, or a right to collect from society at large the environmental benefits I confer by planting trees. The same is true in commercial settings. The fact that my popular store is located next to your obscure one may drive traffic to your store, but I have no right to capture that value.

The very idea that the law should find a way to internalize these positive externalities seems faintly preposterous. Positive externalities are everywhere. We couldn’t internalize them all even if we wanted to. And as noted above, there is no reason we should particularly want to do so. If free riding means merely obtaining a benefit from another’s investment, the law does not, cannot, and should not prohibit it. If the marginal social cost of benefiting from a use is zero, prohibiting that use imposes unnecessary social costs.

We do sometimes try to internalize negative externalities in the real property context in order to avoid the tragedy of the commons. The central idea behind the tragedy of the commons is that joint or public ownership of a piece of property is inefficient, because nonowners who use the property have no incentive to take care of it and will therefore overuse it. Thus, common land shared by cattle owners is overgrazed, because in the private calculus of each cattle owner, their benefit from grazing (which inures entirely to them) exceeds their benefit from holding off (which is spread among all the users of the common). The property rights argument is that dividing the common into private property solves this problem by making each property owner liable for the consequences of her own actions.

Only where there is a tragedy of the commons do we insist on complete or relatively complete internalization of externalities. There is no tragedy of the commons in intellectual property. A tragedy of the commons occurs when a finite natural resource is depleted by overuse. Information cannot be depleted, however. Indeed, copying information actually multiplies the available resources, not only by making a new physical copy but also by spreading the idea and therefore permitting others to use and enjoy it. Rather than a tragedy, an information commons is a comedy in which everyone benefits.

This doesn't mean that intellectual property law is a bad idea. Rather, the basic economic justification for intellectual property law comes from what was only an occasional problem with tangible property—the risk that creators will not make enough money in a market economy to cover their costs. Information is different from ordinary goods because the marginal cost of reproducing it is so low. In a private market economy, individuals will not generally invest in invention or creation unless the expected return from doing so exceeds the cost of doing so—that is, unless they can reasonably expect to make a profit. To profit from a new idea or a work of authorship, the creator must be able either to sell it to others for a price or to put it to some use that provides her with a comparative advantage in a market.

Selling information requires disclosing it to others. Once the information has been disclosed outside a small group, however, it is extremely difficult to control. If we assume that it is nearly costless to distribute information to others, it will prove virtually impossible to charge enough for information to recoup any but the most modest fixed-cost investments. If the author of a book charges more than the cost of distribution, hoping to recover some of her expenditures in writing the work, competitors will quickly jump in to offer the book at a lower price. Competition will drive the price of the book toward its marginal cost—in this case the cost of producing and distributing one additional copy. In this competitive market, the author will be unable to recoup the fixed cost of writing the book. If this holds generally true, authors may leave the profession in droves, since they cannot make any money at it. The result, according to economic theory, is an underproduction of books and other works of invention and

creation with similar public goods characteristics.

Intellectual property, then, is not a response to allocative distortions resulting from scarcity, as real property law is. Rather, it is a conscious decision to create scarcity in a type of good in which it is ordinarily absent in order to artificially boost the economic returns to innovation. But solving the “problem” of intellectual property does not require complete internalization of externalities.

How do the implications of my approach differ from the free riding argument? The critical difference is that intellectual property law is justified only in ensuring that creators are able to charge a sufficiently high price to ensure a profit sufficient to recoup their fixed and marginal expenses. Sufficient incentive, as Larry Lessig reminds us, is something less than perfect control. Economic theory offers no justification for awarding creators anything beyond what is necessary to recover their average total costs.

### **What's Wrong with Overcompensating Creators?**

The argument so far shows that there is no economic justification for granting inventors and creators the right to control positive externalities flowing from their creations, except to the extent necessary to enable them to cover their average fixed costs. But, the reader might object, showing that there is no need to grant such control doesn't compel the conclusion that there is anything wrong with giving creators greater control over positive externalities. Wouldn't it be easier just to treat intellectual property rights as absolute?

