

boalt hall

transcript

*The
Campaign for
Boalt
Hall*

Aperture



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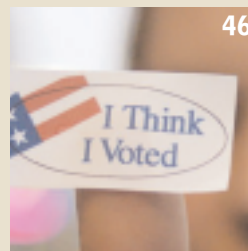
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Boalt Hall Transcript

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Dean's Message



Presidential speechwriters suffer the State of the Union ritual: taking stock and reporting that the State of the Union is “strong but we face challenges....” For veteran observers, it’s amusing to see how, in successive years, chief executives try, and usually fail, to avoid such clichés. My problem is similar.

In pausing this season to take stock, I’m struck both by the confidence we on campus have in the directions and goals we’ve laid out, and by the break-neck pace of our progress. Most important, for the long term, are the giant steps we’ve made toward expanding the faculty by 40 percent; and in completing preliminary designs for a major new building, launching and strengthening several major multidisciplinary research centers, and initiating a major restructuring of our financial aid programs.

Our faculty ranks were augmented this fall by five spectacular new colleagues, with more on the way. The new Berkeley Center for Law, Business and the Economy and the even newer Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity are hitting the ground running on some significant projects. We are making tremendous strides on plans for the new building, which we will share with our neighbors—the Haas School of Business. The new building fits within a

design for a renaissance of the southeast quadrant of the campus that includes renovation of Memorial Stadium.

The progress we’ve made, however, will grind to a standstill without resources. So in some respects the most critical development is our new capital campaign—The Campaign for Boalt Hall, the centerpiece of an unprecedented effort to invest in the law school and build on our greatness.

This campaign is about leadership at the leading edge—in lawyer preparation, in research and in making a difference in the private and public spheres by harnessing our uncommon excellence for the common good. But this all depends on your generosity. (Yes, yours.)

On a somber note, the devastating consequences of Hurricane Katrina remain and will be felt for years to come. Joining other law schools nationwide, we welcomed 18 displaced students from Tulane Law School this fall as visiting students at Boalt. Their adjustment was remarkably smooth, thanks in no small measure to the outpouring of support they received from students, faculty, staff and alumni. In this issue we also talk about how alums, such as Peter Benvenuti ’74 and his wife, Lise Pearlman ’74, and faculty are pursuing the myriad issues raised by the disaster. Professor Laurel Fletcher shares her observations on international human rights law norms, comparing the plight of Katrina victims to the treatment of tsunami survivors. Lecturer Jeff Selbin describes a model for legal services and disaster relief that the East Bay Community Law Center is providing to agencies in Mississippi. Professor Steve Sugarman weighs in on insurance matters while Professor Jonathan Simon ’87/’90 looks at topics of race and equality. Professor Dan Farber discusses disaster law. Lecturer in Residence Maria Echaveste ’80 and I share some perspectives based on our work with FEMA during both Clinton administrations.

In other research arenas, faculty members continue to direct their intellectual firepower at leading concerns facing the public and private sectors. Professor Deirdre Mulligan presents some disturbing conclusions about voter disenfranchisement uncovered in her electronic voting research project. Meanwhile, Visiting Professor Eric Talley offers valuable insight into the ongoing debate over Sarbanes-Oxley.

I am enormously proud of the law school and equally excited about its prospects. While our needs are great, we have tremendous assets that include a loyal community of alumni and friends. We seek your partnership in building Boalt’s future.

A handwritten signature in black ink, appearing to read "C. Edley". The signature is fluid and stylized, with a large initial "C" and a long, sweeping underline.

CHRISTOPHER EDLEY, JR.
DEAN AND PROFESSOR OF LAW

Letters to the Editor

Boalt Leads

I would like to convey my utmost joy in receiving this summer's *Transcript*, which is the best issue that I have read since graduating from Boalt in 1967. This *Transcript* gave me a sense of what Dean Edley and the faculty are about, and where they and Boalt are heading. The remarkable research being done at my alma mater at this time of social discord, the breadth and complexity of the hunt for knowledge by its institutes, and the commitment to practical and progressive applications of the law, truly impresses me. I feel great pride in now seeing Boalt as a leading force in legal thinking on major social issues. Thank you for bringing my heart back to my alma mater.

—David Averbuck '67

However, the article in the Summer issue surprised me when reporting that a New Voices Fellowship had been awarded to Noura Erakat (a Boalt graduate) to develop a litigation project on behalf of Palestine Human Rights. She is also to serve as a grass-roots organizer for the US Campaign to End the Israeli Occupation. I have always understood that a lawyer, particularly one working in an academic environment, was meant to approach a particular problem objectively and with an open mind. It is clear from the article that Erakat has already decided on both the problem and the solution and all that is required is to work out the appropriate means to achieve her end. This is not an approach which I would have expected Boalt to foster.

—Charles Corman '60

EDITOR'S NOTE: Ms. Erakat was awarded a fellowship by the New Voices Foundation, not the law school, to pursue her project.

"The 'War Against Terrorism' and the Rule of Law"

As a Boalt alumnus (class of 1978), I read with great interest a recent article in the *Transcript* by Professor Farber— "The 'War Against Terrorism' and the Rule of Law." The article was of concern to me because I serve as the Terrorism Litigation Counsel in the Department of Justice, with responsibility for supervising and coordinating terrorism-related litigation for the United States. In addition, I teach a course in terrorism law at George Washington University Law School.

The article described the Supreme Court holdings in *Rasul* and *Hamdi* and the litigation concerning those detained

by the United States armed forces as enemy combatants. Professor Farber concluded: "As litigation in the lower courts has continued, most district judges have applied *Rasul* and *Hamdi* with great vigor. Lower courts have extended *habeas* jurisdiction even beyond Guantanamo; they have demanded compliance with the Geneva Conventions, and they have questioned the government's compliance with due process. Only a single judge (in *Khalid v. Bush*), who seemed determined to interpret away the Supreme Court's rulings, has ruled for the government in a substantial way."

I was very surprised to read this statement, which is plainly wrong.

All of the post-*Rasul* enemy combatant litigation involving Guantanamo detainees has proceeded in federal district court in Washington D.C., before various judges. In those cases, Judge Leon ruled first and dismissed the claims by the *habeas* petitioner detainees, concluding that they had not stated any valid *habeas* claim on the merits. Shortly thereafter, Judge Green ruled the opposite way. Both cases are now before the D.C. Circuit, which heard arguments on September 8. No other district judge handling these cases has ruled on the merits of the Guantanamo petitioners' claims.

