

# boalt hall transcript



## Climate Change Goes to Court

A New Boalt Environmental Law  
Center Takes on Rising Challenges





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# From the Dean



It's been a while since a *Boalt Hall Transcript* arrived in your mailbox. Seventeen months, to be exact. You probably weren't counting. But we were. And now that we're back, I want to provide a bit of background on how we got to this point—and where we're going from here.

Boalt lost its communications director in January 2006, immediately after publishing the last issue of the *Transcript*. And in the months that followed, our communications group shrank further. The timing was especially bad because the school was in an unprecedented state of revitalization: adding faculty, creating research centers, reforming financial aid policies, establishing new partnerships, and conducting a capital campaign to fuel the entire enterprise.

The communications professionals who remained on duty last year performed valiant service—which I can only describe as triage. In that environment, a number of important projects, including the *Transcript*, had to wait on the sidelines.

We've come a long way since then. Last September, we hired an executive director of communications and marketing, Sybil Wyatt, who has been moving swiftly to build the kind of program Boalt needs to advance its ambitious agenda.

One of our top priorities has been to conduct a “strategic identity” project that is helping us define the school's character, mission, and value to society. Over the past few months, we have interviewed dozens of faculty, staff, students, alumni, and legal-opinion leaders to get a bead on our distinct identity and to clarify our competitive position among our peers. The insights we gain through this process will feed directly into our strategies for fundraising—especially critical now, in the high-energy stages of our \$125 million campaign—and will inform our plans for attracting stellar students and faculty, strengthening our research and service programs, and advancing all the school's goals.

We also put a high priority on staffing, and succeeded in attracting outstanding communications professionals to fill three key positions. First among them is Jared Simpson, who joined Boalt on a temporary basis to edit this issue of the *Transcript*, and did such an excellent job that we hired him to fill the position for the long term. In his new capacity, he serves as both editor of the *Transcript* and editorial director for the communications and marketing group. In March and April, we also hired a media relations director and an editorial director responsible primarily for the Web.

We hope you'll start noticing evidence of their work immediately—beginning with this issue of the *Transcript*, and continuing with more robust press coverage of our people and programs, a more effective Web presence, more compelling marketing materials, and more vibrancy and consistency in Boalt's identity across the board.

Boalt is alive with activity. We'll be telling you more about it soon.

CHRISTOPHER EDLEY, JR.  
DEAN AND PROFESSOR OF LAW

## Centers and Institutes

Berkeley Center for Criminal Justice  
Berkeley Center for Law, Business and the Economy  
Berkeley Center for Law & Technology  
California Center for Environmental Law & Policy  
Center for the Study of Law and Society  
Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity  
Global Challenges and the Law  
Institute for Legal Research  
Kadish Center for Morality, Law and Public Affairs  
Robert D. Burch Center for Tax Policy and Public Finance  
Thelton E. Henderson Center for Social Justice

## Clinical Programs

Death Penalty Clinic  
Domestic Violence Practicum  
East Bay Community Law Center  
Field Placement Program  
International Human Rights Law Clinic  
Samuelson Law, Technology & Public Policy Clinic

## Journals

Asian American Law Journal  
Berkeley Business Law Journal  
Berkeley Journal of African-American Law and Policy  
Berkeley Journal of Criminal Law  
Berkeley Journal of Employment and Labor Law  
Berkeley Journal of Gender, Law and Justice  
Berkeley Journal of International Law  
Berkeley La Raza Law Journal  
Berkeley Technology Law Journal  
California Law Review  
Ecology Law Quarterly

## BOALT HALL TRANSCRIPT

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## ADMISSION (ALMOST) ACCOMPLISHED

On April 13, a record number of prospective students attended Boalt's Admitted Students' Day. Boalt treated over 340 men and women from around the country and the world to an all-day information fest designed to put to rest any lingering doubts that Boalt is their best choice.

"Boalt isn't a hard sell, but we don't take any chances," says the director of admissions, Ed Tom.

"We're competing with other top schools for the cream of the crop."

Along with lively panel discussions with current students and faculty, and a rousing evening reception, prospective students attended a standing-room-only mock class taught by Assistant Professor Erin Murphy in Booth Auditorium. The room crackled with energy, intelligence, and humor—all of which bodes well for the class of 2010.



**TABLE TALK:** Jiny Kim and Eunice Koo, both 1L's, discuss the *Asian American Law Journal* with prospective student Kristen Rogers.

## Big Easy Explo

**T**he thousands of migrant workers who were lured to post-Katrina New Orleans by the promise of unlimited opportunities have found plenty of work, but also extremely hazardous working conditions, enormous wage discrepancies, and little or no access to health care.

Professor Laurel Fletcher, director of the International Human Rights Law Clinic at Boalt Hall (IHRLC), isn't surprised by the heightened level of abusive conditions as New Orleans rebuilds. "Reconstruction after natural disasters exposes workers to some of the worst on-the-job hazards in situations where services, especially access to health care, are scarce."

Last year, clinic students traveled to New Orleans to interview hundreds of undocumented workers as part of a joint study with

## Rules of the Game

In 1982, a 10-year-old video game fanatic became fascinated with a seminal copyright dustup that pitted the one-time video game giant Atari against a brash upstart, Philips International. While Atari's Pac-Man chewed up Philips's K.C. Munchkin in the courts, a future Boalt alumnus was born. Brad Simon '97 is now 35 and the instructor of one of the first video game law courses in the country.

Simon's precocious calling to the bar underscores the fact that lawsuits are as much a part of the video game industry as shooting and dodging. Bitter litigation has characterized the industry as far back as 1976, the Wild West days of primitive arcade games.

Simon, whose academic career has included successful stops at Brown, University College London, Boalt Hall, and Harvard, is enthusiastic and eloquent on his favorite topic. "Video games involve innovations on many fronts, like content, technology, and business models," he says. "They create a 'perfect storm' that churns up unique legal issues and pushes legal boundaries."

These are not abstract concepts for Simon; he's an industry insider who serves as the vice president and general counsel at Playfirst.com, a leading startup in the very hot "casual" (read

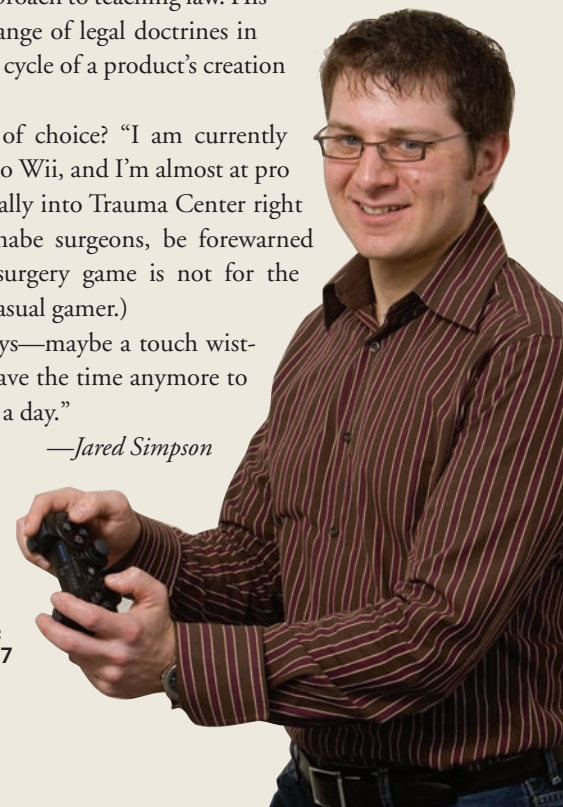
"easy to learn") game segment. Among Playfirst's games is the record-breaking hit Diner Dash, which has more than 150 million online players worldwide and has sold over 1 million units.

Intimate knowledge of the industry has prompted Simon to take an atypical approach to teaching law. His students examine a range of legal doctrines in the context of the life cycle of a product's creation and distribution.

Simon's platform of choice? "I am currently enjoying the Nintendo Wii, and I'm almost at pro level in tennis. I'm really into Trauma Center right now as well." (Wannabe surgeons, be forewarned that this simulated surgery game is not for the faint-hearted or the casual gamer.)

"But really," he says—maybe a touch wistfully—"I just don't have the time anymore to play games five hours a day."

—Jared Simpson



**HE GOT GAME:** Brad Simon '97

# tation Blues

UC Berkeley's Human Rights Center and Tulane University. The resulting report, *Rebuilding After Katrina: A Population-Based Study of Labor and Human Rights in New Orleans*, cites widespread human rights violations, including:

- >> Undocumented workers received an average of \$6.50 per hour less than documented workers performing the same jobs.
- >> Nearly a third of workers surveyed reported working with harmful substances and under dangerous conditions.
- >> 20 percent said they did not receive any protective equipment for hazardous work.
- >> Only 9 percent of undocumented workers surveyed had health insurance, compared to 55 percent of documented workers.

Fletcher notes that the report received widespread attention and she hopes that it will

strengthen efforts at the local, state, and national levels to incorporate a human rights perspective into policies affecting immigrant workers.

But to date, says Fletcher, the situation in New Orleans hasn't improved. "All indications point

to things getting worse. For example, there's more pressure on over-stressed public services that's affecting all low-income inhabitants, and the hardest hit among them are undocumented workers who are the least protected."



**ROOMFUL OF BLUES:** Undocumented laborers relax in a New Orleans church shelter.

## Wine Law Tasting

Only time will tell if 2006 has yielded memorable vintages, but it was definitely a fruitful year for wine law: Boalt Hall's lineup of fall courses included the first full-semester wine law class in the United States. "It's essentially a survey course, much like those offered for oil and gas or food and drug," says instructor Richard P.

Mendelson. "Except," he grins, "it's a lot more fun!"

Fun, but also work, the course covers a surprisingly broad spectrum of legal areas, among them legal history, constitutional law (think 21st Amendment), intellectual

property, business law, environmental law, and international trade.

There's an obvious appeal to students from families in the wine business, but the unique offering attracted a diverse sampling of students, among them budding connoisseurs, oenological neophytes, and those considering niche areas of practice.

Even an abridged list of Mendelson's credentials shows that the students were in capable hands. In addition to producing wine under his own label, he also has a private wine law practice in Napa. He has been a visiting lecturer at the universities of Aix-Marseille and Bordeaux, and in the Bordeaux Wine MBA Program. (Mendelson is also an accomplished sculptor; images of his works grace the labels of his pinot noir.)

Mendelson handles the predictable jocular question about classroom wine-tasting with an unpredictably serious response: "A comparative tasting was part of our discussion of appellations. Appellations are valuable intellectual property only if they offer some form of value-added. The best way to explore that is in the glass."

Speaking of the glass, what are Mendelson's favorite wines? "Burgundy," he answers readily. "I worked for Bouchard Aîné et Fils (a Burgundy wine shipper) in the late '70s, before law school. Burgundy wines got me started in the business, so they have sentimental as well as organoleptic value."

—Jared Simpson

**WINE WIZARD:** Richard P. Mendelson

## LSAT 2.0 Alumni Volunteers Take a Revamped LSAT



Every attorney remembers the Law School Admission Test, and some so fondly that they were willing to take it again. Last fall, more than 800 Boalt and Hastings graduates signed on to tackle a redesigned LSAT as part of a major interdisciplinary research project led by Boalt's Marjorie Schultz '76, and Sheldon Zedeck, a UC Berkeley professor of psychology.