There are a number of costs to granting overbroad intellectual property rights. These costs fall into five categories. First, intellectual property rights distort markets away from the competitive norm, and therefore create static inefficiencies in the form of deadweight losses. Second, intellectual property rights interfere with the ability of other creators to work, and therefore create dynamic inefficiencies. Third, the prospect of intellectual property rights encourages rent-seeking behavior that is socially wasteful. Fourth, enforcement of intellectual property rights imposes administrative costs. Finally, overinvestment in research and development is distortionary.

None of this is intended to suggest that intellectual property is a bad idea. Far from it. Rather, the point is that we cannot and should not seek

to internalize all positive externalities and prevent free riding on intellectual property. Granting intellectual property rights imposes a complex set of economic costs, and it can be justified only to the extent those rights are necessary to provide incentives to create. The economics of intellectual property simply do not justify the elimination of free riding.

### **How Can We Strike the Right Balance?**

In the search for the proper economic balance, the rhetoric of free riding seems unlikely to offer any substantial aid and quite likely to lead us astray. The concept of free riding focuses on the economic effects on the alleged free rider—whether the accused infringer obtained a benefit from the use of the invention, and if so whether it paid for that benefit. The proper focus is on the intellectual property owner, not the accused infringer. The question is whether an extension of intellectual property rights is necessary to permit intellectual property owners to cover their average fixed costs. If so, it is probably a good idea. If not, it is not necessary, and the likelihood that it will impose costs on competition or future innovation should incline us to oppose it. Whether an accused infringer obtained a benefit without paying for it bears only indirectly on that question. Free riding encompasses both conduct that simply captures consumer surplus or other uncompensated positive externalities and conduct that reduces the return to the intellectual property owner to such an extent that it cannot cover its costs. Only the latter is of concern, and free riding as a concept will not help us to distinguish the two.

If we are wrong to think of intellectual property rights in terms of free riding, how then are we to think of them? Several possibilities come to mind. First, it might be possible to rehabilitate the property analogy by disconnecting the concept of property from the arguments against externalities and free riding. It is possible to talk of intellectual property as a species of property more generally without applying the inapt economic lessons from different types of property with different characteristics. The key is to think of property so broadly that different legal regimes can fit under the tent. As Benjamin Kaplan put it, “To say that copyright is ‘property’ . . . would not be baldly misdescriptive if one were prepared to acknowledge that there is property and prop-

erty, with few if any legal consequences extending uniformly to all species and that in practice the lively questions are likely to be whether certain consequences ought to attach to a given piece of so-called property in given circumstances.”

But these nuanced analyses of the variety of possible property rules are the exception, not the rule, in the wave of property-based IP theory and court decisions. Far more common is an assumption that intellectual property is just like real property. My worry is that the rhetoric of property has a clear meaning in the minds of courts, lawyers, and commentators as “things that are owned by persons” and that fixed meaning will make it too tempting to fall into the trap of treating intellectual property as an absolute right to exclude.

A second alternative is to treat intellectual property as a tort. Unlike property systems, which focus on legally enforceable rights to exclude, tort systems are intended to compensate injured parties. A focus on harm to the intellectual property owner, rather than on the benefit conferred on the infringer, is consistent with optimal intellectual property policy. But the analogy to tort law is far from perfect. Tort law tends to focus on the defendant’s conduct, assigning blame where the defendant could have acted differently, rather than focusing on the incentives given to plaintiffs. Furthermore, while basic tort principles design the law around compensating plaintiffs for injury, a significant branch of tort law is built around the concept of unjust enrichment—to recapture or at least to deny to the tortfeasor—positive externalities or spillovers. My fear is that drawing too close an analogy to the tort system will encourage the courts to focus attention on how the defendant was enriched, not on the need for compensating intellectual property owners.

Perhaps the closest legal analogy to intellectual property is a government-created subsidy. The point of intellectual property law is to depart from the norm of a competitive marketplace in order for the government to provide a benefit to a private party. The government is acting to benefit the public, supporting innovation that might otherwise never occur because the market would undervalue creativity. A similar argument can be made for welfare and other forms of government subsidy, such as education—that they are intervening to help particular people or activities in a way that the market would not in order to pro-



duce collateral social benefits.

