

# TRANSCRIPT

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# TRANSCRIPT

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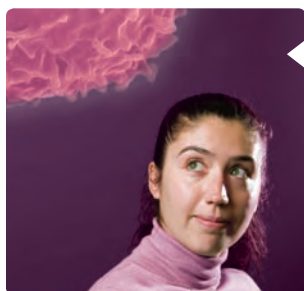
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All in the Boalt Family.





# FROM THE DEAN



*“Boalt is training the next generation to contribute its problem-solving skills to both today’s and tomorrow’s challenges.”*

**—Christopher Edley, Jr.**  
William H. Orrick, Jr.  
Distinguished Chair and  
Dean

**A**s my friend and former student (at Harvard) prepares to be inaugurated President of the United States, he and his team are moving from hope to problem-solving on the grandest scale. It makes me feel ancient, but at the same time energized by a renewed sense that the work of great law schools can make vital contributions over a boundless domain.

Our alumni are leaders in fighting for indigent health care in California’s Central Valley, in marrying investors with “mid-cap” companies navigating the roiling financial markets, and in tackling the urgencies of energy innovation and climate change. Meanwhile, Boalt is training the next generation to contribute its problem-solving skills to both today’s and tomorrow’s challenges. And faculty members are cranking out research to create intellectual capital for the unseen crises ahead.

Consider the new Berkeley Center on Health, Economic & Family Security (page 14)—which will focus cross-campus brainpower on the perils faced by American families and prescribe solutions based on research and analysis. Berkeley CHEFS is one of ten multidisciplinary research centers—six of them created on my watch—contributing basic research, policy engineering, knowledge dissemination, curricular innovation, and public education.

There’s more. In the midst of California’s endless budget crisis, Associate Dean Goodwin Liu—faculty co-director of the Warren Institute—has had the audacity to propose radically revamping the state’s K–12 funding (page 13). Overcoming epic obstacles, Professors Laurel Fletcher and Eric Stover interviewed scores of former Guantanamo Bay detainees. The revelations and recommendations will be invaluable to the new administration (page 24). And the Samuelson Clinic is looking beyond the religious and ethical restrictions on stem-cell research to focus on complex IP-related problems (page 18).

Finally, Elizabeth Cabraser ’78 really rocks—figuratively and literally (page 9). Her recent record-breaking pledge has boosted her lifetime giving to \$5 million. With generosity of this kind, Boalt Hall’s future can be everything we want it to be, and everything society needs it to be.





# IN BRIEF

NEWS FROM THE BOALT COMMUNITY

## Space Planner: Carving Up the Final Frontier

Chat with Boalt professor Robert Merges may elicit eerie recollections of the 1979 shocker *Alien*. Well, not the slime and exploding ribcage stuff. Rather, Merges and others see the next frontier of space development as profit ventures by private corporations—like the one that sent Sigourney Weaver’s crew on its nightmarish voyage.

There’s gold in them thar heavenly bodies—along with iron, zinc, aluminum, and other minerals. Are we rushing into a new space race in which private-sector companies engage in winner-take-all competition for the rights to mineral-rich moons, asteroids, and other choice extraterrestrial real estate? Will the wealthiest nations leave the poorest behind in clouds of rocket vapor? Merges, who specializes in technology

and intellectual property rights, hopes not.

In 1997, he coauthored a book with University of Tennessee law professor Glenn Reynolds that’s considered the standard authority on property rights law in space. In contrast to the essentially colonialist proposals of carving up space on a first-come, first-served basis, *Outer Space: Problems of Law and Policy* advocates a fair-use approach.

Merges proposes that rather than allowing the first intrepid entrepreneurs to gobble up everything they can, a part of the total property in space should be reserved for developing nations to claim when they are ready. An international body would mediate by awarding leases—determining how many to set aside and where to designate them. “We need to have a commons space,” Merges says,

### IN BRIEF: CLASS OF '07 EMPLOYMENT PROFILE

#### Employment Status:

Employed:.....**97%**

Full-Time Graduate Students:.....**2%**

#### Salary:

Median:...**\$160,000**

Average:...**\$123,876**

#### Legal Employment by Type:

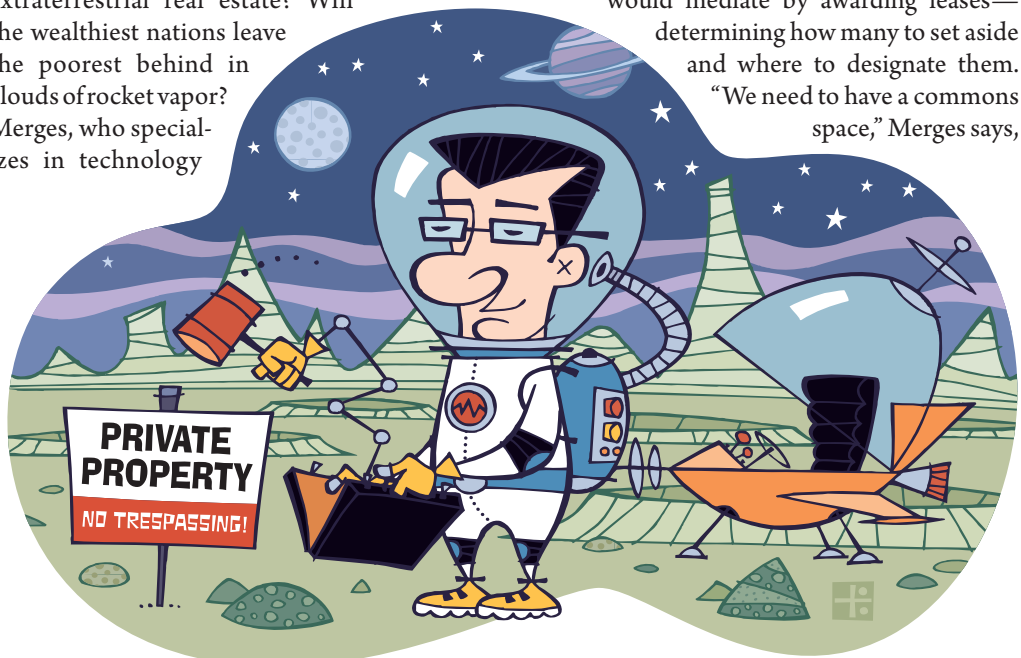
Private Practice:.....**70%**  
(over 60% of whom joined firms with 500+ attorneys)

Judicial Clerkship:.....**12%**

Government:.....**6%**

Public Interest:.....**10%**  
(includes public defenders)

Business:.....**2%**



## IN BRIEF



### Anders Yang Faces New Challenges

**Anders Yang**, a UC Berkeley and Harvard Law School honors graduate, joined Boalt as assistant dean for advancement and alumni relations in September.

Yang worked 13 years at Harvard, recently as senior regional director for capital giving for the Faculty of Arts & Sciences. With Harvard Law, he served as externship coordinator, admissions officer, associate director of alumni relations, and founding director of the western regional office for fundraising and alumni relations. Yang worked on its \$400 million Setting the Standard campaign, which recently concluded with over \$475 million.

Although Boalt just enjoyed a record-breaking fiscal year, Yang must now complete the \$125 million Campaign for Boalt Hall amid a turbulent economy, while also rebuilding a development staff.

“National economic conditions and California’s budget deficit present significant challenges,” says Yang. “Now more than ever, Boalt needs support from its loyal alumni and friends.”

—Andrew Cohen

“but I think we can still carve out a pretty rich domain of private ownership.”

Does such pondering sound, umm, a little spacey? Or at least premature? Actually, a full 50 years ago the UN Committee on the Peaceful Uses of Space recommended that space be named a common heritage zone, where all nations could expect equal access. Merges believes a hybrid approach—neither setting all of space aside as a common heritage nor opening all of it for acquisition by companies—would preserve the UN recommendations while allowing for private development.

Nearly 40 years after the NASA moonwalk crowned America’s space program, cash-strapped governments have lost much of their appetite for costly galactic expeditions. Instead, many are already working to secure legal protections for

entrepreneurs eager to blast off and extract distant resources. But to get them, earthly governments will have to agree on a legal framework for ownership rights. With India recently launching its first unmanned mission to the moon and China’s plans to institute a deep-space program in 2014, they’ll need to do it soon.

“During the old battle in the ’60s and ’70s,” Merges says, “space was one front in the cold war. We won’t have that same dynamic in this next round of conflict. Nowadays things aren’t so ideological with the Chinese. It’s more about national and commercial interest.”

While his ideas seem rational and even workable, Merges is realistic about the power of greed and national interests. “It would be nice to see a middle ground proposal,” he says, “but I’m not holding my breath.” —John Birdsall



**ON THE BEAT:** Joyce Hicks ’77 has made a quick impact at San Francisco’s Office of Citizen Complaints.

completed fewer than half of its investigations within the mandated nine-month period—and was marred by systematic case management problems.

Hailed by Newsom for her “demonstrated ability to initiate innovation,” Hicks has successfully pushed for more manpower—despite San Francisco’s ballooning budget deficit—and more efficient investigations.

“I’m happy that we’ve added more staff,” she says. “We’ve also implemented modern management techniques and strengthened our mediation program in cooperation with the Police Officer’s Association.”

Having spent four years as executive director of the Oakland Citizens’ Police Review Board, Hicks is well versed in both mending fences and building bridges. Oakland police were wary of civilian oversight, but she collaborated effectively with officers, community groups, and union officials.

Hicks now faces a larger challenge. While her Oakland office handled about 100 cases per year in a city with 700 cops, OCC handles about 1,000 cases per year in a city with 2,000 officers. She manages 37 staff members—all of whom now have detailed performance plans with clear timetables and benchmarks.

“There was a huge backlog of cases when I started,” says Hicks, “but we’ve steadily reduced it by mediating more cases, focusing on case management, and increasing staffing levels. San Franciscans want to address violence, but they also want officers to be accountable and comply with city policies.” —Andrew Cohen

## Complaint Department

**W**hen San Francisco Mayor Gavin Newsom appointed Joyce Hicks ’77 to run the city’s Office of Citizen Complaints (OCC) in November 2007, the agency was under fire. “The staff had been overwhelmed by too many cases and the lack of a strong organizational structure,” Hicks says. “Some changes had to be made, and time wasn’t on our side.”

OCC investigates and makes findings on all civilian complaints filed against San Francisco police officers for on-duty conduct. It also issues policy recommendations on police practices. Earlier in 2007, before Hicks took charge, an eye-popping city audit found that OCC had

# California Behind Bars



**L**eandro Andrade stole \$153 worth of children's videotapes from Kmart in 1996. Now serving two 25-year-to-life sentences, he'll be eligible for parole at age 87.

Andrade's key mistake: swiping the tapes after prior felony convictions for first-degree burglary and a drug charge. Californians convicted of two serious felonies receive a mandatory life sentence for a third felony of any kind—even for stealing *Snow White* and *Cinderella*. California's three-strikes-you're-out law is considered the toughest in the country, and Boalt professor Jonathan Simon '87 says it has "produced an overpopulation crisis of epic proportions."

On October 10, the criminal justice experts attending Boalt's Caleb Foote Symposium *Prison Reform in California* hammered home the urgent need to revamp the current system. Sponsored by the Berkeley Center for Criminal Justice (BCCJ), the annual symposium is held in honor of the late criminal justice reformer and Boalt professor.

"California now has a unique opportunity to revisit its commitment to mass incarceration," says Simon, a BCCJ faculty board member and associate dean of Boalt's Jurisprudence and Social Policy Program. "A three-judge federal panel is demanding the state figure out how to reduce its inmate population, and a federal court-appointed receiver is demanding \$8 billion in spending to bring prison health care up to constitutional standards."

In May 2007, Governor Schwarzenegger signed into law a \$7.5 billion bill called the largest prison construction plan in history.

"The 'build more prisons' remedy won't work," said panelist Barry Krisberg, president of the National Council on Crime and Delinquency. "We'll never keep up. Between 1976 and 2006, California added almost 63,000 new prison beds for an

inmate population that grew by over 152,000."

Krisberg points to the 1976 Determinate Sentencing Law, noting that many supporters had no idea it gave sentencing authority to California's legislature. Since then, a flood of state legislation and voter initiatives targeting public fear of crime have produced longer felony sentences. With pol-



**FULL HOUSE:** Inmates in the reception center of San Quentin prison in San Rafael, California. In June, the prison system, including San Quentin, will implement a U.S. Supreme Court ruling banning racially segregated double cells.

iticians eager to show voters their vigilance on crime, no cost-benefit analyses of tougher sentences, and little enthusiasm for rehabilitation programs, a troubling template was created.

Reversing 30 years of prison growth, says Vera Institute of Justice Director Michael Jacobson, requires strategies that highlight "the many benefits of steering funding away from corrections and into other essential services such as education and health care."

The climate appears ripe for such change, with terrorism, war, and health care supplanting crime among issues most important to voters, growing federal pressure to address prison overcrowding, and California eager to reduce a budget deficit exacerbated by billions spent on state prisons.

Experts agree, however, that this crisis will only be resolved when the public demands change.

"If the average Californian understood the condition of our prison system," says Simon, "their level of outrage would neutralize their fear of crime."

Meanwhile, Jacobson sees a possible silver lining to California's budget woes. "We can use the situation to our advantage," he says. "Policy is made during fiscal crisis all the time. This could afford the opportunity to insert correction reform in a quick way." —*Sharon Rohwer*

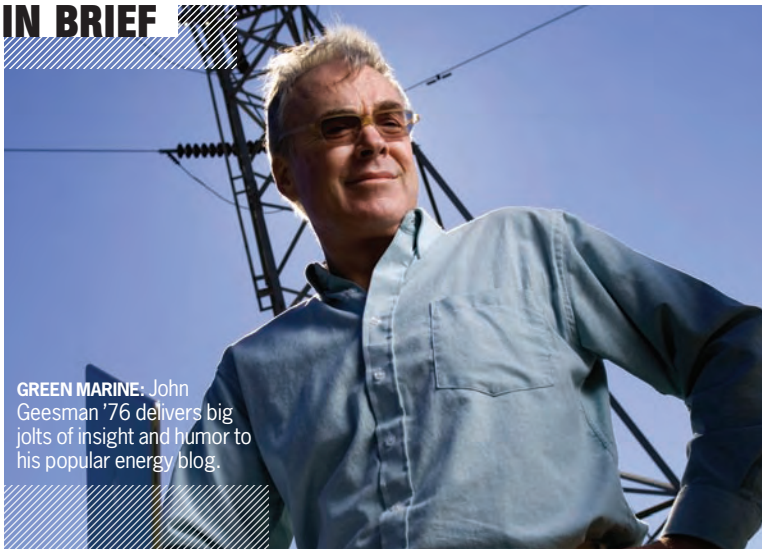
**"California has a unique opportunity to revisit its commitment to mass incarceration."**

—Professor Jonathan Simon '87





**IN BRIEF**



**GREEN MARINE:** John Geesman '76 delivers big jolts of insight and humor to his popular energy blog.

# Getting His Green War On

What happens when a policy insider lets it rip in the blogosphere? When he's John Geesman '76, the result—*Green Energy War* (greenenergywar.com), an eye-opening take on the politics of energy and climate change—is a bracing shot of candid insight that rarely flows from official channels.

Executive director of the California Energy Commission from 1979 to 1983, Geesman launched his blog in March just after another five-year stint on the commission as attorney member.

His posts parse issues ranging from clean coal, energy efficiency, and the recent Republican mantra of “Drill, baby, drill,” combining the brainy political criticism of a Noam Chomsky with the barbed wit of a Bill Maher.

*Green Energy War's* mission statement maps out Geesman's empirical landscape: “Do energy security priorities conflict with environmental objectives? How does consent compete with coercion? Who decides which competing public values should prevail?”

While Geesman may be the consummate wonk, his posts offer a whiff of philosophy and a wickedly dry sense of humor. In his 10-point autobiography—Geesman calls it “time-weighted footprints in the soft sand of my public psyche”—the one-time political activist describes his current tenure as co-chair of the American Council on Renewable Energy's board of directors as “carrying a California torch to light [zero emission] bonfires across the planet.”

The blog's mashup of searing wit and spot-on analysis caught the eye of the *Wall Street Journal*, which sometimes paraphrases and links to *Green Energy War* in its online edition's *Environmental Capital* blog. Geesman's posts stopped for a few weeks in September while he pondered the likely ramifications for energy as a result of the global financial crisis. His take? Knee-jerk Keynesianism should provide a boost for green-energy infrastructure—the patchiest of silver linings.

But Geesman isn't squeamish about laying out the awful truth. *Green Energy War*, he wrote as he launched his blog last spring, is a venue for “periodic mind-clearing blasts of rationality.” Call it a refreshing corrective for official discourse.

—John Birdsall

## MAPPING OUT BOALT'S LL.M. PROGRAM

The 96 students pursuing an LL.M. degree this year hail from 36 countries. The program is tailored to each candidate's needs and educational background.



L'ATELIER STARNO (INFOGRAPHIC); JIM BLOCK (GEESMAN)

# Scoring Moot Points



Scotia Hicks '07 joined Boalt's National Moot Court Competition team as a 3L. "I felt grateful that the first time I grappled with constitutional rights issues wasn't when I had a real client whose life or liberty was at stake," she says.

That training paid off much sooner than expected—in her first month at the San Francisco office of Winston & Strawn. The law firm gave Hicks a pro bono immigration appeal to argue in front of the Ninth Circuit.

"My moot court experience was all I had to draw on when it came to anticipating questions from the judge, thinking on my feet, and keeping my argument on track," she says. "The coaching I received was spot-on. It helped me win the case."

