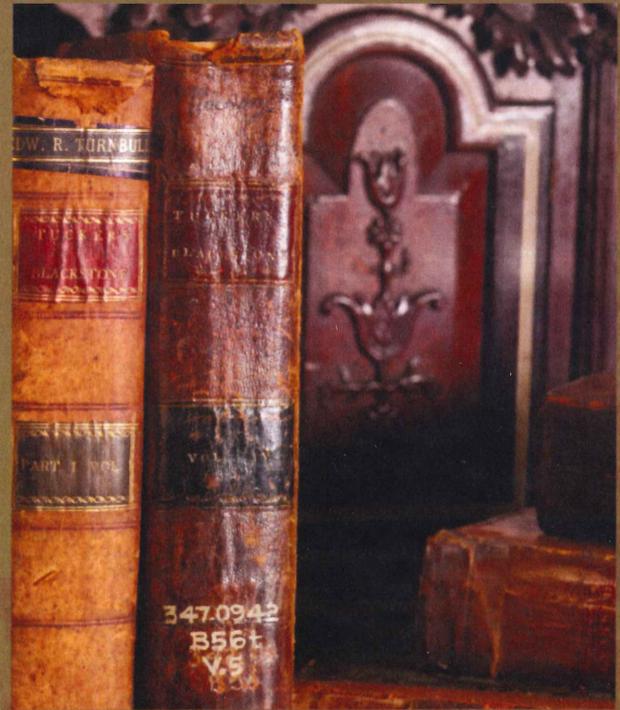
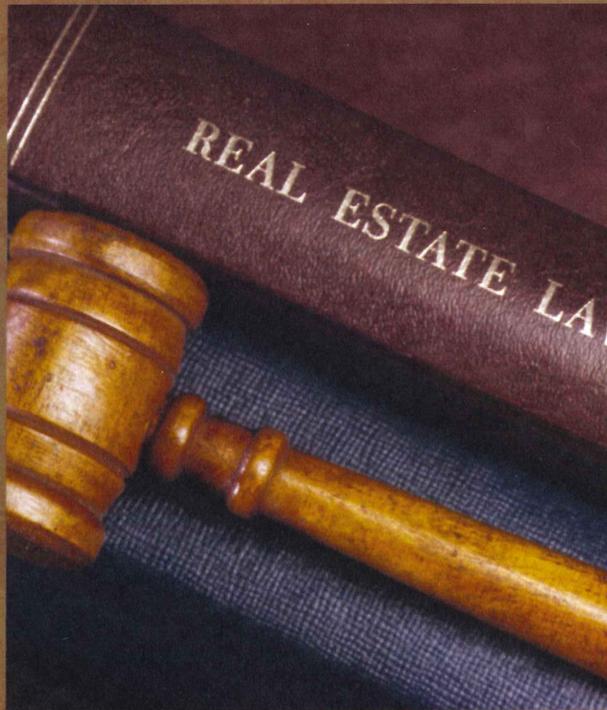




WILLIAM & MARY
LAW SCHOOL

Twelfth Annual
2015 BRIGHAM-KANNER PROPERTY RIGHTS CONFERENCE

AND PRESENTATION OF THE 2015 BRIGHAM-KANNER PRIZE TO JOSEPH WILLIAM SINGER
BUSSEY PROFESSOR OF LAW, HARVARD LAW SCHOOL



October 1-2

Sponsored by William & Mary Law School
Presented by the William & Mary Property Rights Project

THE BRIGHAM-KANNER

PROPERTY RIGHTS

CONFERENCE

The Brigham-Kanner Property Rights Conference, Prize, and Journal are named in recognition of Toby Prince Brigham and Gideon Kanner for their lifetime contributions to private property rights and their efforts to advance constitutional protection of property. The Brigham-Kanner Property Rights Conference began in 2004 at William & Mary Law School. The Conference is designed to bring together members of the bench, bar and academia to explore recent developments in the law that affect property rights. The Prize is awarded each year to an individual whose work affirms that property rights are fundamental to protecting individual liberty.

The *Brigham-Kanner Property Rights Conference Journal* was established in 2012 to provide a forum for scholarly debate on property rights issues. The *Journal* publishes papers presented at the annual conference with the goal of extending the debate to a wider audience. Through the *Journal*, the Property Rights Project ensures that the proceedings of the Conference and any accompanying non-conference articles selected for publication are preserved and made available on its website for all interested parties. The *Journal* is available in print and electronic form through the Project's website, <http://law.wm.edu/academics/intellectuallife/researchcenters/property-rights-project/conference-journal/index.php>.