Nonetheless, the analogy has problems. The fundamental differences between intellectual property rights and other forms of government subsidy have to do with how the recipients of that subsidy are selected and the size of the subsidy determined. While with most government subsidies the government makes both choices, in the case of intellectual property the government leaves those decisions to the very market it is attempting to influence. Because many criticisms of government subsidies focus on size and allocation, they may not apply to intellectual property.

A related formulation is intellectual property as government regulation. Intellectual property is obviously government regulation in the classic neutral sense of that term—government intervention in the free market to alter the outcome it would otherwise produce because of a perceived market failure. Further, copyright in particular (and, to a lesser extent, patent) have become increasingly regulatory in structure, with statutes setting out detailed rules, regulations, and prices for specific uses in specific industries. Nonetheless, there are some problems with the subsidy and regulation analogies. Drawing the analogy to welfare may have a problem similar to the problem with the property story: it brings with it too much baggage.

None of these analogies is even close to perfect. If there are sufficient dissimilarities between intellectual property and other areas of law, drawing analogies becomes problematic, not only because of the caveats that are required (“intellectual property is like any other tort, except in the following ways”), but because those caveats have a way of getting lost over time. This may be what has happened with efforts to talk about intellectual property as a form of property: over time, it is too easy to rely on the shorthand reference to property and to come to believe that intellectual property really is like other kinds of property.

In the final analysis, I don’t know that we need an analogy at all. We have a well-developed body of intellectual property law, and a large and developing body of economic scholarship devoted specifically to intellectual property. The needs and characteristics of intellectual property are unique, and so are the laws that establish intellectual property rights. As the supreme court of Canada recognized 25 years ago, copyright law is

neither tort law nor property law in classification, but is statutory law. It neither cuts across existing rights in property or conduct nor falls between rights and obligations heretofore existing in the common law. Copyright legislation simply creates rights and obligations upon the terms and in the circumstances set out in the statute.



UNITED STATES PATENT-OFFICE DEPARTMENT, WASHINGTON, D. C.—(Photographed by A. GARDNER, WASHINGTON, D. C.)

UNITED STATES PATENT OFFICE DEPARTMENT, WASHINGTON, D. C. IMAGE: © CORBIS

Intellectual property has come of age; it no longer needs to turn to some broader area of legal theory to seek legitimacy. The economics of intellectual property law should focus on the economic characteristics of intellectual property rights, not on inapposite economic analysis borrowed from the very different case of land.

If we don’t need an analogy, maybe we need a new term. If people think of intellectual property as a form of property because of its name, then the name should probably go. But it has built up considerable inertia, and it does capture some of the similarities between the different fields it unites. Furthermore, none of the dozens of alternatives people have suggested seem likely to replace “intellectual property” in the public lexicon. So here’s a modest suggestion: instead of intellectual property, let’s start talking about “IP.” Lots of people already use it as a shorthand anyway. And if we are so unhistorical that the use of the term “intellectual property” can make us forget the utilitarian roots of our protection for inventions and creations, perhaps over time we can forget the origins of the abbreviation, too. ■

This is an abridged version of an article published in *Texas Law Review*, March 2005.

# But the Scouts, Your Honor

BY RICHARD THOMPSON FORD (BA '88)

George E. Osborne Professor of Law

**T**his fall the Supreme Court will review the constitutionality of the Solomon Amendment, which denies federal funding to universities that won't allow the military to recruit on campus. The law sounds like a throwback to 1968, something that would affect a handful of radical schools on the fringe of the academic mainstream. In fact, the 31 law schools that sued to overturn it include some of the most prestigious in the nation.