The original LSAT—a half-day ordeal, as you recall—was first administered in 1948 and was designed to predict how well applicants would fare as law students. However, says Shultz, “It doesn't

say much about how well they'll do after they graduate.” She and Zedeck have designed an exam that they believe measures abilities and attributes necessary to be an effective attorney, such as practical judgment and negotiation skills. Volunteer alumni from the classes of 1973 to 2006 sharpened their pencils (well, logged on to their computers) to take the two-hour online exam. But this time, instead of worrisome scores, the examinees received MCLE credit. —*Helaine Schweitzer*

## A Patent Success

**BOALT HALL'S IP PROGRAM  
NO. 1 FOR 10TH CONSECUTIVE YEAR**

For the tenth straight year, *U.S. News & World Report* has ranked the Berkeley Center for Law & Technology's IP program the best in the country.

Says director and Richard M. Sherman Distinguished Professor of Law Pamela Samuelson, “We have an outstanding array of scholars who are actively engaged in extending the horizons of high-tech law and a reputation for excellent conferences and workshops on the cutting-edge IP issues.”

BCLT was founded in 1996 by two of the current faculty directors, Professors Peter S. Menell and Robert P. Merges. (*see related article, p. 9*)

## To Forgive (but Not Forget)

**Boalt's LRAP encourages grads to enter and stay in public service**

**T**he good news is that Nayantara Mehta '06 was recently promoted from law fellow to staff attorney at Alliance for Justice (AFJ), an Oakland-based nonprofit that offers advocacy for a broad array of social justice issues. Oh, and the other good news is that AFJ's clients will continue to have Mehta's Boalt-powered legal mind in their corner.

Without Boalt's recently overhauled Loan Repayment Assistance Program (LRAP), Mehta, like thousands of idealistic graduates before her, may have regretfully gone into private practice in order to pay off the massive debt she

incurred while in school. “I don't think I would be able to afford paying off my huge law school loan, as well as all my other expenses, on my current salary,” says Mehta. Although she still makes much less than fellow graduates who joined private firms, she feels financially secure, and that's, as she says, “a big psychological relief, and of course it makes a big difference practically as well.”

The legal brain drain in the public sector is worsening as the cost of a legal education continues to soar while public service salaries remain extremely low. The typical starting salary for someone in an entry-level public service law job is \$36,000–\$46,000, compared to about \$100,000–\$125,000 for new associates at private firms. A recent increase in associate salaries—up to 20 percent in some cases—has meant that entry-level salaries at some big firms have jumped to \$145,000.

During the early to mid '90s, Boalt was among a small number of law schools nationwide to initiate an LRAP. In 2006, Boalt revamped its program, and it is now in many respects the most generous in the country.

Graduates can ask Boalt to pay up to \$100,000 of their loans



**BLOGS TO BOOKMARK**

# Study Law Online!

Blogs first appeared on the Internet in 1994 and are now an integral part of journalism, business, and popular culture. They are also an increasingly important resource for lawyers. Of the more than 75 million log-style Web sites tracked by blog index and search engine Technorati.com, at least 1,500 address legal issues, according to Blawg.com, a site that tracks legal blogs.

Boalt's Chris Hoofnagle, senior staff attorney at the Samuelson Law, Technology & Public Policy Clinic, says, "Legal blogs are important because they offer fast and often unvarnished coverage of legal developments. They differ

greatly in quality of thought and thoroughness. Nevertheless, for some niche issues, blogs are the best and most timely source of information. We are currently developing a blog for the Samuelson Clinic that will feature research performed at Boalt."

**CHRIS'S PICKS:**

Concurring Opinions has provocative coverage of many legal issues, and features an incredible array of younger scholars' views:

[www.concurringopinions.com](http://www.concurringopinions.com)

The Technology & Marketing Law Blog from Eric Goldman (assistant professor, Santa Clara University School of Law) offers an excellent survey of recent developments in advertising and Internet law: [blog.ericgoldman.org](http://blog.ericgoldman.org)

Discourse.net from Michael Froomkin (professor of law, University of Miami School of Law)

covers both legal and high-profile issues in the news: [www.discourse.net](http://www.discourse.net)

The Consumer Law & Policy Blog is a serious and often sophisticated discussion of challenges in consumer law: [pubcit.typepad.com/clpblog](http://pubcit.typepad.com/clpblog)

Law and Technology Theory has heady discussions that include words like "normative": [techtheory.blogspot.com](http://techtheory.blogspot.com)

Lessig Blog is a chronicle on digital copyright by Larry Lessig (professor of law, Stanford Law School): [www.lessig.org/blog](http://www.lessig.org/blog)

Bank Lawyer's Blog is a highly opinionated but great view into the head of a financial services lawyer. Not many of these lawyers are this frank, in public or private:

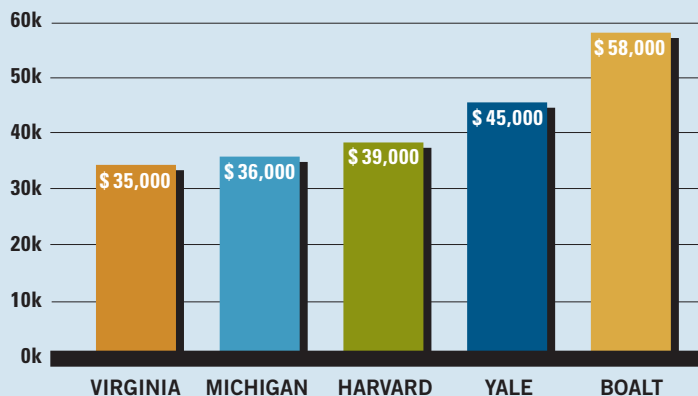
[www.banklawyersblog.com](http://www.banklawyersblog.com)

—Kevin Wong

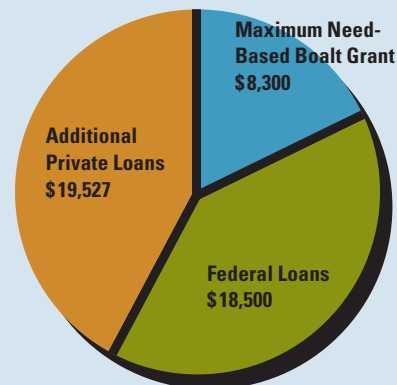
over 10 years if they are employed in government or public interest jobs that make substantial use of their law degrees and pay salaries of \$58,000 or less. Those with incomes above that level can ask forgiveness of a portion of their loan.

To date, some 84 Boalt alumni, including 31 new graduates,

have received funding for the January–June 2007 eligibility period. And Mehta believes they'll never regret it: "I had some pretty amazing friends at Boalt who have dedicated themselves to making the world better in some way. I think for most of them LRAP allows that to happen." —*Transcript Staff*



**Boalt's LRAP contribution point compared to other top-tier law schools.** (The contribution point is the income level below which 100% of an eligible student's loans are covered by the program.)



**How a maximum-need student finances one year at Boalt Hall.** (2006 - 2007 resident costs shown)

# Does Money Really Talk?

WHEN IT COMES TO EXECUTIVE PAY,  
ERIC TALLEY THINKS SO

**T**he compensation packages bestowed on top-level executives can no doubt reliably predict many aspects of their everyday lives: the neighborhoods they live in and the size of their homes, the kinds of schools their children are likely to attend, the vehicles they drive, and where they go to ski. Maybe one day

someone will discover that a CEO's compensation correlates with his or her golf handicap, as has recently been found with stock prices.

Surprisingly, Professor Eric Talley, faculty director of the Berkeley Center for Law, Business and the Economy (BCLBE), says that his innovative research shows that when properly analyzed, the amount and structure of

executive pay can predict outcomes of much more weighty consequence, such as the possibility that an executive officer will lie to boost the company stock price, or the likelihood of a company being sued for securities fraud—and even the settlement size of such litigation. In 2004, Talley wrote a paper with Gudrun Johnsen of Iceland's Reykjavik University exploring relationships among corporate governance, executive compensation, and securities litigation. Incentive compensation, they found, was a particularly large—and sometimes pernicious—lever. “It gets managers to act a lot more like shareholders,” Talley says, “but it also may give them a stake in trying to prop up their share price, even if that involves nontruthful disclosures or submerging information.”

Generally, researchers have relied on good, old-fashioned mathematical regression to explore the relationship between compensation and litigation. But Talley says that while regression is good at finding correlation, it falls short when it comes to uncovering causation. Talley—who holds a Ph.D. in economics as well as a J.D. (both from Stanford)—has instead turned to game theory, a branch of economics that deals with incentives and strategic behavior. For Talley's purposes, game theory models are superior to regression because they can generate testable predictions, such as the relationship between executive compensation and fraud. “We've tried to come up with, conceptually, how these things are likely to fit together in a larger model,” he says. “And once we've made some predictions, we've tried to test them.”

Talley believes his model has several applications. “This approach is helpful for understanding not only how to interpret the correlations but also how to test the effects of other sorts of policy interventions,” he says. Take the Private Securities Litigation Reform Act of 1995. Although the act was intended to reduce



**FOLLOWING THE MONEY:** Eric Talley makes a point about executive compensation.



nuisance suits, its critics charged that it would also impede serious litigation. By studying compensation structures and governance after the act took effect, Talley found that the critics were right. “The evidence we found is consistent with not only frivolous litigation being eliminated, but maybe even a larger fraction of meritorious litigation being eliminated,” he says.

Talley is in the process of updating his 2004 paper now, and he finds that BCLBE is an ideal place to continue his work. Boalt Hall recruited Talley in mid-2006 from USC Law School; simultaneously, Boalt recruited his wife, Professor Gillian Lester, from UCLA. (“We traded our Botox for Birkenstocks,” he jokes.)

BCLBE, Talley says, is a terrific environment for exploring the relationships among regulation, entrepreneurship, business policies, litigation, inventiveness, and so forth. The center also provides frequent opportunities for colleagues to compare their ideas and findings. For example, Talley mentions ongoing discussions with his colleague Jesse Fried, another noted expert on executive compensation. While both researchers have revealed negative consequences of incentive-driven compensation, Fried relies on a different research model to argue that such schemes may have very few—if any—redeeming benefits for shareholders.

Talley sees his own multidisciplinary approach as instructive to corporate compensation committees, lawmakers, and regulators, and he believes it can facilitate the creation of effective statutes and regulations. Simultaneously, it increases the avenues available to legal scholars. “In a lot of areas of law, it helps to have at least a few faculty with expertise in an outside discipline,” he says. This expertise, he suggests, allows one to come to the law with an interesting, fresh angle that can help inform the overall legal debate.

—Fred Sandmark



## Patent Trolls Take Their Toll

A BOALT CENTER PUSHES FOR PATENT LAW REFORM

One of the many types of trolls that populate Scandinavian folklore is a brutish being that lurks under bridges and occasionally leaps out to demand money from startled passersby. Several years ago, Peter Detkin, a Palo Alto patent attorney and former assistant general counsel for Intel, coined the puckish term “patent troll” to characterize individuals and companies (presumably neither brutes

nor bridge dwellers) whose business strategy bears a disconcerting resemblance to that of their Nordic namesakes.