Now Hicks is among the alumni and adjunct volunteers who help Boalt teams prep for advocacy competitions. "It's a small but extraordinary group," says Bill Fernholz, Boalt's director of appellate programs. "Unlike other schools, our advocacy programs are driven by our students and benevolently supported by volunteers."

Fernholz's push to "get students to learn by doing and then get out of their way" is gaining traction—participation has mushroomed from a handful of students to more than 70 each semester. Two years ago, students created the Alternative Dispute Resolu-

tion program from scratch, adding to the existing Appellate (Moot) and Trial (Mock) programs.

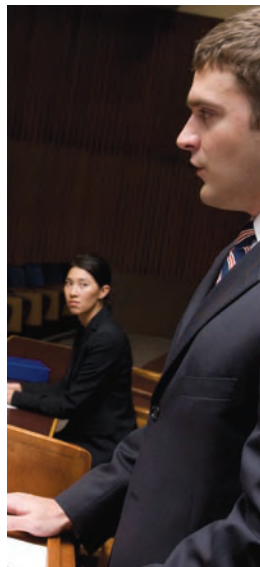
Meanwhile, Boalt students are taking part in more competitions—and with more success. In the past year, teams advanced to the finals in the ABA Arbitration and AAJ Student Trial Advocacy competitions—both firsts for the school.

Every year, students like Warren Ko '09 raise the bar. As a 2L, Ko came into the trial program cold yet wound up going to the AAJ nationals after beating out 14 other teams at regionals. Now a Board of Advocacy co-chair, Ko spearheads the trial program's new internal competition, which joins Moot Court's annual McBaine Competition.

"We compete against schools with extensive programs and we're right up there with them."

—Warren Ko '09

"We compete against schools that have extensive programs with full-time faculty and we're right up there with them," Ko says. "It's extremely gratifying." —Sharon Rohwer



**CASE MAKERS:** Boalt students' level of participation and success at national competitions has lifted the school's advocacy programs to new heights.



JIM BLOCK (6X)



## IN BRIEF



### Mexico Honors María Blanco '84

**She's been** included in the ranks of *Women Who Could be President* by the League of Women Voters. The American Jewish Congress has named her as one of its *Mensches in the Trenches*. But among her many honors, María Blanco '84 holds the Ohtli medallion closest to her heart.

The Ohtli Award is the highest recognition bestowed by Mexico to someone outside its borders. Blanco, executive director of Boalt's Warren Institute, received it in September for her contributions to the advancement of Latinos in the United States.

"As someone who was born in Mexico and who's worked on immigrant rights issues for 20 years, this award is particularly meaningful," she says.

*Ohtli* means "pathway" in the language of the ancient Aztecs.

"It's only recently that the Mexican government began reaching out across the border to honor the population of Mexicans living abroad," says Blanco. "That they've chosen to recognize my work is very important to me."

—Sharon Rohwer



## A Global Legacy

**A**s a globe-trotting Coast Guard officer, top business leader, Federal Reserve chairman, and U.S. Secretary of the Treasury, G. William Miller '52 always maintained an international perspective. It's fitting that his enduring legacy to Boalt Hall will be the work of the Honorable G. William & Ariadna Miller Institute for Global Challenges & the Law.

Dean Edley recalls vividly the depth of Miller's commitment to change. "When we were planning the ambitious project that has become the Miller Institute, Bill wrote to me, 'If we don't dream and try to turn dream to reality, nothing will happen,'" says Edley. "Bill spoke often of his conviction that only a common set of human values, grounded in the rule of law, could

tile manufacturing company into an aerospace conglomerate. While advancing in business, Miller became active in civic life and pushed for hiring reforms for minorities as chairman of an

advisory council to President Kennedy's Committee on Equal Employment Opportunities.

"Bill was definitely a leader in that area," says Boalt professor David Caron '83, a friend of Miller's and a fellow Coast Guard officer and Boalt graduate. "His stand on minority hiring helped bring him to Jimmy Carter's attention."

After Miller joined the Federal Reserve Board in 1974 and became chairman four years later, President Carter named him Secretary of the Treasury in 1979. "Bill had a strong sense of social and fiduciary responsibility," Caron says. "He was some-

secure global peace without sacrificing individual cultures."

Miller died in 2006, the year his seed money helped launch the institute, which confronts pressing international challenges by seeking to support those with inequitable access to power, resources, and justice.

It marked the last of countless generous acts Miller performed on Boalt's behalf. He served on the school's Campaign Cabinet, the Boalt Hall Alumni Association (BHAA) board, and chaired the Distinguished Professors Project in 1986—which raised \$1.2 million to endow chairs for Boalt faculty. Miller received the 1979 Citation Award, the BHAA's highest honor, and the 1987 UC Berkeley Foundation Trustee's Citation.

Miller graduated from the Coast Guard Academy in 1945 and spent four years in the Pacific and Far East, where he met and married his wife Ariadna, a Russian émigré. He then joined the private sector and eventually became CEO of Textron—transforming the tex-



**FREQUENT FLIER:** Miller's continuous travels strengthened his global outlook.

JIM BLOCK (BLANCO, OHTLI), JAMES YANG (ILLUSTRATION), AP PHOTO/J. SCOTT APPLEWHITE (MILLER)



one who believed government had an important place in ensuring the integrity of economic sectors.”

Miller went on to chair G. William Miller & Co., Inc., a private merchant banking firm that assisted nations with investments and financial plans. He remained continually active in public service, and received honorary degrees from

seven colleges.

On his 50th law school reunion yearbook page, Miller described his decision to attend Boalt as “one of the key turning points of my life. Thanks to the skills, dedication and patience of the Boalt faculty, I gained the knowledge and perspective that turned risk into opportunity.”  
—Andrew Cohen



# Rocking Our House With a Cool \$5 Million

**E**arlier this year, Elizabeth Cabraser '78 pledged \$3,780,350 to the Boalt Hall Fund—bringing her total lifetime giving to \$5 million. This year's gift is the largest single alumni donation ever given to Boalt Hall.

A star litigator, Cabraser could easily have been a star musician instead. Her godfather, a big-band drummer, sparked the passion for music by giving her an old set of drums. Then, she says, “like millions of other teenagers in 1964, I saw the Beatles on ‘The Ed Sullivan Show’ and that was it.”

Music has been a central part of Cabraser's life. She played saxophone in her high school band and also gigged on weekends as a drummer in local garage bands. “Music kept me out of a whole lot of trouble I almost certainly would've gotten myself into,” she says. “I loved everything about it.”

Academics often played second fiddle to music during Cabraser's six-year undergraduate stint at UC Berkeley from 1969–75; she routinely took time off from her studies to play area gigs and to tour. The flourishing Bay Area music scene at the time gave her confidence that she could bang out a respectable living with her drums.

“I was searching for what I wanted to do, and music was a real option,” she says. “I figured I probably wouldn't get into law school, and that would be a sign to keep drumming.” But Cabraser was accepted by Boalt and enrolled in 1975. That—and the meteoric rise of an unstoppable musical force—changed everything.

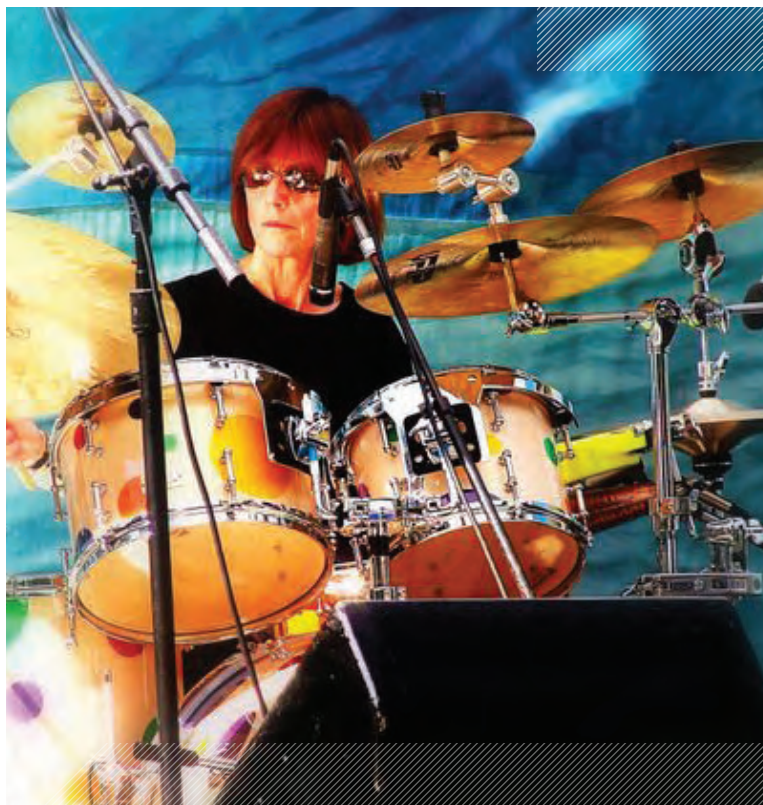
“I blame disco for my life as a lawyer,” she says. “Live music opportunities dried up, and it became much tougher to do music as your day job.”

Cabraser considered a career in physics, which she loved in high school. But college years coincided with the Vietnam War, when virtually all grant funding flowed toward military projects.

“Being young and impatient, I didn't want to try physics and wait to see if things changed,” she says. “Many would-be scientists were lost because the research was all war related. I had several disillusioned scientists in my class at Boalt who took a new path.”

Cabraser instantly took to her new path, tapping into Boalt's spirited sense of community: “The faculty diversity, freedom of expression, and public service emphasis all inspired me. Those dimensions aren't always apparent in law schools, but they are at Boalt.” (Continued on page 10)

**SHINING SYMBOL:** Elizabeth Cabraser '78 has hit high notes in music, law, and philanthropy.



## IN BRIEF

Cabraser has actively supported Boalt throughout her career. Now a name partner at Lief Cabraser Heimann & Bernstein in San Francisco, she serves on the Capital Campaign Cabinet



“I blame disco for my life as a lawyer. Live music opportunities dried up and it became much tougher to do music as your day job.”

and chairs the current Reunion Campaign—which had raised \$342,000 more than the previous campaign with seven weeks still in the campaign cycle. Cabraser is also an adjunct professor at Boalt, teaching complex litigation and mass torts/class action seminars.

Her \$3.78-million pledge marks the largest individual contribution Boalt has ever received in all major

gift categories—including unrestricted giving, reunion giving, and giving to the school’s ongoing Campaign for Boalt Hall. “Dean Edley has injected a spirit of action, optimism, and energy that moves Boalt in a direction many students, alums, and professors admire,” Cabraser says. “I’m happy to honor that.”

Frequently honored for her own legal work, Cabraser has been named by the *National Law Journal* (NLJ) as one of America’s top 10 women

litigators, 50 most influential women lawyers, and 100 most influential lawyers. For the last five years, NLJ also named Lief Cabraser one of the nation’s top plaintiffs’ firms.

But even with her frenzied work schedule, Cabraser’s music life never skips a beat. She’s the drummer in Polkanomics—a unique group of five women whose repertoire includes R&B, Tex-Mex, and old-school standards—and still finds time to sit in with other bands.

Cabraser is also vice president of Craviotto Drum Company, which makes high-end, solid shell drums in Watsonville, California. While most drums are produced from multiple plies of wood, Craviotto, popular with classical percussionists, makes its from a single piece. Cabraser—who used to take apart and fix her own drum kits to save money—provides design ideas, funding, and hardware input.

“I’ve always been fascinated with how drums are built,” she says. “This keeps me connected to musicians and lets me contribute in a way I can’t by playing, because my day job is often a day and night job.”

What’s on Cabraser’s iPod these days? A not surprisingly eclectic mix that includes rock, jazz, and funk. “New Orleans musicians are my favorite. I keep up with what my kids listen to, and I like speed metal quite a bit. I also just listen better than I used to, which is true with many older musicians. Most of music, like most of law, is about listening and paying attention.” —Andrew Cohen

## The PC Way to Dump Your PC

**Still looking for a** guilt-free exit strategy for that 1995 PC in your bedroom closet? The one that came with 8 megs—*gasp!*—of RAM but also plenty of mercury, lead, and cadmium? The Environmental Law Society (ELS), now ramping up a multi-pronged program to improve Boalt’s recycling efforts, is there for you.

Last year, the activist student organization launched a successful

initiative to recycle hazardous waste-laced electronic items. Working with E-Cycle Environmental, a nonprofit that safely disposes of retired electronics, ELS collected old computers, monitors, cell phones, and the like from students, faculty, and staff.

This year, the group’s busy agenda includes setting up a permanent e-waste drop-off area.

An estimated 65 million computers will be retired in 2008. If not dis-

posed of properly, toxins integral to their functioning can end up contaminating land, lakes, and waterways.

“Boalt staff members like Areca Sampson, Mary Elliott, and Gar Russell have been central in our push to revamp Boalt’s recycling program,” says ELS Co-President Jamey Volker ’09. “As Boalt’s operations director, Gar has been especially helpful in allocating

resources for it.”

Michelle Fon Anne Lee ’10 leads the ELS effort to reduce paper waste, working with Boalt’s computer lab to increase incentives for students to make double-sided printouts and meeting with Lexis and Westlaw officials on

using paper with greater recycled content. ELS also partners with Café Zeb to compost food waste, and will soon place bins at strategic spots around the school.

“Our goal,” says Volker, “is to foster an activist legal community at Boalt dedicated to environmental protection, education, and justice.”

—Jared Simpson & Alison Cebulla

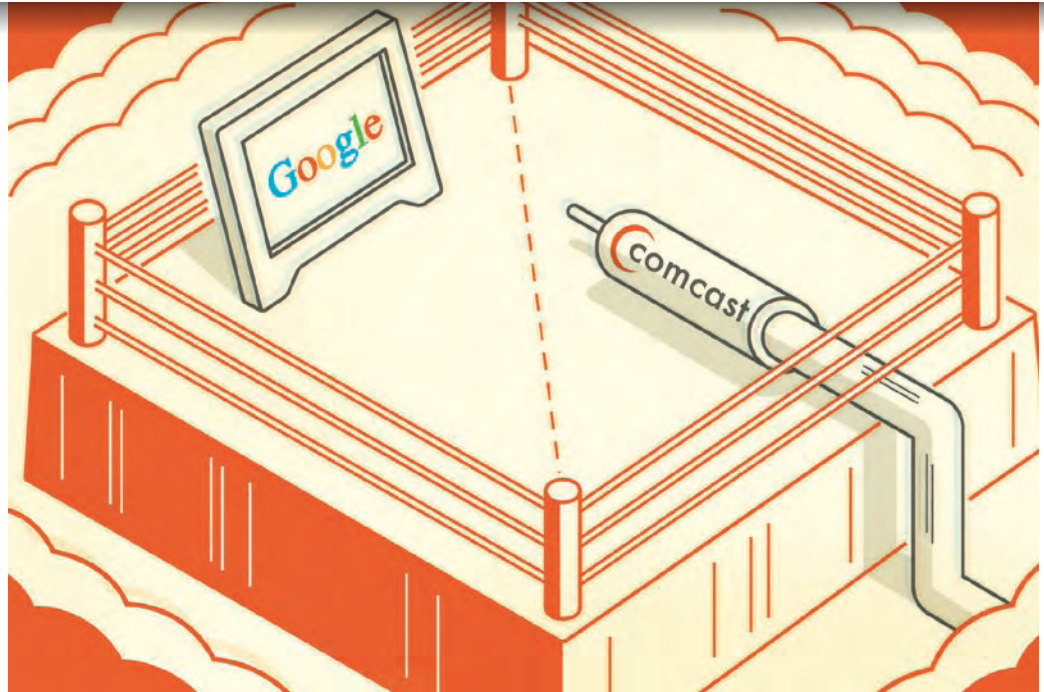
For more information on ELS, visit <http://els.boalt.org/>





# FOREFRONT

AT THE  
LEADING  
EDGE OF  
RESEARCH  
AND SERVICE



## The Fight for the Last Mile

### Can Big ISPs Shift the Internet out of Neutral?

To hear some folks talk, says Boalt's Associate Dean Howard Shelanski '92, an apocalyptic showdown is looming in cyberspace, pitting the forces of Darkness and Greed against the defenders of Freedom and Equality. Emerging as the two biggest warriors in this epic battle are Comcast and Google. A former chief economist for the FCC and a noted telecommunications scholar, Professor Shelanski is monitoring the hostilities

with an expert eye.

A dozen years ago, when Shelanski began teaching telecommunications law at Boalt, his students worried most about the costs of telephone lines and cable TV. Now, they fret about packet-switching filters and network neutrality—"nerdy issues," Shelanski says, that are becoming mainstream as Americans spend more and more hours online.

In a nutshell, net neutrality means that



“last-mile” providers—broadband behemoths such as Comcast—don’t interfere with users’ uploads, downloads, applications, or access to Web sites, regardless of the content. Neutrality advocates often paint the issue in David-versus-Goliath terms, but some formidable titans have the Davids’ backs. Their brawniest ally is Google, which has its own reasons to take up arms: Strong neutrality protections would make it tougher for big providers to impose fees on Google itself or on the company’s heavy users.

One recent clash highlights the issues and the stakes. In November 2007, two nonprofit organizations—Free Press and Public Thought—complained to the FCC that Comcast was “throttling”—delaying or blocking—file sharing among users of several peer-to-peer (P2P) applications, especially BitTorrent. Once almost synonymous with online piracy, BitTorrent’s P2P technology is now widely used legally to transfer large video files—leading neutrality advocates to posit that Comcast’s real aim has been to throttle competition to its cable TV offerings. Comcast countered that it was simply regulating traffic to better serve rank-and-file users, whose connections can bog down when so-called “bandwidth hogs” swap huge files.