Here's the back story. Many universities bar employers that discriminate on the basis of sexual orientation, among other things, from interviewing on campus or using the schools' career placement services. So a law firm that discriminates is barred from putting its brochures in the career-development office. Likewise the Judge Advocate General, the legal arm of the military, which, like the rest of the armed services, does not employ openly gay homosexuals as a consequence of the "don't ask, don't tell" policy. Accordingly, a number of law schools have for years refused to accommodate the JAG recruiters. For a time the recruiters worked around the ban, meeting with interested students in off-campus locations like hotels and ROTC program offices, but a cold war between the law schools and the military was under way.

The Solomon Amendment, Congress's response, hardly set the stage for a detente. It will "send a message over the walls of the ivory tower of higher education," one of its sponsors, Republican Congressman Richard Pombo from California, promised at the time. "Starry-eyed idealism comes with a price." The price is extremely steep. Under the law, if any department of a university excludes the military, the *entire* university loses all federal funding.

In the suit that the Supreme Court will hear next term, schools argue that the Solomon Amendment interferes with their First Amendment rights of expression and free association by requiring them to help an employer that discriminates. At first blush the argument looks weak. The law doesn't force universities to accommodate the military: It only takes away their federal money if they don't. Since the government doesn't have to offer the money at all, isn't it free to offer it with strings attached? That depends on the strings: The government cannot condition benefits on relinquishing a constitutional right. If requiring universities to accommodate the military violates the First Amendment, so does conditioning federal money on the accommodation.

But does it violate the First Amendment to require uni-

versities to accommodate the military in their career placement services? Here gay-rights advocates have an unlikely ally—a 2000 Supreme Court decision that said the Boy Scouts could keep out gay scoutmasters. In *Boy Scouts of America v. Dale*, the Court held that a New Jersey law that required the scouts to admit members without regard to sexual orientation violated the group's First Amendment rights. Writing for the majority, Chief Justice William Rehnquist '52 (BA '48, MA '48) opined that forcing the scouts to admit homosexuals would impair the group's ability to express disapproval of homosexual conduct. The opponents of the Solomon Amendment make an almost identical argument about being forced to accommodate an employer that discriminates. The Third Circuit Court of Appeals accepted the analogy, holding that "just as the Boy Scouts believed that homosexual conduct is inconsistent with the Scout oath, the law schools believe that employment discrimination is inconsistent with their commitment to justice and fairness."

So, the Solomon Amendment, a law that protects discrimination on the basis of sexual orientation, may be undone by *Dale*, an opinion that protects discrimination on the basis of sexual orientation. But in order to attack Solomon in this way, one has to endorse *Dale*, an incoherent mess of an opinion that threatens anti-discrimination laws nationwide. *Dale* doesn't deserve to be cited, much less extended; it deserves to be reversed. As Justice John Paul Stevens complained in his dissent in the case, before *Dale* the Court had never held that an anti-discrimination law violated the First Amendment.

The Solomon Amendment effectively punishes criticism of the government, but it would be constitutional if not for *Dale*. Given *Dale*, it ought to be scrapped. *Dale*, however, is a confused and dangerous opinion likely to sow confusion in lower courts for decades to come. I'd love to see them both go; forced to choose, I hope the Court will spare Solomon and ditch *Dale*. But the case is only five years old—a cub scout of legal precedent—and judges hate to admit they were wrong. More likely the Supremes will apply *Dale* to strike down Solomon. Can the Court uphold the Solomon Amendment and hang on to *Dale*? Not without abandoning principled decision making altogether. I'm confident the nation's highest court would never stoop to that. But I'm told my starry-eyed idealism comes at a price.

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(A version of this essay first appeared in *Slate* on May 6, 2005.)

# In Memoriam

## ALUMNI:

**Lazare F. Bernhard '32 (BA '29)** of Pacific Palisades, Calif., died June 12, 2005, at the age of 96. An able swimmer with lifeguard training, Bernhard won a Carnegie Medal for rescuing a drowning man from the ocean. He was an 18-year-old Stanford sophomore at the time and he used the prize money to finance his Stanford Law School education. Bernhard practiced law in Los Angeles before joining the Army as an attorney in 1942. He flew to England on several missions during World War II, including the delivery of D-Day orders to the military. He is survived by his wife, Lanie; daughter, Laurie Jo; two sons, John and Paul; sister, Johanna; and three grandchildren.