Typical patent trolls—who not surprisingly prefer the more prosaic designation “intellectual property (IP) firm”—snap up patented technology from companies that go out of business, often at bargain-basement prices. They then proceed to demand royalties, licensing fees, or large one-time settlements from companies that they accuse of patent

infringement. Many companies, from tiny start-ups to corporate behemoths like Sony and Hewlett-Packard, often choose to settle such claims rather than face costly litigation and injunctions that could slow down a product's development.

Anyone familiar with patent laws knows that all of this is perfectly legal. Such IP firms take advantage of the fact that patent rights are transferable and that current law allows them the same right as other companies to sue for infringement and seek injunctive relief. That's one reason Professor Pamela Samuelson and her colleagues at the Berkeley Center for Law & Technology

standard, but didn't apply the patent. In 2002, with its core teleconferencing business floundering, Forgent rummaged through its IP holdings and found that old patented algorithm it had forgotten about. The company soon began vigorously enforcing its patent rights against enterprises using JPEG technology—a strategy that seemed at first a bottomless source of revenue. Through 2005, Forgent won settlements from scores of companies, among them Yahoo! and Adobe. In early 2006, however, its courtroom mojo began to wane when the U.S. Patent and Trademark Office (USPTO) stepped in and rejected the

patentable innovation—and should not have been granted. The non-obviousness standard is the crux of many patent disputes, and Samuelson and her colleagues argue for tightening the requirements for non-obviousness, as well as implementing other reforms, such as strengthening review procedures and staffing up the overextended patent office, all of which would make the patent system more responsive to the needs of innovators and less prone to abuse.

“We're trying to take a really broad perspective on patent reform to provide useful information to people in the legislature who are trying to make good decisions,” Samuelson says. She is particularly worried about trolls going after financially fragile start-ups, which are often the source of innovation, and she and her colleagues at BCLT are currently studying the impact of patent law and policy on entrepreneurial activity.

The term “patent troll” is a colorful sobriquet that some believe is being overused and applied indiscriminately to companies making rightful claims. BCLT's Barr, former vice president of intellectual property for Cisco Systems—who, as noted previously, prefers “non-practicing entities”—explains why semantic distinctions are not important to companies that make a lot of revenue from selling products and services. “Such companies will always be at a disadvantage negotiating patent rights with patent owners whose primary business is patent licensing, because these disputes cannot be resolved by cross-licensing patents. The big information technology companies want patent reform that will make it more difficult for questionable patents to be issued and that will ensure that the compensation for valid patents fairly reflects the value of those inventions.” These improvements will, according to Barr, result in a stronger, healthier patent system for all innovators.

—Fred Sandmark

**“Trolls don't actually build products, and they don't want to build products. Their business model is litigation. That's not what the patent system was set up to do.”**

—Professor Pamela Samuelson, Director, BCLT

(BCLT) are calling for patent law reform. Trolls, she says, “don't actually build products, and they don't want to build products. Their business model is litigation. That's not what the patent system was set up to do.”

Samuelson is cautious when it comes to tarring with the patent troll brush, and declined to name specific companies for this article. Her colleague Robert Barr, a veteran patent law expert and executive director of BCLT, offers Acacia Research, Forgent Networks, InternetAd Systems, MercExchange (the subject of a recent U.S. Supreme Court ruling), and Techsearch as “non-practicing entities,” a term he prefers to “trolls.”

Forgent Networks is famous—or infamous—for an IP lawsuit spree that netted the Texas-based company over \$100 million in settlements and licensing fees. In 1997, the company acquired a key bit of IP underlying JPEG, the ubiquitous digital image compression

broadest claims of the patent. In June 2006, a court further limited the claims Forgent could make; in November of the same year, the company accepted an \$8 million settlement for all outstanding suits, far less than the \$1 billion it had been projecting.

In another high-profile patent case heard by the Supreme Court last year, the justices delivered a narrow ruling that denied patent holder MercExchange injunctive relief against eBay. Samuelson views the decision as a small but important step toward patent reform. She is particularly concerned with the misapplication of injunctions—a crucial consideration when addressing a complex technology like software. “A patent may cover one small component of a complex product, and yet threaten to bring down an entire product line,” Samuelson says.

Earlier in the year, the USPTO had determined that MercExchange's patent was “obvious”—that is, not judged a



# Stand Off or Stand Down?

## BOALT HALL OCEAN LAW EXPERTS HELP DEFUSE ASIAN MARITIME CLASHES

**I**n April 2006, South Korea dispatched 18 patrol ships to the Dokdo Islands, a cluster of two islets and dozens of small reefs in the Korea Strait, 135 miles from the Korean Peninsula. Their mission: to intercept two Japanese ships ostensibly performing a survey of the waters surrounding the islands. Hurried diplomatic efforts brought the brief standoff to a peaceful conclusion; Japan relented and recalled its vessels.

An isolated incident? Hardly. Both countries have long claimed the rocky and almost uninhabited islets (Japan calls them—many believe provocatively—*Takeshima*), and since the end of World War II, there have been many such confrontations—and they don't always end peacefully. Over Japanese objections,

South Korea has occupied the minuscule grouping for over 50 years; during that time, its patrols have detained many Japanese fishermen within the islands' territorial waters. One interception reportedly resulted in a collision that took several Japanese lives.

The casual observer might find the situation almost absurd: A struggle for a small scattering of reefs with questionable economic value is threatening the peace of Northeast Asia and the unprecedented opportunities for prosperity and growth in the most dynamic economic region in the world. More disconcerting is the fact that other countries in Northeast Asia—big players like China and Russia among them—are embroiled in equally volatile maritime disputes.

The truth is that there is more at stake

here than sovereignty over tiny bits of territory, according to David D. Caron '83, C. William Maxeiner distinguished professor of law, ocean law expert, and co-director of the Law of the Sea Institute (LOSI). The Dokdo hostilities are rooted deeply in a complex and bitter legacy that includes centuries of warfare, Korean memories of Japanese colonialism, and the ravages of World War II and international agreements following its conclusion. These seemingly minor territorial disputes are highly symbolic and have the potential to fan the flames of nationalism, and—although a major conflict is unlikely—such hot spots can derail movement toward greater regional cooperation.

A job for Boalt Hall, right? Actually, it's the perfect challenge for LOSI—which has been housed for the last four years at Boalt and co-directed by Stefan A. Riesenfeld Professor of Law and History Harry Scheiber. A highly-regarded international consortium of scholars, LOSI has played a unique and central role in both the study and implementation of ocean law around the globe since the 1970s.

The intensity of the most recent Dokdo Island flare-up prompted Choon Ho Park—a judge on the International Law of the Sea Tribunal and member of LOSI's international board—to invite Scheiber and Dr. Seoung-Yong Hong, president of South Korea's prestigious Inha University, to put their heads together to examine the fundamental issues underlying the recurring regional maritime disputes. Their talks led LOSI and Inha University to co-host an international ocean law forum, *Towards a Framework for a New Order of the Sea*, which was held in downtown Seoul in late October 2006.

Along with the typical bustle of panel discussions, tutorials, and presentations, many ocean law scholars managed to squeeze in informal discussions with government officials from Korea, Japan, and China—frank exchanges aimed at



**LAWYERS OF THE SEA:** Professors Harry Scheiber and David Caron '83 show off the Berkeley campus to visitor Seokwoo Lee, professor of international law at Inha University, Incheon, South Korea.

paving the way for formal government-level talks. This kind of second-track diplomacy often proves the most effective way to discern cracks in the hardened positions that hinder fruitful negotiation among hostile governments. “A conference like this can help each country understand the strengths and weaknesses of its position,” says Caron. “When you discuss it within your own country, it sounds so strong and perfect. But sometimes these informal chats can give you some helpful feedback to refine your positions.”

Caron and Hong co-chaired the conference that included presentations by Boalt alumni Richard McLaughlin '97, director of the Harte Research Institute for Gulf of Mexico Studies at Texas A&M University, and Yann-Huei Song '92 (LL.M.) of the Academia Sinica in Taiwan, as well as current Boalt Hall students Cmdr. Glenn Sulmasy, '07 (LL.M.), and Jennifer Jeffers '09.

Caron notes that he was gratified to hear government officials at the conference throwing around encouraging words

like “conciliation,” but he also doubts that maritime clashes will end any time soon. “I’d say that’s a long way down the road. These are long processes, and even if you reach the people at the conferences, these issues often have deep resonance in the publics of each country. It takes a long time to move them along.”

The Dokdo Island dilemma remains volatile, but according to Caron, efforts such as LOSI’s are helping: “You need to work on reducing every point of tension, however small, to somehow bridge the present to a more prosperous, peaceful future.”

Helping mitigate maritime disputes is only one of LOSI’s many focuses. In the last four years, Professors Caron and Scheiber have held five major conferences and published three edited volumes—with three more in the works—addressing such issues as the oceans in the nuclear age, and illegal and unregulated fishing. A LOSI conference on law of the sea issues in the Caribbean was held in Corpus Christi, Texas in March.

—*Christopher E. Bush*

## Rx: Tender Legal Care

A NEW EBCLC PARTNERSHIP HELPS EASE LEGAL PAINS

**T**ears streamed down the mother’s cheeks as she described her daughter’s trauma. Weeks after the young girl’s uncle had entered their apartment and molested her, 15-year-old Michelle (a pseudonym) was crying constantly and unable to sleep. She no longer felt safe in her own home.

Immediately after the assault, the mother had whisked Michelle to the walk-in clinic at Children’s Hospital & Research Center Oakland. Now the mother had returned to the same facility, but this time to seek a legal way to break the lease to her apartment.

A hospital may seem an odd place to look for legal assistance, but thanks to a new partnership launched by Children’s Hospital and the East Bay Community Law Center (EBCLC)—Boalt’s poverty law clinic—low-income youth and their families in the East Bay can now see a doctor and a lawyer at the same facility. After receiving medical treatment, a patient can walk down the hallway and consult with a lawyer or law student about obtaining welfare benefits, dealing with a negligent landlord, or handling a nasty custody fight.

In this case, it was Madeline Howard—a third-year Boalt student and one of the project’s two student advocates—who negotiated with the landlord to release the family from its lease. “It was amazing to see the impact that advocacy had on their lives,” Howard says. “I visited them after they moved into a new apartment. They felt safe, and Michelle was able

**These seemingly minor territorial disputes are highly symbolic and have the potential to fan the flames of nationalism, and such hot spots can derail movement toward greater regional cooperation.**



ZONE OF CONTENTION: The Dokdo Islands





**LEGAL CHECKUP:** A client discusses her legal rights with (from left to right) Sheila McLaughlin Hall '84, health law practice director at EBCLC; student intern Tova Wolking '07; and Dr. Kelley Meade, a pediatrician at Children's Hospital.

to resume a normal life. She was able to sleep at night, and stopped crying all the time. Even though she'll be scarred by the experience, it was great to be able to help her and her family make a new start."

Launched in June 2006, the Alameda County Medical-Legal Partnership is patterned after a similar collaboration of pediatricians and lawyers in Boston. In fact, it was Howard's stint with the Boston program—three years as a volunteer advocate and outreach coordinator—that sparked her decision to attend Boalt and get the legal credentials necessary to be as effective a medical-legal advocate as possible.

Sheila McLaughlin Hall '84, legal director of the project, notes that many of the program's clients would be wary of going to a law office. "There's an increased trust because we've been referred by their doctor," she says. "We actually feel like part of the medical team." It's not surprising that Hall and her students refer to their initial consultation with a client—usually held in a small examining room—as a "legal checkup."