In the related litigation brought by petitioner Hamdan (who is also detained in Guantanamo, and has been charged before a military commission with war crimes), Judge Robertson ruled in Hamdan's favor on various claims. However, Judge Robertson was then reversed unanimously by the D.C. Circuit, which held that the Geneva Conventions did not provide Hamdan with the rights that he asserted, and that he could not in any



New Voices Fellowship

I was an overseas student at Boalt some 40 years ago and have continued to watch with pride and pleasure the development and progress of the Law School.

event attempt to enforce the Conventions through litigation in U.S. courts. Thus, the D.C. Circuit completely vindicated the government's legal position on the merits. Hamdan has sought Supreme Court review, which the government has opposed. In early November, the High Court granted cert in the case. It will likely be heard in March 2006.

In the most recent related development, the Fourth Circuit has in the *Padilla* case upheld the government's authority to detain U.S. citizen enemy combatants. In that case, again, the court of appeals unanimously reversed a contrary decision by a district judge.

Thus, with regard to enemy combatant and related litigation, federal judges have actually been ruling in favor of the government's positions. Accordingly, Professor Farber's article did a disservice to your readers, who have been given a seriously mistaken impression of what is happening with regard to the reaction of the federal courts to the enemy combatant legal arguments being made by the United States. Further, I note that I have been heavily involved in many criminal and civil post 9/11 cases involving laws punishing terrorist financing and support, requests for disclosure of sensitive government information, and the validity of new government anti-terrorism security measures.

In this litigation, the Justice Department has been urging the courts to balance the enormous public interest in security against terrorism with the equally important public interest in protection of civil liberties. The government has been overwhelmingly successful in these cases, winning nearly all of them before a spectrum of judges considered liberal and conservative. Thus, we have been making responsible legal arguments in support of various anti-terrorism efforts, and have been highly successful before the courts in our efforts.

In sum, contrary to what Professor Farber stated, the rule of law is very much alive in the area of enemy combatant litigation, as well as in the anti-terrorism field generally, and the federal courts are finding in the vast majority of cases that the Department of Justice is taking correct legal positions. It seems to me that this is a much more interesting story, which the Boalt alumni should have heard from Professor Farber.

(This letter is written in my personal capacity as a Boalt alumnus—I have mentioned my position at the Department of Justice solely in order to explain why I am knowledgeable about the subject here.)

—Douglas Letter '78

Professor Daniel Farber Responds

Dear Mr. Letter:

You're obviously quite right about the recent decisions, although my recollection was that Khalid involved only a few of the detainees. Because of the delays in the publication process, the article was actually written some weeks ago. The two court of appeals decisions that you mention are both very recent—indeed, the Fourth Circuit's Padilla decision came out after the issue had already been published and mailed. One of the problems about addressing such topical issues is that legal events outpace the more stately process of publication. As you say, it will be very interesting to see what the Supreme Court will do with these decisions. I gather that the government's claims against Padilla have shifted substantially in a way that makes them less vulnerable to challenge, and I do not have a strong view about the applicability of the Geneva Convention to the charges against detainees.

Of course, all of this is really beside the main point of the article, which was not about the validity of the detainee's specific legal claims but about the question of whether they were protected by the rule of law at all. It seems to me that the question of whether the detainees exist in a legal black hole is much more important than the specifics of the procedures used against them.

—Daniel Farber,

Sho Sato Professor of Law

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Disputing the Alternative

Reference is made to your article, "Disputing the Alternative" (Summer 2005, Vol. 38, No. 2). It's time to amend CCP 170.6 to include members of the District Court of Appeals.

—Draper B. Gregory '60

Pitching Pennies Redux

As a Boalt 2002 grad, I was surprised to see that the Then/Now [Spring 2005 column] referred to pitching pennies as “quaint” and suggested it was somehow no longer practiced. My classmates and I played “leaners” outside of Boalt Hall on a nearly daily basis from 1999-2002, and now I play it with alumni here at Wilson Sonsini during our too-infrequent quiet moments.

The object of leaners was to throw quarters at a (specific) wall in the courtyard. (S)he whose quarter landed closest to the wall took all the quarters. Ricochet is allowed. If one’s quarter leans against the wall (a “leaner” that gives the game its name), every other player gives that player a dollar, in addition to her/his winning the round.



The late Nicholas Dubsick '38 (in sweater vest) pitches pennies with classmates.

I’d appreciate your letting the older alumni know that the tradition was alive quite recently. The most prolific players (if I might say) were me, Joshua Martin and Alexander Clark, each class of 2002.

I credit my knowledge of the game to Alex, who got me into it. I can think of literally dozens of other students who played, however.

—Michael Lousteau '02

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Thirsting to Make a Difference:

Boalt Clinic Wins Dominican Rights Case

Roxanna Altholz '99 got a call one morning in October that, in a sense, she had been waiting for since 1998.

Back then, as a student in Boalt's new International Human Rights Law Clinic, she had helped file a discrimination case on behalf of two girls born in the Dominican Republic to Haitian immigrant parents. This fall, having returned to Boalt as a lecturer in residence in the clinic, she awaited the verdict in the case from the Inter-American Court of Human Rights in Costa Rica.

On October 7, the call came. The court agreed with the clinic's argument that the girls had been illegally denied citizenship and other basic civil rights. The Dominican Republic was ordered to pay a small sum in damages, apologize and end discrimination against thousands of Haitian immigrants and their children.

"I was ecstatic," said Altholz. She phoned her co-counsel in the Dominican Republic. "They began yelling, thanking God and saying they couldn't believe it," she said.

The ruling was also gratifying for more than 30 current and former clinic students who worked on the case. "This has been the crowning piece of litigation for the clinic thus far," said clinic director Laurel Fletcher. "This has been the clinic's baby."

The clinic was launched in 1998 by Professor Emeritus Carolyn Patty Blum, an authority on human rights law. One



Professor Laurel Fletcher (front)
and Lecturer in Residence
Roxanna Altholz '99

Jim Block

of her first moves was to hire Fletcher, a 1990 graduate of Harvard Law School.

Less than two months after the clinic opened, Fletcher traveled with four students to the Dominican Republic to investigate the situation of the Haitian community there. "We are not going to be able to solve problems sitting in Berkeley," Fletcher said. One of the students was Altholz, a native of South Africa, who was then a Boalt 2L.

They found Haitians living in desperate poverty and in a society largely hostile to them. Perhaps worst was the plight of Dominican-born children of Haitian descent, denied birth certificates and access to schooling. The clinic, along with the Association of Women of Haitian Descent and the Center for Justice and International Law (CEJIL), decided to sue the government on behalf of two girls, then ages 1 and 13.

The clinic's work on the case received major support from alumni Werner Wolfen '53 and Stephen D. Gunther '65. The clinic's involvement climaxed in

March when Altholz, who was active in the case after graduation as a CEJIL attorney, traveled to Costa Rica with Fletcher to argue the action before the Inter-American Court.