**A telephony analogy**

However, the nonprofits charged, Comcast fought dirty: It disrupted file sharing by “forging” disconnect orders that appeared to come from BitTorrent users’ own computers. “Consider the following analogy,” they urged the FCC:

*Alice telephones Bob, and hears someone answer the phone in Bob’s voice. They say “I’m sorry Alice, I don’t want to talk to you,” and hang up. Except, it wasn’t actually Bob who answered the phone, it was Comcast using a special device to impersonate Bob’s voice.*

In August 2008, the FCC concluded that Comcast had indeed secretly hindered file shar-



**RINGSIDE SEAT:** Howard Shelanski '92 keeps a close eye on the neutrality slugfest.

ing. Stopping short of imposing stiff fines sought by the complainants, the agency ordered the network to disclose to subscribers and application developers like BitTorrent how it prioritizes and directs Web traffic. That’s only fair, according to Shelanski. “It’s like Amazon or FedEx,” he says. “If you order a book or send a package, it isn’t surreptitiously delayed because of who you are or what’s inside.” But Shelanski—who served as the FCC’s chief economist in 1999 and 2000—thinks the commission was right not to impose fines. “Comcast violated a principle of Internet openness,” he explains, “which the FCC is on record as supporting, but didn’t violate any clearly applicable regulation or law.”

The case provoked new saber-rattling by Google. In June 2008, the search-engine giant announced that it was developing software to detect signs of interference by the likes of Comcast. “If the broadband providers aren’t going to tell you exactly what’s happening on their networks,” a Google executive told the techie Web site *The Register*, “we want to give users the power to find out for themselves.”

**A net loss?**

Though deemed a compromise by the FCC, the game theorists among us might assess the agency’s

“It’s like Amazon or FedEx. If you order a book or send a package, it isn’t surreptitiously delayed because of who you are or what’s inside.”

—Howard Shelanski



August ruling as a classic lose-lose outcome. “Everybody was mad,” says Shelanski. “Comcast, because they’d already resolved the issue with BitTorrent, and the complainants, because they didn’t get retroactive relief. Other neutrality advocates were angry as well, because they said the ruling won’t actually stop network operators from discriminating, but it will give politicians an excuse to avoid taking legislative action. They can now say that the FCC has taken appropriate steps to ensure there are no tollbooths.”

For some, anger has given way to ecstasy due to President-elect Obama’s choice of two outspoken neutrality advocates, Susan Crawford and Kevin Werbach, to head up his FCC transition team. The terms of three of the FCC’s five commissioners (including the two Democrats) expire in 2009. Comcast and Google execs, BitTorrent addicts, and the burgeoning ranks of packet-savvy neoneers will be holding their breath—and megabytting their nails—as they await next year’s turns on the information superhighway. —*Jon Jefferson*

# Finding the Golden State Mean

## A Boalt Expert Offers a Daring Plan to Reform California's Education Spending

**ON THE MONEY:** Goodwin Liu advocates reforming California's K-12 funding system.

Professor Goodwin Liu gives the Golden State low grades when it comes to K-12 funding. California continues to trail behind most of its 49 counterparts in education spending, which means—among other deficits—far fewer teachers and administrators per student than other states. “But what’s equally troubling,” says Liu, “is that well-meaning equalization efforts have led to an unnecessarily complicated and inefficient funding system that actually fosters more inequity.”

Liu, co-director of Boalt Hall’s Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, and two fellow researchers, former California Secretary of Education Alan Bersin and Stanford emeritus professor Michael Kirst, have taken a long, hard look at California’s flawed K-12 funding—and have proposed a bold approach to reform.

While it may seem a tad quixotic to advocate for funding reform while the state grapples with a \$14-billion deficit, Liu and his colleagues think otherwise. “When there is new money, people think of new ways to spend it,” says Liu. “When people are chastened by the unavailability of money, the hope is that they become reflective and consider how to best allocate what they have. We can’t do much about the size of the pie right now, but we can be more equitable about how we slice and serve it.”

After sifting through past research and reams of





data generated by the state’s dizzyingly complex and fragmented funding regime, the research trio issued a report titled *Getting Beyond the Facts: Systemic Reform of K–12 Education Policy in California*. It recommends abandoning the antiquated funding system shaped in part by equalization mandates in favor of an approach that acknowledges inherent inequities. The plan calls instead for the state to dish out future resources according to student need and regional differences.

**Unfairness doctrine**

At first glance, it seems consummately just that the state divides funding as evenly as possible among the school districts; in 2006, it provided about \$8,500 per student. But Liu contends that this system actually exacerbates social inequalities. “Districts that are serving the most disadvantaged students now must do so with the same amount of money as districts having fewer,” says Liu. “That’s just not fair to those kids.”

Instead, Liu says, “We’d like to see a more steeply graduated system that would drive dollars to those districts with more disadvantaged kids.” Under the proposal, no district would receive less money than it currently does. However, as new funding becomes available, it would be distributed based on student need and regional education costs.

Liu points out that California’s high cost of living directly affects how much it takes to run schools. California also serves a larger student population than any other state, a sizeable per-

centage of which has special needs. Nearly a quarter of the state’s students are English learners, 10 percent receive an array of special education services, and nearly half qualify for free or reduced-price lunch. “We have more high-need kids in addition to having more kids,” Liu says.

**A state job**

Liu—educated in Sacramento public schools and now in his sixth year teaching at a state university—is an unabashed booster of citizen-supported education. “The whole edifice of the state, the economy, the health of the democracy, and people’s sense of civic duty and of working for a common good—I think all of that is highly dependent on an education system that serves all the people and serves them equitably,” he says.

Furthermore, Liu points out, California devotes half its budget to funding primary public education—more than half if you include higher education. As a result, many taxpayers regard it as the state’s number one job.

California’s recent budget impasse has temporarily quashed some of the hopes raised when Governor Arnold Schwarzenegger declared 2008 the “Year of Education Reform.” Though its report has received a positive reception from state lawmakers, Liu’s team is still looking for a “political champion” to move the proposal through the legislative process. But change, says Liu, is inevitable: “Increasingly, Californians are realizing that continuing the status quo is not an appealing option.” —Kara Platoni



# Bridge to Somewhere

**A Boalt-based think tank connects academia with family security policy makers**

**A**nn O’Leary ’05 likes to think of herself as a bridge builder. The executive director of the Berkeley Center on Health, Economic & Family Security (Berkeley CHEFS)—Boalt’s newest research and policy institution—wants to forge strong links between academic research and policy makers addressing the increasingly insecure world of today’s American families.

“People feel insecure because both the private and public sectors don’t provide supports and benefits that make sense for workers and their families today,” O’Leary says. “Demographics

and families have changed—think about single parents, or families in which both parents work—but benefits and laws haven’t kept pace. We want to help officials craft family and workplace policies based on solid research.”

“We see this as a dynamic center—a bridge between the world of ideas and the world of action,” O’Leary continues. “Sometimes when people say that, they really mean one-way traffic. Their academic findings flow to people in the action-oriented fields, and they hope that somebody will pick them up and run with them.”

But on O’Leary’s ideal span, information





**FAMILY MATTERS:** Ann O'Leary '05 is the executive director of the recently launched Berkeley Center on Health, Economic & Family Security.

travels in both directions. “We want to have conversations with people in the policy world in Washington and Sacramento to learn from them about what they think the research questions ought to be,” she says. “We want our ideas to be rooted in serious academic work, but we want to make sure that they reflect the realities of the policy world and the questions policy makers have.”

In the innovative spirit of the six think tanks launched during Dean Edley’s tenure thus far, Berkeley CHEFS takes a multidisciplinary approach to bring new thinking to family security issues. With three faculty co-directors from different UC Berkeley departments—Jacob Hacker from Political Science, Mary Ann Mason from the School of Social Welfare, and Associate Dean Stephen Sugarman from Boalt—Berkeley CHEFS is marshalling and coordinating research from various disciplines to address five core issues: defining economic risks faced by working families, increasing health security, improving protections for people who are on leave from work, encouraging flexible workplaces, and ensuring retirement security.

### Troubled water

The center’s launch has proven to be unsettlingly timely. Since Berkeley CHEFS opened its doors in early 2008, the global economic crisis has knocked American families of all social strata—including, O’Leary suspects, some Boalt alumni—out of their jobs, healthcare, retirement

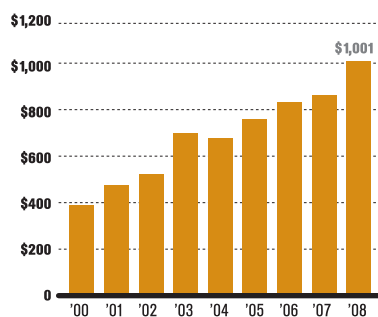
plans, and homes. “Any observer would agree that health, economic, and family security are among the most important societal problems that we’re experiencing as a country and in the state of California,” O’Leary says. “They call for immediate attention now more than when we started the center just six months ago.”

That immediate attention likely means new laws and new regulatory tools from a new Administration, notes O’Leary—who has served as legislative director to Senator Hillary Clinton, special assistant to President Clinton on domestic policy, and senior policy advisor to Secretary

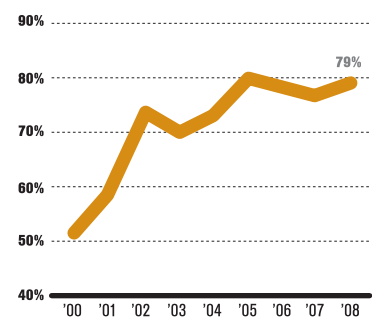
## POOR PROGNOSIS

One of Berkeley CHEFS’ focuses is the rapidly rising cost of health care.

Average annual deductible per individual among PPOs



Percentage of PPOs with a deductible



SOURCES: MERCER, LOS ANGELES TIMES

of Education Richard Riley. “We can provide deep policy thinking and technical assistance to policy makers as they drill down on the hard, detailed questions that will arise in drafting universal health care legislation or crafting solutions to improve economic security for families,” she says. Berkeley CHEFS will also interpret its research into practical and useful briefs for policy makers and the media. “People in Washington are moving pretty fast, and they need accessible information,” she says.

**The long haul**

Berkeley CHEFS also plans long-term research, education, advocacy, and conferences on topics such as hybrid health reform; leveraging the federal government’s contracting power to promote flexible, family-friendly workplaces; and developing new, updated, and more unified federal policies on extended leave time for workers. A conference slated for spring 2009 will explore

responses to the problem of social risks that have shifted to individuals from employers and government (think 401(k) plans versus pension plans). For example, says O’Leary, “If you accept the notion that we’re likely not going back to defined-benefit plans, how can we protect people against risky retirements and ensure their ability to make decisions about their money?”

The center will also host students on their way to careers in government. “We see the center as a training ground for individuals who are finishing law school and want to do policy-oriented research before going into a policy field,” she says.

It’s important and timely work, and O’Leary encourages interested alumni to join her. “There are so many alumni who have a wealth of knowledge in these areas,” she says. “We’d love their engagement as we go forward—both intellectual and financial support.” A bridge designed to support weighty two-way traffic needs a solid foundation. —Fred Sandmark

# Doing Overdue Diligence

## A Boalt researcher examines the role of bond-rating agencies



**CREDIT FIXER:** John P. Hunt proposes a novel method for ensuring credible bond ratings.

“**W**hat kills a skunk is the publicity it gives itself,” Abraham Lincoln said. For decades, that dictum was thought to apply to the rating of bonds and other fixed-income financial instruments: if an agency published ratings that stank, the public would turn up its nose, and the agency’s reputation—and business—would suffer. A small number of credit-rating companies—including Fitch Ratings, Moody’s, and Standard & Poor’s—have built multimillion-dollar businesses on their skill at rating bonds.

Then came residential mortgage-backed securities, or subprime RMBS, the infamous culprit of the current financial crisis. As recently as early 2007, bonds based on subprime RMBS yielded more than traditional corporate bonds with the same ratings but were considered to have approximately the same default risk. Driven in part by the high ratings, many investors rushed to buy in. Then the RMBS market collapsed; everyone now knows that bonds based on RMBS were

much riskier than similarly graded corporate bonds. (Ratings on novel financial instruments unrelated to residential housing—such as exotic instruments called constant proportion debt obligations [CPDOs] based on corporate credit derivatives—also failed.)

**The agencies still rate**

In theory, the credit-rating agencies should have taken a hit for publishing low-quality ratings. But in reality, they didn’t. “Moody’s actually increased its revenue in rating traditional corporate investment-grade bonds during the financial crisis, and issuers are still seeking—and paying for—agency ratings,” says John P. Hunt, research director in the Law and Finance program and a fellow at the Berkeley Center for Law, Business, and the Economy (BCLBE). “They haven’t suffered a loss of reputation in their traditional business.”

Hunt says investors need a better way to ensure ratings quality on novel financial instruments, and he has proposed a mechanism he calls “disclose or



disgorge” in a law review article to be published in the *Columbia Business Law Review* in spring 2009. Hunt suggests that rating agencies either disclose *up front* that they can’t rate a new instrument at higher than a specified minimum quality level, or they agree to disgorge profits later if rating quality falls below the specified level. “Disclose or disgorge” also could include reduction or elimination of fraud liability for the rating agencies.

Hunt admits that many issues would need to be hammered out to make his scheme work, the most important of which is setting the minimum quality level. One possibility he suggests is to allow rating agencies themselves to choose the quality level they will guarantee, subject to a low floor such as something slightly above the level achieved on subprime RMBS.

### Triple-A research

Ken Taymor, executive director of BCLBE, says Hunt’s work is groundbreaking. “Analyses of this quality just haven’t been done,” he says. “This is not an area that has been heavily discussed. It’s original work in terms of the scope of the analysis and the suggested policy revision.” Hunt’s work is so novel, in fact, that Taymor acknowledges an absence of forums (at BCLBE or elsewhere) for injecting brand-new thinking into the debate. That presents an opportunity for BCLBE to start a discussion about innovation and stability in financial institutions and capital markets, Taymor says; he hopes to convene a workshop where financial, academic, and policymaking communities can critique Hunt’s and others’ work.

Hunt is cautiously optimistic when asked how the financial industry might react to “disclose or disgorge.” Precedent exists, and timing is good; the idea of profit disgorgement is not novel, Hunt says, and the SEC is in

what he calls one of its periodic incremental efforts to address problems with the rating agencies. Congress is holding hearings on rating agencies, too. But the credit rating companies carry a lot of influence in the SEC and in Congress, so it’s unlikely that they’ll impose regulations the agencies can’t live with. “I think rating agencies might agree to this if it was proposed as a regulatory solution that would supplant fraud liability,” Hunt says.

And even with SEC action and congressional hearings, fixes for problems in the credit rating business won’t

come easily or quickly. In part, that’s because the industry is in a state of continuous financial innovation, which calls for rethinking regulation. “Congress has held hearings practically every year on this since 2001,” Hunt says. “The issue’s still open, so it’s worthwhile to get new ideas into the debate. It’s certainly not going away because of what the SEC’s currently undertaking.”

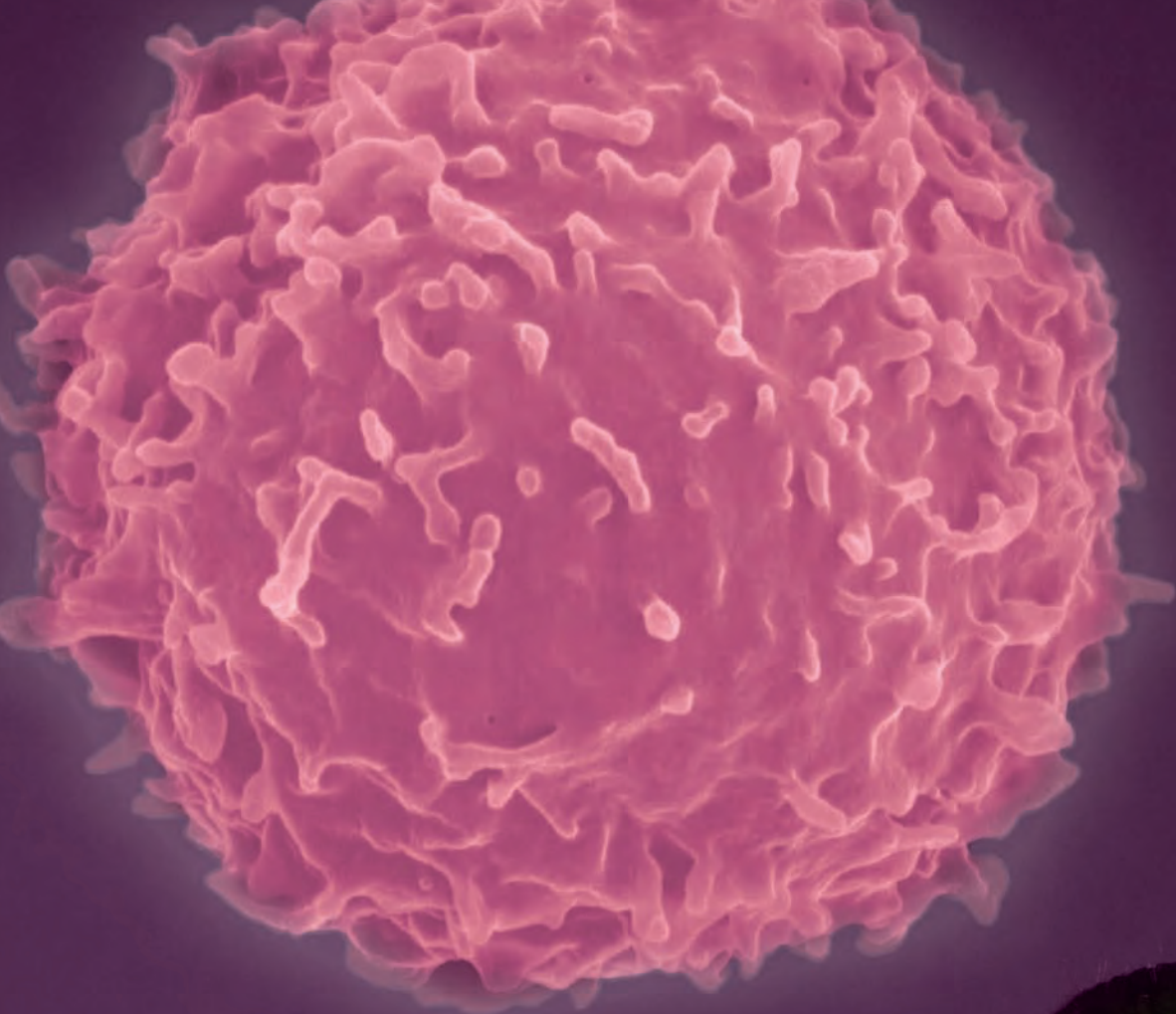
Or, to quote Lincoln again: “As our case is new, we must think and act anew.” —Fred Sandmark

“Analyses of this quality just haven’t been done.”