SCHEDULE

OF EVENTS

Thursday, October 1, 2015

- 6:30 pm RECEPTION**
President's Gallery, Wren Building
(please note the Wren Building has limited accessibility for people with physical disabilities)
- 7:30 pm DINNER AND PRESENTATION OF THE 2015 BRIGHAM-KANNER PRIZE**
Great Hall, Wren Building

Friday, October 2, 2015

- 8:30 am REGISTRATION AND CONTINENTAL BREAKFAST**
William & Mary Law School
- 9:00 am – 10:30 am Panel 1: *Property as a Form of Governance***

Property has long played a central role in our economic, political, and legal systems. The 2015 prize recipient Joseph Singer has described property as a form of political governance grounded in our democratic values. Using Singer's work as a springboard, this panel will discuss the extent to which property provides a form of political, economic, and social governance.

Opening Remarks: Joseph William Singer, Bussey Professor of Law, Harvard Law School

Panelists

- Joseph William Singer, Bussey Professor of Law, Harvard Law School
- Michael M. Berger, Partner, Manatt, Phelps & Phillips, LLP, Los Angeles, California
- Nestor M. Davidson, Professor & Associate Dean for Academic Affairs, Fordham Law School
- Frank I. Michelman, Robert Walmsley University Professor, Emeritus, Harvard University
- Laura S. Underkuffler, Associate Dean for Academic Affairs & J. DuPratt White Professor of Law, Cornell Law School

Moderator

Lynda L. Butler, Chancellor Professor & Director, Property Rights Project, William & Mary Law School

- 10:30 am – 10:45 am Networking Break**

- 10:45 am – 11:45 am Panel 2: *Civil Forfeiture of Property***

Civil forfeiture laws allow government to seize private property without convicting or even charging the property owner with a crime. Used by a wide variety of state, local, and federal officials, the laws have resulted in the seizure of homes, cash, cars and other property of people never charged with a crime. This practice highlights the disparities in the protection of fundamental rights, suggesting that property rights remain a "poor relation" of other fundamental constitutional rights protected in civil and criminal settings. The panel will evaluate the impact of civil forfeiture laws on property rights and consider what, if any, reforms are needed.

Panelists

- Sara Sun Beale, Charles L. B. Lowndes Professor of Law, Duke Law School
- Scott G. Bullock, Senior Attorney, Institute for Justice, Arlington, Virginia
- Sandra Guerra Thompson, Alumnae College Professor of Law & Director, Criminal Justice Institute, University of Houston Law Center

Moderator

Robert H. Thomas, Director, Damon Key Leong Kupchak Hastert, Honolulu, Hawaii

- 11:45 am – 1:00 pm Lunch**

- 1:00 pm – 2:15 pm Panel 3: *Of Pipelines, Drilling, & the Use of Eminent Domain***

Throughout the country, landowners are discovering that utility and energy companies have been given the power to condemn rights of way and other property interests to lay pipelines and drill under their property even when the resulting oil and gas will be taken to ports for shipment overseas. Sometimes legislatures have even enacted laws that give the power to condemn to foreign corporations, that prevent local governments from regulating the land use activities, or that significantly streamline the final approval process for the companies' activities. Panel 3 will discuss the constitutional and legal issues raised by these activities and laws, as well as the ownership interests implicated by fracking and forced pooling.

Panelists

- Michael Braunstein, Professor Emeritus of Law, Moritz College of Law, The Ohio State University, & Goldman and Braunstein, Columbus, Ohio
- Jan G. Laitos, Professor of Law & John A. Carver, Jr., Chair in Natural Resources and Environmental Law,

University of Denver Sturm College of Law

Berne Mosley, President, Energy Projects Consulting, LLC, former Director of Certificates for Federal Energy Regulatory Commission, & former Deputy Director of Office of Energy Projects

Arthur E. Schmalz, Partner, Hunton & Williams LLP, McLean, Virginia

Moderator

Stephen J. Clarke, Partner, Waldo & Lyle, P.C., Norfolk, Virginia

- 2:15 pm – 2:30 pm Networking Break**

- 2:30 pm – 4:00 pm Panel 4: *Property Rights in the Digital Age***

The debate over the role of property rights in the creation and development of new ideas and works of imagination has taken on new meaning in our digital age. From litigation over the Google Books project to claims of infringement of electronic and digital communication systems, jurists and commentators have vigorously discussed the nature of the public domain and the role of property in shaping or limiting the public domain. Panel 4 will explore these complex issues and evaluate whether fundamental property principles provide a framework for the evolution of intangible property rights in the digital age.