The new program is only one of many advocacy projects carried out by

EBCLC. Founded by Boalt students in 1988, EBCLC is the largest provider of free legal services in Alameda County. Each year, 14 staff attorneys guide more than 100 law students in their efforts to assist clients with housing, jobs, and health care issues.

The ultimate goal of the EBCLC-Children's Hospital partnership is to improve the health of disadvantaged families. "There's a long and unfortunate correlation between poverty and poor health outcomes," says Jeff Selbin, clinical professor of poverty law at Boalt and former executive director of EBCLC. "Our experience is that lawyers can help do a host of things that stabilize families and increase their access to health care."

Dr. Gena Lewis, a pediatrician at Children's Hospital, agrees emphatically. She had been so impressed with EBCLC's legal intervention programs for HIV sufferers that she initiated the conversation that resulted in the partnership. Lewis notes that the alarming number of cases of asthma and other

chronic diseases endemic among low-income youth has been linked to poor nutrition and inadequate living conditions. "If you fix those problems, hopefully you fix the medical ones as well," she says.

In one recent case, a 19-year-old woman came to the clinic to be treated for a serious flare-up of her psoriasis. She had been living in her car—aggravating her chronic skin condition—because her landlord had refused to fix plumbing problems that had made her apartment uninhabitable. A legal check-up with Howard followed her treatment, and she is now living with a cousin while Howard negotiates the return of her apartment security deposit.

**“Even though she'll be scarred by the experience, it was great to be able to help her and her family make a new start.”**

Such legal interventions “can help reduce the health disparities created by living in poverty,” Hall says. “We've been doing this for 16 years or so in the area of HIV-AIDS. Now it's time to give the same attention to the problems of youth. We've been wanting to do this for a long time.”  
—*Transcript Staff*

# From the Streets of San Francisco

**DAVID ONEK BRINGS STREET CRED TO THE BERKELEY CENTER FOR CRIMINAL JUSTICE**

**D**avid Onek—the first executive director of the Berkeley Center for Criminal Justice (BCCJ)—serves up a succinct and cogent case for his vision of the center’s mission: “We are intent on using the intellectual capital at Boalt to tackle the most pressing criminal justice issues facing communities today.” Onek’s determination to harness academia’s brainpower in the service of addressing crucial problems at the local level makes him a perfect fit for Boalt and BCCJ.

Onek comes to his new post flush with hands-on experience as the deputy director of San Francisco Mayor Gavin Newsom’s Office of Criminal Justice, where he headed up numerous criminal justice initiatives, including programs aimed at reducing gang violence and restoring public safety in the city’s most beleaguered areas.

Onek’s arrival at Boalt comes at a time when a number of Bay Area municipalities are scrambling to find ways to contend with an alarming resurgence of gang-related violence that includes record-breaking homicide rates. He and faculty co-chairs Jonathan Simon ’87/’90, David Sklansky, and Charles Weisselberg have immediate plans to bring BCCJ into the fray with an initiative aimed at fostering effective collaboration among community leaders and law enforcement. “To address gang violence successfully, criminal justice agencies, community leaders, and academics have to work together, and the

center is uniquely positioned to foster that kind of collaboration,” says Onek.

BCCJ is basing its approach on national efforts such as the widely emulated Boston model, an innovative—and among the cognoscenti, almost legendary—partnership of faith-based leaders, street outreach workers, and law enforcement officials that in the mid-1990s succeeded in reducing Boston’s gang-related homicides by two-thirds. The Boston model, which has been successfully implemented in Chicago and a handful of other communities across the country, couples an unequivocal message that violence is unacceptable with a credible promise of resources and services to help young perpetrators escape the poverty and hopelessness that have led them into a violent lifestyle.

This is not a one-size-fits-all approach, Onek says. Every community has its own patterns of youth violence and gang behavior, its own values, and its own strengths, all of which need to be carefully assessed before any specific measures can be taken. But regardless of the details, a successful outcome hinges on solid partnerships with community leaders and genuine follow-up—both in the delivery of effective services and resources and in swift and sure enforcement when necessary. BCCJ’s efforts include getting the buy-in and active cooperation of decision makers such as elected officials, judges, district attorneys, and public defenders.

That Onek is already considered a leading expert in criminal and juvenile

justice law and policy at the relatively young age of 37 is not really surprising—he’s had a head start. “I decided to study law because of my interest in juvenile justice,” he notes. Before entering Stanford Law School, he had already dealt with youth crime and prevention both behind the lines and in the trenches—he studied model juvenile justice programs as a research associate at the National Council on Crime and Delinquency, and served as a counselor at a treatment center for adolescent delinquents. Onek spent his law school summers working at the Juvenile Division of the San Francisco Public Defender’s Office and the Youth Law Center. After graduating in 1999, he won the prestigious Skadden Fellowship, which he applied to his work at San Francisco’s Legal Services for Children. He followed that up with a stint as senior program associate at the W. Haywood





Burns Institute for Juvenile Justice Fairness and Equity, where he worked to reduce racial disparities in the juvenile justice system.

Onek lives in the hilly, young-family-with-children enclave of Bernal Heights in San Francisco with his wife, Kara Dukakis, and their daughters, Olivia, 5, and Nora, 2. And yes, since you ask, it's that Dukakis. Onek's father-in-law is a former governor of Massachusetts and the 1988 Democratic nominee for president. In fact, public service seems to be a long-standing tradition on both sides of the family. Onek's father, Joseph, was

deputy counsel to the president in the Carter administration, served in both the Justice Department and State Department in the Clinton administration, and was recently tapped to be senior counsel to Speaker of the House Nancy Pelosi.

Simon, Sklansky, and Weisselberg are delighted to have Onek on the team, and Onek returns the compliment: "I'm honored to have been selected to work with them. I couldn't ask for more distinguished and supportive faculty co-chairs," he says. BCCJ plans to continue ramping up and recently brought Jessie Warner '05 on board as a program associate. —*Jared Simpson*

**"To address gang violence successfully, criminal justice agencies, community leaders, and academics have to work together, and the center is uniquely positioned to foster that kind of collaboration."** —David Onek



**NEW GUY ON THE CASE.** David Onek checks out his Boalt Hall office.

# Meetings of the Mind

## Selected Upcoming Conferences and Symposia

### MAY

#### Berkeley Extensions Tax Seminar

**DATE:** May 7

**LOCATION:** Clark Kerr Conference Center  
**BOALT CO-SPONSOR:** Berkeley Center for Law, Business and the Economy

A daylong conference that brings together leading tax experts from government and the private sector to explore a host of business taxation topics. Donald L. Korb, chief counsel for the Internal Revenue Service, will be the keynote speaker.

#### Center for Intellectual Property Studies Forum

**DATE:** May 20-23

**LOCATION:** Chalmers Conference Centre and the School of Business, Economics and Law, Göteborg University in Göteborg, Sweden

**BOALT CO-SPONSOR:** Berkeley Center for Law & Technology

This four-day conference on the latest research on intellectual property issues will feature over 140 speakers from around the world, including Robert Barr, executive director of the Berkeley Center for Law & Technology, and Steven Weber, director of Berkeley's Institute for International Studies.

### MAY/JUNE

#### Intellectual Property in the New Technological Age Seminars

**DATE:** May 30-June 2

**LOCATION:** Boalt Hall

**BOALT CO-SPONSOR:** Berkeley Center for Law & Technology

Guided by Boalt IP faculty, prominent jurists, and leading practitioners, the program will explore the landscape of intellectual property law, important recent developments, the challenges of managing patent cases, and the dynamic changes in the law being brought about by the Internet.

### OCTOBER

#### Juvenile Justice Reform: Forty Years After Gault

**DATE:** October 25-27

**LOCATION:** Boalt Hall

**BOALT CO-SPONSOR:** Berkeley Center for Criminal Justice

This conference will focus on juvenile justice reform 40 years after the landmark Supreme Court case *In re Gault*, in which the court held that the proceedings for juveniles had to comply with the requirements of the 14th Amendment.





# climate change goes to COURT

## A NEW BOALT CENTER RAMPS UP FOR LEGAL AND POLICY CHALLENGES

In mid-2006, global warming went pop: Al Gore's *An Inconvenient Truth* became a breakout hit—the Oscar-winning documentary has been viewed by millions worldwide and is the third-highest-grossing documentary film in history. Its unlikely success is only one indication of the growing awareness and sense of urgency about climate change. According to a Fox News poll taken in January, 82 percent of Americans now believe that global warming is real. A CNN poll taken the same month

indicates that 75 percent believe that there should be mandatory restrictions on automobile and industrial emissions to help curb greenhouse gases (GHG).

These polls were taken before the really bad news broke: On February 2, the Intergovernmental Panel on Climate Change (IPCC) released its long-awaited—and long-dreaded—report. As expected, the more than 2,000 climatologists from 113 countries confirmed beyond a reasonable doubt that global warming is real, that humans are very likely to

blame, and that we can expect to see an acceleration of its deleterious effects, including a rise in sea levels by as much as 0.59 meters (almost two feet), by the year 2100. While the document (actually an 18-page summary that will be followed by a full report in May) didn't have anyone breaking out the champagne, its unquestionable scientific validity and unequivocally grim prognosis have raised hope among concerned citizens that comprehensive and unified action will soon be on the political agenda.





**By JARED SIMPSON  
and JOHANNA WALD**

The fear of unprecedented global catastrophe has already provoked bitterly contested legal and political battles, such as the move by several states to regulate automobile and factory emissions that led to the first Supreme Court decision on climate change policy, *Massachusetts v. EPA*. The court's holdings in favor of the petitioners, announced April 2, essentially establish a new legal context for climate change debate. Developing and implementing effective laws and policies within this contentiously divided national and global arena requires the expert guidance of not just top climatologists, but other professionals as well, including

the environmental law and policy experts from top-tier legal institutions such as Boalt Hall.

### **Enter the Center**

"This is the big one," says Sho Sato Professor of Law Dan Farber, "the environmental issue that's going to dominate the agenda for decades." Farber is faculty director of the recently launched California Center for Environmental Law & Policy. CCELP (handily and appropriately pronounced "sea kelp") was established to expand Boalt's nationally renowned Environmental Law Program, and enhance the school's already substantial involvement

in crucial environmental issues. CCELP's intention is to make Boalt a major academic player in the effort to come to grips with the causes and effects of climate change.

CCELP's commitment to "moving to an entirely different level," as Farber puts it, is demonstrated by two recent appointments. Rick Frank, a senior legal adviser to the California Attorney General and an environmental lawyer for more than 30 years, has been named the center's first executive director. Joining Frank as associate director—and adding formidable international expertise—is Cymie Payne '97. Payne has spent the past six years in

Geneva as a senior attorney at the United Nations Compensation Commission, a U.N. Security Council agency that handles compensation claims for losses resulting from Iraq's invasion of Kuwait. She is also the director of CCELP's Global Commons Project, which was established to expand the influence of environmental law on international policy-making. "With Rick and Cymie on board," says Farber, "we'll take a leading role in crucial environmental debates at the state, national, and global level."