— Ken Taymor on John P. Hunt’s proposed mechanism for ensuring ratings quality on financial instruments.







**HIGH HOPES:** Hilliary Creely '09 wants future stem-cell research to be based on the open-science model.

# Stem cells: Snagged in the patent thicket

## Hilliary Creely '09 fights for a biotech commons

By Jon Jefferson

Fifty yards downstream from a bucking raft, the American River snakes to the right, then kinks back to the left, as it churns through Troublemaker Rapid and roars past Gunsight Rock. Perched on the edge of the raft, Boalt 3L Hilliary Creely digs a paddle into the current, her shoulders glistening with water droplets and late August sunshine. Creely's raft is taking part in a two-day whitewater trip organized by the Boalt Disability Law Society—a group she's volunteered with for the past year—which includes several law students with spinal-cord injuries that have rendered them paraplegics or quadriplegics. They're classmates and colleagues Creely hopes can be helped or cured by breakthroughs in stem-cell therapy.

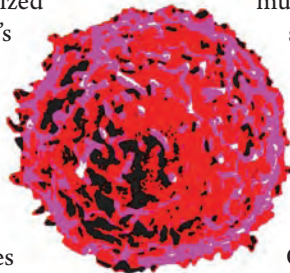
Navigating river rapids with less-able classmates is emblematic of Creely's educational and career path, which involves charting a course through what she likes to call "the commons." It's a term Creely uses often, confidently, and flexibly: Sometimes she invokes it while discussing human society's well-being in the broadest sense; sometimes while referring to scientific inquiry or biomedical research; and sometimes in articulating specific hopes and fears for stem-cell research.

If anyone at Boalt is entitled to speak confidently of the commons—and specifically about stem cells—it's Creely. Before law school, she earned a B.S. in biology, then snagged a Ph.D. in molecular and cell biology. During her doctoral studies, she was part of a laboratory team that developed and patented a new way of harnessing a protein to treat neuro-

muscular diseases. After that—and still before law school—she completed a two-year postdoctoral fellowship in genetics and evolution. She's now a valued student staffer at the Samuelson Law, Technology & Public Policy Clinic, which specializes in developing legal standards and policy guidelines at the frontiers of science and intellectual property.

Creely's experience with the patent system—along with her Ph.D. in biology, postdoc, Samuelson Clinic experience, and easy fluency with phrases like "induced pluripotency" and "up-regulating enzymes"—gives her more street cred on biotech issues than some IP attorneys will ever accrue. So when she voices more worry than hope about the pace of stem-cell breakthroughs, we should take notice.

Creely's hopes, like those of millions eager for cures for themselves or loved ones, soared when human stem cells were first





isolated a decade ago. “Pluripotent” stem cells—the simple, undifferentiated cells that can morph into every type of specialized cell in the body—were hailed as the Fountain of Self-Repair and Regeneration. Nudge a stem cell in one direction, it creates kidney cells, Creely explains; nudge it a different way, it yields flesh, or bone, or brain. Liver failing? A British lab is working on ways to grow a new one for you. Heart damaged? Johns Hopkins researchers are testing a stem-cell patch kit. Spinal cord severed? Stem cells have repaired spinal-cord breaks in laboratory mice, raising hopes that people like Creely’s wheelchair-bound friends and classmates might walk again.

*[Ed. note: As we go to press, it has been reported that a woman living in Spain underwent a successful transplant of a new wind-pipe grown from her own stem cells.]*

But despite the promise, says Creely, stem-cell breakthroughs are increasingly caught in what she calls a “stranglehold.”

## Patent Thicket

Creely isn’t so concerned about the ethical and political controversy that erupted around the use of stem cells from human embryos a decade ago. “That’s gradually being resolved,” she says. “Researchers are finding ways to reverse-engineer cells from human adults.” By reprogramming mature, specialized cells—taking them back into undifferentiated cells—scientists are now creating “induced pluripotent stem cells,” and beginning to prod them in new, desirable directions.

“What worries me far more than the ethical and religious

objections,” says Creely, “is the ‘patent thicket,’” by which she means a dense tangle of competing claims, staked out as researchers and institutions scramble to patent each new advance. Unless things change, she fears—unless a culture of openness and sharing replaces the possessive, proprietary impulse—this patent thicket could choke out progress, and extinguish the glittering hopes for stem-cell breakthroughs.

Even before the start of translating stem-cell research into therapies for human patients, thousands of related patent applications have been filed, each contributing to the thicket’s entanglement. And research could already be stagnating, Creely notes, resulting in a decline in innovation. Since 2003, applications for stem-cell patents have dropped by 50 percent in the United States. We could be witnessing the beginning of what she calls a “tragedy of the anticommons.”

Creely’s concern about the anticommons is the flip side of what ecologist Garrett Hardin, in a 1968 essay on human overpopulation, dubbed “the tragedy of the commons.” Hardin argued that individual interests—what he came to call “the selfish gene”—would inevitably trump societal interests and eventually destroy shared resources, be they as humble as a village commons or as big as the biosphere.

Although Hardin’s topic was overpopulation, his reasoning—and his metaphor—have since been applied to numerous other issues, including biomedical research and intellectual property. And that brings us downstream, aboard Creely’s intellectual raft, to stem cells, “the Thomson patents,” and the

# The Law, the Profits, and the Poor

## Why California’s unique approach to spurring stem-cell research may backfire.

**T**he Bush Administration’s August 2001 decision to restrict federal funding for research on human embryonic stem cells disheartened scientists and stem-cell research advocates. It also led California to step into the fray—or into the void—in a big, deep-pocketed way. In November 2004, the state’s voters approved Proposition 71, a 10-year, \$3-billion program to fund research that uses embryonic stem-cell lines that fall outside Bush Administration constraints.

By September 2008, the California Institute for Regenerative Medicine (CIRM)—a new state organization created to fund and oversee the research—had

approved 229 grants totaling more than \$614 million. That makes CIRM the world’s largest single funding source for human embryonic and pluripotent stem-cell research—what Creely calls “an island of hope.” With President-elect Obama’s promise to reverse course on federal funding, the other 49 states might soon merge with California once more, giving embryonic stem-cell research a potent booster shot.

One provision that helped Proposition 71 win support was its novel revenue-sharing requirements. As researchers make breakthroughs—and as those breakthroughs make money—these mandates seek to ensure that California taxpayers reap financial rewards

along with medical miracles. Any institution or company that earns more than \$500 million by commercializing a CIRM-funded discovery must share that wealth with the state.

Nonprofit organizations, such as universities and tax-exempt biomedical foundations, fork over 25 percent of all net profits above \$500 million. For-profit companies pay according to a more complicated formula, one that can include 25 percent of profits with additional “blockbuster” payments.

The numbers could add up: A Stanford analysis estimated that revenues from CIRM-funded innovations could funnel \$385 million into the state’s coffers. With California awash in red ink, sharing the wealth sounds like a win-win idea. But is it?

Probably not, says Boalt Hall’s David Tolley ’09, who spent last year studying Prop 71 as a CIRM-funded stem cell legal fellow. In his paper published in the 2008 issue of the *Berkeley Technology Law Journal*, Tolley argues that revenue-sharing will more likely hinder developments than repay taxpayers. Citing a survey by the California Healthcare Institute—an advocacy group representing more than 250 biotech companies, universities, and research institutions—he notes that



# “If you’re the person living with a spinal-cord injury or a disease that could benefit from a new therapy, seven years can be a lifetime.”

—Hilliary Creely '09 on the Thomson patents expiring in 2015

anticommons: a patch of ground so carved up into small individual plots and guarded by so many owners, that it becomes virtually unusable.

## The Thomson Triplets

In the 1990s James Thomson, a veterinary researcher and molecular biologist, began to consider using human embryonic stem cells to explore human development and why it sometimes goes awry. In 1998 his lab at the University of Wisconsin succeeded in extracting and culturing human embryonic stem cells. The university’s technology-transfer organization, the Wisconsin Alumni Research Foundation (WARF), was granted three broad patents—known in bio-

medical circles as the Thomson patents—protecting the techniques used to culture primate and human embryonic stem cells. The Thomson patents are so broad that any researcher, institution, or biotech company that wants to commercialize an embryonic stem-cell therapy must pay royalties to WARF. At first glance, crying foul seems unfair. Hasn’t WARF devised breakthrough techniques and shouldn’t its members enjoy the rewards of ownership protected by IP law?

But Creely isn’t so sure the patents should have ever been issued to begin with. “The problem with patenting foundational technologies is that it puts a lot of power in the hands of whoever holds the patents,” she says. “There are certain basic laws in biology, and that’s just the way nature works; there’s no work-around solution to some of these foundational techniques.”

Recent advances in the field—especially the discovery of ways to turn mature, specialized cells into induced pluripotent stem cells—might seem to contradict Creely’s assertion. But even some researchers who have succeeded in inducing pluripotency have stressed that for some research, there is simply no substitute for embryonic stem cells. So while thousands of other patents have laid claims to pieces of the stem-cell commons during the past decade, Creely considers the three Thomson patents to be “the choke point” in stem-cell research—the thickest tangle in the thicket.

She’s not alone. In 2006, the California-based Foundation for Taxpayer and Consumer Rights, along with the New York-based Public Patent Foundation, asked the U.S. Patent and Trademark Office (USPTO) to reexamine and revoke or narrow the Thomson patents. According to the two groups, Thomson’s advances were obvious, based on earlier researchers’ isolation of embryonic stem cells from mice in 1981. They also charged that the patents were overly broad—“like Microsoft pat-

more than 80 percent of group members said they’d be “much less likely” to consider licensing a technology or investing in a start-up required to pay out a portion of its proceeds. Tolley also quotes Tom Okarma, CEO of a biotech company named Geron that is developing therapeutic drugs derived from embryonic stem cells—and is “unlikely to apply for any science grants” from CIRM because it doesn’t want to “siphon away revenues” from investors.

Although Tolley thinks Prop 71’s revenue-sharing provisions make poor financial sense, he does concede that they make political sense. “It was such a political process to get them set up,” he says. “These probably had the best shot at getting approved.”

Tolley has scrutinized another novel feature of Prop 71—any company licensing a CIRM-funded breakthrough must develop an “access plan” to ensure that the therapy benefits uninsured Californians. While that proviso helped win public support for the ballot initiative, Tolley says it raises some tough questions: “How will we get these high-tech therapies to, say, homeless folks living under bridges? And by ‘uninsured Californians,’ do we mean only citizens? Or

does that include residents who are undocumented aliens, too?” Despite such uncertainties, Tolley considers the access-plan requirement—unlike revenue-sharing—to be worthwhile. “Because broad access is unlikely without regulatory intervention,” he writes, “access plans are crucial to CIRM’s IP policies.”

Long fascinated by health care’s thorny questions, Tolley has four uncles—all surgeons—and an aunt who’s a pediatrician. “My grandfather was also a doctor and I was premed in college,” he says. “I was surrounded by it, but frustrated by it. Then I took a medical ethics class, and I realized there was a way to deal with these questions and issues in a different way.” After college, he continued to explore health-care ethics at Yale Divinity School. But then came another realization. “I want to make a tangible difference in people’s lives,” he says. “That’s why I went to law school.”

Under Boalt’s 3L exchange program, Tolley is completing his final year of law school at Harvard. This fall, he’ll start working for Ropes & Gray, a Boston firm whose clients include biomedical research centers in Palo Alto and San Francisco. —JJ

enting computing,” according to John Simpson, the California group’s stem-cell project director—and that they discourage U.S. research on lifesaving stem-cell treatments.

At first patent examiners upheld the challenge, rejecting all three of the Thomson patents. Then, in August 2008—after WARF appealed and elaborated on its case for the unique and original nature of the Thomson lab’s work—the USPTO reversed its position. The decision dealt a blow to Creely’s hopes. “It could have been a good opportunity for the patent office to make a statement,” she says. “A chance for them to say that some insights into biological processes are so foundational,

their use shouldn’t be limited by giving a monopoly property right to one individual or organization.”

The Thomson patents expire in 2015; by some reckonings, that’s not so far away. But Creely sees it differently. “If you’re the person living with a spinal-cord injury or a disease that could benefit from a new therapy,” she points out, “seven years can be a lifetime.” What’s more, although expiration of the Thomson patents will remove the patent thicket’s biggest tangle, many additional obstacles—the thousands of more specific patents filed since Thomson’s—will remain for years beyond 2015.

# Playing and Sharing in the BioBrick Sandbox

## How the X-Games of synthetic biology could make us all winners.

**P**icture a get-together that’s half science fair, half gift-swap party—where youthful inventors show off their best Lego creations proudly, then give them away freely. Reimagine the Legos as cells and bits of DNA, and you’ve grasped the essence of the International Genetically Engineered Machine (iGEM) Competition, where student teams from around the world compete to build the best microbial “machines” from microscopic organisms and snippets of DNA. The 2008 iGEM competition involved some 1,200 high school and university students, on 84 teams from 21 different countries. Taking its cue from the open source movement in computing, the competition involves *open wetware*—biotech tools and techniques whose details are shared freely.

iGEM is the playground of synthetic biology, or *synbio*, which is sometimes described as “extreme genetic engineering,” says Hilliary Creely. The phrase was coined as a perjorative term by synbio critics, but Creely considers it a compliment—“extreme as in ‘exciting,’ like extreme sports,” she explains. By inserting chunks of synthetic DNA—what Creely calls “DNA widgets”—into other cells, the student-scientists create micro-machines to tackle all kinds of jobs: Detecting and destroying pollutants in rivers. Trapping HIV cells. Unmasking and defeating

antibiotic-resistant microbes. Killing breast-cancer cells.

If those micro-machines prove successful, they will be openly available for use or adaptation. That’s because all iGEM entries are built using “BioBrick standard biological parts”—bioengineered bits originally developed at MIT—and all parts created for the competition must be fully documented by their design teams. Those new mini-creations are then added to the steadily growing BioBrick repository.

iGEM’s play-well-with-others spirit reflects the ideals of the organization that makes the competition (and the inventions) possible: the BioBricks Foundation (BBF), a nonprofit created by scientists and engineers from MIT, Harvard, and the University of California at San Francisco. The BBF’s community-minded approach to genetic engineering comes straight from open wetware principles, and a legal framework meant to codify that approach is coming straight from Boalt Hall. In 2007 the BBF signed on as a client of the Samuelson Clinic; in the months that followed, the Samuelson team interviewed numerous stakeholders—ranging from basic researchers to biotech startup entrepreneurs—about ways to craft IP policies and licensing agreements that would preserve and promote openness. The legal framework—still under development—is meant to keep a patent thicket from choking the BioBricks commons. But that’s not to say

that items built with BioBricks couldn’t be patented, notes Creely. “One idea is a model where you compete not at the level of owning the part,” she says, “but at the level of owning unique ways of using the part. Ideally, instead of patenting your particular DNA widget, you might patent a novel method of using it to treat disease X, or in combination with other widgets.”

In October, Creely journeyed to Hong Kong for SynBio 4.0—a global symposium attended by more than 500 researchers, inventors, entrepreneurs, and investors—to describe the Samuelson project. While most of the registrants took a taxi from the airport, Creely—poster gal for the commons—took a city bus. But she stopped short of riding in a rickshaw cab. “I didn’t want to make another human being haul around the extra weight of the jelly doughnuts I ate the week before the trip,” she laughs.

A month later, a less glitzy but more spirited event occurred: the iGEM Championship Jamboree at MIT. The student crop of synthetic biologists couldn’t match the credentials and experience of the Hong Kong crowd, but what they lacked in vitae they made up for in vitality. They stormed Cambridge to compete, to share, and to build a better world—molecule by molecule, widget by widget, BioBrick by BioBrick. —JJ

In Creely's view, advances would be swifter, and the anti-commons far less worrisome, if stem-cell researchers adopted the principles of *open science*.