Despite her satisfaction with the result, Altholz has no illusions that the fight is over. The Dominican government initially rejected the decision. To keep attention on the issue, Altholz and clinic students mounted a media campaign in both the Caribbean and the United States.

Meanwhile, the clinic is engaged in many other issues. A current project: helping redraft rules of procedure for the African Commission on Human and Peoples' Rights, a human rights body active throughout Africa. It's just another example of how the clinic meshes with students' fervor to put their Boalt education to work in the real world, Fletcher said.

"Students are thirsty for this," she said. "They want to make a difference."

—HARRIET CHIANG

www.law.berkeley.edu/clinics/ihr/c

“Where I Belong,” Says Boalt 1L

Growing up in Nigeria, Samson Asiyambi '08 knew life in a society that stifled free expression. He saw anti-government riots in the streets of his hometown, Lagos. He experienced the chilling reality of a regime that would go to any length to silence opponents, such as the 1995 hangings of dissident Ken Saro-Wiwa and eight other human rights activists.

“When you live in such regimes, they don't tolerate political activism,” said Asiyambi, who moved with his family to Houston shortly before he turned 15. But his childhood left an indelible mark, instilling a political consciousness that

eventually led Asiyambi to apply to Boalt Hall. Today, at age 24, Asiyambi is one of the 264 students who make up Boalt's class of 2008. Selected from among 7,535 applicants, members of the 1L class come from 38 different states and eight countries of citizenship. Their credentials include 12 Ph.D.'s, 40 master's degrees, five Fulbright Fellowships, and a host of other distinguished awards.

Originally intent on an academic path focusing on international relations, Asiyambi shifted his sights to law school while completing his undergraduate degree in 2004 at the University of Texas at Austin. He was a double major in economics and government. Asiyambi concluded that he wanted to pursue

international human rights work, a decision he traces to his formative experiences in Nigeria. “Law is a more pragmatic way to achieve what I want to do,” he said.

Boalt captured Asiyambi's attention early on. He was drawn by the school's academic reputation, its Bay Area location and UC Berkeley's legacy as the birthplace of the Free Speech Movement. But it was Asiyambi's first visit to Boalt for Admit Week last April that sealed his decision. Hosted by members of Boalt's Law Students of African Descent, Asiyambi encountered friendly students and a collegial environment. “The students made an

impression on me,” he recalled. He made up his mind: “This is where I want to go. This is where I belong.”

Since starting school in August, Asiyambi has plunged into a course load of Torts, Criminal Law, Legal Research and Writing, and Civil Procedure, and has become active with Law Students of African Descent and other student groups. He's developed an unexpected zeal for civil procedure and an appreciation for the intense concentration demanded of legal study. “One word, one sentence can change the whole interpretation of what a case is saying,” he observed during an afternoon break at Boalt's Café Zeb.

Overall, the 1L class prepared for law school by earning degrees in 75 different undergraduate majors at 94 institutions. UC Berkeley, UCLA, Stanford, Yale and UC San Diego top the list of undergraduate alma maters. Women make up 58 percent of the class, and 30 percent of the students are people of color. They earned a median GPA of 3.81 and a median LSAT score of 166 (94th percentile). The students bring a wealth of experience as company founders, engineers, securities and financial analysts, intercollegiate debaters, community volunteers, a Navy SEAL and even a hula teacher. Several students served as interns and legislative assistants in state government and on Capitol Hill.

The 1L class also is imbued with culinary talent. One student worked as a personal chef for a noted celebrity while another was a chemical engineer who helped brew a nationally recognized craft beer.

—ABBY COHN

www.law.berkeley.edu/admissions/welcome/facts/profile.html



Samson Asiyambi, Class of '08

Jim Block

Library Love Affair, or, How Kathleen

New library director Kathleen Vanden Heuvel '86 has enjoyed spending time in libraries since she was a child.

“It wasn’t so much that I was a bibliophile,” said Vanden Heuvel, the oldest of eight children from Madison, Wisconsin, remembering when her library love affair began. “I loved that you can ask librarians questions and they’d be nice and help. It’s like you made their day. I love that libraries are communal spaces, where people share books.”

Vanden Heuvel is truly one of Boalt’s own. Her first job after graduating from Cal with a degree in ancient history in 1981 was clerking at Boalt’s library. Her career choices—especially the decision to attend Boalt and earn a master’s in library science—were influenced by former library director Robert Berring '74. “He

Library director Kathleen Vanden Heuvel '86 seated in the renovated reading room

Jim Block



was so enthusiastic about the nexus of law and librarianship,” she recalled. “Rather than work at a firm, I wanted to take a neutral view of the law, helping people work through questions.

Wilson Sonsini Goodrich & Rosati Main Reading Room circa 2005

William Benemann



Vanden Heuvel Became an Institution

It probably has something to do with my personality type—as the oldest of eight kids, it’s neat to be the person who someone asks.”

Berring said it’s hard to think of Boalt without also thinking of Vanden Heuvel. “Kathleen is one of those people who’s here all the time,” Berring said. “She is totally service-oriented and understands that a good library is driven by the people who use it.”

One of the biggest joys of directing the library, Vanden Heuvel said, is overseeing renovation of Boalt’s Wilson Sonsini Goodrich & Rosati Main Reading Room, a job she expects to complete by the end of the year. She said the reading room is a place that “reaffirms the communal aspect of libraries. It’s a magnificent, giant room with tables—there are no private carrels.” The physical space, Vanden Heuvel added, is a reminder of what law is about. “Our reading room houses only primary source material—cases and statutes. It’s important to keep a sense of coherence about the law when you can Google a case name and randomly pull up something without any surrounding context.”

She also encourages students to appreciate the continuing

role of libraries. “It’s wonderful that so much information is available electronically, but I also want students to remember that a great deal of valuable information is only available in paper,” she said. That her staff reshelves hundreds of books every week is proof that students have received that message, she added.

Vanden Heuvel has made an impression on many a student, in one case earning a small place in legal fiction as a result. Sheldon Siegel ’83, a novelist who worked for Vanden Heuvel at the loan desk during law school, named a recurring character—a judge, no less—after her in his books. “Kathleen would have made an excellent judge,” Siegel explained. “She has the perfect judicial temperament. She’s brilliant, thoughtful and never flusters.”

In her spare time, Vanden Heuvel, who lives in Kensington, watches classic films. “And with seven siblings,” she said, “I spend a lot of free time on the phone to my family.”

If you really need to track her down, though, just look in the library.