Panelists

- Peter S. Menell, Koret Professor of Law & Co-Director, Berkeley Center for Law & Technology, University of California at Berkeley School of Law
- Alan Norman, Co-Chair of Intellectual Property Department, Thompson Coburn LLP, St. Louis, Missouri
- Arti K. Rai, Elvin R. Latty Professor of Law & Faculty Director, Center for Innovation Policy, Duke Law School

Christopher S. Yoo, John H. Chestnut
Professor of Law, Communication, and
Computer & Information Science, &
Founding Director, Center for
Technology, Innovation and
Competition, University of
Pennsylvania

Moderator

James Y. Stern, Assistant Professor of
Law, William & Mary Law School

4:00 pm – RECEPTION

4:30 pm

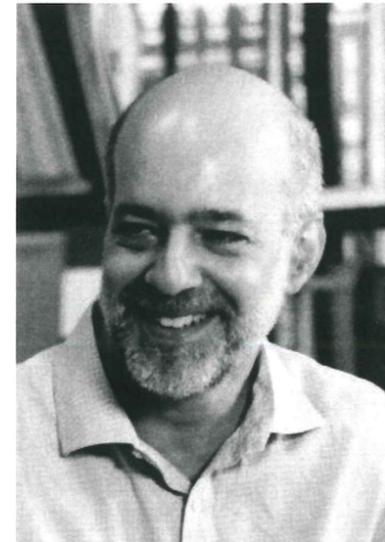
THE BRIGHAM-KANNER

PROPERTY RIGHTS PRIZE

Every year during the Brigham-Kanner Property Rights Conference, the Property Rights Project presents the Brigham-Kanner Prize to an outstanding figure in the field. The Prize is named in recognition of Toby Prince Brigham and Gideon Kanner for their lifetime contributions to private property rights, their efforts to advance constitutional protections of property, and their accomplishments in preserving the important role that private property plays in protecting individual and civil rights. Toby Prince Brigham is a founding partner of Brigham Moore, LLP, in Florida and has practiced eminent domain and property rights law for more than 40 years. Gideon Kanner is Professor of Law, *Emeritus*, at Loyola Law School in Los Angeles and was Of Counsel at Manatt, Phelps & Phillips in California.

This year, the Brigham-Kanner Prize will be awarded to Professor Joseph William Singer for his outstanding contributions to the field of property law.

Joseph William Singer



Singer has long been recognized as one of the nation's foremost theorists in property law. In addition to a casebook and treatise on property law, he is the author of *Entitlement: The Paradoxes of Property* (Yale University Press, 2000), *The Edges of the Field: Lessons on the Obligations of Ownership* (Beacon Press, 2000), and *No Freedom without Regulation: The Hidden Lesson of the Subprime Crisis* (Yale University Press, 2015).

Singer, who joined the Harvard Law School faculty in 1992, was appointed Harvard's Bussey Professor of Law in 2006. Prior to that, he taught at Boston University School of Law, practiced law in Boston, and served as a law clerk to Justice Morris Pashman of the Supreme Court of New Jersey. In addition to books on property law and federal Indian law, he has published more than seventy law review articles. He received his law degree and master's degree (Political Science) from Harvard and is a graduate of Williams College.

PAST RECIPIENTS

OF THE BRIGHAM-KANNER PRIZE



2004

Frank I. Michelman

Frank I. Michelman is Robert Walmsley University Professor, *Emeritus*, at Harvard University, where he taught from 1963 to 2012.

He is the author of *Brennan and Democracy* (1999), and has published widely in the fields of property law and theory, constitutional law and theory, comparative constitutionalism, South African constitutionalism, local government law, and general legal theory. Professor Michelman is a fellow of the American Academy of Arts and Sciences and a past President (1994-1995) of the American Society for Political and Legal Philosophy. He has served on the Committee of Directors for the annual Prague Conference on Philosophy and the Social Sciences, the Board of Directors of the United States Association of Constitutional Law, and the National Advisory Board of the American Constitution Society. In 2005, Professor Michelman was awarded the American Philosophical Society's Phillips Prize in Jurisprudence and, in 2004, the Brigham-Kanner Property Rights Prize.