### A Cure for the Selfish Gene?

The profit motive and patent thicket notwithstanding, Creely points out there is precedent for scientific cooperation on behalf of the greater good—the movement broadly known as open science. Within open science are smaller, discipline-specific submovements. In computing—where the trend first gained momentum—it's called open source, which began partly as a revolt against Microsoft's monopolistic grip on operating systems and software. Over the past decade or so, open-source development has spawned a wide range of free software, including Linux, Mozilla Firefox, the Apache HTTP Server (which serves nearly half of all Web sites), and the ubiquitous Internet Protocol. In the nondigital realm of plant biology, major agricultural universities in the United States have joined forces to develop a more open approach to sharing new, improved versions of staple food crops. And when teams of bioengineering students gather at MIT to pit their DNA-modified widgets against one another (see "Playing and Sharing," page 22.), they agree to play by open-science rules.

Such collaborative efforts resonate strongly with Creely, whose greater-good mindset goes way back. A practicing Quaker—a faith whose members refer to themselves as "friends"—Creely has worked summers as a volunteer firefighter and emergency medical technician (EMT). She's also ladled soup for the homeless, counseled battered women, and taught middle-school math and science for AmeriCorps. "AmeriCorps is very Quakery," she says, "though I didn't think about it at the time. The ideals of open science really speak to me. It's all about community, about the larger society that will benefit."

As an undergraduate, Creely considered a career in medicine, but her summer as an EMT changed her mind. Instead, she opted for graduate work in molecular and cell biology, followed by a Fulbright postdoctoral fellowship at the Max Planck Institute in Leipzig, Germany. "I knew before going to Leipzig that I wanted to go to law school, but I wanted to learn more about science and live abroad and interact with cutting-edge scientists first."

Creely's interest in biotech law was kindled during her Ph.D. work at Brown University. Her lab there "developed a way of using the protein biglycan we hope can treat muscular dystrophy and other neuromuscular disorders—a way to keep the muscle glued to the nerves, basically—and some of the work got patented. That was my first exposure to the way science and law can intersect at intellectual property."

She wasted no time wading into the IP waters during her first year at Boalt, taking Introduction to Intellectual Property from noted IP scholar Peter Menell—and Copyrights from one of the world's leading experts, Pamela Samuelson. Creely followed up as a 2L by taking a new seminar on stem-cell law. Boalt's IP program has long been considered one of the best in the nation, and now California is the world's epicenter for human embryonic stem-cell research. The state began moving to the



"The ideals of open science really speak to me. It's all about community, about the larger society that will benefit."

forefront in November 2004, when voters approved Proposition 71, a 10-year, \$3-billion program to fund embryonic stem-cell research that falls outside the Bush Administration's funding restrictions. (See "The Law, the Profits, and the Poor," page 20.)

During her second year of law school, Creely was chosen as a stem cell scholar by the Berkeley Stem Cell Center. The honor includes a fellowship funded by CIRM, whose charter contains a mandate to explore the ethical, legal, and social implications of stem-cell research. Currently 15 UC Berkeley graduate students and researchers hold appointments as stem cell scholars; of those, only two—Creely and 1L Scott Sierra—have received funding to explore legal issues surrounding stem-cell technologies.

And future inquiries like theirs could be in jeopardy. CIRM's 2009 grants will fund only scientific work, not research on legal issues. "That's a real loss," says Lily Mirels, the administrator of the Berkeley Stem Cell Center, "because the law scholars bring such an interesting perspective to the table." Mirels voices hope that Boalt and the Samuelson Clinic will continue to work at the legal frontiers of stem-cell territory.

So does Creely. "We have a real obligation, especially at this law school and this clinic," she says, "to make a difference in how things move forward."

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Jon Jefferson is a writer and documentary producer. He has coauthored—with renowned anthropologist Bill Bass—three crime novels and two nonfiction books on forensic anthropology.





**THE RIGHTS COMBINATION:**  
Noted human rights experts  
Laurel Fletcher and Eric Stover



# Life After Gitmo

The research of two Boalt human rights scholars reveals the shattered lives of many former Guantanamo Bay detainees.

By Jon Jefferson


**F**or many of them, the nightmarish journey began with a cash transaction: They were sold, for \$5,000, to U.S. soldiers in Afghanistan or Pakistan. Blinded by burlap hoods, shackled in chains or bound with wire, they were transported to holding cages, then flown halfway around the world to Guantanamo Bay, Cuba. There, in an extraordinary military prison created at the U.S. naval station, they inhabited “cells” fashioned from steel shipping containers, enduring living conditions and interrogation techniques that deliberately rejected the Geneva Conventions’ standards governing treatment of prisoners of war.

By now most of the nearly 800 men known to have been detained at Guantanamo—“Gitmo,” in military slang—have been released. Of the total, only 17 were charged with a crime. And of those, one pleaded guilty and only two were convicted. President-elect Barack Obama has pledged to close the prison, and his advisers are developing plans to resolve the remaining detainees’ legal limbo. But however swiftly the Obama Administration acts, Guantanamo is likely to cast a shadow for years to come, both on America’s image abroad and, more darkly, on

the lives of those who were imprisoned there.

The lingering damage to the lives of those held there is the subject of a provocative new study by two of UC Berkeley’s foremost human rights scholars: Laurel Fletcher, director of Boalt Hall’s International Human Rights Law Clinic; and Eric Stover, faculty director of the Human Rights Center. In the summer of 2006, in response to concerns from attorneys whose clients were struggling after being released from Guantanamo, Fletcher and Stover conceived of an unprecedented study. “We decided to speak directly with as many former detainees as possible,” says Stover, “and hear, in their own words, how their detention had affected them—their lives, their families, their communities.”

By now the harsh conditions and brutal interrogation practices of Guantanamo have been reported widely. So has the fact—conceded even by Gitmo’s commander—that because of the wide net and poor screening employed, many or even most of the men imprisoned there posed no serious security threat to the United States. By November 2008, about 520 of them had been released. Yet, as Fletcher notes, one glaring omission remained: “No one had really examined what had happened to people once they left U.S. custody.” Fletcher and Stover set out to remedy that oversight.



**“We call for the creation of an independent, nonpartisan commission. The commission needs to have subpoena power, needs to have access to critical documents and be able to compel testimony, and it should have the authority to recommend criminal investigations, if that’s where the evidence leads.”**

— **Laurel Fletcher**, introducing *Guantánamo and Its Aftermath* at a press conference in Washington, D.C.



It wasn’t their first time to tackle a controversial issue together. “Eric and I have worked together for 10 years on a variety of human rights issues,” says Fletcher, including abuses of Latino workers in the aftermath of Hurricane Katrina, forced labor in the United States, and the impact on war-torn communities of the justice meted out by the International Criminal Tribunal for the former Yugoslavia. But even though they were seasoned observers of human rights abuses, they found the project deeply troubling.

Beginning in August 2007, Fletcher and Stover traveled to nine countries, speaking with 62 former detainees, as well as 50 others who had been stationed at the naval base or had worked around the Guantanamo system—including U.S. government, military, and civilian personnel—plus attorneys for former detainees.

“It was incredibly difficult to find former detainees who were willing to talk to us,” says Fletcher. “Some men found it very hard to talk about what had happened. It was too close to reliving interrogation.” Others, though, were grateful, voicing hope that by sharing their experiences, they could improve treatment for the remaining detainees. “I felt a responsibility to convey their experiences as accurately as possible,” Fletcher says. “That’s the mission of this research.”

The in-depth interviews yielded more than 1,500 pages of transcripts, which were coded using specific software to identify common themes. The stories and the coded data paint a comprehensive and disturbing portrait, both of life at Guantanamo and of life in its wake.

Fletcher pulls no punches as she discusses the detainees’ stories of physical, financial, and psychological ruin. “Some of these people have lost their family, neighbors, and friends,” she says. “Some have even lost their country.”

Stover was stunned by what the interviews revealed. “Twenty-five years ago,” he says, “I edited a book called *The Breaking of Bodies and Minds*, about state-sponsored torture in Latin America and psychiatric abuse in the Soviet Union. Never did I think that I would be seeing the United States repeating some of the practices that I documented back then.”

The project report, *Guantánamo and Its Aftermath*, was released November 12 at a press conference at the National Press Club in Washington, D.C. Coauthored by Fletcher and Stover, with help from more than 10 law students and graduate students, the report is a collaborative effort of the two

UC Berkeley organizations, which partnered with the Center for Constitutional Rights (CCR), a New York-based legal and educational organization. CCR consultant Patty Blum—a retired Boalt professor and founding director of the International Human Rights Law Clinic—was instrumental in persuading Fletcher and Stover to undertake the research. She also was essential to arranging the interviews and reviewed multiple drafts of the report.

At the press conference, Stover explained the timing of the report, released the week after the presidential election. “We’re releasing this report now,” he said, “because it’s really focused on our recommendations for the new administration.”

Although President-elect Obama has pledged to close Gitmo, “that’s not enough,” Fletcher told the media. “We call for the creation of an independent, nonpartisan commission. . . . The commission needs to have subpoena power, needs to have access to critical documents and be able to compel testimony, and it should have the authority to recommend criminal investigations, if that’s where the evidence leads.”

The evidence—meticulously documented in the study’s coded interviews—refutes the claim that the mistreatment of prisoners was rogue behavior by a few bad apples. Rather than being sporadic and unusual, abusive conditions and treatment were the norm—a system of U.S. detention and interrogation policies crafted by the Bush Administration as part of “a new paradigm” for fighting terrorism. “One of the most egregious aspects of this system,” Fletcher and Stover write, “was a series of high-level directives issued between September 2001 and April 2003 authorizing the use of ‘enhanced interrogation techniques.’ Many of these interrogation methods—whether used individually or simultaneously over prolonged periods of time—appear to have violated international and domestic prohibitions on torture or other cruel, inhuman, or degrading treatment.”

They’re not the only ones who think so. In a strongly worded foreword to the report, the Hon. Patricia M. Wald—who presided over United Nations trials of accused war criminals in the Balkans conflict—writes, “I was struck by the similarity between the abuse [Guantanamo detainees] suffered and the abuse we found inflicted upon Bosnian Muslim prisoners in Serbian camps when I sat as a judge on the International Criminal Tribunal for the former Yugoslavia.”

The interviews led Fletcher and Stover to one sweeping conclusion: Guantanamo has had a profound effect, not only on





## Boalt's Interdisciplinary Vision in Action

**More than 10 law students and graduate students from elsewhere on campus formed an interdisciplinary team to work on the two-year study.**

Pictured are: back row, left to right: Alexis Kelly '08; Stephen Paul Smith '11 and Ph.D. candidate in sociology; Sarah Staveteig, Ph.D. candidate in sociology and demography; and Eric Stover, faculty director of UC Berkeley's Human Rights Center; front row: Laurel Fletcher, director of Berkeley Law's International Human Rights Law Center; K. Alexa Koenig, attorney and Ph.D. candidate in the J.S.P. program; and Nobuko Mizoguchi, Ph.D. candidate in demography. Four of the students designed the database: Staveteig; Mizoguchi; Neelam Ihsanullah '07; and Emil Ray '07. Five others collected and analyzed interview data and conducted historical, legal, and medical research: Kelly; Smith; Koenig; Zulaikha Aziz '08; and Reem Salahi '08.

how detainees fared during their incarceration, but also on their ability to reintegrate into their families and communities. "The impact is acute," Fletcher says. "And so is the need for immediate assistance to those who've been released."

### **Journey to the Dark Side**

To understand the former detainees' current struggles, it helps to review their abrupt descent into a darkly surreal world of isolation, abuse, uncertainty, and despair. In the months fol-

lowing the Al Qaeda attacks of September 11, 2001, U.S. soldiers and intelligence agents fanned out through Afghanistan, Pakistan, and the Middle East, offering generous rewards for "al-Qaeda and Taliban murderers." In poor countries such as Pakistan and Afghanistan (the latter country's per-capita income averages less than \$500 a year), bounty payments of \$5,000 proved a powerful incentive, and hundreds of men were handed over to U.S. forces. Indeed, of the 62 former detainees interviewed for the UC Berkeley (Continued on page 30)





# A Former Detainee Speaks Out

## Moazzam Begg is demanding accountability.

In January, 2002, Moazzam Begg, a British citizen of Pakistani descent, was seized in Islamabad. Although never officially charged with a crime, the U.S. alleged that he had terrorist ties. A married father of two, with a new baby on the way, Begg spent eleven months at Bagram Air Base and two years in Guantanamo, largely in solitary confinement in a six-by-eight foot cell, before being released in 2005. Well-educated and multilingual, Begg has become a human rights advocate and often speaks on behalf of other detainees. In 2006 he published a memoir, *Enemy Combatant: My Imprisonment at Guantánamo, Bagram, and Kandahar*.

The following is an excerpt of an extensive interview posted in its entirety at <http://hrc.berkeley.edu>. and <http://www.law.berkeley.edu/clinics/ihrclc/>.

### What it was like to return home?

The last time I had seen my wife and children was in the middle of the night when I was taken away at gunpoint and I hadn't seen them since then. I didn't know what they were going to be like, I didn't know how I was going to be like. And of course one of the hardest things was that I was now a free man. I could actually walk in a room and not worry about being shackled, not worry about having a wall in front of me after three paces. That itself was difficult.

### Why was that difficult?

I was used to being in a tiny cell. I could almost close my eyes and walk three steps forward and three steps back without hitting the wall. Now all this space, it seemed—it was frightening. It was scary. It was almost having agoraphobia.

And then on top of that, there were all

these people around me, my father, my brothers, my wife, my children. And of course the hardest thing about the children was that six months after I was taken into custody my wife gave birth to my youngest son. I had never seen him before in my life. He didn't know who I was and I didn't know who he was, and now he's my child. And I hadn't seen a child for three years. I don't know what it's like to look at a child any more, even though I'm a father. And my children, my eldest daughter, she was about six years old the last time I had seen her, I could still pick her up in the air and throw her and catch her and play with her. Now she was close to ten. I couldn't do that with her anymore.

And so I saw all of these faces that were familiar and yet they had grown so much and were unfamiliar. The only faces that were really familiar of course was my wife and my father, people who were older, and they were all crying. But I couldn't cry anymore. I couldn't. I couldn't cry. My tears had dried up, and part of my tools for survival in Guantanamo was to try to forget about my family, to forget that I was a son, forget that I was a husband, or a father or a brother. Because the more I thought about these things the harder it would be. So as time went on I started to forget things.

### What other problems do returning detainees face?

Of people who have returned here to the United Kingdom, ... those who don't have British citizenship but have been long-term residents are still struggling even on the very basic necessities of life. Most of them want to work, they want to get a job to provide for their families but they can't do so because their residency has been revoked and they are waiting on it being re-established.... So now these guys, they can't work, they can't receive any welfare

benefits, they can't in effect be men in their houses where their children are depending on them. So in a sense they are like an addition to the household where the mother has to work and the man just has to sit around doing pretty much nothing.

In other cases for those guys who weren't married and are trying to find a wife, trying to get someone to marry them in the traditional sort of Islamic way, they are finding difficulty also because of the stigma that is attached to being a former Guantanamo detainee.... And then there are the problems of society in general. What happens if you go to apply for a job and somebody sees your name and they see a gap in the last time you worked up until now? They say, "Well where were you for these past few years?" The moment you say "Guantanamo Bay" they say, "Well, thank you and don't call us, we'll call you."

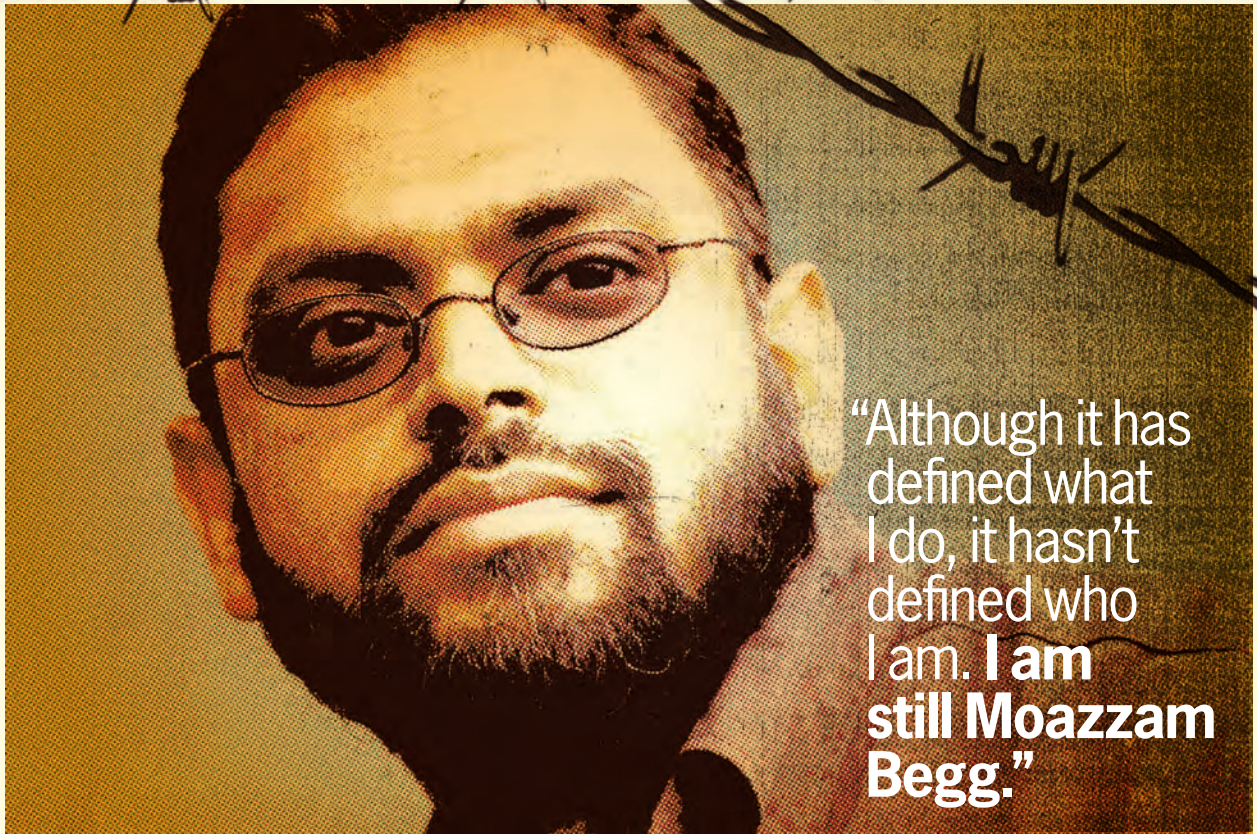
### Are people dealing with emotional side effects?

