

2010 Update

Necessity is the Mother of Innovation: The Legal Profession in the New Economy

Axiom joins the Center in bringing together experts to examine the effect of the economic downturn

On February 23, 2010, The Stanford Center on the Legal Profession and Axiom co-sponsored a program on challenges facing the bar. Necessity is the Mother of Innovation: The Legal Profession in a New Economy brought together a distinguished panel of general counsel, managing partners, and other experts to explore the effects of the recent economic downturn and their long-term implications for the delivery of legal services.

After a brief introduction by Stanford Law School Dean Larry Kramer, the panel opened with a keynote address by Ben W. Heineman, Jr., former Senior Vice President and General Counsel of General Electric and a Distinguished Senior Fellow at Harvard Law School's Program on the Legal Profession. In "A New Paradigm for Law Firm Leaders," Heineman argued that the movement of law firms from loosely

managed associations of professionals to disciplined business organizations has led to "an erosion in professional values" and has increased focus on economic return through "a relentless quest for escalating profits per partner." He called for "a new paradigm for law firm leaders, as past fissures in law firms, caused by relentless business pressures, begin to crack open from the earthquake of the Great Recession which has dramatically altered the economic landscape of the law." "Put simply," Heineman suggested that bar leaders should forge "a better, healthier balance between the firm as professional association and the firm as business organization in order to increase associate and partner loyalty and morale, to improve productivity, to create new win-win alliances with clients, to better serve society and to enhance (Cont'd on Page 6)



In this Issue

Necessity is the Mother of Innovation	1
From the Director	2
Diversity on Corporate Boards of Directors	3
Featured 2009-10 Programs	4
Center Faculty and Staff	7
Steering Committee	7
2009-10 Selected Outreach Events	8
Contact the Center	8

From the Director



To borrow the conventional euphemism, these are challenging times for the legal profession. Stanford's Center has responded accordingly. One of our forthcoming initiatives, an International Conference on Legal Ethics, captures the point in its title: The Legal Profession in Times of Turbulence. This is the fourth meeting of this conference, and the first time it is occurring in the United States. Over 150 participants from around the globe will convene on the Stanford campus in July to discuss urgent issues of professional responsibility and regulation. The American Bar Association's Center for Professional Responsibility is a cosponsor of the event, and the ABA's President, Carolyn Lamm, will join us as a speaker. Two journals, *Legal Ethics*, and the *Journal of the Professional Lawyer* are publishing symposia based on the Conference, and we hope it will leave a lasting imprint on the field.

We are equally proud of other events that the Center sponsored this past year, including three connected with our project on leadership. In September, we jointly sponsored, with the Rock Center for Corporate Governance and CalSTRS and CalPERS, a conference on diversity on corporate boards of directors. That event brought together scholars, chief executives, nonprofit organizations, consultants, and board members to evaluate the case for diversity, and ways to institutionalize its benefits. In February, with support from Axiom, our annual lecture featured Ben Heineman, former Vice President and General Counsel of General Electric, and lecturer at Harvard Law School. Heineman's talk, "A New Paradigm for Law Firm Leaders," was followed by a panel of prominent law firm leaders and general counsel. A third leadership project involved development of Stanford Law School's first course on the subject. I and the Center's Executive Director Amanda Packel are currently editing materials from that course for the first book designed for teaching leadership in law schools, to be published in 2011 by Aspen. All of these initiatives reflect the Center's continuing commitment to link theory and practice.

In these efforts, the Center is blessed with an exceptionally talented and committed staff. Amanda Packel, together with Dena Evans, our project coordinator, and Dmitry Bam, our research fellow, join me in welcoming your ideas for future projects. We encourage your comments and support. Please join us, online at www.law.stanford.edu/program/centers/clp, or better still, in person at one of our forthcoming events.

Deborah L. Rhode
Director, Stanford Center on the Legal Profession
E.W. McFarland Professor of Law

Diversity on Corporate Boards of Directors

With support from California's two large pension funds, CalSTRS and CalPERS, the Center on the Legal Profession and the Rock Center for Corporate Governance hosted a conference on September 10, 2009 on Diversity on Corporate Boards: When Difference Makes a Difference. More than 125 participants gathered to discuss the issue with leading corporate executives, directors, researchers, government officials, executive search consultants, and heads of non-profit organizations.