**Owen F. Goodman '40** of Palm Springs, Calif., died at the age of 100 on July 14, 2005. Goodman served in the Army as a captain in the 41st and 9th Field Artillery Battalion; he was stationed in Rabat, North Africa, under Gen. Eisenhower, and took part in the initial landing in Sicily. Upon returning to California, he worked for law firms in the Los Angeles area, as well as for multiple water management districts. Goodman served as the first mayor of Rolling Hills, the first gated community in California. He was an avid golfer, winning numerous local championships, and an active member of the Bakersfield South Rotary Club and the Palm Springs Rotary Breakfast Club. He is survived by his wife, Darlene, and brother, Robert.

**James L. Grubbs '42** of Los Angeles, Calif., died February 10, 2005, at the age of 88. Before retirement, he served as a legal-corporate attorney of his own firm Grubbs and Collins. He is survived by his wife, Nancy.

**Frederick G. Dutton '49** of Washington, D.C., died June 25, 2005, at the age of 82. A World War II and Korean War veteran, he was awarded a Purple Heart and a Bronze Star for his contributions. He became a Washington power broker and worked on the presidential campaigns of John F. Kennedy, Lyndon Johnson, Hubert Humphrey, and George McGovern. Dutton was Kennedy's Cabinet secretary and an assistant secretary of state for congressional relations under Presidents Kennedy and Johnson. He served on the Democratic National Committee's McGovern Commission from 1969 to 1972, which led to the reform of the delegate selection process and helped increase the number of female delegates. Be-

yond the Beltway, Dutton also advised Mobil Oil, the Ministry of Foreign Affairs of Saudi Arabia, and the Saudi Embassy in Washington. He is survived by his wife, Nancy; four daughters, Lisa, Eve, Stacy, and Christina; son, Christopher; and seven grandchildren.

**William E. Siegert '51** of Stockton, Calif., died July 13, 2005, at the age of 92. Before law school, Siegert was an officer in charge of anti-aircraft defense on the California coast, taught in gunnery schools, and invented a gunnery sight. He continued to serve his country through the Army Reserve and retired at the rank of lieutenant colonel. At law school, he edited *Stanford Law Review* and graduated with honors. Siegert then joined the law firm of Neumiller & Ditz, specializing in civil law. He became a full partner and retired in 1972. Known as a renaissance man with a lifelong love of learning, William had a passion for electronics, machinery, and tools and he was credited with numerous clever inventions. After retiring from law practice, he studied art, music, architecture, cooking, and electron-microscopy, and received certificates in landscaping, air conditioning, and automobile brakes. He is survived by his daughter, Melody Allen Lenkner; son, Christopher Durell Siegert; granddaughter, Jodie Marie Theil; and the Cadillac LaSalle convertible coupe he purchased in 1939.

**William H. Rehnquist '52 (BA '48, MA '48)** passed away September 3, 2005. See p. 4.

**Carlos F. Brown '53** of Sacramento, Calif., died July 30, 2005, at the age of 77. Born in Tacoma, Wash., he moved to Yakima, Wash., when he was 12 to live with his grandparents. After graduating from high school, he served in the U.S. Navy for a little over one year, before attending Stanford. He is survived by his wife, Lynn; daughter, Carla; and son, Chris.

**Leonard A. Goldman '54** of Beverly Hills, Calif., died this year at the age of 75. His interests included cancer research, music, Big Brothers of America, and the Jewish Big Brothers of Los Angeles. He was the founder and president of the Amie Karen Cancer Foundation and the director of the KDFK radio station. He is survived by his wife, Mera Lee; son, Mark; daughters, Tamara and Robin Joy; and grandchildren, Benjamin, Phoebe, and Zachary.

**Kenneth M. Judd '59** of Portland, Ore., died May 13, 2005, at the age of 79. During World War II, Judd served in the Navy in the Pacific and received a Purple Heart. After the war, he graduated from Montana School of Mines and Stanford Law School. He moved in 1959 to Portland, where he was in private law practice and then owned Pacific Steel Foundry and Crawford & Doherty Foundry. He is survived by his wife, Harriet; son, Jeffrey; daughter, Karen J. Lewis; and four grandchildren.

