

MEMORIAL RESOLUTION
WILLIAM FRANCIS BAXTER, JR.
(1929-1998)

Law Professor William F. Baxter died at home in Los Altos on November 27, 1998 at the age of 69, from the effects of emphysema and Parkinson's disease. An alumnus of the University and Law School, he had been a member of the Stanford faculty most of the time since his law school graduation in 1956, with the notable exception of his service from 1981 to 1983 as Assistant Attorney General in charge of the Antitrust Division of the Department of Justice.

As antitrust chief, Bill commanded wide public attention when in 1982 he settled a seven-year-old case against AT&T with by far the largest breakup in the history of the Sherman Antitrust Act, splitting off seven regional phone companies (Baby Bells) from the parent (which continued to operate in the long distance market). On the same day, he dismissed as "without merit" a seemingly endless, thirteen-year-old suit against IBM, which had employed more than 300 lawyers and generated 2,500 depositions and 66 million pages of documents. Antitrust litigation has rarely so dominated the headlines.

Bill was born in New York City on July 13, 1929, and moved to northern California in 1939 when his father went into the gold-dredging business, unsuccessfully. Bill entered Stanford in 1947, graduated in 1951 as a member of its NROTC unit, and was then called up for active service. After training at the Navy's Judge Advocate General school in Norfolk, because his senior year had also been the first year in the law school, he spent the better part of his service between 1951 and 1954 as the JAG officer and navigation officer of a troop transport that plied the Pacific between the West Coast and Japan.

Discharged as a lieutenant, he returned to resume law school in the fall of 1954, and in his third year became comment editor of volume eight of the Stanford Law Review. His classmates, and aspiring comment writers, soon became acquainted with Bill's systematic, orderly approach to everything he did, his intellectual vigor, and the assertive way he expressed strongly held views (which comprised most of his views). His devotion to work was also much a hallmark. One anecdote, possibly even true, has him responding to a complaint that the law review selection process was too

competitive, and drove candidates to put in excessively long hours, by saying: "I can't believe that. None of them was in the library when I left at 2 this morning."

Upon graduation, with election to the Order of the Coif, Bill was invited to join the faculty. Even as a student, he had organized a seminar for a few students and faculty based on a newly-published and seminal work on federalism and federal court jurisdiction, a subject Bill loved but one that was then being taught by another professor. Bill's naval experiences led him into teaching instead a course on admiralty law, which he quickly converted into an exploration of federal jurisdiction. After two years as a junior faculty member, he spent two years in private practice with Covington & Burling in Washington, D.C., returning to Stanford in 1960.

Bill soon developed, and then pursued with his customary intensity, an interest in economic analysis, and brought it to bear in an enlightening and entertaining way on a variety of topics, including aircraft subsidies and airplane noise ("The SST: From Watts to Harlem in Two Hours" [1968]) and environmental pollution ("People or Penguins: The Case for Optimal Pollution" [1974]). He also co-authored an early and still influential study of electronic banking ("Retail Banking in the Electronic Age" [1977]).

But antitrust law became his specialty and the field to which he devoted most of his efforts. While in private practice he participated in a major FTC antitrust proceeding and came away convinced that nobody in the hearing room understood the purpose of the antitrust law or what outcome of the proceeding would further that purpose. In 1968 he was appointed a member of the White House Task Force on Antitrust Policy, chaired by a former Law School faculty member and mentor, Phil Neal, and co-authored its Report. Throughout the 1970s he not only taught antitrust law but did extensive private consulting in the field.

Thus, when shortly after the inauguration President Reagan nominated Baxter to be head of the Antitrust Division, he had firmly settled in his mind that the purpose of the antitrust laws is to promote economic efficiency. Confirmed by the Senate, not without opposition, he was in a position to act to further that purpose. Three of his policy initiatives stand out. The first and most important was to rewrite the 1968 "Merger Guidelines"--a pioneering statement of the criteria used by the government to identify and challenge those corporate acquisitions likely to reduce competition. The revised Merger Guidelines, issued in 1982, provided a rigorous legal methodology for defining markets and tracing linkages between corporate transactions and resulting shifts in competitive dynamics. While the guidelines have since been revised, all the essential

features of Bill's version have not only survived but served as the model for regulators promulgating similar guidelines in dozens of other jurisdictions around the world, shaping much of the global economic infrastructure.

His other initiatives on taking office were to step up Justice Department efforts to shape the development of antitrust doctrine in the lower federal courts by filing more amicus briefs in private lawsuits, and to clean out old judicial decrees entered in past government antitrust cases by eliminating those rendered obsolete by passage of time and changing competitive conditions. Both were successfully implemented and effective, especially the amicus program.

But the high point of Bill's career was unquestionably the Bell System divestiture, comparable only to the breakup of the Standard Oil Company of New Jersey in 1911. His position was controversial even within the Administration, being strongly opposed by among others the Secretary of Defense, who rather outranked him. But its benefits for consumers and for the competitiveness of the US telecommunications industry have been widely praised by economists, and in 1996 he was a co-recipient of the John Sherman Award, for his "vision and courage".

As a faculty member, Bill was devoted to the institutions of the Law School and to building its stature and reputation. In 1962 he was a leader in organizing an ambitious search for the most promising legal scholars in the country, which led to a famed raid on Columbia for four of its rising stars, who graced the Law School for the remainder of their academic careers. He was instrumental in inaugurating a joint degree program with the Graduate School of Business in the 1960s, became a full professor in 1964, and was named the W^m Benjamin Scott and Luna Scott Professor of Law in 1976. He was also engaged in major service to the University, among other things chairing the President Search Committee that led to the appointment of Kenneth Pitzer in 1968.

As a teacher, Bill was challenging and demanding, never shying away from difficult concepts. Evaluations by his students consistently reported that his courses were intellectually the most stimulating they had taken, for he held them to his own rigorous standards.

The consistency of his rational and economic approach to most issues lent itself to legend--or parody. While strolling one evening on a quiet street near their Washington residence, Bill and his wife Carol were confronted by an armed robber; they emerged minus some personal property but without injury. At the next Antitrust Division

holiday party, the incident became a skit in which the robber demanded Bill's watch. When Bill resists, the robber points out that it would be only a wealth transfer--a mere redistribution that would not affect economic efficiency or total social welfare. Reassured that the robber shares his standards of economic analysis and acknowledging that the point is analytically correct, Bill immediately surrenders his watch.

Apart from academic pursuits, Bill was enthusiastic (and as always competitive) about tennis, golf and bridge--still playing a regular weekly bridge game when his health had rendered more physical activities impossible. One golfing partner remembers meeting him on the first tee one Sunday morning and offering, as an opening gamesmanship ploy, the complaint that he had just knelt in church and wrenched his back. "Churches are treacherous places," was Bill's unsympathetic response.

Bill is survived by his wife, Carol Cairns Baxter, and her son Bernard Treanor; by his previous wife Barbara Metzger Baxter and their children William F. Baxter III, Marcia Baxter Bearman, and Stuart C. Baxter; his grandchildren Robby Bearman, Katie Bearman, and Sky Baxter; and by his brother Donald J. Baxter and his sister Janice Adams.

Presented to the Senate of the Academic Council on April 27, 2000.

Committee:

Kenneth E. Scott, Chair

William Allen

Guy Blase

Tad Lipsky

Barton Thompson

Ed Zimmerman