John Chiang, California Controller, serves on the boards of both CalSTRS and CalPERS

Opening remarks came from California Controller John Chiang, who is on the boards of both CalSTRS and CalPERS. He began with a quip from a British official about the state of corporate boards: "There is nothing wrong, simply that they are male, pale, and stale." Chiang went on to argue that "[d]iversity is more than the traditional notions of age, gender, nationality, and race. It is about a broader range of thoughts, perspectives, and competencies that define good leadership teams. It is about getting past exclusivity . . . and avoiding the common playbooks that get us into trouble...Corporate boards and we as investors need to do a far better job of tapping the talent that is available. Our focus should be on the characteristics that provide for corporate governance and strong corporate leadership and not simply the check the box mentality."

In the first panel, "The Case for Diversity,"

Toni Rembe, former partner at Pillsbury Winthrop Shaw Pittman LLP argued that "[e]ven token directors can add to board process" because "they [make] other directors aware... of women's issues" just by being present. Female directors can also serve as role models and inspire other women to see "their own potential" and explore new career opportunities.

"Our research shows that what works is to make executives part of the solution. What does not work is to define them as part of the problem by trying to train away their bias or produce incentives or feedback to show them how biased they are."

**Frank Dobbin,
Harvard University**

Two subsequent panels, "Challenges and Barriers to Achieving Diversity," and "What Works and What Doesn't," explored some of the obstacles to achieving more inclusive corporate leadership. Michelle Clayman, Founder; Managing Partner & Chief Investment Officer, New Amsterdam Partners, noted one problem: "Women often feel it's unseemly to put themselves forward. They've got to get over that." Mary Cranston, former managing partner of Pillsbury Winthrop Shaw Pittman LLP, discussed the complacency that can set in once a board has a few female directors. She identified a "rule of three, ... a level at

which you start to get some critical mass, [which] is now becoming a safe harbor." Nominating committees that are still predominantly males sometimes get "their three women on the board" and feel that their diversity task is done.



Commissioner Luis Aguilar, SEC; Toni Rembe, Pillsbury; Ginger Lew, National Economic Council; and Debbie Soon, Catalyst

Harvard Sociology Professor Frank Dobbin helped focus attention on solutions. His research built on a sample of over 800 companies and 30 years of annual data to compare strategies for increasing diversity and reducing bias. Three approaches are common: (1) appointing a manager or creating a task force charged with overseeing diversity; (2) implementing training programs and evaluation systems that reward diversity; and 3) creating affiliation networks and mentoring programs designed to assist women and minorities reach leadership positions. Dobbin's results suggest that the most effective strategy – creating a diversity task force or managerial position – is not the one most commonly employed. Instead, companies commonly use training and evaluation systems that do not substantially improve diversity. Poorly designed educational programs can increase backlash, and the incentives built into evaluation systems are generally too modest to have much impact. "Bottom line," Dobbin noted, "our research shows that what works is to make executives part of the solution. What does not work is to define them as part of the problem by trying to train away their bias or produce incentives or feedback that show them

(Continued on Page 5)

Featured 2009-10 Programs

Public Interest and Public Service



Access to Justice: Sargent Shriver Civil Counsel Act Evaluation Methodologies Workshop, co-sponsored by the Levin Center for Public Service and Public Interest Law

The Center co-sponsored an event focusing on California's new legislation, the Sargent Shriver Civil Counsel Act, which creates pilot projects for guaranteeing state-subsidized counsel in designated civil cases. The workshop, moderated by Professor Rebecca L. Sandefur (left) brought together leading researchers on access issues, together with representatives from legal services programs, state agencies, and the judiciary, to discuss ways of evaluating these pilot programs. (March 12, 2010)

The ABCs of Moving into Private Public Interest Firm Practice, co-sponsored by the Levin Center

Stanford Law School's Alumni Mentor-in-Residence Ed Swanson, JD '91 of Swanson McNamara (right), spoke to students about the challenges of incorporating public interest ideals into private practice. (April 14, 2010)



Legal Ethics and the Conditions of Legal Practice



Necessity is the Mother of Innovation: The Legal Profession in a New Economy, co-sponsored by Axiom