CCELP has already set its sights on the surge of climate change activity in Sacramento. Frank reports that he and other CCELP staff will play an important advisory role as the state legislature and California Air Resources Board decide how to implement the groundbreaking Global Warming Solutions Act of 2006 (AB 32). Passed in September 2006 and signed into law by an erstwhile reluctant

the act, as stated by the Natural Resources Defense Council, the nation's "most ambitious effort to combat global warming."

Sacramento-savvy Frank cautions that, at this point, "there may be less here than meets the eye," referring to the fact that the legislation does not specify how its broad mandates are to be measured, monitored, and regulated, but instead gives sweeping powers to the 11-member Air Resources Board to make those determinations. The board's decisions are crucial in determining whether the legislation actually results in the mandated emission reductions. Payne notes that some measures will be taken fairly soon, under the early action provisions of the bill. For example, by June 30, the Air Resources Board is required to publish a list of measures that can be implemented by the end of 2009. "Some of those steps will be less controversial because they may scoop up California's remaining low hanging fruit in

dents, has a larger population than all but 33 countries. But being the big state on the map comes at a cost: California is the world's 12th-largest emitter of carbon dioxide; its automobiles and industries spewed out 492 million gross metric tons in 2004, according to a report produced by the California Energy Commission.

But, as the passage of AB 32 indicates, California is serious about changing its polluting ways. Schwarzenegger himself appears to be signaling a change of heart with dramatic moves that—while still largely symbolic—are attracting a lot of attention and keeping the issue at the forefront. For example, on July 31, 2006, in Long Beach, California, Schwarzenegger and British Prime Minister Tony Blair signed the climate change and clean energy collaboration, an agreement that pledges an array of cooperative actions, including exchanging information and looking at the possibility of working out an emissions trading program.

Bypassing the federal government is a significant and growing trend for state and local governments frustrated by the Bush administration's failure to act. "California and other states have been forced to become so active because of the dearth of national leadership," says Frank. The Bush administration has repeatedly been taken to task for failing to take the lead on climate change policy, and California is neither the only nor the first state to take independent action. Massachusetts, Arizona, and Colorado are among several states that have passed emission reducing measures. On February 26, the governors of five western states—Arizona, California, New Mexico, Oregon, and Washington—announced the Western Regional Climate Action Initiative, which will set pollution-reduction goals for the signatory states and establish a market-based program to meet those goals. A statement by Arizona Governor Janet Napolitano during the



**FRANK  
ASSESSMENT:**  
Rick Frank,  
Executive Director,  
CCELP  
"The Supreme Court's  
decision against the  
EPA is a major and  
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states and environmental  
groups that  
brought the case."

Governor Schwarzenegger, the law imposes emissions caps on utilities, refineries, and manufacturing plants, and requires that GHG emissions be reduced to 1990 levels by 2020. It also mandates that measures be taken to ensure that the state further reduces emissions to 80 percent below 1990 levels by 2050. While several other states have passed similar legislation, California is the first to cap emissions across all the relevant industries, making

terms of conservation, efficiency, and alternative power sources," she says. "Industries can be expected to be more concerned about the more far-reaching provisions that will be implemented later."

### California Steaming

California's immensity makes for great cocktail party conversation: The state boasts the eighth-largest economy in the world, and with almost 40 million resi-



# Stick Trumps Carrot

By Ruth Greenspan Bell '67



Bell is a resident scholar at Resources for the Future, an independent research agency. She focuses on international issues of compliance with environmental laws.

The IPCC report announced in February leaves little doubt that global warming is already happening and that human activity is a chief cause. However, the prevailing attitude appears to be that current market-based solutions such as those proposed by the Kyoto Protocol will save the day.

If and when the world decides to become serious about global warming (and the IPCC prognosis suggests narrowing options), I doubt the Kyoto Protocol's "flexible mechanisms" will have much to do with what emerges. Kyoto, based on unique examples from U.S. practice, may represent an idealized vision of how pollution might be controlled in a perfect world, but the real world is far from meeting those conditions.

The model U.S. sulfur dioxide cap-and-trade program incorporates trading as a tool to reach an independently established and enforced regulatory objective. Credit for pollution reductions properly goes to the cap, not the trade. The program is actually a classic form of the much-maligned command-and-control regulation, in which trading is backed up by strict, transparent accountability and tough penalties. In contrast, analysis coming out of India, for example, suggests that the Protocol's Clean Development Mechanism (CDM) is subject to manipulation, reducing confidence that genuine carbon reductions are being achieved.

Focusing only on the trade is like giving credit for a good haircut to the scissors rather than the barber. And it reflects a deeper problem: the climate debate has been dominated thus far by a single-minded focus on efficiency as the most important criteria for a remedial program. Money and resources should not be wasted, but efficiency has never been the sole driver of any environmental requirement. The focus should be on finding a system that can really work and that will be as efficient as possible under the circumstances. Why should the world experiment with untried theory for the critical and time-sensitive set of challenges posed by climate change?

**Focusing only on the trade is like giving credit for a good haircut to the scissors rather than the barber.**

signing neatly sums up the initiative's rationale: "In the absence of meaningful federal action, it is up to the states to take action to address climate change and reduce greenhouse-gas emissions in this country."

Even municipal governments are taking time from zoning laws and road repairs to register their desire for a unified response. In 2005, Seattle Mayor Greg Nickels launched the U.S. Mayors Climate Protection Agreement, in which cities pledge to do what they can to help reduce emissions. As of March 29, 435 mayors from all fifty states have signed on (including Berkeley Mayor Tom Bates, of course). But, however laudable such state and local efforts may be, to date they have only pro-

duced a crazy quilt of uncoordinated, inadequate, and largely toothless regulations. Says Frank: "Everyone, not just environmentalists and conservation organizations, but industry and state governments as well, agree that this is a subject best tackled at national and international levels."

## Supreme Courting Disaster

Aggressive moves by California, Massachusetts, and other states to regulate emissions has provoked automakers and other affected industries to strike back with a largely successful spate of lawsuits. The beleaguered states sought relief from the EPA, petitioning the agency to use its power under the Clean Air Act (CAA) to

regulate tailpipe and industrial emissions. The EPA's refusal to do so led 12 states and a host of municipalities and environmental organizations to sue the agency. The ensuing round of decisions and appeals in *Massachusetts v. Environmental Protection Agency* resulted in the first Supreme Court decision on climate change, which was a resounding victory for the plaintiffs. This decision says Frank, is "the most important environmental law decision by the U.S. Supreme Court in 20 years."

Frank explains that the EPA and the Bush administration had argued that the federal government has no authority to regulate heat-trapping gases because they are not air pollutants as defined by the CAA. Frank, who was deeply involved in the case while serving in California's Office of the Attorney General, notes that this argument had "essentially reversed the stance of the last two administrations toward the EPA." The EPA's counsel also argued that—regardless of the agency's responsibilities under the CAA—the petitioners lacked standing to bring the suit, a position to which several of the justices appeared sympathetic, judging from their comments and questions during the arguments.

Frank says that he and his CCELP colleagues are greatly encouraged by the court's holdings. "This is a major and unqualified win by the states and environmental groups that brought the case," he says. Not only does the decision repudiate the Bush administration's claims that it lacks the legal authority to regulate GHG under the CAA, but "it is at least as significant for its ruling that environmental litigants generally, and sovereign states in particular, have the legal standing to pursue their climate change-related legal claims in the federal courts."

## Thinking Cap (and Trade)

Holding your own on the topic of global warming at the next chatty gathering

means boning up on cap-and-trade programs. Legislators, members of state agencies, legal practitioners, and NGO administrators did just that at a February conference organized by CCELP: Cap and Trade as a Tool for Climate Change Policy. Payne, who organized the conference, says its main goal “was to educate the business, finance, legal, and policy communities on where climate change policy is headed both nationally and internationally.” And these days the next step seems to be stringent regulation (cap) and market-based incentives (trade). Signaling the political importance of the conference, the keynote speaker was no less than Senator Dianne Feinstein. Feinstein is a proponent of cap and trade and has co-authored bills that would cut carbon dioxide emissions from power plants and increase fuel economy standards.

Simply stated, a cap-and-trade scheme mandates an overall limit on the amount of allowable GHG emissions in any given year, and portions out allocations to individual companies. Companies that produce less than their quota may trade or sell their remaining allotment to those that produce more. The program was successfully implemented in the United States after the CAA Amendments of 1990 mandated the reduction of smokestack pollutants that caused acid rain, and it has subsequently been endorsed by the Kyoto Treaty and put into practice in parts of Europe.

Cap and trade isn't the only greenhouse-gas game in town. Some experts, such as Al Gore, believe that the simplest and most transparent method of regulation would be taxing carbon emissions. Nonetheless, Payne notes that among the plans currently being considered, regulatory and market mechanisms are the most likely to be implemented by states, regions, and the federal government. Statements and actions by top leadership, including Feinstein, confirm this. But, Payne adds, although a market-driven approach is the

current preferred policy tool, “that does not exclude the future use of alternate approaches, such as a form of carbon tax.”

Cap and trade definitely has a pretty good track record—in the last two decades for example, emission restrictions and market incentives helped to reduce dramatically the pollutants from coal-fired plants that caused acid rain in the Northeast—but it is complicated to implement and enforce. “Assigning credits, knowing whether they are actually being generated

“It's not so much a cataclysm as ongoing harm,” Milkey responded, pointing out that rising sea levels will soon claim land in coastal states like New York, Massachusetts, and California. “The harm is already occurring.”

CCELP is analyzing the profound legal implications of dramatic shifts in public and private boundaries along the coast caused by rising sea levels. For example, as tidelands, wetlands, reefs, and islands are submerged, owners of coastal



by legitimate projects (read: knowing if a company is cheating), measuring baselines for determining when reductions take place—these are all problematic areas for programs of this nature,” says Payne (See *Stick Trumps Carrot*, p.19).

### Sea Levels (and Other Rising Challenges)

While we're still bickering about how to deal with its causes, climate change is already happening, resulting in immediate and alarming consequences that raise other urgent legal and policy issues. Frank recalls that during a sharp exchange on the question of standing in *Massachusetts v. EPA*, Justice Scalia told the plaintiff's counsel, Massachusetts Assistant Attorney General James R. Milkey, that he was required to demonstrate that harm is imminent. “I mean, when is the cataclysm?” Scalia asked.

property can be expected to demand government protection from storm surges, in the form of sea walls and cliff armor. Payne suspects that these demands will raise new jurisdictional questions and resource-allocation challenges to a legal framework that has, in the past, treated property as relatively static.

The imminent threat of rising sea levels gets a lot of media attention—it was a particularly hair-raising feature of *An Inconvenient Truth*—but many other crucial legal and policy issues need to be addressed, and soon. Farber notes that in California, for example, an entire infrastructure has been built to capture snowmelt that flows down from mountains each spring and use it to meet agricultural, industrial, and municipal needs. “The problem,” says Farber, “is that the system is designed for one particular climate.” Warming will likely cause snow to



## “California and other states have been forced to become so active because of the dearth of national leadership.”

**Rick Frank, executive director, CCELP**

melt earlier and shrink the runoff period, meaning that storage facilities will have to be expanded significantly to capture and move the same amount of water each year.

But any such expansion is an extremely contentious policy issue in California.