—LESLIE GORDON

www.law.berkeley.edu/library/mainReadingRoom.html



Boalt’s main reading room c. 1951

A Home of Its Own

A Dream Come True for the Department of Jurisprudence

In 1908 university architect John Galen Howard designed a home for the Department of Jurisprudence, a small masterpiece in the Beaux Arts style. The building was made possible by a generous donation of \$100,000 from Elizabeth Josselyn Boalt, and was to be a memorial to her late husband, attorney John Henry Boalt. Unfortunately, when Howard reviewed the cost of the new building, he discovered it could not be built for less than \$150,000. The department's dream of having a home of its own was placed on hold until law professor George Boke suggested a solution: approach the attorneys of California and convince them that the legal profession as a whole would benefit from a rigorous academic law program modeled on those of Harvard and Columbia. The pitch worked, and \$50,000 in pledges was quickly raised from 75 donors.

The fund-raising brochure featured a drawing of the proposed structure, and promised that the second floor of the building, where the law library and faculty offices were located, would be named "Lawyers' Memorial Hall." The library was one of Howard's most elegant interiors on campus. Today it houses the East Asian Library, but it retains much of the original furnishings, including the mahogany desks designed especially for the use of Boalt Hall law students. The building was the home of the law school from 1911 until 1951, when the current Boalt Hall was dedicated. The old building was then renamed Durant Hall, in honor of Henry Durant, first president of the University of California.

—WILLIAM BENEMANN, BOALT HALL ARCHIVIST

Boalt Hall Archives



William Benemann



Boalt Hall Archives



LEFT: The ornate law school library was located on the second floor of the original Boalt Hall.

THIS IS THE PROSPECTUS WHICH WAS SENT TO THE LAWYERS OF CALIFORNIA TO SOLICIT THE ADDITIONAL \$50,000 NEEDED TO START CONSTRUCTION ON THE ORIGINAL BOALT HALL

THE LAWYERS' MEMORIAL HALL OF BOALT HALL OF LAW
([BERKELEY: DEPT. OF JURISPRUDENCE, 1908])

[APRIL 1908].

California must create a great School of Law and leadership.

The University of California will build this School of Law on the Campus at Berkeley. Boalt Hall will house it. The Lawyers' Memorial Hall will be the living center—the heart of the School of Law.

It is planned to make this a great School of Law; to create not merely a law department of good standing, but a center of legal education of the highest rank—a Harvard or Columbia of the West—and more—drawing a student body from the western half of the continent, training future leaders in our community, giving full consideration to the special development of the law of the States this side of the Rockies.” p. [3]

This building will consist of the lecture rooms on the lower floor, law-club rooms on the sub-floor, and the Lawyers' Memorial Hall covering the entire upper floor. This Lawyers' Memorial Hall will be the vital center of the future School of Law—here will be gathered a great library of law,—the plan providing stack room for 90,000 volumes. Ranged around the law stacks will be the day's life of the School—on one side the work-rooms or studies of the instructors, within hand reach of the stacks; on the other side will be the Reading Hall itself, where the students will work throughout the day, with access to the stacks, within touch of the instructor, and with the spirit of solidarity gathering momentum from the reactive contact of each other in such properly adjusted conditions. Off the Reading Hall will be special rooms: The Conference Room, for students desiring to talk over a disputed point without disturbing the quiet of the Reading Hall; the Lawyers' Room, where any lawyer of the State may have a private mode of using the great library that will be gathered here; the Law Review Room, where the projected law magazine of the School, to be devoted specially to the development of problems of the western law, such as that of mines and water, will be edited....” p. [3-4]

Here is to grow the high purpose, the high standard of legal honor, and the spirit of devotion to the public welfare that is to mark this School of Law from its foundation—for its distinctive purpose is to do more than prepare attorneys for practice—it is to train leaders in democracy, and men of the law with the highest standard of honor the profession should cherish.

It is expected that professorships will be endowed so liberally that a compensation equal to or greater than that paid in the great Schools of Law in the East will draw the ablest men of the Nation to this School. P. [4]

LEFT: Now the home of the East Asian Library, the former Reading Hall retains much of its original grandeur today.

FAR LEFT: This colorized photo shows the original Department of Jurisprudence, built in 1911, which was located in the center of campus.

Celebrating Faculty Scholarly Work



Jim Block

Boalt faculty members show off their latest publications (standing left to right) Howard Shelanski '92, Alan Auerbach and Robert Kagan, (seated left to right) John Yoo, Harry Scheiber, Barry Krisberg, Stephen Bundy '78, Elizabeth Edinger, Joan Heifetz Hollinger, Daniel Farber and Robert Berring '74.

It has become an annual tradition for Boalt professors to gather over lunch to share the news about the publications they published during the previous year. Professor Robert Berring '74 hosted the luncheon, held this year in September. Berring, in his inimitable way, roasted the various offerings with awards that ranged from the book that weighed the most to the best dust jacket design to the lengthiest. Berring had his work cut out for him.

Following is a listing of recent faculty publications:

ALAN J. AUERBACH

Toward Fundamental Tax Reform (with Hassett)

ROBERT C. BERRING '74

Finding the Law, 12th Edition (with Edinger)

STEPHEN MCG. BUNDY '78

Pleading and Procedure, State and Federal Cases and Materials, Ninth Edition (with Hazard, Tait and Fletcher)

DAVID D. CARON '83

Bringing New Law to Ocean Waters (with Scheiber)

JESSE H. CHOPER

Cases and Materials on Corporations, Sixth Edition (with Coffee and Gilson)

ELIZABETH A. EDINGER

Finding the Law, 12th Edition (with Berring)

AARON EDLIN

Antitrust Analysis, Problems, Text, and Cases (with Areeda and Kaplow)

DANIEL A. FARBER

A History of the American Constitution, Second Edition (with Sherry) and *Modern Constitutional Theory: A Reader*, Fifth Edition (with Garvey and Aleinikoff)

MALCOLM FEELEY

Criminal Justice: Introductory Cases and Materials, Sixth Edition (with Skolnick and McCoy)

WILLIAM A. FLETCHER

Pleading and Procedure, State and Federal Cases and Materials, Ninth Edition (with Hazard, Tait and Bundy)

JESSE FRIED

Pay without Performance: The Unfulfilled Promise of Executive Compensation (with Bebchuk)

ANGELA P. HARRIS

Economic Justice: Race, Gender, Identity and Economics (with Coleman Jordan)

JOAN HEIFETZ HOLLINGER

Family by Law: An Adoption Reader (with Cahn)

ROBERT A. KAGAN

Dynamics of Regulatory Change: How Globalization Affects National Regulatory Policies (with Vogel) and *Institutions & Public Law: Comparative Approaches* (with Ginsburg)

LAURENT MAYALI

Staatsanwaltschaft (with Durant, Padoa Schioppa and Simon)