The Stanford Center on the Legal Profession and Axiom co-sponsored a panel discussion with leading lawyers, including Axiom CEO Mark Harris (left), to explore how the profession will respond to the new economic landscape. (February 23, 2010, see cover story page 1)

International Legal Ethics Conference IV: The Legal Profession in Times of Turbulence, co-sponsored by the ABA Center for Professional Responsibility

Stanford Law School and the Center on the Legal Profession will be the first American hosts of the International Legal Ethics Conference. Under the theme of "The Legal Profession in Times of Turbulence," the Conference will bring together scholars and regulators from across the globe to explore challenges facing the contemporary legal profession. Co-sponsored by American Bar Association. Will feature ABA President Carolyn Lamm as keynote lunch speaker. (July 15-17, 2010)



"Game of Shadows:" Drugs, Ethics, and Criminal Defense in the BALCO Scandal

Troy Ellerman, an attorney who represented defendants charged with supplying performance-enhancing drugs to athletes, discussed his decision to leak grand jury transcripts to reporters and its consequences for his career (disbarment and four felony convictions). Mark Fanairu-Wada, co-author of *Game of Shadows*, offered his perspective as a reporter covering the scandal, and what he saw as an unjust outcome: more stringent penalties for Ellerman than the defendants found guilty of supplying drugs. (May 6, 2010)



Diversity in the Professions



Diversity on Corporate Boards: When Difference Makes a Difference

With co-sponsorship from the Rock Center on Corporate Governance, the California State Teachers' Retirement System (CalSTRS) and the California Pension Employees Retirement System (CalPERS), the Center hosted a conference to examine

racial, ethnic, gender, and cultural diversity on corporate boards of directors. The conference brought together some of the nation's most distinguished leaders and scholars to identify best practices and policy initiatives on corporate governance. (September 10, 2009; see story, page 2)

Women of Stanford Law Admitted Students Reception, co-sponsored by the Women of Stanford Law and the Center on the Legal Profession

The Center co-sponsored a reception for women admitted to Stanford Law School's Class of 2013. (April 18, 2010)

Please check our website for streaming video and audio of past and recorded events, as well as more details on these programs and other upcoming events.

<http://law.stanford.edu/program/centers/clp/>

Diversity (Continued from Page 3)

how biased they are." By contrast, mentoring programs can be helpful because they are "another way of putting someone in charge" of promoting diversity.



Joe Grundfest, Stanford Law School; Henry Jones, CalPERS; Aulana Peters, Gibson Dunn; Marta Tienda, Princeton University, TIAA-CREF; and Ann Yerber, Council of Institutional Investors

During a final panel on "Good Governance – Beyond Cosmetic Compliance," participants discussed the difference that a board can make when it is willing to ask the difficult questions, even during times of financial success. CalSTRS Board Member Peter Reinke noted, "A lesson we should all learn from the economic calamities of the last 18 months is that boards have to be trained [to ask those inconvenient questions] and we have to celebrate and encourage contrarian points of view....To borrow from [a teacher's edict,] there is no such thing as a stupid question. I would love to see that phrase chiseled in stone over the entrance of our board room [and all boardrooms in the U.S.]"

In moderating that final panel, Stanford law professor Joseph Grundfest sounded a cautionary although ultimately optimistic note. As he pointed out, and a background paper prepared for the conference by Amanda Packel and Deborah Rhode further indicated, claims that increased diversity leads to improved financial performance are highly contested, and the evidence tends to be inconclusive. If the goal is simply short-term profit maximization, then other forms of diversity "such as adding financial experts, are more likely to lead to a stock price return." The case for gender and minority diversity on boards should rest on other factors, such as "reflecting the workforce, [and offering] a broader range of viewpoints [which may ensure] a better chance of understanding consumers, markets and suppliers." ■

reputation in the profession and in the community. . . .”

Heineman acknowledged the difficulty in creating this shift, and particularly in “modifying profits per partner relative to other firms as the driving ethos.” But he argued that “this new leadership paradigm is necessary if we are witnessing a secular change in law firms with a dramatic end to unceasing growth in associates, ‘leverage,’ revenues and profits and with some ‘pillars’ of practice like pyramidal associate structures and the billable hour under attack.” In his view, the shift is necessary “even if conditions for economic growth return, because the multiple issues regarding clients, partners, associates and society stemming from the ‘business model’ law firm have been starkly highlighted in the down-turn and need to be addressed in any event.”