Frank notes that recent efforts to build new storage facilities and expanded water-delivery systems have met with vigorous opposition from conservation groups and other stakeholders. “Even in the face of the pressures on our current water system posed by climate change, expansion proposals will likely be met by political controversy and litigation,” he says. In February, Frank was appointed by Governor Schwarzenegger to serve on the Delta Vision Blue Ribbon Task Force on the future of the Sacramento-San Joaquin Delta. “That future will be affected by

these changing runoff patterns,” he says. “Being a member of this task force is one direct and concrete way in which I and the center will be contributing to solutions.”

### Big Science, Big Law

In February, the University of California, Berkeley and its partners at the University of Illinois at Urbana-Champaign and the Lawrence Berkeley National Laboratory were selected by British Petroleum (BP) to lead an innovative \$500 million research effort. The resulting Energy Biosciences Institute will be housed on the Berkeley campus and will carry out research aimed at developing new sources of energy and reducing the impact of energy consumption on the environment.

John Browne, CEO of BP, said that the company selected Berkeley and its part-

ners largely based on their ability to repeatedly deliver “big science,” large and complex projects that require top-level knowledge leading to scientific breakthroughs. With big science comes big legal and policy issues, as well, and CCELP expects to actively participate in the legal aspects of the new institute’s projects. Payne points out that there are many regulatory and legal issues around the deployment of biofuels or other approaches to climate change mitigation, such as thorny questions regarding land and water use, ocean law, and legalities related to research and

### Sunshine Clause

development. “Our ongoing work with the Energy Biosciences Institute is a perfect example of the kind of interdisciplinary efforts for which we hope CCELP will become known.” In addition to ongoing research and curriculum development, CCELP is holding a town-hall style forum with state regulators and other experts on new energy technologies in April. The IPCC report delivers an unremittingly gloomy scenario, but Payne and other CCELP staff remain upbeat. Payne evinces tremendous determination to “think our way out of this problem” and believes that eventually measures to reduce emissions will be routinely woven into our daily lives. Payne notes that AB 32 is only one of a whole package of other measures that shouldn’t be overlooked, including: AB 1493, that sets GHG emissions limits on automobiles (which is now under litigation); the governor’s low carbon fuel standard; the renewable portfolio standard; and SB 1368’s GHG emissions performance standard for electric power generators. Payne adds that the Democratic control of Congress portends serious legislative initiatives to deal with climate change. “The California delegation of Nancy Pelosi, Dianne Feinstein, and Barbara Boxer is on a roll in this arena, which is particularly exciting,” Payne says.

The laws and policies adopted domestically and internationally in the next decade will determine how successful we are in slowing warming and addressing its consequences. It has been over a century since Mark Twain was (erroneously) credited with the famous aphorism: “Everybody talks about the weather, but nobody does anything about it.” CCELP is part of a growing global movement that is committed to both talking and pushing for whatever measures necessary to address the most pressing issue of our time.

**LEGAL FORECASTER:**  
Sho Sato  
Professor of Law  
Dan Farber,  
Faculty Director,  
CCELP  
“This is the big one—the environmental issue that’s going to dominate the agenda for decades.”

# Shooting for the Championship

Dallas Mavericks CEO Terdema Ussery turns crisis into opportunity—again and again.

BY CHRISTOPHER E. BUSH

**S**ome people shrink from pressure. Others, like Terdema Ussery II '87, rise to it. Just ask the lieutenant governor of Texas.

With less than 30 seconds on the clock in the final game of last year's NBA Western Conference semifinals, the Dallas Mavericks trailed by three points to their cross-state archrivals, the San Antonio Spurs. During a break in the action, Texas Lieutenant Governor David Dewhurst turned to Mavericks CEO Ussery, who was sitting behind him. Then, recalls Ussery, "He said, in a nice but somewhat patronizing way, 'At least one way or another, a Texas team is going to be represented in the next round, and that's something you can be proud of. You had a great season.' He went on and on about how we should feel good about the fact that we were about to lose the game."

Ussery was tired of the doubters. "We had blown the lead in the series," he concedes, "and everyone was saying, 'You cannot win a Game 7 in San Antonio.'" But after years of rebuilding a team that had once been an NBA laughing-stock, Ussery had seen the Mavericks in far worse spots.

He assured the lieutenant governor the Mavs would win. "You know there are only 20 seconds left?" Dewhurst asked him. Ussery wouldn't back down. So Dewhurst made a promise: If Dallas pulled it off, he would attend every playoff game the team played from then on. "I'm happy to say the lieutenant governor is a man of his word," Ussery reports.

Dallas ended up advancing to the league championship series, although its Cinderella season ended there, when the team lost to the Miami Heat in six games. Still, Ussery calls the victory over the Spurs the highlight of his career so far with the Mavericks. "San Antonio had been the monkey on our backs for several years, and people had said, 'You're not tough enough to go down there and do it.' And we did."

## Legal Dreams

Like most of the turning points in his life, Ussery's rise to the top ranks of the NBA wasn't planned; the opportunity was born of crisis, and Ussery seized it. Although opportunity had knocked urgently at his door before, it had never come dressed in a basketball jersey. As a child growing up on the border between Watts and Compton, California, Ussery wasn't even particularly into basketball. "Football's really my first love," he says. (Ussery's grid-

iron dreams are being fulfilled by another Terdema, his 15-year old son, a football star at St. Mark's of Texas, and, Ussery says, "just a sweet kid.")

Even football took a back seat to becoming a lawyer, though. Having witnessed the searing devastation of the 1965 Watts riots as a boy, Ussery knew he wanted to fight racial inequity in America—but through positive energy, not violence. A career in law, he decided, was the best way to make a living while making a difference.

He excelled academically and was admitted to Princeton in 1977. While there, he played football and, on a lark, even tried out as a walk-on for the basketball team, coached by the legendary Pete Carril. "He confirmed that I was probably the worst basketball player he had ever seen out of California," Ussery says. "During my two-hour tryout, I proved that I couldn't shoot and I couldn't jump. It was a very short-lived basketball career." As a player, at least. And for the time being.

After Princeton, Ussery returned to California to work on Los Angeles Mayor Thomas Bradley's gubernatorial campaign. He also applied to law schools and was accepted by several of the best. But his work on the campaign stimulated an interest in government. "This pull of policy and politics, and the extent to which a government can and can't be effective, was pretty strong," he says.

So Ussery deferred his dream; instead of law school, he headed for the East





**MINDING THE BUSINESS:**  
Terdema Ussery '87 watches  
the Mavs win another one.

Coast again, this time for a master's degree from Harvard University's John F. Kennedy School of Government. He might well have stayed in the East, finding a niche in the political establishment there, if not for an urgent phone call one night from California.

## **A Family Crisis Leads to Boalt**

Ussery's family owned and ran a small grocery store in South Central Los Angeles. Then, as now, it was a rough neighborhood. In 1984—as Ussery was nearing completion of his master's degree—his mother called to say that his father had been shot during an armed robbery at his corner store. “I felt an overwhelming desire to be closer to home,” Ussery says. Although his father survived and ultimately recovered fully, Ussery knew he wanted to return to California.

He enrolled at Boalt Hall on the strength of its proximity to Los Angeles and its prestige. His brother, also affected by their father's shooting, transferred to UC Berkeley from Atlanta's Morehouse College to complete his undergraduate degree. The two moved in together, and Ussery got down to work on his law degree.

After his first year at Boalt, Ussery made *California Law Review*, which proved to be a pivotal experience. “Outside of my course work, my life revolved around it. I met some of my closest friends to this day down in the basement of Boalt Hall in the old *Review* office,” he says. But the journal also led to his greatest single law school humiliation.

Most law students have nightmares about being skewered by a professor during a classroom grilling. Ussery lived that nightmare two months into his federal tax class. “I had been up all night editing an article from a professor at Columbia University,” Ussery recalls. “I just didn't have the opportunity to read the cases

before class.” Instead of trying to hide—and risk looking vulnerable—Ussery opted for a time-honored ploy: appearing eager to be called on. The professor called his bluff, directing the first question of the day at Ussery.

“I had to be honest,” Ussery says. “I told him, ‘I didn’t read the cases. I really apologize, but I was up all night editing an article.’”

The professor slammed his casebook shut and glowered at the class. “We’ll reconvene when everyone is prepared,” he said, then spun on his heel and stormed out the door.

Two decades later, the memory still stings. “I felt like an idiot because I was the reason the class was called off early,” Ussery says. “But everyone patted me on the back and was really happy. I was a hero and a goat at the same time.”

Luckily, the rest of Ussery’s time at Boalt was far better. “I had some phenomenal instructors,” he says, “who were very passionate about the law and teaching—people like Professor Sugarman, who was very theatrical. Through their passion for the law and their scholarship, they confirmed in my own heart that I had made the right decision to go to law school.”

Boalt Hall opened fascinating doors for Ussery. He worked as a summer associate for Morrison & Foerster, and he clerked at the California Supreme Court for the late Associate Justice Allen E. Broussard ’53. “I had a lot of great opportunities,” Ussery says. “It was almost an embarrassment of riches.”

After completing his law degree, Ussery hired on as an associate with Morrison & Foerster in Los Angeles, which brought him close to his family’s home. He enjoyed the work and seemed headed for a successful career as a big-firm lawyer. But then fate intervened again, once more by telephone, once more in the wake of violence and crisis.

## Rescuing the CBA

On July 19, 1989, United Airlines flight 232 from Denver to Chicago was cruising over Iowa at 37,000 feet. As the DC-10 banked gently to the right, the fan blade assembly of the central, tail-mounted engine shattered. Shrapnel tore through the aircraft, shearing off the tail cone, severing all three major hydraulic lines, and damaging the horizontal stabilizer.

Fighting desperately to control the aircraft, the pilots made an emergency landing at the Sioux City Airport, but the plane veered off the runway, broke up, and exploded. Miraculously, 184 of the 282 passengers survived.

Among the dead was almost the entire senior staff of the office of the Continental Basketball Association (CBA), including its commissioner, Jay Ramsdell, who was only 25 years old. The loss threatened to cripple the league for years. “In 1991, I got a phone call from Irv Kaze, who’d been named the commissioner and was starting to put the CBA back together,” Ussery says. “He said, ‘I’m not a lawyer. I need a lawyer. I’ve heard about you. Would you be willing to come do this for a year?’”

Always up for a challenge, Ussery agreed and soon found himself deputy director and general counsel of the CBA. He had negotiated a yearlong leave of absence from Morrison & Foerster. He never went back.

Within a year, he was the CBA’s commissioner, charged with the monumental task of pulling it out of bankruptcy. By building attendance and negotiating a new \$4.3 million deal between the players and the NBA, he accomplished the task in less than three years. Ussery is particularly proud of tightening and formalizing the CBA’s relationship with the NBA. By 1993, he was ready for a new challenge.

It came from Nike, which asked him to head the sports management group that handles its top professional athletes—

celebrities like Scottie Pippen and Deion Sanders. The endorsement deals were huge; occasionally the egos and problems were, too. Yet Ussery seemed to have a gift for working constructively with high-profile athletes. Twice while at Nike, he made the annual *Sporting News* list of the 100 most powerful people in sports. So in 1997, when Ross Perot bought the struggling Dallas Mavericks and looked for help to rebuild the team, the canny billionaire didn’t take long to call on Ussery.

“What I’m really doing, though, is throwing 44 parties a year for 20,000 people per party. The whole objective is to make sure those 20,000 people leave with one thought in mind: ‘When can I come back?’”