In January, 1995, and again in January 1996, Professor Michelman served as a co-organizer and co-leader of the Judges' Conferences sponsored by the Centre on Applied Legal Studies of the University of the Witwatersrand, devoted to matters of constitutional law in South Africa. In December, 2011, Professor Michelman delivered the keynote address for a multi-day Conference on "The 20th Anniversary of Israel's Human Rights Revolution," at a session held at the Knesset, Jerusalem.



2005

Richard A. Epstein

Professor Richard A. Epstein is the inaugural Laurence A. Tisch Professor of Law at the New York University School of Law.

He is also the Peter and Kirsten Bedford Senior Fellow at the Hoover Institution, and the James Parker Hall Distinguished Service Professor of Law, *Emeritus*, and Senior Lecturer at the University of Chicago Law School. He is an Adjunct Scholar at the Cato Institute, and a Visiting Scholar at the Manhattan Institute. He has served as editor of the *Journal of Legal Studies* and the *Journal of Law and Economics*.

He has written on a wide range of legal and interdisciplinary topics and is the author of numerous works including *The Classical Liberal Constitution: The Uncertain Quest for Limited Government* (Harvard University Press 2013), *Design for Liberty: Private Property, Public Administration, and the Rule of Law* (Harvard University Press 2011), *Skepticism and Freedom: A Modern Case for Classical Liberalism* (University of Chicago Press 2003), *Simple Rules for a Complex World* (Harvard University Press 1995), *Bargaining with the State* (Princeton University Press 1993) and *Takings: Private Property and the Power of Eminent Domain* (Harvard University Press 1985). He was inducted into the American Academy of Arts and Sciences in 1985 and was awarded the Bradley Prize in 2011.



2006

James W. Ely, Jr.

Professor James W. Ely, Jr., is Milton R. Underwood Professor of Law, *Emeritus*, and Professor of History, *Emeritus*, at Vanderbilt

University. He has written about a wide range of topics in legal history and is the author of numerous works including *The Guardian of Every Other Right: A Constitutional History of Property Rights* (Oxford University Press, 3rd ed. 2008), *American Legal History: Cases and Materials* (Oxford University Press, 4th ed. 2011) (with Kermit L. Hall and Paul Finkelman), *The Fuller Court: Justices, Rulings, and Legacy* (ABC-CLIO 2003), *Rail-roads and American Law* (University Press of Kansas 2001), and *The Chief Justiceship of Melville W. Fuller, 1888-1910* (paperback edition 2012). Ely served as assistant editor of the *American Journal of Legal History* from 1987 to 1999. Since joining the Vanderbilt faculty in 1973, he has received numerous teaching awards.



2007

Margaret Jane Radin

Professor Margaret Jane Radin is the Henry King Ransom Professor of Law at the University of Michigan Law School and Faculty of Law

Distinguished Research Scholar at the University of Toronto. Prior to joining the Michigan faculty in fall 2007, she was the William Benjamin Scott and Luna M. Scott Professor of Law at Stanford University, and director of Stanford Law School's Program in Law, Science and Technology. She also has been on the faculty of the University of Southern California Law Center and has been a visiting professor at UCLA, NYU, Berkeley, and Harvard. Radin has published prolifically on property rights theory and institutions, commodification, intellectual property, and cyberlaw, as well as on contracts and legal theory. Highlights of her property scholarship include *Contested Commodities* (Harvard University Press 1996)

and *Reinterpreting Property* (University of Chicago Press 1993). Radin is a Fellow of the American Academy of Arts and Sciences.



2008

Robert C. Ellickson

Professor Robert C. Ellickson is the Walter E. Meyer Professor of Property and Urban Law at Yale Law School. Prior to joining the

Yale faculty in 1988, he was a member of the law faculties at the University of Southern California and Stanford University. Professor Ellickson's books include *The Household: Informal Order Around the Hearth* (Princeton University Press 2008), *Order Without Law: How Neighbors Settle Disputes* (Harvard University Press 1991), *Land Use Controls* (Aspen Law and Business, 4th ed. 2013) (with Vicki L. Been, Roderick M. Hills, Jr., and Christopher Serkin), and *Perspectives on Property Law* (Aspen Law and Business, 4th ed. 2014) (with Carol M. Rose and Henry E. Smith). He is a fellow of the American Academy of Arts and Sciences and was President of the American Law and Economics Association in 2001.



2009

Richard E. Pipes

Richard E. Pipes is the Frank B. Baird, Jr., Professor of History, *Emeritus*, at Harvard University.