ROBERT P. MERGES

Foundations of Intellectual Property (with Ginsburg)

DANIEL RUBINFELD

Editor, *Econometrics: Legal, Practical, and Technical Issues* (co-editor Harkrider) and *Microeconomics*, Sixth Edition (with Pindyck)

HARRY N. SCHEIBER

Bringing New Law to Ocean Waters (with Caron)

HOWARD SHELANSKI '92

Merger Remedies in American and European Union Competition Law (with Lévêque)

JEROME H. SKOLNICK

Criminal Justice: Introductory Cases and Materials, Sixth Edition (with Feeley and McCoy)

JOHN YOO

The Powers of War and Peace: The Constitution and Foreign Affairs after 9/11

FRANKLIN E. ZIMRING

(Reviewer) *American Juvenile Justice* (by Barry Krisberg) and *An American Tragedy: Legal Responses to Adolescent Sexual Offending*

— STAFF

Ken King '87

Shares Details of Recent Yahoo!-Alibaba Deal in China

Just hours after China's biggest-ever Internet deal was closed, Ken King '87 gave the Boalt community an insider's perspective on the newly forged partnership between Yahoo! Inc. and Alibaba.com, the largest e-commerce company in China. "It was one of the most complex, difficult deals I've ever been involved with," said King, a partner in charge of the Palo Alto and San Francisco offices of Skadden, Arps, Slate, Meagher & Flom, in a late-October talk at Boalt Hall. An expert in corporate and securities law, King represented Sunnyvale-based Yahoo! in the transaction, valued at more than \$4 billion.

Announced last August, the deal was completed on October 24 with a \$1 billion cash transfer plus \$700 million in assets from Yahoo!'s China operation, King said. In exchange, Yahoo! now owns a 40 percent stake in Alibaba.com. Alibaba is China's top e-commerce company, with a network of online marketplaces—including an auction site—that reach more than 20 million registered users worldwide. King noted that the transaction also creates a partnership for Yahoo! with Alibaba's "very sophisticated" management team in China under the leadership of the company's CEO, Jack Ma. "I think what Yahoo! was looking for was domestic management expertise in China," King said. "That was really what was informing a lot of the approach."

King's talk, "Cross-Border M & A: Doing the Yahoo!-Alibaba Deal in China," was sponsored by the Berkeley Center for Law, Business and the Economy (BCLBE), Boalt's new research center focused on the impact of law on business and the U.S. and global economies. Part of BCLBE's ongoing speaker series, King's presentation drew about 200 people. "You can think about the deal in lots of different ways," explained King, who serves as a member of BCLBE's advisory board. "Ultimately, it was something of a joint venture."

King said the negotiations included 20 days of on-site talks in both Hong Kong and Palo Alto, along with daily conference calls that began for him at 6:30 p.m. on the West Coast and often ended in the early hours the following morning. In addi-



tion, lawyers from some eight different firms were dealing with governing laws from multiple jurisdictions, King explained. The new entity, like most of China's Internet companies, was incorporated in the Cayman Islands, King said.

The deal creates a partnership in one of the largest and most attractive Internet markets in the world, he said. Currently, China ranks just second to the United States in the overall number of Internet users. China has 103 million people online compared to 203 million users in the United States. But with an overall Internet penetration rate of just 8 percent of China's 1.3 billion residents compared to 69 percent of the United States' 296 million residents, "It's pretty easy to do the math and understand why China is an important market for any company," he said.

King heads Skadden's Corporate Group in the San Francisco Bay Area and has represented technology and other firms in a number of high-profile transactions, including cross-border mergers and acquisitions. While at Boalt, he served as editor in chief of the *California Law Review* and was a member of the Order of the Coif.

—ABBY COHN

Abby Cohn

Centers Build Bridges Between the Worlds of Research and Civic Action

Boalt's recently launched new centers are moving full-steam ahead. The new Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity is Dean Edley's answer to the question, "Will you be bringing The Civil Rights Project to Berkeley?" The institute is already undertaking several initiatives designed to build bridges between the worlds of research and civic action, including examining K-12 achievement and accountability and the civil rights implications of the No Child Left Behind Act. The institute also welcomes its first fellow, **Ana Henderson**, who hails from the U.S. Department of Justice Civil Rights Division.

Another one of Boalt's newest think tanks, the California Center for Environmental Law & Policy (CCELP), hosted this fall a visit from Governor **David Freudenthal** of Wyoming, who met with faculty and students and joined a lunchtime panel on natural resources federalism. CCELP also named **Matthew Zinn** as its first environmental law fellow. Zinn is a litigation attorney with the San Francisco environmental firm Shute, Mihaly & Weinberger.

In October the Berkeley Center for Law & Technology (BCLT) joined forces with the Haas School of Business to collaborate on an all-day conference, Investing in Emerging Markets: China, India, Russia. **Robert Barr**, executive director of BCLT, moderated a panel

addressing issues of trade, technology and investment. Deans **Richard Lyons** of Haas and **Christopher Edley** of Boalt opened the conference with welcoming remarks.

Several Boalt faculty members are new recipients of endowed chairs and distinguished professorships:

Lauren Edelman '86, the Agnes Roddy Robb Chair; **Aaron Edlin**, the Richard W. Jennings '39 Chair; **Robert Kagan**, the Emanuel S. Heller Chair. And **Pamela Samuelson** is the first to hold the

Richard M. Sherman '74 Distinguished Professorship. As well **Philip Frickey** now holds the Alexander F. and May T. Morrison Professorship. **Stephen Sugarman** now holds the Roger J. Traynor '27 Professorship. **Franklin Zimring** is the first to hold the Werner '53 and Mimi Wolfen Research Professorship. And **Kristin Luker** now holds the Elizabeth Josselyn Boalt Chair.

U.S. District Judge **Thelton Henderson** '62 is the subject of Berkeley filmmaker Abby Ginzberg's new documentary film, *Soul of Justice: Thelton Henderson's American Journey*. The film focuses on the adversity Henderson faced from his days as the first African-American attorney in the U.S. Department of Justice Civil Rights Division in the early 1960s to his noteworthy quarter-century of service on the federal bench. Given Henderson's continued activism on the bench despite becoming a senior judge, it's not unrealistic to expect a sequel.