Yes, I know of at least a couple. One would refuse, even if he went to a restaurant, to sit with his back to the door because he was paranoid that the CIA or the MI-5 or any other intelligence agency would fly in and literally kidnap him.... Another one in particular has become so reclusive that he refuses to speak to anybody.... He feels that everybody's abandoned him, he feels that he's got nobody here, and he frankly just misses Guantanamo.

### How about yourself?

I find myself sometimes wanting to be alone when there is no need to do so, when I sort of turn people away, including family and children, and ask them to leave me alone when there should be





“Although it has defined what I do, it hasn’t defined who I am. **I am still Moazzam Begg.**”

no need to do that. And I think that a lot of that has to do with the experience of solitary confinement.

**Has anything given you solace, both at Guantanamo and afterward?**

There’s always been one consistent comfort point for me and it never ever changed whether it was before, during, or after Guantanamo, and that for me was simply the Quran. The book that I have read, that I knew from before my incarceration, was the same book that was bought to me in Kandahar and Bagram and in Guantanamo. My clothes were changed, my face was changed, my hair was shaved off, my environment was changed, my very person, my being, was changed, but that book that I often used to read and refer to for some sort of guidance and health and sustenance never changed. It was the same, every letter of it.

**Has the fact that you were never offered an apology or compensation affected you personally?**

I have taken it on.... I have pending cases against the British government for complicity in my own torture which I think

will then open doors towards the same thing against the United States administration for being involved in what took place.

**Why do you feel it is important to publicly speak about your detention instead of returning to private life?**

I think Guantanamo made this happen.... I sat and thought and thought for years, formulating my thoughts, sometimes on paper, sometimes in my head, almost in an internal filing system of what I am going to do and how I am going to do it when I return. And part of that for me is accountability. It’s trying to bring people who have done what they have done to accounts, without letting them get off scot-free. And at the same time, advocating for those people who don’t have a voice. The majority of people at Guantanamo, whether those released or those who are still there, really don’t have much of a voice in comparison to somebody like me, being British and being able to articulate my point of view in a manner that most people understand.

**What would you like Americans to understand about Guantanamo?**


The message is a very, very simple one:

That the face of the United States of America has changed irreparably at present and it’s going to take a lot of work for it to come back, for the United States to become a place [about which] people used to say, at one time, “That’s a country I love.” ... The people in the United States of America need to bring that back, and the only way they can do that is by introducing some justice. Not Bush-style, “American-style justice,” as he calls it, but traditional, gentleman-style justice, which means that there should be fair play.

**You have strongly advocated for accountability and compensation; do you feel you can ever be made whole again?**

I don’t look at it that way. Guantanamo is part of what I am. It makes me whole. The experience hasn’t made me any less. And I don’t think it should make anybody any less. It’s just now become part of our experience, and part of that experience means being able not just to put it aside, but to be able to continue life despite it.... Although it has defined what I do, it hasn’t defined who I am. I am still Moazzam Begg. —Kara Platonj





study, more than one-third said they had been sold to the U.S. for cash.

All 62 interview subjects reported that their first stop was one of two makeshift detention facilities in Afghanistan, at U.S. military bases in Kandahar or Bagram. At Kandahar Airport, a prison camp was cobbled together from tents, Quonset huts, and airport buildings; at Bagram Air Base, the floor of a cavernous aircraft maintenance hangar was partitioned off into large wire pens and small, plywood isolation cells.

Upon arriving at Bagram or Kandahar, prisoners were stripped naked, and their hair and beards were shaved. The detention areas were lit by floodlights around the clock. Prisoners were assailed by large and apparently vicious dogs. Some were shackled with their arms above their heads for hours on end; others were pushed down stairs, or beaten. Threats of death—to detainees and even to their family members—were common. And that was just the prelude.

### Destination: Guantanamo

For the 8,000-mile journey aboard cargo planes from Afghanistan to Guantanamo, most detainees were shackled into what was nicknamed the “three-piece suit”: a set of chains connecting the wrists, waist, and ankles. Some also reported being chained to the floor of the plane in painful positions; some recalled being drugged, while others said they begged in vain for sedatives or painkillers.

Upon arriving at Guantanamo, detainees spent four weeks in isolation, a tactic meant to foster both disorientation and dependence on their guards and interrogators. After that, most prisoners were locked into steel shipping containers converted into cells by replacing one end with wire mesh and by installing a metal bed and a primitive toilet. The camp’s routines were specifically designed to break the prisoners’ will. “The operating assumption was that camp conditions should serve to weaken the defenses of detainees,” the report explains, “and enable interrogators to break them down psychologically.”

In late 2002, the study notes, the camp’s operations became increasingly focused on intelligence gathering. “Guantanamo wasn’t a detention facility,” says Stover, “it was an interrogation facility. Guards and interrogators collaborated; even medical and mental health personnel worked with interrogators, in a flagrant breach of professional ethics.”

In an environment of unrelenting surveillance, guards scrutinized prisoners in their cells and passed on their observations of possible use to interrogators, including details of medical treatment. Guards played “good cop, bad cop,” sometimes allowing small privileges and “comfort items,” then capriciously taking them away.

Detainees never knew when they would be interrogated, or how many times per day, or for how long. More than half of the respondents characterized their questioning as “abusive.” Many stated that their interrogation sessions included periods of isolation in very cold rooms and being shackled into stress positions—hunched over in a chair, for instance, or on the floor with hands and feet locked tightly to a metal ring. Sometimes they were subjected to long periods of blinding strobe

lights flashing and painfully loud music. “You’ve been there for hours and hours, being chained to the floor and not being able to move,” one detainee recalled. “The worst thing is you don’t know what’s going on. And you’re just sitting in there, the AC is on and you’re freezing and chained to the floor.... If you try to move, the shackles start digging into your wrists and your ankles and it’s painful.”

One recurring theme sounded by many detainees was a relentless stream of affronts to their Islamic faith. They reported having their heads and beards shaved as punishment, and being sexually humiliated by female interrogators—a particularly shameful experience for men who are forbidden to touch any women except family members. Some said they were mocked or interrupted as they prayed, or that they had witnessed the Quran being kicked or thrown or handled disrespectfully.

Although a number of media reports highlighted specific incidents of abuse at Guantanamo, little attention—until this study—has focused on the cumulative effects of the treatment endured by detainees throughout their imprisonment. “These detainees were exposed, for years, to methodical efforts to wear them down,” says Stover. “It wasn’t just individual acts of cruelty; the entire system at Gitmo was designed to break them.”

Some broke more completely than others. Six former detainees interviewed by Fletcher and Stover said they’d tried to commit suicide while in custody. So far U.S. officials have confirmed only three successful suicides at Guantanamo. Although they have not released numbers about attempts, by August 2006 at least 460 instances of “manipulative self-injurious behavior” had been catalogued.

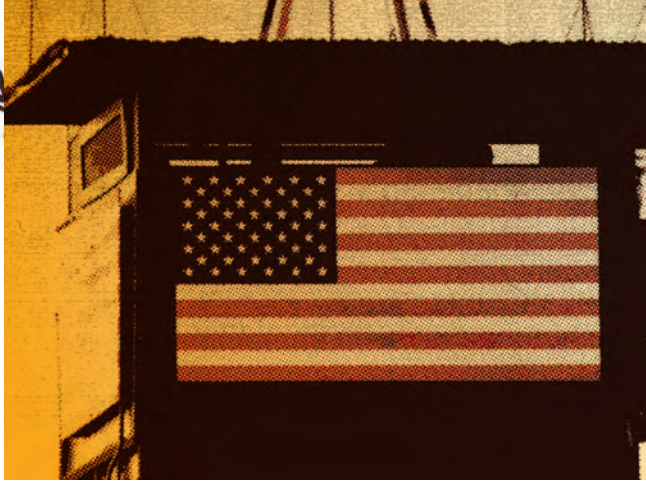
One former detainee’s attorney summed up Gitmo’s ethos of futility and despair this way for Fletcher and Stover: “One of my clients said, ‘Look, you can’t help me. I’d rather lie in my cell than pretend I have hope.’”

### A Hollow Freedom

And yet, for more than 520 detainees, the bleak limbo of their life at Guantanamo has ended. For the men in the UC Berkeley sample, the average length of confinement was slightly more than three years. Ironically, the journey back was much like the journey there. “We were all loaded onto these buses that had blacked out windows and taken to the airfield,” one respondent recalled. “The coaches had a capacity for about 50 people each and they were full, but not with detainees. There were only four detainees on my bus and I was one of them. Everybody else was a soldier.... I was placed again in the so-called ‘three-piece suit,’ only this time there was no hood or goggles. There was a padlock, a big thick padlock, on the shackles, too, for good measure, just in case, you know, I tried to escape on the way to freedom.”

But the journey away from the surreal conditions of Guantanamo did not signal a return to normalcy. Interview after interview revealed that the effects can last for years. One of the aftershocks is “the stigma of Guantanamo” marking the former detainees. “The presumption in the public eye is that they are dangerous men,” says Fletcher. “They’re being shunned by their friends, their communities, and in some





**“Years of my life were wasted over there. I lost the chance of living as a human being, my family lost the chance of being with their father and husband, I lost the chance of being with my children and my wife. A person’s life passing by, you never can get that back.”**

—Former detainee, From *Guantánamo and Its Aftermath*

cases their families.” One destitute interview subject was forced by his family to leave home, while his wife returned to live with her parents. “I have a plastic bag holding my belongings that I carry with me all the time,” he told the interviewers, “and I sleep every night in a different mosque.”

Pariah status, emotional problems, and multiyear gaps in employment records have meant financial desperation for many of the respondents: More than half reported being unemployed; only one in 10 had a permanent job.

In Afghanistan, stigma and retribution have been particularly harsh. Some Afghani respondents said that their property had been seized, looted, or destroyed. In other countries, some former detainees—having finally been freed from Guantanamo—were arrested and even tortured on their return home because they were suspected of being terrorists or, ironically, American spies.

Even those who haven’t been persecuted have faced daunting challenges in resuming normal lives. The men’s absence often had a devastating effect on their families. “It’s not just about this person being in prison for five years,” Stover says. “It’s about taking the breadwinner from the family, or the person who provides emotional and spiritual support to a whole network.” Some families spent everything they had mounting search efforts, or bribing officials in hopes of freeing their loved one. Some men returned home to children who had never seen them, or who no longer knew them; others returned to find that their wives had divorced them.

Their long-term hardships and anxieties have left many respondents unable to take up the reins of normal life, the UC Berkeley study found. Nearly two-thirds report emotional difficulties, including depression, memory loss, troublingly

vivid memories and dreams, and obsessive behavior. Others struggle with physical issues, most notably chronic pain, joint problems they attribute to shackling, and a deterioration of strength that makes it harder to work. “They can’t just go back to their old life,” says Fletcher, “because in many instances their old life doesn’t exist.”

There’s a Kafkaesque look and feel to the arbitrary nature of the men’s arrest and eventual release. One Guantanamo detainee told the UC Berkeley researchers that he had been given two hearings—a year apart—by the Annual Review Board, the entity created by the Detainee Treatment Act to determine the fate of detainees: “On the first occasion they gave me a letter and I was told that I was enemy of Americans,” he recounted. “My second court [hearing] they gave me a paper and I was told that I was free.”

But when freedom has been systematically, relentlessly taken away, it’s not easily restored. One man got an early glimpse of Gitmo’s lingering legacy as he boarded the flight that would take him away from Guantanamo; the flight that would take him home. Walking across the tarmac toward the aircraft, he felt confused and afraid:

“I was thinking, ‘Wait, I haven’t got my shackles on. This is wrong. Then [the policeman from my country] said, ‘Just walk straight, don’t look back.’ When I sat down in my seat, they said, ‘When you want to get up just tell us, and you can get up and walk ... And I still didn’t understand. I should have shackles on me, right?’”

.....  
*Jon Jefferson is a writer and documentary producer. He has coauthored—with renowned anthropologist Bill Bass—three crime novels and two nonfiction books on forensic anthropology.*



# Breaking the Laws

**Herma Hill Kay looks back on a lifetime of making cracks in the glass ceiling.**  
Interviewed by Andrew Cohen

**B**ack in the mid-1940's, two South Carolina grammar school teachers opened Herma Hill Kay's young eyes to the electrifying possibility—and the sobering realities—of a woman becoming a lawyer. One, her sixth-grade civics teacher, was so impressed by Kay's sparkling performance in a classroom debate on the Civil War that she was moved to say, "If you

were my daughter, I'd send you to law school." The other was her mother, who taught third grade. She met Kay's ebullient announcement of her future calling to the bar with a withering reply: "No, you won't go to law school. Girls can't make a living as lawyers."

Kay, of course, has done more than make a living. In 1998, the *National Law Journal* named her one of the 50 most influential female lawyers in the country and one of the eight most influential lawyers in Northern California. But her success was a hard-won victory against the forces of male privilege that her mother foresaw, and the experience has left Kay with no illusions. Women have made significant progress, but in many respects the legal profession remains a bastion of male privilege. Kay's skeptical appraisals of female advancement in the legal arena are often delivered with an unadorned frankness. For example, while you might think that the recent increase in the number of women law school deans represents another milestone in women's empowerment, Kay has a blunt—and less rosy—take: "The deanship has become a harder job and more time-consuming. I think a lot of men decided they'd rather focus on research, consulting, or something else."

Kay knows all about the challenges of running a law school. As Boalt's first woman dean from 1992 to 2000, she faced severe budget restrictions and a California law preventing public institutions from engaging in recruitment based on affirmative action. Nonetheless, Boalt thrived during her tenure, and

the school rose from 12th to 8th in the *U.S. News & World Report* law school rankings.

Kay joined Boalt's faculty in 1960 and became a pioneer among women in the law, writing seminal works on sex-based discrimination, family law, conflict of laws, and diversity in legal education. She is the recipient of count-

less honors, including UC Berkeley's Distinguished Teaching Award, and the first Boalt Hall Alumni Association Faculty Lifetime Achievement Award.

Recently, Kay sat down with senior communications writer Andrew Cohen for a wide-ranging conversation on her time at Boalt and the past, present, and future of gender-related issues in the law profession.

**Andrew Cohen: What were the biggest challenges you faced during your eight years as dean?**

**Herma Hill Kay:** Certainly the state budget problems. We didn't get a state budget until October in my first year, and that posed some challenges. But I suppose the biggest problem came when the Regents passed their resolution against affirmative action in 1995. It became effective a year later and so it was the class that entered in 1997 and finished in 2000 that was first affected.

**It was midway through your tenure as dean when California became the first state to ban explicit racial preferences in public institutions through Proposition 209. How did that affect the law school?**

Prop 209 followed the Regents' resolution, and it really wasn't getting much play until the Regents decided to pass that resolution. In a sense, people really thought that the university had done this from the beginning. I think there was a feeling that California schools were turning their backs on minority





**SWIMMING AGAINST THE CURRENT:**  
Herma Hill Kay at the Berkeley City  
Club pool—a favorite hangout.



applicants, and of course we worked hard to change that perception. We formed a task force on changing our admissions policy and tried to create a diverse student body without violating the new rules. We adopted a policy that emphasized individual achievement and put less value on undergraduate grades and LSAT scores, and we expanded our recruiting base.

**Did being a woman dean make your job more difficult?**

Obviously, it was different. There were a lot of people who felt empowered by the fact that I was dean, mainly our women graduates and also our minority graduates, because I'd always been very supportive of them. I think the reception that I got from our alumni was entirely welcoming. Having been a professor here since 1960, it wasn't like I was an unknown quantity. Also, I wasn't the first woman dean in the UC system. There was actually a marvelous period there for a couple months where all four of the UC law schools had women deans. That didn't last.

**Are there many women deans at U.S. law schools?**

I actually published an article on this. Up until January 1, 2001, there had never been more than about 13 women deans at a given moment. All of a sudden it kind of took off and now it's up to somewhere in the mid-40s. One of the interesting things that I've noticed is that it has been very rare for a woman dean to follow a woman dean. There have only been three or four occasions where that happened.

**Why has there been this sudden increase?**

I think in part it's because the deanship has become a harder job and more time-consuming. I think a lot of men decided they'd rather focus on research, consulting, or something else.

**What accomplishments are you most proud of during your time as dean?**

We managed to get our clinical program up and running and it took awhile to get that done. Eleanor Swift was an absolutely invaluable person to make that happen.... Now our clinical programs generally rank as being among the best in the country. I'm very proud of that.