**Charles J. Hoffman '60** of Pebble Beach, Calif., died May 29, 2001, at the age of 69. He was the Supervising Deputy District Attorney for Madera County. He is survived by his wife, Barbara, and daughter Linda.

**R. Frederic Fisher '61** of Inverness Park, Calif., died of cancer August 17, 2005, at the age of 68. Fisher spent most of his career as a maritime lawyer, representing steamship owners as a partner in two major San Francisco firms. Beginning as a volunteer for the Sierra Club, a sidelight from his practice in the late 1960s, Fisher became a pioneer in environmental law, co-founding the prominent nonprofit public-interest organization known as the Sierra Club Legal Defense Fund. One of his first and possibly most important cases was *Marks v. Whitney*, which firmly established the Public Trust Doctrine in California; the case has been cited by judges all over the world to protect baylands as well as lakes, rivers, and streams for public use and enjoyment. An avid wilderness hiker, Fisher was especially drawn to the Sierra Nevada and the red rock desert region in Utah and Arizona. After a classmate from Stanford Law School introduced him to the Sierra Nevada, Fisher said, "Once you get into the Sierra, and you see anything that's a threat to it, you become an environmentalist unless there is something wrong with you." Fisher is survived by his wife, Susan; sons, Matthew and Jonathan; and brother, Jonathan.

**John G. McAuliffe '63** of Walnut Creek, Calif., died November 5, 2004. He was a member of the State Bar of California, the Alameda  
continued on page 83



## In Memoriam from page 84

County Bar Association, and the Contra Costa County Bar Association. He practiced in the areas of insurance law and personal injury, including both plaintiff's and defense personal injury and automobile damage litigation. He also served as staff counsel and managing attorney for Allstate Insurance Company. He is survived by his wife, Kathryn; son, William; and daughter, Kathleen.

**Howard Lee Everidge '76** of Dallas, Texas, died December 27, 2003, at the age of 52. According to his mother, Everidge died in a car wreck.

**Eric D. Johnson '95** of Anchorage, Alaska, died May 6, 2005, at the age of 40. Johnson first went to Alaska as a summer law clerk for the Sierra Club Legal Defense Fund in 1994. After law school, Johnson completed two clerkships in Alaska and stayed to work for the Native American Rights Fund on a two-year fellowship from the National Association for Public Interest Law. He served as tribal rights attorney for the Association of Village Council Presidents from 2000. Johnson's work spanned a successful challenge to a 1998 referendum proclaiming English to be Alaska's official language, numerous cases to enforce tribal government rights under the Indian Child Welfare Act, and the defense of Native hunting and fishing rights. In 2003, Johnson's contributions were honored by the Alaska Civil Liberties Union with its Liberty Award. An Eagle Scout in his youth, Johnson was an avid outdoorsman in his spare time. He is survived by his partner, Margaret; parents, William and Margaret; and brother, Robert.

**AT STANFORD:** Dean Larry Kramer addresses alumni and students at the Cinco de Mayo fiesta hosted by the Stanford Latino Law Students Association. Mariachi Cardenal de Stanford provided music for the students, alumni, and faculty in attendance.



PHOTO: MISHA BRUK



PHOTO: TAMMY SPATH

**IN PALO ALTO:** (Left to right) Erica Peters, Amy Fox '00, Chris Byrd '00, Ulysses Hui '00, and Marc Peters '00 caught up at a reception hosted by Gibson, Dunn & Crutcher for Stanford Law School alumni, faculty, and summer associates.



PHOTO: MISHA BRUK

**AT STANFORD:** (Left to right) Professor Michael Klausner, Albert Baker, Deborah Baker '05, Professor Robert Weisberg '79, and Cecily Baker mingle after a graduation dinner for students, parents, and Bay Area alumni sponsored by the Stanford Black Law Students Association.