## Building Two Champions

During more than 10 years as Mavericks president and CEO, Ussery has faced numerous challenges. The team went into freefall at the beginning of the 1990s, amassing a humiliating win-lose record of 179-445 (including one 20-game losing streak) between 1990 and 1998. Given a mandate by Perot, Ussery and other new leaders began to transform the team into a powerhouse. Once the Mavs were winning again, Ussery led the charge for a



new arena, the \$420 million American Airlines Center, so more Dallas fans could come root for the team. And he weathered a change in ownership when Perot sold the team in 2000 to Internet billionaire Mark Cuban.

Today, besides leading the Mavericks, Ussery serves as CEO of HDNet, another of Cuban's business ventures. Most people would find the demands of running two

**EMBRACING THE MOMENT:** On June 3 2006, Ussery and Jason Terry celebrate beating the Phoenix Suns to go on to the NBA Finals.



companies enormous, but Ussery thrives on the pressure. "The thing that's most rewarding is not knowing on a daily basis what direction I'll have to go," he says. "I really find it stimulating, the uncertainty of it all."

Each business poses unique challenges. Consider the Mavericks: "My assets are essentially men who wear short pants," he laughs, "and scamper up and down the court trying to score points. What I'm really doing, though, is throwing 44 par-

ties a year for 20,000 people per party. The whole objective is to make sure those 20,000 people leave with one thought in mind: "When can I come back?"

HDNet, founded in 2001, was the first television network to broadcast exclusively in the new high-definition format. "We started from scratch with just an idea," Ussery says. "We worked for a year and a half to get it launched, to get all the pieces in place." Ussery and his technical and marketing staff had to convince content providers, network owners, and

viewers that HDTV was an idea whose time had truly come. "The first few years, people just assumed we were talking about a technology that would never come to the fore—that we were wasting everyone's time," he says.

Ussery knew better. He recalls the spring day in 2001 when the network went live. "We were sitting in a trailer in Arlington [Virginia], about to broadcast our first event, a major league baseball game," he says. "We counted down from

30 and when we got to zero our people in Los Angeles flipped the switch, and our network was on the air. That was an amazing feeling."

Since then, HDNet has grown to become the top producer and broadcaster of HDTV programming in the U.S. It has added a second channel, HDNet Movies, and is carried by most of the major cable and satellite television providers, including Time Warner Cable, DirecTV, and Adelphi Communications.

## The Next Big Thing

For now, Ussery is focused on winning a championship with the Mavericks—as of this writing, they have a playoff berth, a league-leading record, and have won 18 of their last 20 games—and making sure HDNet is among the winners when the high-def television market shakes out. Still, he believes other great opportunities await him.

He has been mentioned frequently as an eventual replacement for NBA Commissioner David Stern. Although he finds that prospect interesting, Ussery insists he doesn't dwell on it.

"My life has been so unpredictable in so many ways, my objective every day is just to do the best job I can, given the challenges in front of me," he says. "I know there's another big thing out there, but I don't know what it is. The key is to be ready when it presents itself."

If the past really is prologue, that big thing will surely present itself, probably in the form of another urgent phone call. And Terdema Ussery will answer the call once more.

# ON THE MOVE

## Boalt Student Action Figures



### A Passion for India

**F**or Dipti Singh '07, an encounter with a frail Indian woman on a New Delhi street was a transformative moment. Irom Sharmila Chanu had been waging a six-year hunger strike to protest a sweeping military powers act in her native state of Manipur. Sharmila was barely able to speak or walk, but her tenacity and courage inspired Singh. “Just to be in her presence was amazing,” says Singh. Sharmila’s fast had been regularly interrupted by arrests and state-ordered tube feedings, and soon after their meeting, Singh says, “She was arrested yet again.”

That meeting was just one of many eye-opening experiences of Singh’s field placement in New Delhi, where she spent last fall as an unpaid intern with the Human Rights Law Network (HRLN), an NGO dedicated to leveraging India’s legal system to advance human rights. Singh became involved in a variety of legal projects that made her a ground-zero witness to India’s human rights violations. She was, she says, moved by “the injustice that takes place every single day, every single minute, and what a powerful tool the law can be.”

Singh’s work included poring through national and international laws on AIDS and HIV to help create a groundbreaking legal manual that will empower Indian lawyers and judges to tackle these often taboo subjects. She also prepared and filed public interest petitions in three disability rights cases,

that involved such issues as employment rights for hemophiliacs and the blind. Singh continues to follow developments with Sharmila, who is getting legal assistance from the HRLN.

Born in India, Singh moved to the United States with her parents when she was 4. She has returned to visit relatives about a half-dozen times while growing up, but, she says, “As I’ve gotten older, I’ve felt more of a connection with India itself. The placement and my experiences with people like Sharmila have made me even more passionate about understanding India and spreading awareness of its problems.”

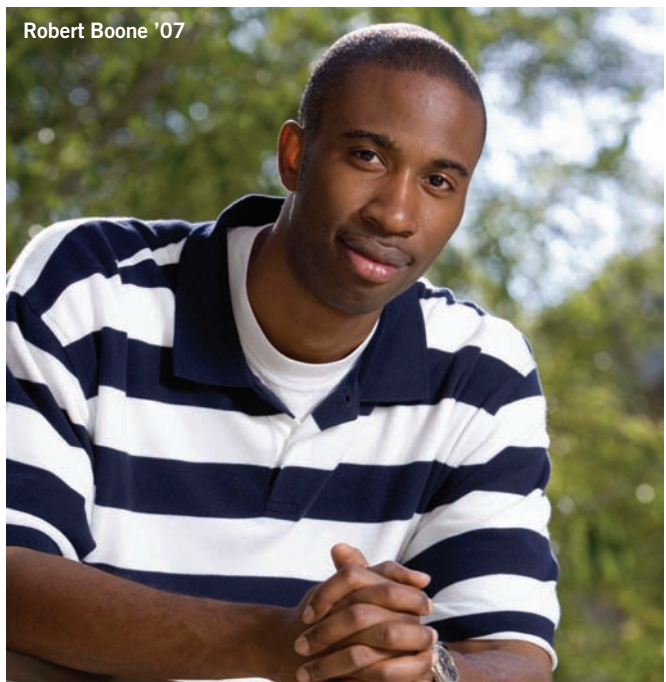
—Christopher E. Bush

### A Boone for Boalt

**R**obert Boone '07, in baggy jeans and a gray puffy jacket, looks like he might be an undergraduate who got lost in the Boalt Hall maze and wandered into the *California Law Review (CLR)* office to ask directions. But it’s his office—Boone is a 3L and the current editor-in-chief of *CLR*. A glass case near Café Zeb bears witness to his semi-celebrity status: It displays articles from *The Daily Californian*, *California Bar Journal*, and *The Oakland Tribune* that tout him as the first black editor of *CLR*.

But that’s of little interest to Boone, who’s more eager to talk about *CLR* and his efforts to ensure that the “elite and mysterious”—as he puts it—journal remains neither. Along with the principal task of publishing six issues of the prestigious review, he also spent much of his 10 months at the helm building relationships with the law school community at large.

“I’m most proud of the faculty lecture series we initiated,”





he says. “Some of the talks, like Goodwin Liu’s, were standing room only. I hope the series will continue as *CLR*’s signature contribution to the school.” During Boone’s tenure, the journal has co-sponsored events with other organizations such as the *Berkeley Journal of International Law*, and the Native American Law Students Association. Boone also saw to it that *CLR* contributed resources to other Boalt student groups for the first time, including more than \$10,000 and many volunteer hours to schoolwide events.

And how about demystifying the journal? Boone says he thinks he’s off to a good start, and he flips through the February issue—his favorite—pointing to articles on entertainment law, school desegregation cases, criminal law, policing through surveillance, voting rights, and refugee laws. “There’s a lot of variety,” he says, “and the articles are innovative and address contemporary issues.”

Boone’s proud of the basics, too. “We brought in a great group of students, gave them the opportunity to work for an important publication, and maintained our obligations to our authors.” And, says the editor-in-chief, “We did a good job of meeting deadlines, and that’s always a good thing.”

—Linda Anderberg

## From East Timor to the Internet

In 2004, less than a year after graduating from Tufts University, Victoria Hartanto ’08 traveled 8,000 miles from her home in San Francisco to East Timor, the impoverished former colony of Indonesia. She had been born in Indonesia and lived there until her family moved to the United States when she was 4. A Jesuit high-school education that emphasized the plight of the mostly Catholic East Timorese left her with an abiding interest in the country. “I’d been so interested for so long, it was time to go see it for myself.”

At Tufts, where she majored in peace and justice studies and international relations, Hartanto had studied with horror the rampant carnage in East Timor after its vote for independence from Indonesia in 1999. During her three-month stay in East Timor, she helped La’o Hamutuk, a local NGO, research and evaluate the international war crimes tribunal investigating the atrocities. “I interviewed the special prosecutors, judges, and public defenders working to bring people to justice,” she says.

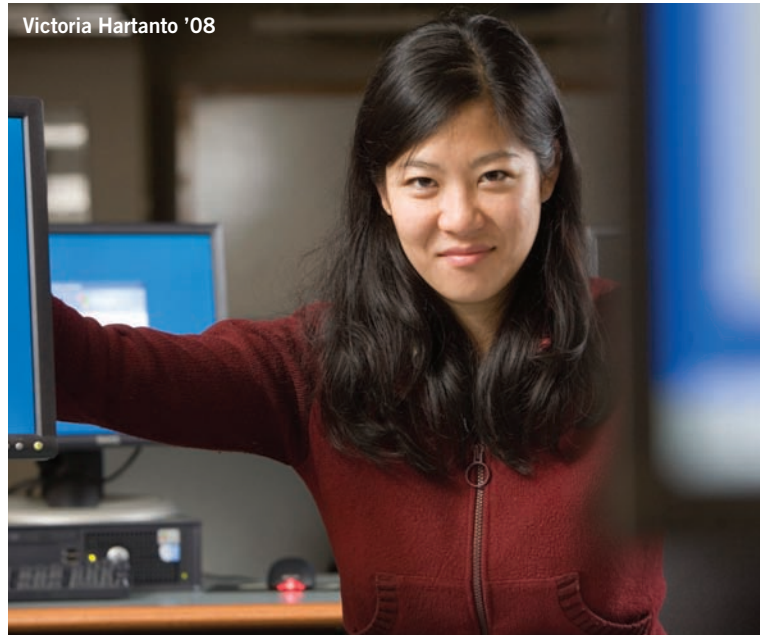
Her conviction that a law degree would make her a more effective human rights advocate led her to Boalt Hall and the gritty hands-on projects of the International Human Rights Law Clinic (IHRLC). In 2006, she and three other students

were assigned to the IHRLC’s Human Rights and the Internet Project—which was created to investigate and ameliorate Internet censorship in China and other countries.

In March 2005, Chinese journalist Shi Tao was sentenced to 10 years in prison for allegedly revealing contents of an internal government e-mail message to foreign-based Web sites. To international outrage, Yahoo! admitted it had disclosed information that helped identify Shi Tao. “That was a big factor in his conviction,” says Hartanto.