Another recent release is a report co-edited by **Laurel Fletcher**, director of Boalt's International Human Rights Law Clinic, *After the Tsunami*. The Human Rights Center at UC Berkeley, in partnership with the East-West Center, dispatched teams of researchers in March and April 2005 to five countries—India, Indonesia, the Maldives, Sri Lanka and Thailand—affected by the 2004 tsunami to interview hundreds of survivors and key informants. In other international law news, Boalt plans to establish a regular externship program with the International Criminal Tribunal for the Former Yugoslavia in The Hague starting in 2006. The current vice president of the court, Judge **Fausto Pocar**, will work with three Boalt interns every year—in the fall, spring and over the summer. **Hannah Garry** '01, who currently works with Judge Pocar, and Professor **David Caron** '83 were instrumental in orchestrating the program. Garry will provide legal assistance and supervision to Boalt's externs.

Jim Block



Lauren Edelman '86

An additional opportunity for Boalt students will be a new fellowship that will focus on legal issues connected with stem cell research as part of a broad, innovative UC Berkeley training grant that won a projected three-year, \$2.5 million grant from the Independent Citizens' Oversight Committee, the executive body in charge of the California Institute for Regenerative Medicine. The Boalt stem cell research fellowship, which will be split between two third-year law students, is expected to total \$50,000 a year. It will focus on such legal issues as intellectual property rights, donor consent, tissue ownership, management of research conflicts of interest, distribution of royalties, access to healthcare applications and financial returns to the state.

In other grant news, the UC Berkeley Institute for the Study of Social Change (ISSC), directed by Robert D. and Leslie-Kay Raven Professor of Law **Rachel Moran**, has received \$4.3 million from the Centers for Disease Control and Prevention to fund a new Center on Culture, Immigration and Youth Violence Prevention. The center opened this fall and focuses on the causes and prevention of youth violence, particularly among Asian-Pacific Islander and Latino immigrants in Oakland. **Franklin Zimring**, William G. Simon Professor of Law and chairman of the Criminal Justice Research Program at Boalt's Institute for Legal Research, is principal investigator of the new center, which the ISSC, the National Council on Crime and

Delinquency, Boalt Hall and UC San Francisco will jointly run.

In Las Vegas, Boalt honored U.S. District Court Judge **Lloyd George '61** with the Judge D. Lowell and Barbara Jensen Public Service Award. After building a successful private practice in Las Vegas, Judge George was appointed in 1974 to preside over the U.S. Bankruptcy Court for the District of Nevada. A decade later, President Ronald Reagan nominated him to the U.S. District Court in Nevada. He served as the court's chief judge from 1992-97. In 1999 Congress voted to name the new federal courthouse in Las Vegas in his honor. Boalt students **Chorisia Folkman '06** and **Christina Hiureas '07** both received Jensen summer fellowships in public interest law.

The U.S. Constitution may not hold the glamour of Vegas' glittering lights but standing-room-only crowds flocked to Boalt to attend a Constitution Day panel discussion, "The Path of Constitutional Law: Continuity, Crossroads, or Crisis?" UCTV aired its one-hour presentation of the panel on cable and satellite television throughout October. Visit http://webcast.ucsd.edu:8080/ramgen/UCSD_TV/11153.rm to view the lively discussion.

Professor **Reva B. Siegel** of Yale Law School delivered this year's Thomas M. Jorde Symposium keynote lecture. The symposium, co-sponsored by Boalt and the New York University School of Law's Brennan Center for Justice, was founded and endowed by Thomas M. Jorde, Boalt professor of law, emeritus.



Adam Sachs '86

D. Lowell Jensen '52, left, and U.S. District Court Judge Lloyd George '61

Siegel's lecture, "Constitutional Culture, Social Movement Conflict, and the Constitution of the Family," explored the interaction between the courts and social movements, such as the battle to outlaw sex discrimination, and considered the implications for both movements and constitutional jurisprudence.

More than 70 alumni from throughout Europe, Canada, Peru and the United States gathered in Bologna, Italy, this summer for the annual meeting of the International Association of Boalt Alumni (IABA). Participants, including Boalt Professors **Herma Hill Kay** and **Richard Buxbaum '53** (LL.M.), were



Boalt Alumni in Bologna

welcomed to the three-day session by Dean **Stefano Canestrari** of the Bologna University School of Law. Chairperson **Francisca Hernanz '88** (LL.M.), an attorney in Madrid, and Secretary **Pascal Pichonnaz '97** (LL.M.), a professor at the University of Fribourg, presided over the business meeting. Organized by attorney **Paola Parma Sforza '87** (LL.M.), the event featured the traditional banquet, held in the elegant rooms of the Circolo della Caccia, and included sightseeing tours of Bologna and nearby Maranello, as well as Ferrara. Next year the group plans to return to Berkeley for a meeting on July 14-16.

—LINDA ANDERBERG

Professor Reva B. Siegel



Jim Block

In the Aftermath

Some Solutions, Lots of Unanswered Questions

ON LABOR DAY WEEKEND, a few days after Hurricane Katrina slammed into the Gulf Coast, Peter Benvenuti '74 and his wife, Lise Pearlman '74, flew from West Coast to East, armed themselves with food, water and gas, then drove 409 miles to his hometown.

He didn't recognize it.



Jim Block

Peter Benvenuti '74 and his wife, Lise Pearlman '74

of Katrina

By Jodi Enda

Bay St. Louis, Mississippi, was laid waste by wind and water. So was neighboring Waveland. And Pass Christian. Trees, stripped of their leaves, were filled with debris wrenched from buildings, houses, cars. His parents' house and those of four brothers and a sister were either destroyed or severely damaged. The family homestead was forever changed.

"It's almost indescribable," Benvenuti said. He paused. "But let me try. There is a strip of beach that runs from Waveland on the west to Ocean Springs on the east—35 to 40 miles of beachfront. Almost all was developed with houses and small communal developments. Gulfport and Biloxi had real office buildings, steel-frame. With the exception of those kinds of buildings, everything that was within reach of the storm surge was destroyed, just completely chewed up. Almost like trees going through a mulching machine. There were very few parts of frames of houses left standing."

Pearlman said it looked like "a bleak scene from an eerie horror film."

The couple had flown from their home in Oakland to Atlanta, where they rented one SUV and borrowed another. They crammed the vehicles with as much as they could before heading to Mississippi. While their immediate show of support and the provisions were most welcome, what Benvenuti and Pearlman came away with was an awareness that Gulf Coast residents would need much more than the canned goods, ice, chain saws and even the precious gasoline that they had packed into those SUVs. They would need lawyers.