**You've been at Boalt for your entire teaching career, since 1960. How has legal education changed over those years?**

Clinical education was a big change. And, of course, the curriculum has exploded with new subject-matter areas and new research methodologies, such as interdisciplinary work. As for teaching methodology, very few people are still doing what used to be known as the Socratic Method, where the professor always answers students' questions with another question. Now it's more of a problem approach, or a lecture and question approach.... There are also substantially more women and people of color who are law professors today than in 1960, and I think they offer a different role model for men and women students of all colors.

**In what ways have students changed over the years, and in what ways have they stayed the same?**

It goes in cycles. There was a period here when the Boalt students were very radical, much more so than the faculty. Later,

many were more worried about getting jobs. But a significant number of our students have always felt strongly about public interest law. I think that is reflected now in the work of the [Thelton E. Henderson] Center for Social Justice.

**You have written extensively on family law, women's rights, and diversity in legal education. In what direction is family law headed?**

I think that family law has been challenged by same-sex relationships both in adoption and the struggle for marriage equality. That's affected conflict of laws issues, such as full and faith credit questions, as well. A lot of rethinking has happened in both of those fields in recent years.

**What about the future of women's rights, in a legal context?**

It seems to me we're about to have to revisit the whole abortion issue, given the change in membership on the United States Supreme Court. And I think there's a kind of backlash around affirmative action efforts as well, which also affects women of color and women in general.

**You have suggested that marriage could become a kind of renewable contract. Can you talk about that?**

I don't really see that happening any time soon, but I've suggested that the partnership concept is not really working too well anymore given the amount of divorce. So I suggested a joint venture model for relationships, to serve different purposes that could arise at different times. I meant it more as a kind of challenge to thinking about attributes of the institution rather than incorporating it into the statutes.

**Do you think it's a model people may gravitate to over time?**

I do think with the no-fault divorce law that all states have now there really isn't a sense anymore that marriage is indissoluble. Maybe it is, and if people like it that way then fine, but the statistics don't show that. So I think the question is how do you start thinking about this? Do you think that every marriage that has not lasted a lifetime has failed, or do you see marriage in a more limited sense playing different roles in people's lives at different times?

**You coauthored California's no-fault divorce law in 1970. How has the law affected women's lives?**

I think it was a good idea. It was never undertaken to achieve equality between men and women; it was undertaken to try to get the blackmail out of divorce and I think it has accomplished that.... Marriage is no longer the only career open to women. Women are now more in control of their own lives both because of the no-fault divorce laws, and also because of laws prohibiting discrimination in employment which were developed around the same time.

**Do you think Proposition 8 will actually go into effect in California, and how will it affect the roughly 18,000 gay couples who were married here?**

While the question of the retroactivity of Prop. 8 is unresolved, I agree with the view Professor [Jesse] Choper gave in a TV interview before the election: It is unlikely that Prop. 8 will be

applied to marriages between persons of the same sex that were performed in California prior to its effective date.

**The Court recently finished its first term with John Roberts as Chief Justice. How will the Court's recent decisions affect the future of issues you've worked on over the years?**

The last term has produced what are from my point of view regressive decisions on both abortion and employment rights. And I think that there are cases out there waiting in the wings that hopefully won't get to the Court for awhile. The way the Court is constituted, it doesn't look as though anything is going to change very fast because the conservative justices are younger than the more moderate and liberal justices.

**How do you think the election of Barack Obama will affect the Supreme Court?**

I think any appointment to the Supreme Court by President Obama will strengthen the Court's moderate wing. But since neither the chief justice nor one of the three conservative justices is likely to resign from the Court, the vote count in close cases will most likely be unchanged, as long as Justice Kennedy remains active.

**Justice Ruth Bader Ginsburg has said she doesn't think the Court will overturn *Roe v. Wade*. Do you share her view?**

As she knows better than I, they don't have to overturn *Roe v. Wade*: They can just undermine it. I mean, the minute the Court starts encouraging states to pass legislation to protect women from making poor choices, they're going down the road of paternalism that will make it very difficult for women to exercise that right. Justice Ginsburg said that in her dissent in the recent late-term abortion case, *Gonzales v. Carhart*.

**Are you optimistic about the future of the legal profession?**

I think lawyers perform an absolutely critical function in society, providing access to the courts and counseling people about what their rights are and what they can demand. Guantanamo Bay is a great example of that. It took a long time to get the courts to examine that problem, but it's getting done now. I also think the whole notion of separation of powers is coming under closer scrutiny... and that questioning of authority is fostered by lawyers and will continue to be fostered by lawyers. On the other hand, I think the practice of law has become more and more time-consuming, making it much more difficult to have anything remotely approaching a private life.

**Many women drop out of the legal profession after having children. Do you think law firms will eventually change to better accommodate women?**

The women students in my Sex Discrimination course don't understand what the problem is. They just say that they

wouldn't work for a firm that didn't have a good policy along these lines. And it may be as more women go into the profession, they will have more bargaining ability to demand these kind of changes. That's how a lot of the law firms started doing pro bono work, not only because the bar associations required it, but because the students they wanted to hire insisted on it... When women start saying this is what we have to have in order to accept your job offer, I think firms will get the message.

*“There was actually a marvelous period there for a couple months when all four of the UC law schools had women deans. That didn't last.”*



**Is there a similar trend with women law professors?**

I think universities have gotten the message in terms of putting family-friendly policies in place. The academic life, as rigorous and competitive as it is, still doesn't have the 24/7 ambience that law firms have. At least we like to think it doesn't.

**You're currently working on a history of women law professors in the United States between 1900 and 2000. What prompted you to take on this project?**

I got the idea when I became president of the Association of American Law Schools (AALS). A journalist asked me if I was the organization's first woman president...I was actually the third. I started wondering about the women law professors who came before me, who they were and where they taught. I started making a list, and came up with only 14 women who preceded me who were full-time professors at schools that were ABA-approved and members of AALS...I went through the whole list and most people didn't remember who these people were, so I thought someone should tell their story, and why not me? I started researching, and their stories are absolutely fascinating.

**You are a much-beloved figure at Boalt. How does it feel to be an icon?**

I don't know about all that, but I'll tell you a story. We have an event for 1Ls and professors who teach courses in the spring semester that are open to these students as electives. They can talk to us about our courses, and not too long ago a student came up to my table and asked if there was a chair named for me. I told him indeed there was, and he said, "Wow, I thought you were dead!" I laughed and said, "Not yet!" So if that's being an icon, I'd be just as happy not to be one. ■





# ON THE MOVE

BOALT  
STUDENT  
ACTION  
FIGURES

## Beginner's Pluck

**H**amada Zahawi '08 knows something about starting from scratch. In 2004, when he and a few fellow law students decided to create the *Journal of Middle Eastern and Islamic Law (JMEIL)*, they had plenty of vision, smarts, and energy—but nothing else. “We had no faculty supervisor, no Web site, no symbol, no design, and no idea of how to solicit articles,” says Zahawi. “We didn’t even know how to edit.”

Zahawi sought advice from other journal editors on campus, among them Darius Graham '09 from the *Berkeley Journal of African-American Law & Policy*, Bob Kao '08 from the *Asian American Law Journal*, and Aurelio Perez '09, Giancarlo Urey '09, and Jose Lopez '09 from *La Raza Law Journal*. “We wanted to do it right so people wouldn’t think ‘Oh, that looks like a first journal,’” says Zahawi.

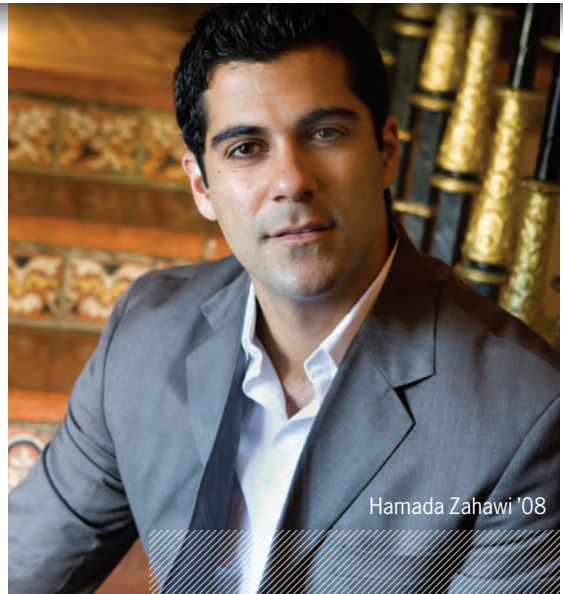
Recruiting a full staff who’d be passionate about the journal’s message was especially challenging. “This is a school that traditionally has about four or five Muslims in any given year,” says Zahawi. His search led him outside of Boalt’s walls, and he eventually recruited graduate students—and even five undergraduates—from other programs. “Each brought a little element of their own background and added insights from other disciplines.”

For Zahawi, the creation of *JMEIL* was all-consuming. “I wanted to show people the energy

and the utter determination that I had to make this work to the point where people thought that I was psychotic. I put like 99 percent of my time into this last year. I didn’t care what else happened!”

The resoluteness paid off, and in 2006 *JMEIL* received seed funding of \$5,000 from the Center of Middle Eastern Studies that helped the group garner accreditation and the right to use the Berkeley name on its journal, which lent credibility to its search for articles of merit. Current editor-in-chief Khalil AbuGharbieh '10 secured the journal’s first article, an 82-page piece defining Islamic legal histories—from Amr A. Shalakany, assistant professor of law at the American University in Cairo, under whom Khalil had studied in Egypt.

Other key players in the creation of the law journal include Arezo Yazd '09, former managing editor; Jennifer Yazdi, a UC Berkeley undergrad-

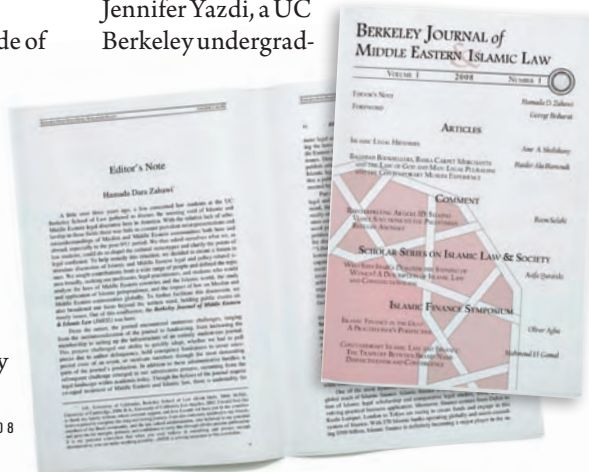


Hamada Zahawi '08

uate, graphic designer, marketer, and brander; Yaman Salahi, another undergraduate who created the Web site and proofread the entire final copy of the journal; and Amy Coren '10, current managing editor and lead organizer of *JMEIL*'s Islamic Finance conference.

*JMEIL* has already organized compelling symposiums. “One that we launched was the Current Affairs Symposium. Two years ago we held one entitled ‘Iraq: Four Years of Freedom,’” says Zahawi. “This year we put something together that addressed the impact of war on women.” *JMEIL* also teamed up with the law school’s Robbins Collection, an international center of comparative legal and historical studies, to create the Scholar Series on Islamic Law & Society, and the Islamic Finance Symposium.

*JMEIL* is one of only two U.S.-based law journals dedicated to Middle Eastern, Islamic, and comparative law scholarship. —Alison Cebulla





Sarah Barker-Ball '10

## Ball of Fire

What's Sarah Barker-Ball's idea of a good time? Simultaneously serving as development director for the *Ecology Law Quarterly*, planning events for the Berkeley Energy & Resources Collaborative (BERC), working as an extern at the California Energy Commission, and coordinating an IdeaLab for Green Collar Jobs. Oh yes, and attending classes and hitting the books as a 2L at Boalt Hall. "It's definitely been hard work, but it's so great. I'm having fun. I can't believe it's already a third over."

Barker-Ball seems hard-wired for hard work. After snagging an undergraduate degree in physics from Stanford, she joined her grandfather's company, Energetix, which specializes in small-scale wind, solar, and hydro-power renewable energy innovations. "I worked with his patent attorney and I thought, 'Oh, I can do that!' I came to Boalt because it's a leader in intellectual property law."

Barker-Ball intends to pursue a career representing clean technology—or *cleantech*—companies. She groans when asked to define cleantech. "There isn't an official, agreed-upon definition. Clean and green are pop-culture words that are thrown around like nothing else. People use the term in a very vague, broad-scale way but I would define it as technology that either generates renewable energy or

helps us use energy more efficiently."

The vice president of law on BERC's leadership team, Barker-Ball has helped to develop three new projects: BERC Innovative Solutions, an interdisciplinary consulting program made up of UC Berkeley graduate students; Cleantech to Market, a partnership between scientists at the Lawrence Berkeley National Lab and interdisciplinary teams of BERC students; and a cleantech solutions course.

"Businesses are adopting clean or green or sustainable solutions," she says. "We're trying to understand that process a bit more and lend what expertise we have. The great thing about BERC is that it's entirely interdisciplinary. Projects done through a collaboration of business and science and policy or another field, what they can accomplish is more meaningful to me than a paper written from a single perspective."

Though Barker-Ball is a devout optimist, the problems of long-term sustainability can test her faith. She notes that goals set by institutions and governments to reduce waste and carbon dioxide emissions aren't stringent enough given the reality of the global warming crisis. And then there are those who are getting left behind with the rise of the new green economy. "We have to make sure our green policies address social and environmental justice goals as well," says Barker-Ball. —Alison Cebulla & Jared Simpson

## Impartial to the Law

When Jeremy Brown '09 joined the Samuelson Law, Technology & Public Policy Clinic's Video Surveillance Project last year, he found himself wedged between two clashing agendas: a vigilant war on crime and terrorism that utilizes high-tech surveillance, versus a desire to protect individual privacy.

"Technology moves faster than judicial law," says Brown. As he points out in an article he penned for the *Berkeley Technology Law Journal*, it took nearly 100 years of wiretap surveillance before the U.S. Supreme Court ruled that warrantless wiretapping violated the Fourth Amendment.

The objectivity needed for balancing civil rights concerns with the legitimate needs of law enforcement comes easy to Brown. "I was a journalist before coming to Boalt, covering immigration issues in South Texas. I had to remain neutral," he says.

In the absence of laws governing video surveillance, Brown and the Samuelson Clinic provided the next best thing: policies and procedures for using the systems responsibly. They worked directly with the Richmond Police Department to craft their guidelines, and they also developed a how-to guide for general dissemination.

An interest in direct client service led Brown to join the East Bay Community Law Center, where he advocates for welfare recipients. He recently dusted off his journalist's hat to write a press release decrying a local county's decision to deny benefits to an eight-year-old boy.

Brown's impartiality wanes when it comes to Boalt's clinics. "I'm a cheerleader for them," he admits. "The practical offerings and the opportunity to work in the field are what drew me to the school. I never wanted to have parlor-game debates about the meaning of the law." —Sharon Rohwer



Jeremy Brown '09





# ON THE SHELVES

NEW AND NOTABLE WORKS FROM THE BOALT COMMUNITY

**BOOK: ANDREI CHERNY '03**

## Chocolate and Awe

In 1948, the children Hitler had probably thought would be the first generation of the Thousand Year Reich were scrambling for Hershey's bars amid the rubble of Berlin.

Tied to makeshift parachutes and dropped from American C-54 transport planes, the airborne goodies are charmingly emblematic of the Berlin Airlift—a massive and stunningly daring humanitarian project that has no equal. In a yearlong effort involving 277,000 flights, U.S. pilots delivered 4.6 billion pounds of food, coal, and other supplies into the Soviet-blockaded city, capital of a nation many Americans still regarded with hostility and suspicion.

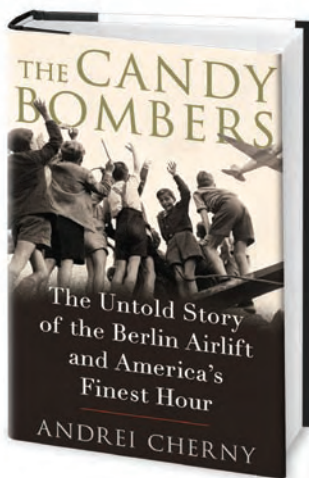
*The Candy Bombers: The Untold Story of the Berlin Airlift and America's Finest Hour* tells the gripping tale of how a combination of steely conviction, foreign-policy calculation, and plain old dumb luck helped President Harry Truman, Defense Secretary James Forrestal, and others to succeed in halting the Soviets' designs on central Europe, without a single shot being fired. It's a fascinating account, but author Andrei Cherny '03 also views its consequences for our later relationship with Europe as an important geopolitical lesson. Cherny—founder of the progressive journal *Democracy*, one-time speechwriter for Vice President Al Gore, and an “unofficial advisor” to the Obama campaign—sees the saga of

the Berlin Airlift as something of a template for any future hearts and minds campaigns.

“In confronting the Berlin blockade,” Cherny writes in the introduction, “America went to battle against a destructive ideology that threatened free people around the world. In a country we invaded and occupied that had never had a stable democracy, we brought freedom and turned their people's hatred of America into love for this country, its people, and its ideals. Never before—or since—would America be so admired around the world and stand so solidly on the side of light.”