Among his appointments, he served as director of Harvard University's Russian Research Center from 1968-1973, as chairman of the CIA's "Team B" to review Strategic Intelligence Estimates in 1976, and as director of East European and Soviet Affairs in President Ronald Regan's National Security Council from 1981-1982. Professor Pipes's books include *Formation of the Soviet Union: Communism and Nationalism, 1917-1923* (Russian Research Center Studies 1954, 1964, 1998), *Struve: Liberal on the Left, 1870-1905* (Russian Research Center Studies, 1970) (v. 1), *Russia under the Old Regime* (Penguin History 1974), *Struve: Liberal on the*

PANELISTS AND MODERATORS

BIOGRAPHIES



Sara Sun Beale

Beale is the author of dozens of articles and co-author of three books: *Grand Jury Law and Practice*, *Federal Criminal Law and Related Actions*, and *Federal Criminal Law and Its Enforcement*. Beale has been active in law reform efforts related to the federal government's role in criminal justice matters. She is the Reporter for the Advisory Committee on Criminal Rules, which drafts the Federal Rules of Criminal Procedure.



Scott G. Bullock

Scott Bullock is a senior attorney at the Institute for Justice. His current work focuses on property rights and economic liberty cases in federal and state courts. Among other issues, Bullock works extensively on eminent domain abuse and civil forfeiture cases. Bullock has published articles in the *New York Times* and the *Wall Street Journal*, and he has appeared on *60 Minutes*, *ABC Nightly News*, and *National Public Radio*, among many other publications and broadcasts.



Stephen J. Clarke

Believing that property rights are fundamental to liberty, Steve limits his practice to representing property owners in eminent domain and property rights litigation. A partner at Waldo & Lyle, P.C., Steve has appeared in courts in Virginia and West Virginia, representing homeowners, farmers, small business owners, and Fortune 500 companies. He regularly speaks and writes about the importance of private property ownership.



Michael Braunstein

Michael Braunstein's law firm, Goldman and Braunstein, LLP, in Columbus, Ohio, focuses on eminent domain litigation on behalf of land owners, with an emphasis in interstate petroleum and natural gas pipelines. Mike is professor emeritus at the Moritz College of Law at The Ohio State University. His extensive publications include casebooks on property law, mining law, eminent domain, and the Ohio chapter on eminent domain for the ABA compendium.



Lynda L. Butler

Chancellor Professor of Law and Director of the Brigham-Kanner Property Rights Project, Lynda Butler specializes in property rights and property law, land and water use, and environmental policy. She received her J.D. from the University of Virginia and her B.S. from the College of William & Mary. Prior to joining the faculty at William & Mary Law School, she practiced at Wilmer, Cutler & Pickering in Washington, D.C.



Nestor M. Davidson

Dean Nestor Davidson's teaching and scholarship focus is on property, land use, local government law, and affordable housing. He practiced in commercial real estate and affordable housing at Latham & Watkins and served as Deputy General Counsel at the U.S. Department of Housing and Urban Development.



Jan G. Laitos

Jan Laitos holds the John A. Carver, Jr., Chair at the Sturm College of Law. He is a regional board member of the Rocky Mountain Land Use Institute and, since 1981, a Trustee of the Rocky Mountain Mineral Law Foundation. He is the author of several books and treatises published by Oxford University Press, Cambridge University Press, West Academic, Foundation Press, Aspen, Duke University Press, and Bradford Press.



Berne Mosley

Mr. Mosley is the President of Energy Projects Consulting, LLC, a firm that advises clients on the various aspects involved with siting energy infrastructure projects. Previously, Mr. Mosley was with the Federal Energy Regulatory Commission for 28 years, and his last position was the Deputy Director of FERC's Office of Energy Projects. This Office is responsible for processing applications for the construction and operation of natural gas pipeline, storage and LNG facilities, as well as hydroelectric projects.



Arti K. Rai

Arti Rai is an internationally recognized expert in intellectual property (IP) law, administrative law, and health policy. Rai has taught at Harvard, Yale, and the University of Pennsylvania law schools. Rai's research on IP law and policy in biotechnology, pharmaceuticals, and software has been funded by NIH, the Kauffman Foundation, and the Woodrow Wilson Center.



James Y. Stern

James Y. Stern is Assistant Professor of Law at William & Mary Law School. He writes on property law and theory, intellectual property, and conflict of laws. Professor Stern received his A.B. from Harvard and his J.D. from the University of Virginia, and he served as law clerk to Judge J. Harvie Wilkinson and Justice Anthony Kennedy.