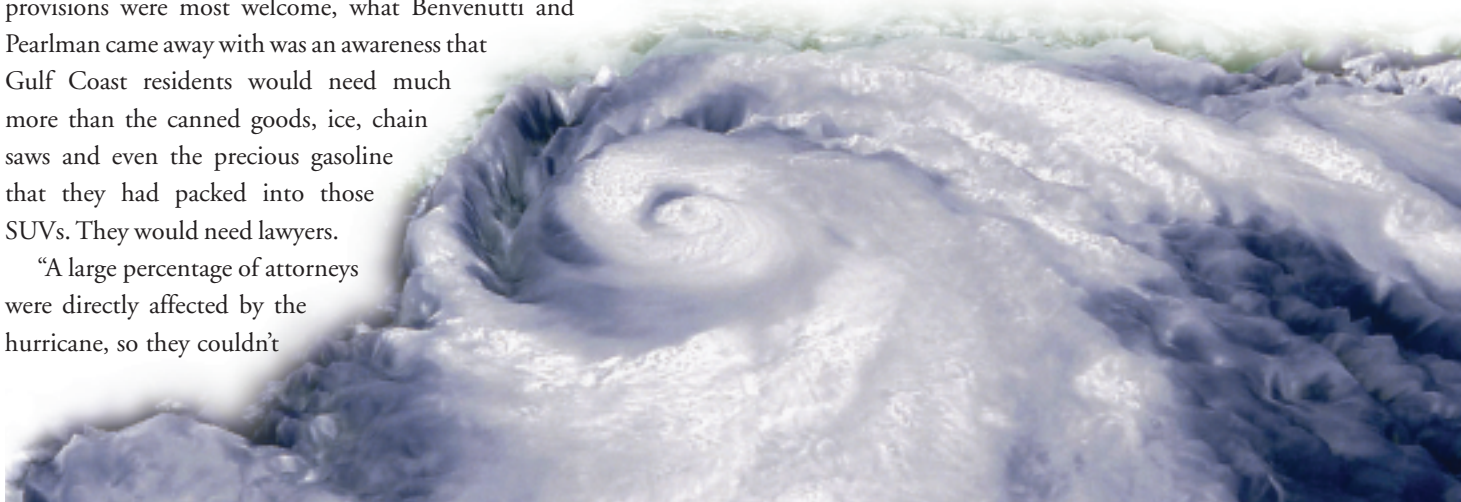
"A large percentage of attorneys were directly affected by the hurricane, so they couldn't



Lise Pearlman '74 salvages paintings from the home of her husband's (Peter Benvenuti '74) parents in Bay St. Louis, Mississippi, on Labor Day weekend.

help other victims because they were busy figuring out how to get their own practices up and running," Pearlman said. The absence of those lawyers left thousands of hurricane victims in the lurch as they struggled to deal with their losses and sort through the morass of forms and bureaucracies—a virtually endless tangle of complications—required to reclaim their lives in the Gulf states or elsewhere. Attorneys from other parts of the state who volunteered to help in those early days had to sleep in cars.

Courtesy of Peter Benvenuti



In the months since the hurricane hit land on August 29, lawyers from around the country have volunteered their services to victims in Louisiana, Mississippi and Alabama. Boalt and its faculty and alumni have pitched in, in a number of ways: by taking in 18 Tulane Law School students for the fall term (see page 26 for story), providing pro bono help to evacuees in person or by phone, advising local lawyers, contributing to an online legal manual for Katrina survivors and even making it possible for out-of-state attorneys to work in the Gulf states.

Beyond the immediate needs of Gulf Coast residents, though, are tougher issues. Questions about rebuilding. About racial and economic discrimination. About whether and how politicians can transcend partisanship to help people and communities in need. About whether regulations should be relaxed to hasten recovery. And perhaps the most obvious: about what needs to be done to ensure the government doesn't repeat the mistakes of Katrina. Boalt faculty and alumni are working on these problems as well.

"We're looking at ways in which people might not have thought about Katrina, about how law and lawyering is going to be involved in next steps," explained Dean Christopher Edley.

Pearlman, a former presiding judge in California's State Bar Court, immediately recognized a problem in Mississippi. There was no mechanism to allow a large number of out-of-state lawyers to practice in the Magnolia State. The Federal Emergency Management Agency (FEMA) was setting up "one-stop shops" for residents to receive help getting their lives back together. The cen-

ters aim to provide housing assistance; financial aid; benefits under Social Security, Medicare and Medicaid; and legal advice. But there aren't enough in-state lawyers to staff them.

So Pearlman drafted a proposal, which the Mississippi Bar Association used as the basis for its petition to the state Supreme Court, to authorize out-of-state lawyers to practice in the state temporarily and on a pro bono basis. Under her proposal, out-of-state attorneys interested in helping hurricane victims would submit affidavits detailing where they were licensed and that they were lawyers in good standing, swearing that they would follow Mississippi law and operate under the direction of the Mississippi State Bar, and promising to adhere to the state's rules of professional conduct. The state Supreme Court issued an order, based on the proposal, by the end of the first week in September.

Making that happen within a few days was far from easy. First, Pearlman needed to make contact over Labor Day weekend with certain lawyers in Mississippi, which was no small problem because so many phones and cell phones were out. Finally, she said, she reached the Pascagoula City Attorney, Melvin Mitchell. "His first reaction was, 'We need 17,000 electricians, not 17,000 lawyers,'" Pearlman said. "I said I was working on what would happen after the lights came on."

Ultimately, Mitchell put Pearlman in touch with his son, Meade Mitchell, who was active in the state Young Lawyers' Division Legal Assistance Program, which was coordinating the state bar's relief effort out of Jackson, the capital. The younger Mitchell delivered Pearlman's proposal to Adam Kilgore, the state bar's general counsel, just as Kilgore was heading to a meeting at the state Supreme Court on hurricane relief.

Kilgore "called the next morning to thank me and said this was manna from heaven," said Pearlman, an arbitrator and a mediator who teaches professional responsibility and ethics at the Santa Clara University School of Law. "They were getting inundated with offers of assistance and they weren't sure what they were going to do with them. They needed to protect Mississippians to make sure that these people weren't coming to make money off of them."

Now, out-of-state attorneys can volunteer to man FEMA centers in Mississippi or, if they prefer to work from their offices, to answer queries to a legal hotline. A month after Mississippi's action, Louisiana's Supreme Court issued a similar order.



Courtesy of Peter Benvenuti

The sister of Peter Benvenuti '74 at the site of her collapsed home in Waveland, Mississippi, a few days after Katrina struck.

Benvenuti, a bankruptcy lawyer with Heller Ehrman in San Francisco, has teamed with others in his firm to send lawyers to Mississippi to staff the FEMA centers.

At the same time, Peter Carson '85, co-chair of the Pro Bono Committee of the American Bar Association's (ABA) Section of Business Law, has been helping coordinate lawyers from around the country who have volunteered to assist businesses in the Gulf states.