PHOTO: TAMMY SPATH

**AT STANFORD:** Hank Barry '83 and Catherine Kirkman '89 were among the Silicon Valley alumni who attended July's *MGM v. Grokster* panel discussion hosted by the Stanford Program in Law, Science & Technology and the Stanford Law Society of Silicon Valley.

**IN SAN FRANCISCO:** In attendance at the San Francisco Law Society reception hosted by Folger Levin & Kahn were (left to right) Hon. Susan Illston '73, John Levin '73 (MA '70), Professor Kathleen M. Sullivan, and National Law Society Chair Sara Peterson '87. Sullivan interviewed the speaker, Michael Kahn '73, about his new book, *May It Amuse the Court: Editorial Cartoons of the Supreme Court and Constitution*.



PHOTO: MISHA BRUK



PHOTO: ANNA WANG

**IN SAN FRANCISCO:** (Left to right) Heather Nolan '01, Susan Bowyer '92, and Professor Lawrence C. Marshall, associate dean for public interest and clinical education, met with local students and alumni at one of four regional receptions hosted by the Stanford Public Interest Program. The event was held at the ACLU of Northern California office, courtesy of Natasha Minsker '97 and summer law clerk, Matthew Liebman '06.



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# Stanford Law School ALUMNI WEEKEND 2005

## Additional Program Highlights

Reunion Dinners  
for the Classes of 1950,  
1955, 1960, 1965, 1970,  
1975, 1980, 1985, 1990,  
1995, and 2000.  
Saturday, October 22

Dean's Circle Dinner  
Thursday, October 20

Volunteer Leadership  
Summit  
Friday, October 21

Reception for Alumni  
and Students of Color  
Friday, October 21

Alumni Reception  
Friday, October 21

Tailgate Party  
Saturday, October 22

## Special events include:

### **CONTROLLING THE BENCH: THE IMPEACHMENT OF JUSTICE SAMUEL CHASE REVISITED**

Friday, October 21 ■ Kresge Auditorium

The only impeachment of a justice of the Supreme Court of the United States happened in the context of a bitter presidential election in 1800 and ignited a struggle over who would control judges and how we, as a nation, would come to define "judicial independence." Law students will present appellate arguments in an abbreviated reenactment of the impeachment trial. Dean Larry Kramer will join history professor Jack Rakove, and others, in a discussion of the trial's contemporary relevance.

### **FROM DESPAIR TO HOPE? THE GLOBAL WAR ON POVERTY**

*Cosponsored by Stanford Law School and the Stanford Alumni Association*

Saturday, October 22 ■ Memorial Auditorium

As the international community continues to confront worldwide terrorism, it is important to address the conditions and causes that breed terror—poverty and injustice. What role should the United States play unilaterally and in concert with other industrialized nations to promote sustainable economic development and social reform efforts across the globe? Join Office of Management and Budget director Josh B. Bolten '80, former assistant to the president Reuben Jeffery III, JD/MBA '80, and former White House chief of staff Leon Panetta (invited) in an in-depth discussion of these critical issues. Former United States ambassador to the European Union Richard L. Morningstar '70, will moderate.

### **STANFORD UNIVERSITY ROUNDTABLE FORUM "NATIONAL SECURITY: AT WHAT COST?"**

Friday, October 21 ■ Memorial Auditorium

Our lives have changed significantly since 9/11—from taking off our shoes at airports, to debating the pros and cons of a national ID card. How do we balance national security with an individual's right to pursue life, liberty, and happiness in a world that is increasingly volatile and uncertain? Join Pepperdine University professor of political science Dan Caldwell (BA '70, MA '78, PhD '78), Manhattan Institute fellow Heather MacDonald '85, Stanford Institute for International Studies senior fellow Steve Stedman (BA '79, MA '85, PhD '88), and the law school's own Jenny S. Martinez for an engaging roundtable discussion.



## Thursday to Sunday, October 20 to 23

For registration and additional information about these and other exciting Alumni Weekend 2005 programs and reunion activities, visit our website at <http://www.law.stanford.edu/alumniweekend>.