Ben Heineman

With respect to clients, Heineman suggested that law firms “align their economic incentives with the incentives of their clients (through alternative fees in particular matters or strategic alliances for a broader book of business).” Law firms should also “redefine ‘productivity’ in a fashion that serves their clients (doing more with less), not, as some too often presently do, in ‘leveraging’ more billable resources per matter.” In addition, law firms need to “focus rigorously on ‘value and quality’ and not allow billable hours for mediocre work which results from huge, poorly managed teams.” At the outset of representation, law firms should “seek a related and reciprocal commitment from the client that the job of the firm is not just to be acute lawyers (what is ‘the law’) but also wise counselors (having the duty to express their views about what is ‘right’ for

the institution in the particular setting taking factors beyond technical law into consideration).”

Heineman also called on law firm partners to “regain a sense of common community, with shared values and aspirations, not just exist as balkanized practitioners, practice groups or geographies intent on their own narrow self-advancement.” He acknowledged, however, that fostering “a common culture based on professional values of service, collegiality, loyalty, quality, integration and cooperation is probably the greatest challenge for today’s law firm leader.” To meet that challenge, Heineman suggested that firms must explicitly recognize “the different ways in which lawyers and partners can add value, such as: bringing in business, being expert in client relations, being adept at project management (as firm’s move to alternative fee arrangements), being a mentor and leader for associates, and contributing to community or society.” The partnership needs to reinforce these values through its compensation system by moving away from “mechanistic compensation that proceeds from an ‘eat what you kill’ mentality and that rewards only the top business getters.”



Laura Stein

With respect to associates, Heineman noted that firms “should address the striking discontent and disconnection of many starting associates which leads to a dramatic exodus after only a few years at the associates’ not the firms’ choice.” Firms need to hire fewer lawyers “who can be given clear, sequential, systematic and organized competency training, who can have real responsibility

and accountability at an early stage in their careers (through pro bono work if necessary), and who can be part of the firm community (understand its financial situation and its broad footprint), rather than being fed a steady diet of unchallenging work in isolation.” This will require “real mentoring, counseling and commitment” from partners and “meaningful merit-based evaluation, compensation, and promotion of associates.”



Michael J. Holston

Following Heineman’s remarks, a panel chaired by Center Director Deborah Rhode explored these and other challenges facing the profession in the new economy. Michael J. Holston, Executive Vice President and General Counsel of Hewlett Packard, and Laura Stein, Senior Vice President and General Counsel of the Clorox Company shared the perspectives of in-house law departments. Ralph Baxter, CEO and Chairman of Orrick, described how his law firm was moving away from some features of the traditional law firm model, such as lockstep associate promotion and compensation. Mark Harris, CEO of Axiom, discussed ways in which his new model of legal practice was seeking to use on-site lawyers with flexible scheduling to provide cost-effective services. Finally, Leigh Jones, Associate Editor of the National Law Journal, provided the perspective of a journalist covering the legal profession. ■

Center Faculty and Staff



Deborah L. Rhode
Director,
E.W. McFarland
Professor of Law

Deborah L. Rhode is a graduate of Yale College and Yale Law School, and served as a law clerk to Justice Thurgood Marshall. She is a former president of the Association of American Law Schools, a former chair of the American Bar Association's Commission on Women in the Profession, the former founding director of Stanford's Center on Ethics, and a former director of Stanford's Institute for Research on Women and Gender. She also served as senior counsel to the Minority members of the Judiciary Committee, the United States House of Representatives, on presidential impeachment issues during the Clinton administration. She is the most frequently cited scholar on legal ethics and a fellow of the American Academy of Arts and Sciences. She has received the American Bar Association's Michael Franck award for contributions to the field of professional responsibility, the American Bar Foundation's W. M. Keck Foundation Award for distinguished scholarship on legal ethics, and the American Bar Association's Pro Bono Publico Award for her work on expanding public service opportunities in law schools.