Peter S. Menell

Peter S. Menell is the Koret Professor of Law at UC Berkeley School of Law and a Director of the Berkeley Center for Law & Technology. Professor Menell has authored more than 60 articles and eight books on intellectual property law, environmental law, property law, and law and economics. He studied at MIT (S.B.), Stanford (Ph.D.), and Harvard (J.D.).



Alan Norman

Mr. Norman earned his J.D. from the University of Florida in 1985 and has been practicing patent law for 30 years. Mr. Norman's practice focuses primarily on patent litigation and PTO post-grant proceedings. He also possesses a wealth of experience in patent application preparation and prosecution, covering a wide variety of mechanical and electromechanical technologies.



Arthur E. Schmalz

Mr. Schmalz is a partner on Hunton & Williams' Energy and Environmental Litigation Team. Over the course of his nearly 22 years in practice, he has handled a wide variety of commercial litigation, including eminent domain proceedings on behalf of natural gas pipeline companies and the defense of developers and other landowners in eminent domain actions asserted against them.



Robert H. Thomas

Robert H. Thomas (LLM, Columbia Law; JD, University of Hawaii Law School), a Director with Damon Key Leong Kupchak Hastert, focuses on appellate law, regulatory takings, and eminent domain. He is a member of Owners' Counsel of America and is the Managing Attorney for the Pacific Legal Foundation Hawaii Center. Previously, he taught law at the University of Santa Clara and currently is Chair of the Eminent Domain Committee of the ABA's Section of State & Local Government Law.



Sandra Guerra Thompson

Professor Thompson wrote a series of pioneering articles on asset forfeiture during the height of the war on drugs. She has also authored articles on topics such as eyewitness identification and wrongful conviction, immigration crimes, jury discrimination, police interrogations, and federal sentencing. Her latest publication is *Cops in Lab Coats: Curbing Wrongful Convictions with Independent Forensic Laboratories* (Carolina Academic Press 2015).



Laura S. Underkuffler

Professor Underkuffler is J. DuPratt White Professor at Cornell Law School. She has also taught at Duke, Harvard, Georgetown, and the University of Pennsylvania. She has published widely in the United States and abroad about property theory, constitutional law, and moral decision making in law. She is the author of *The Idea of Property: Its Meaning and Power* (Oxford University Press 2003) and *Captured by Evil: The Idea of Corruption in Law* (Yale University Press 2013).



Christopher S. Yoo

Christopher Yoo is one of the nation's leading authorities on law and technology. He leads a novel interdisciplinary program that combines law, economics, and engineering. Before entering the academy, Professor Yoo clerked for Justice Anthony M. Kennedy of the U.S. Supreme Court and practiced law with Hogan & Hartson under the supervision of now-Chief Justice John G. Roberts, Jr.

WILLIAM & MARY

LAW SCHOOL

Legal education began at William & Mary in 1779 at the urging of Thomas Jefferson. He was governor of Virginia at the time and a member of the College's Board of Visitors. Jefferson believed that aspiring members of the profession should be trained to be citizen lawyers — passionate legal advocates and honorable human beings. The College's Board created the first Chair of Law in the United States in that year, naming George Wythe as its first occupant. Students of Wythe included Thomas Jefferson, John Marshall, James Monroe, and Henry Clay. The growth of the law school was halted by the beginning of the Civil War in 1861. Sixty years later, the study of law was revived in a modern program that attracts students from all regions of the nation.

William & Mary Law School has hosted the Brigham-Kanner Property Rights Conference since 2004. In 2011 William & Mary co-sponsored the Conference with Tsinghua Law School in Beijing, China.

THE COLLEGE OF

WILLIAM & MARY

Chartered in 1693 by Queen Mary II and King William III of England, The College of William and Mary is the second oldest institution of higher learning in the country. The College's student body has just over 8,437 full-time (graduate and undergraduate) students with a 12 to 1 student/faculty ratio. *U.S. News and World Report: Best Colleges 2015* ranks the College 6th among public universities in the country. Known as "the alma mater of a nation," William & Mary has educated three American presidents— Thomas Jefferson, James Monroe and John Tyler—and George Washington served as its first chancellor.

W. Taylor Reveley, III, was sworn in as the 27th president of The College of William & Mary on September 5, 2008, after serving as interim president since February 2008. Before assuming his current post, he served as dean of William & Mary Law School for almost a decade, starting in August 1998. He is the John Stewart Bryan Professor of Jurisprudence.