With the help of the IHRLC and other human rights organizations, the chastised Yahoo!, as well as Google and other Internet companies doing business in China, drafted a corporate code of conduct to protect the rights of their international

Victoria Hartanto ’08



customers. Hartanto does not think the companies were motivated solely by public relations concerns. “I believe the companies really do see the human rights side of the issue,” she says. “They don’t feel good about what’s happening in China and other countries, and they’re trying to do the right thing.”

Hartanto was dubious when she was assigned to the project by Laurel Fletcher, IHRLC director and clinical professor of law. “I felt unqualified,” Hartanto says. “I’d always been involved in human rights issues that are more black-and-white and life-or-death.” But Fletcher says, “I knew she’d be great. Vicki’s a sophisticated problem-solver who’s able to see the big picture as well as the nuances of complex problems.”

—Christopher E. Bush

# ON THE SHELVES

New and Notable Works from the Boalt Community

## Outing Early America

**BOOK : WILLIAM BENEMANN**

Few of us, as William Benemann notes in the fourth chapter of this remarkably original work, know of Baron Friedrich

Wilhelm von Steuben and the essential role he played in the victory of the 13 colonies over the British. But until the publication of this book, even

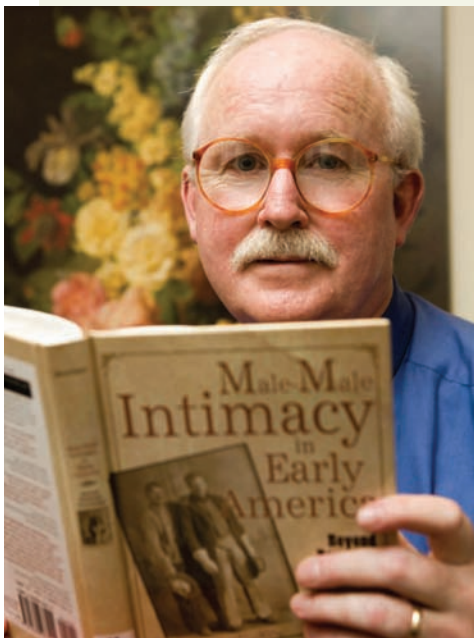
those aware of von Steuben and his place in history knew nothing about the German expatriate's lifelong involvement in a male love triangle with Continental Army officers Benjamin Walker and William North. Drawing on the text of what he calls an "extraordinary body of letters," Benemann

focused on clues that others had missed or ignored and pieced together a convincing and vibrantly detailed account of a complex relationship.

Benemann—Boalt Hall's archivist—didn't have the resources normally available to historians: documents written with the intent of clearly imparting information. In colonial and post-colonial America, homosexuality was both taboo and criminal, which meant that almost everything written about and by gays was filled with circumlocutions and innuendo. Benemann has received critical acclaim—and was named a

2007 Stonewall honoree—for both assiduously sifting through the historical record and carrying out what Jason Shamaï of the *East Bay Express* calls "first-rate detective work, teasing out the substance in implication and exposing the cover-ups."

The book is a result of painstakingly documented research, but it's a fun read, too. The *Gay & Lesbian Review* says: "Benemann has a good storyteller's way with prose: his writing is lucid, engaging and informed; he has compiled a vast bibliography and deeply researched his topic with an obvious passion."



**Male-Male Intimacy in Early America: Beyond Romantic Friendships**

By William Benemann

Published by Haworth Press, 2006.

## Criminal Obsession

**BOOK : JONATHAN SIMON**

Connecting the collapse of the New Deal to the tragic events of 9/11 may seem a stretch, but if there's a common thread, it is America's overwhelming obsession with crime. So argues Jonathan Simon '87/'90, associate dean of Boalt's Jurisprudence and Social Policy Program, in his new book *Governing Through Crime*, which elaborates on how politicians have methodically manipulated our collective perception of safety, freedom, and justice.

In an age when schoolchildren are screened with metal detectors, job seekers are routinely tested for drugs, and suburban enclaves are patrolled by private security forces, Simon maintains that the very fabric of our free society has been shredded by the so-called "War on Crime." In such a state, citizens' sense of vulnerability is exacerbated by political rhetoric that opens the door to government intrusion into formerly private affairs. In a similar vein, politicians have recast social problems, like welfare

dependency and educational inequality, in criminal terms—making every person a potential victim in this culture of crime.

In the end, Simon calls on Americans to wrest from politicians the assessment of criminal risks and to engage in a debate over longstanding social ills. As Jeremy Travis, president of the John Jay College of Criminal Justice, put it: "This disturbing and provocative treatise should command the attention of scholars, opinion leaders, and policymakers who aspire to create a more tolerant and open future for this country."

**Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear**

By Jonathan Simon '87/'90

Published by Oxford University Press, 2007.





## Holly

Co-written and co-produced  
by Guy Jacobson '93  
Distributed by Priority Films



# Showing He Cares

**FILM : GUY JACOBSON** In 2002, while walking around Phnom Penh, Cambodia, Guy Jacobson '93 was surrounded by a group of little girls who relentlessly and graphically offered him sexual services. One—who was no more than 5 or 6 years old—told him in broken English that she'd be beaten if she didn't return to the brothel with money. After giving her a few dollars, the shaken Jacobson vowed to do everything in his power to stop child prostitution. A year and a half later he founded The K11 Project—a three-film series comprising *Holly*, a full-length feature film, and two documentaries—that addresses the terrible plight of children abducted into child prostitution.

*Holly* is a gripping fictional narrative of a 12-year-old Cambodian girl who is rescued from child prostitution by an American expatriate engaged in selling illegal artifacts. The film—which features performances by Chris Penn and Ron Livingston—premiered in August 2006 at the Edinburgh Film Festival, and was featured in several other film festivals around the world. Child prostitution is a topic ripe for a melodramatic and sensationalistic treatment, but Jacobson and his co-writer, Guy Moshe, avoid both. Critic John Ritchie notes that *Holly* delivers “a delicately told visual story without exploiting the subject matter. In fact, there is not a single shot of sex or nudity—nor is it needed.”

One of the project's mottos, says Jacobson, is “Now you can't say you don't know, you can only say that you don't care.” A principal aim of the K11 Project is to raise awareness of the grassroots Redlight Children Campaign, a multi-pronged initiative to put a stop to child prostitution and trafficking.

## What the F\*\*k?

**FILM : BRUCE LEISEROWITZ** During this 93-minute documentary, the English language's premier four-letter word is uttered, written, sung, or otherwise referenced more than 800 times—or so says at least one reviewer with perhaps too much time on his hands. Most viewers probably haven't counted, being otherwise occupied by the prodigious amount of commentary, information, and raucous humor that writer-director Steve Anderson has crammed into the brief running time.

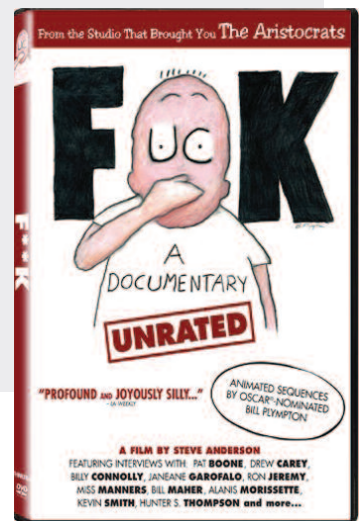
Executive Producer Bruce Leiserowitz '87 was immediately intrigued when Anderson, a good friend, told him about his plans to make the film, and he jumped at the chance to get involved. This was Leiserowitz's first time as an executive producer, and, as his bio on the film's Web site says, he “suspects that his work on this film will prevent him from serving on the U.S. Supreme Court, but as the film shows, a future in politics is not ruled out.”

Destined to be the definitive (and maybe only) film treatment of what the more restrained among us

delicately refer to as the “f word,” the 2006 release—now available on DVD—offers observations by a large and varied array of luminaries, including Sam Donaldson, Drew Carey, Alanis Morissette, Ice-T, Bill Maher, and Pat Boone (who claims he uses his last name as a substitute when he's tempted to swear, as in “Oh, Boone!”), along with a fascinating mélange of animation, archival film, and even quotations from the Bible. Called “profound and joyously silly” by the *L.A. Weekly*, the brazen fun is tempered by reminders that our naughtiest little word has often been at the center of bitterly contentious cultural and legal wrangling regarding profanity and the limits of free speech.

F\*\*k

Executive Producer  
Bruce Leiserowitz '87  
Distributed by  
TH!NKFilm Company



# For Women Only

**WOMEN MUST WORK TOGETHER TO ACHIEVE TRUE EQUALITY**

By Jan Blaustein Scholes '77

**F**or 30 years, I have been an international tax and business lawyer. My colleagues and I have built one of the most exciting global enterprises in the world. It is one of the top 200 publicly traded companies in Australia and controls about \$30 billion in assets.

I am a fortunate and successful woman. And yet I am also a disappointed woman.

Why? Simply because my own success—and that of a few noteworthy but rare specimens like Carly Fiorina—is not representative of the sad truth: There is still massive gender inequality in the workplace, and women are still bumping their heads on the same glass ceiling that gave me headaches as far back as 1977.

Optimists point out that women now constitute 57 percent of the student populations of the colleges in the U.S., 50 percent of the law and medical schools, and a growing percentage of business and engineering students. Encouraging numbers? I suppose, but I have some other very disheartening figures. Women represent only:

- 1.7 percent of CEOs of major companies.
- 16 percent of senior management.
- 16 percent of the partners of major law firms.
- 12 percent of those who sit on boards of directors.

Women make up only 12 percent of boards of directors? That's outrageous and unacceptable! My view is that every retailer, every bank, and every investment bank should have equally weighted boards of directors—not by law, but simply due to the fact that approximately 50 percent of their clients are women.

Another highly significant and discouraging fact is the vastly unequal distribution of equity funding. Women own about half of the businesses in the U.S., yet receive a measly 5 percent of the equity funding.

Women, what can we do?



**Women, what can we do? I'll tell you what I'm doing—I'm putting my money where my mouth is.**

I'll tell you what I'm doing: I'm putting my money where my mouth is. I've been talking to lots of women entrepreneurs about how I can help. I'm currently looking at wonderfully interesting opportunities in—just to name a few areas—biodegradable fuels, a children's Internet company, and a breast cancer detection company. There's a false perception that women basically invest in cosmetics and retail and nothing else. The reality is that their interests are as broad as those of men—and all they need is help from other women.

Aside from making personal investments, I have also been working with women around the country to establish a fund to invest in strictly women-owned businesses. It would be funded by, say, 20 wealthy women, and backed by universities, colleges, and pension funds. We would then aim the money at businesses established by their alumnae and women associates. What the fund would offer is the following: money for women entrepreneurs, and a chance to have the 20

wealthy women sit on boards of companies.

Will these efforts work?

I don't know if I'll ever see it, but the current male-centric model has not worked, so we need to try something else.

You—and I'm sorry, guys, but I'm addressing the women here—as successful Boalt graduates, as proud lawyers and businesswomen, should work with me and other women to once and for all shatter that glass ceiling. Will you help?

*Jan Blaustein Scholes '77 is senior legal advisor at Babcock & Brown, a global investment and advisory firm, where she has served as partner and general counsel. Prior to joining Babcock & Brown in 1987, Scholes was a partner at Heller Ehrman, specializing in international taxation. She currently serves on the advisory board of Boalt's Berkeley Center for Law, Business and the Economy.*