Amanda K. Packel
Executive Director

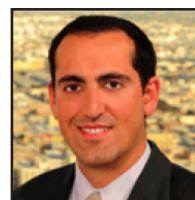
As the Executive Director, Amanda coordinates all aspects of the Center's activities, including developing the direction and goals for the Center and overseeing operations, publications, programs, research, and other inter-disciplinary projects. She joined Stanford Law School in 2008 after practicing white collar criminal defense and conducting corporate investigations as an associate at Covington & Burling and at Orrick. Packel has also worked in a research capacity at the Office of the Federal Public Defender in Northern California and in the Economic Studies Program at the Brookings Institution. She received her B.A. in Economics from Princeton University and a J.D. from the

University of California at Berkeley School of Law in 2001, where she was an Articles Editor of the California Law Review. After graduating from law school, Packel served as a law clerk to Judge Marsha S. Berzon of the U.S. Court of Appeals for the Ninth Circuit.



Dena Evans
Project Coordinator

As Project Coordinator for the Center on the Legal Profession, Dena Evans assists the Executive Director in producing Center publicity materials, the Center web presence, and various ongoing projects. Most recently, she served in a similar capacity for the Stanford Center on Ethics. Evans is a 1996 Stanford graduate in American Studies, and holds an MA in Secondary Education from the Stanford Teacher Education Program. Evans spent six years as on the cross country / track & field coaching staff at Stanford, where she earned 2003 NCAA Women's Cross Country Coach of the Year and 2004 USTCA Assistant Track Coach of the Year honors.



Dmitry Bam
Fellow

Dmitry joined the Stanford Center on the Legal Profession in August 2009 as its first Fellow. His research focuses on judicial ethics. In Spring 2011, he will be teaching a seminar at Stanford Law School called, "The Judicial Role." Bam received a B.S. in psychology and a B.A. in political philosophy, summa cum laude, from Syracuse University. He is a graduate of Stanford Law School, where he was an Articles Editor on the Stanford Law Review. After graduation, Bam clerked for Judge Barry G. Silverman on the United States Court of Appeals for the Ninth Circuit. He then practiced law at Morrison & Foerster and Jones Day.

Center Steering Committee

Nora Freeman Engstrom
Assistant Professor of Law

Ronald J. Gilson
Charles J. Meyers Professor of Law and Business

Deborah R. Hensler
Judge John W. Ford Professor of Dispute Resolution and Associate Dean for Graduate Studies

Lawrence C. Marshall
Professor of Law, David and Stephanie Mills Director of Clinical Education, and Associate Dean for Public Interest and Clinical Education

Paul Oyer
Professor of Economics, Graduate School of Business

Norman W. Spaulding
Nelson Bowman Sweitzer and Marie B. Sweitzer Professor of Law

Selected Outreach Events 2009-10

Center staff participated in a wide array of events on the profession during 2009-10, including:

An Unfinished Project: Law and the Possibility of Justice - A Conference in Honor of Professor Richard Abel, UCLA School of Law, September 2009

Ethics Roundtable with New York General Counsel, September 2009

Leadership Conversation on the Future of Pro Bono in New York City, Columbia Law School, October 2009

"Managing Pro Bono: Doing Well by Doing Better," *The Economic Downturn and the Legal Profession*, Fordham University School of Law, October 2009

AALS Workshop on Pro Bono and Public Service, AALS 2010 Annual Meeting, New Orleans, January 2010

The Shriver Report: A New Report on the Status of Women in the Workplace, sponsored by Stanford ACS and the Women of Stanford Law, February 2010

"Leadership Challenges: Ethics and Diversity," Stanford University Leadership Academy, March 2010

Judicial Ethics and Accountability: At Home and Abroad, University of the Pacific McGeorge School of Law, Sacramento, California (presentation by Fellow Dmitry Bam) , April 2010

"After Critique: What is Left of the Law and Society Paradigm?" Law and Society Association Annual Meeting, Chicago, May 2010

Contact the Center

The Center Newsletter is designed and produced by the staff of the Stanford Center on the Legal Profession. Unless specifically noted, all articles are written by staff.

To be added to our mailing list, to receive our newsletter by email , or to find out more about the Center's programs and initiatives, please write us at:

legalprofession@law.stanford.edu.

Stanford Center on the Legal Profession

Stanford Law School
Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610

Phone: 650.736.9770

Fax: 650.721.5537

legalprofession@law.stanford.edu

<http://law.stanford.edu/program/centers/clp>

StanfordLawSchool

Stanford Center on the Legal Profession