It's a point that underscored Cherny's appearance on Comedy Central's *The Colbert Report* in May 2008. “Are you saying that humanitarian aid is the way for us to win the hearts and minds of the world?” asked host Stephen Colbert with his trademark incredulity. “That doesn't instill fear.” Exactly. With *The*

*Candy Bombers*, Cherny seems to suggest what might have been in Baghdad, if only we'd rained down sustenance and sweets instead of shock and awe. —John Birdsall



**The Candy Bombers: The Untold Story of the Berlin Airlift and America's Finest Hour**

**By Andrei Cherny**

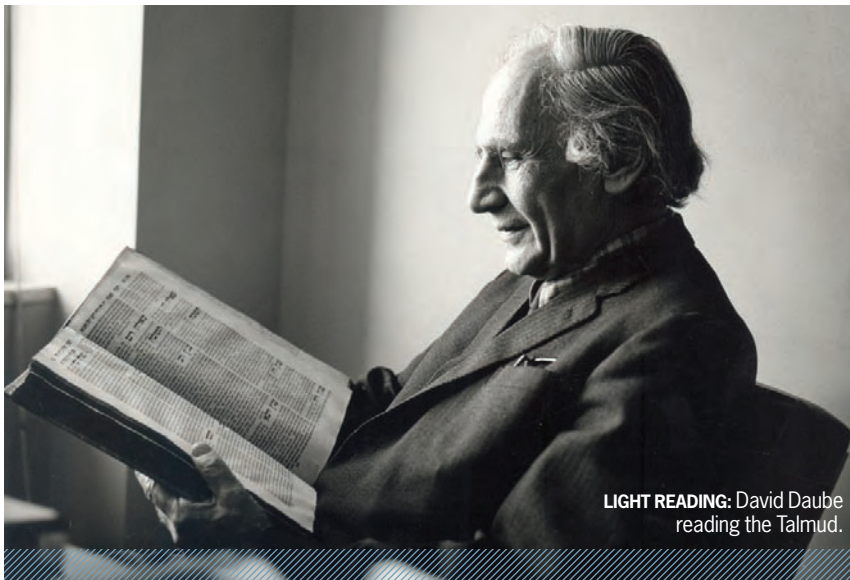
Published by G.P. Putnam's Sons, 2008



**SWEET TALK:** Author Andrei Cherny attempts to win the heart and mind of Stephen Colbert.



COMEDY CENTRAL



LIGHT READING: David Daube reading the Talmud.

**BOOK: DAVID DAUBE. EDITED BY CALUM CARMICHAEL**

## A Man for All Topics

According to Boalt law library director Kathleen Vanden Huevel, “Everyone who knew David Daube became his student, whether they were leaders of countries or people who slept at the Transbay terminal.” During his Berkeley years, it wouldn’t have been unusual to see Daube, a friend of the likes of Winston Churchill, chatting intensely with a street musician playing for food money. Cornell professor Calum Carmichael, who was once Daube’s student at Oxford, is the editor of this extraordinary collection of journal entries. In his introduction, Carmichael—who also edited a six-volume series devoted to Daube’s work—writes with passion of his former teacher’s “extraordinary humanity, which encouraged people to rightly view him as the great humanist of the law.”

A professor at Boalt Hall from 1970 to 1981, Daube also served as director of the law school’s Robbins Hebraic and Roman Law Collections. He began this journal of periodic entries—which he called his jottings—in 1972 and continued through the early 1990’s. This compilation reveals a voracious and sweeping intellect that, as Carmichael says, “... considers issues that simply do not occur to other people.”

Written with “a dazzling agility and

originality of mind,” as Carmichael says, the jottings range from a few sentences to four pages and include esoteric scholarly musings, personal—sometimes intimate— anecdotes, and witty hits on the often raunchy pop culture of the 70s. In four consecutive pages of this collection, you’ll find Daube’s take on a lavish night out in Guatemala with its national luminaries, hierarchical conduct rules for Yale Law School professors, a dream sparked by “an intense and sad conflict” with his wife, and even a mini-review of the porno chic film, *Deep Throat*. (He found it boring).

A Jew born in Germany in 1909, Daube spent World War II and its aftermath in England on the faculties of Cambridge, Aberdeen, and Oxford. His influence was such that Adolph Hitler put him on a list of people to be killed if Germany conquered Great Britain. “We are all of us survivors all the time; everything that is, is a survivor relative to what has fallen by the wayside,” writes Daube. “Naturally, having escaped from Hitler’s clutches myself, I am a bit more alive to the whole business than the average guy.”

—Andrew Cohen

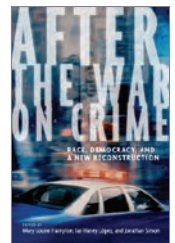
**The Jottings of David Daube**  
**Edited by Calum Carmichael**  
 YBK Publishers, Inc., 2008

**BOOK: MARY LOUISE FRAMPTON, IAN HANEY LÓPEZ, & JONATHAN SIMON**

## Law and Disorder

A new collection of essays edited by three Boalt experts suggests that we are all collateral damage of the decades-old war on crime.

After the War on Crime: Race, Democracy, and a New Reconstruction is a collection of essays that probe the past and present of a doomed policy. Mary Louise Frampton—faculty director of Boalt’s Thelton E. Henderson Center for Social Justice—and Boalt professors Ian Haney López and Jonathan Simon rounded up a dozen voices that together expose the legacy of what the editors call one of the most far-reaching social experiments in American history. Among the contributors are Todd Clear, professor of criminology at John Jay College in New York City, and Jesse Allen, associate counsel at the Brennan Center for Justice, NYU School of Law.



The war on crime was forged during the Nixon era as part of the Southern Strategy, the editors assert, that stoked the fears and resentments of white voters against African Americans. In the decades following, the war brought aggressive policing, mandatory sentencing, and longer prison terms. “The war on crime allowed the nation to again turn hostile to racial minorities,” the editors write, “without having to explicitly break support for civil rights.” By the late 90s, more than two million mostly minority Americans were imprisoned.

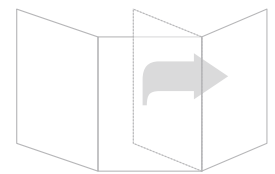
Can we repair the damage? In the essay, “Smart on Crime,” San Francisco District Attorney Kamala Harris hypes public health and environmental justice prevention strategies that local prosecutors can support. The editors foresee an arduous reconstruction, but the effort just might reinvigorate American democracy itself. —J.B.

**After the War on Crime: Race, Democracy, and a New Reconstruction**  
**Edited by Mary Louise Frampton, Ian Haney López, and Jonathan Simon**  
 Published by New York University Press, 2008





# BOALT HALL



OPEN THE GATEFOLD

## *Under Construction Since 1951*

**D**espite the festive atmosphere at the Darling Courtyard groundbreaking ceremony on October 8, construction foreman Chris Edley was all business. In a yellow plastic not-so-hard hat, he directed the crew of three groups of Boalt former deans, staff, alumni, and students who began the

excavation for the future South Addition. Edley warned one group “not to go deeper than 48 feet,” and urged another to put some back into their work: “C’mon, we’re never going to get it done at this rate!”

But when it is done, the South Addition will be an elegant unifying hub of the many renovations underway

to accommodate the explosive growth of Boalt’s faculty and research centers.

The three-level structure—one above ground and two below—will bring visually striking changes to Boalt, and provide a dynamic new home for the law library’s unique and extensive collection. The design includes huge skylights, open stair-

### REMODEL: 2005–2006



Clockwise from top left: main reading room, modernized large lecture room, new seminar rooms





ways, and efficient compact shelving—creating more space for student research and reading rooms.

The South Addition will feature an 8,500 square-foot ground-level pavilion that houses a café, student lounge, and state-of-the-art classroom. Walkways will connect a roof-deck garden to the Steinhart Courtyard and the library's main reading room, and a newly landscaped entryway will create a green and vibrant transition from the complex to the street.

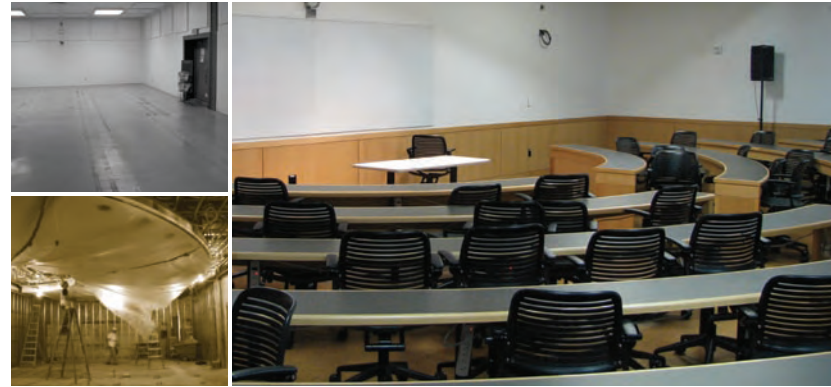
### A Darling Demolition

The demise of Darling Courtyard added a bit of bittersweet to the ceremony. Edley recalled the many activities—pitching pennies, playing Frisbee, and just hanging out—that have made the small patch of green a favorite gathering place for law students over the past several decades. But, he added, Boalt “can’t be the great law school of tomorrow that we want to be unless we have world-class facilities.... The program has far outgrown our current walls.”

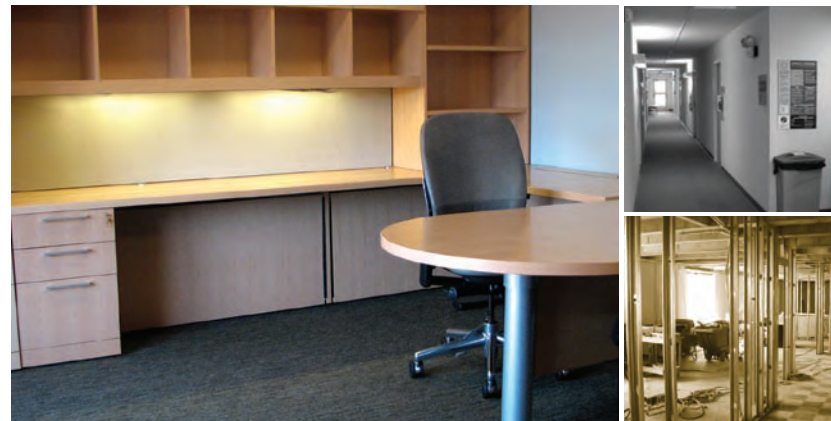
In a shady corner, a four-piece band played traditional jazz while attendees gobbled up tri-color tortilla chips with chipotle-infused guacamole and mango salsa fresca, and miniature caprese sandwiches (this was a California groundbreaking, after all). Some posed for photos wearing commemorative tee-shirts that read *Berkeley Law: Under Construction Since 1951*. Former law school deans Herma Hill Kay, Sanford Kadish, Robert Berring, and Ed Halbach were on hand, along with former UC Berkeley Chancellor Michael Heyman.

In the past four years, Boalt has expanded its faculty by 25 percent while establishing six new research centers, and continued growth is planned. Before the first South Addition shovels hit dirt, the school created four modern seminar rooms, renovated three lecture halls, and restored a library reading room. Over the summer, Boalt also added faculty offices in Simon Hall and created the Koret Interactive Learning Center, a classroom and state-of-the-art video-conferencing facility.

## REFRESH: 2007–2009



The Koret Interactive Learning Center will offer state-of-the-art video conferencing in 2009.



Remodeled faculty offices in Simon Hall, 2008



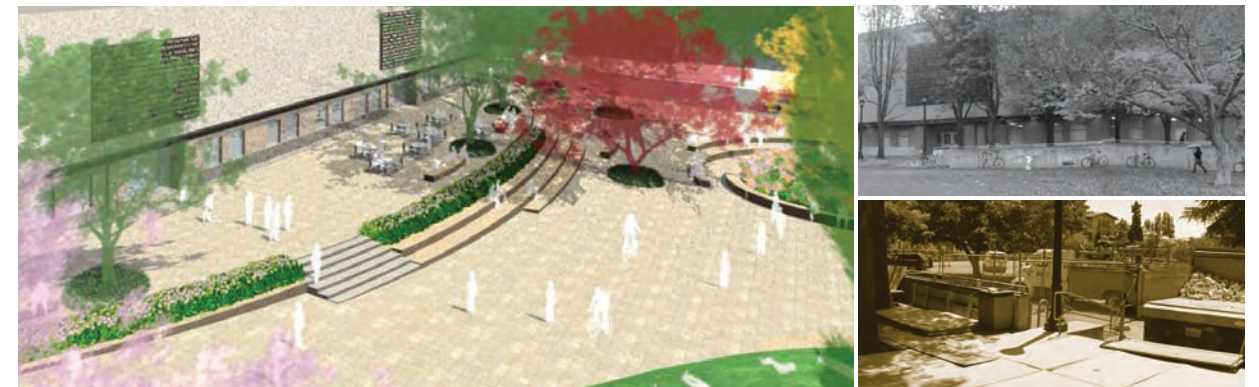
Once a necessity, the phone booths will be retired.



Moot courtroom. Estimated completion: January 2009



New student center with offices for journals and student organizations. Estimated completion: 2009



View of the West Terrace after reconstruction and expansion. Estimated completion: early 2009

Other ongoing or planned projects include upgrading classroom technology, developing collaborative space for students on the west terrace level, and renovating the west terrace itself to reclaim usable outdoor space adjoining College Plaza.

**Caution: Students Working**  
Work on the project is scheduled to

last about two years, with the building ready for move-in around summer 2011. Edley acknowledged that construction would be periodically disruptive, but said Boalt is taking every step to minimize inconvenience and exposure to noise and dust.

“I hope that, as we as a campus community bear that disruption in the next many months,” he said,

“you’ll have a sense of progress.”

The loudest work will be done between midnight and 8 a.m. Sound-dampening glass and walls are being installed in classrooms closest to the project site, along with modernized ventilation and air conditioning. Sound-dampening windows will be installed in the main reading room of the law library, and the North

Addition reading room won’t be affected by construction noise.

Like all Boalt construction projects, the South Addition follows UC Berkeley green building practice. The law school is pursuing Leadership in Energy and Environmental Design certification to ensure an environmentally sound and healthy place to work.

The building’s total cost is estimated at \$90 million, paid for with bonds secured by donor gifts and future student fees. Donors who want to support the South Addition can contribute to Boalt’s general campaign fund, and may receive a naming opportunity within the building in recognition of gifts at certain levels. —*Andrew Cohen*



## RENEW: SOUTH ADDITION 2010–2011



South Addition from above and to the southwest



The southeast corner; café entrance is at left



Walkways will connect a rooftop garden to the main reading room



The southeast corner with rooftop garden and café and lounge entrance

JIM BLOCK (GROUND-BREAKING)



**GIVE ME A BREAK:** An exhausted Dean Edley is supported by former UC chancellor Michael Heyman and former Boalt dean Sanford Kadish. Other former deans from left: Herma Hill Kay, Bob Berring, Ed Halbach



**STYLE COUNSEL:** Professor Jeff Selbin models a commemorative tee-shirt



**LEADING BY EXAMPLE:** Dean Edley with (from left) Nan Joesten'97, Danielle McMillian '10 and David Abella'10 BHSA, Blake Holland '11 of the Building Committee



# INSIGHT: Why We Must Mentor: The Key to Ensuring the Succession of Leadership

BY HOLLY FUJIE '78



*“Each of us can make the difference between success and failure for someone who needs guidance and a sympathetic ear.”*

**A**fter I graduated from Boalt in 1978, I entered a firm of 75 lawyers that had only a few women—none of them partners—and no other minorities. The firm did its best to be welcoming, but it was a daunting experience for a 22-year-old woman with no experience in business. And, as an Asian-American, I faced the usual inadvertently isolating remarks, like “You know, I really love Japanese food!” and “We don’t really think of you as a minority!” At the time, I would have loved to have someone to talk to about these experiences and to help me to deal with the challenges of being an Asian woman lawyer in a male-dominated firm, but I didn’t know anyone in the same circumstances. I had to cope as best I could on my own.

**DOING YOUR DUTY.** That experience helped foster my belief that one of the most important duties for those of us who have successful law careers—who have made it to partnership or the higher ranks in the corporate world or government—is to help others to achieve this same success. I have been very lucky in my career and consider it a great honor to be allowed to serve as only the third woman and the first Asian-American president of the State Bar. And I consider it my duty as a leader in the Bar to help others to succeed in the profession as well.

Through various mentoring programs—as well as just through meeting law students and young lawyers—I have picked up dozens of mentees whom I’ve tried to help navigate the labyrinth that is the practice of law. Being a mentor does not take a lot of time—I have the occasional meeting over lunch or coffee—but most of my mentoring is accomplished through email messages and phone calls.

I also provide mock interviews for law students, including reviews of their resumes. A

number of my law student mentees are Asian American, and I can help them deal with cultural issues that can have detrimental effects on their interviewing skills and their future work as lawyers.

**CULTURE CLUES.** For example, many Asian Americans—while extremely articulate and gregarious in their personal lives—are acculturated to be more deferential than their peers to those in authority (Yes, even to those second-year associates who interview on campus!). As a result, even fourth-generation Asian Americans can act so quiet and monosyllabic in their responses to questions that an interviewer might doubt their ability to speak up in court or with a client. I tell them that, yes, it is acceptable to ask a lot of questions and maybe even to interrupt an interviewer with an enthusiastic response. Many of these mentees have gone on to success in interviews and in their careers, and it gives me great personal satisfaction to watch their professional growth.

**HELP THEM, REWARD YOURSELF.** I strongly believe that all of us in the law—particularly those of us from outside the mainstream culture who benefited from the fantastic education we got at Boalt—have an obligation to assist those just starting their careers in the law. Each of us can make the difference between success and failure for someone who needs guidance and a sympathetic ear. Become a mentor, and you will find that the rewards that you reap from the experience will more than justify the time it takes.

*Holly J. Fujie '78 is the current president of the State Bar of California and a shareholder in Buchalter Nemer's insurance industry and litigation practice groups in Los Angeles. She speaks frequently on issues of insurance coverage and diversity in the legal profession.*