"It was evident very early on that in the recovery from now two hurricanes, there's just going to be a huge need for pro bono assistance in the business law area as small businesses and individual businesses try to recover," said Carson, a finance lawyer with Bingham McCutchen in San Francisco. Although FEMA long has contracted with the ABA's Young Lawyers' Division for help

"People have been deprived of entire infrastructures for businesses, from supply chains to customers. Getting the region back up on its feet is going to require getting those businesses started again."

—Peter Carson '85

mannning its call centers, the widespread damage from Katrina meant that more help would be needed, he said.

"People have been deprived of entire infrastructures for businesses, from supply chains to customers," Carson said. "Getting the region back up on its feet is going to require getting those businesses started again. Business law pro bono is relatively recent in its origins. There has been for a long time the notion of pro bono representation of nonprofits and community organizations. There are programs that match up lawyers and nonprofits. More recent is the notion to match up lawyers with micro businesses—mom-and-pop businesses that can't afford legal services to negotiate a lease, intellectual property rights and so forth."

Carson said the task was made more difficult because of Louisiana's use of the Napoleonic Code and because there is not a strong tradition of pro bono work in the Gulf states. "When you don't have a local bar that's oriented that way, it's harder to bring in lawyers," Carson said.

Meanwhile, Boalt Professor Charles Weisselberg played a key role in creating an online legal resource for victims, an undertak-

ing of the University of Mississippi Civil Legal Clinic and volunteer students and professors, the Clinical Legal Association and the Association of American Law Schools (AALS) Section on Clinical Legal Education. The Internet-based manual is a work in progress. "In the wake of Katrina's devastation, we looked for ways to provide real help from the community of clinical law faculty nationwide," said Weisselberg, who chairs the AALS's clinical section and directs Boalt's clinical education program.

Perhaps more challenging than the legal issues are the political ones related to Katrina and other disasters. Congressional hearings are probing the Bush administration's response to the hurricane, and members on both sides of the aisle have been harsh in their critiques. Maria Echaveste '80, a lecturer in residence at Boalt, brings an insider's sensibility to the issue: she was President Clinton's deputy chief of staff from 1998 to 2001.

As the Gulf Coast struggles back to its feet, Echaveste said White House officials should be asking tough, forward-looking questions, starting with how and what should be rebuilt. Politically, that's difficult. It might mean not rebuilding New

Orleans' poor and mostly African American 9th Ward, she said. It might mean rebuilding it better.

"I don't know the answers," Echaveste said. "But I wish we could ask the questions without partisanship and posturing."

In the meantime, Edley said Boalt will continue to examine ways that lawyers can help victims of Katrina and future disasters.

"This is an important example both of the myriad ways that a great university can make a contribution to a complex problem and, specifically, the centrality of law and lawyers," he said. "It takes many disciplines and professions to respond to a disaster of this magnitude, and we need the same mobilization to prepare for the next one. Californians, in particular, have a lot to think about."

All the criticism about the lack of preparation and slow response related to Katrina has helped draw needed attention to the challenge California has in preparing for major disasters.

"It's also in a more parochial sense," the dean said. "What I'm really trying to do is teach the rest of the campus lessons about the contributions that law can make as the university tries to mobilize for service."

A Slew of Legal Questions

One reason Bill Clinton beat an incumbent president in 1992 was that George H. W. Bush had done a “terrible job” helping Florida residents following Hurricane Andrew a few months earlier, said Christopher Edley, Dean and Professor of Law.

So when Clinton took office, his administration took steps to make sure the Federal Emergency Management Agency worked well. Clinton appointed Arkansas’ disaster chief, James Lee Witt, to run the agency and, Edley said, gave him the authority to cut through red tape that in the past had prevented different branches of government from working together in the wake of natural disasters. (As associate director for economics and government at the Office of Management and Budget from 1993 to 1995, Edley was responsible for overseeing FEMA and numerous other departments and agencies.)

“So as a consequence, when there were major disasters I spent a lot of time on the phone with James Lee Witt and his staff making sure that everything from budget issues to regulatory issues to interagency deployment of resources went as flawlessly as possible,” he said. “It was just a high priority of the White House. I still remember getting a briefing from James Lee Witt early during my tenure, within a couple of weeks of taking office, in which he was describing the highest priority disasters for which they did contingency planning—and a Category 4 or 5 hurricane hitting New Orleans was number one or two on the list.

“I remember him listing the reasons: it was below water level, the levees, the narrow causeway over Lake Pontchartrain. The whole scenario was there. Ever since that briefing, whenever a hurricane would get near the Gulf of Mexico, I would think about New Orleans. So you can imagine, I was really quite weepy as all of this was unfolding in New Orleans (and) feeling this sense of pain because I believe so fervently that we would have done a better job.”

His thesis is hard to refute. President George W. Bush’s FEMA Director Michael Brown resigned in September after being widely criticized, by Republicans and Democrats alike, for his handling of Hurricane Katrina. Meanwhile, the state of Louisiana hired Witt, now a consultant, to help lead its reconstruction effort.

Edley said hurricanes and other disasters raise a slew of legal questions, from how to deal with criminal evidence that has been

washed away to who should get government assistance to whether to relax codes to speed reconstruction.

Shortly after Clinton took office, the upper Mississippi River flooded much of the Midwest, Edley said, presenting the new administration with its first natural disaster. Large chunks of several states were under water, he said, as he recalled touring the area in a helicopter with the president.

“In the aftermath of that, there were really complex legal questions about who would be eligible for disaster assistance, about the interaction of federal disaster aid with private insurance resources, about the eligibility standards for emergency SBA (Small Business Administration) loans, about how much cost-share should be expected in the recovery effort from state and local governments versus the federal government paying the full bill,” Edley said. There also were questions about whether it was appropriate to “simply go back and rebuild on a flood plain when you know it’s only a matter of time before the same thing’s going to happen again.”

Many of the same issues arose during the Northridge earthquake in January 1994, Edley said. In that case, there were additional questions about whether to repair structures or rebuild them to meet new, more stringent safety codes.

And, of course, the question throughout centered on who would foot the bill.

After the Mississippi flooded, the administration decided to, in essence, buy out and relocate a couple of small towns onto higher ground, he said. After the earthquake, it paid to bring some buildings into compliance with new codes.

“We did it rather generously and routinely because there was simply no political mileage in playing Scrooge,” Edley said. “Disasters of a certain size give the president the authority to waive the requirement of a match from state and local governments. States and local governments have been hit financially by the loss of revenue. Where are they going to get the resources to carry on their basic functions? They’re not the federal government—they can’t just print money. So one has to work through how state and local governments carry on with the business of government, everything from schools to state hospitals to making pension payments. It’s a mess.”



Jim Block

Dean Christopher Edley, Jr.

“You don’t tell people, ‘Come here, you’re going to be safe,’ and then not feed them, not give them water, not give them any way out.”

—Laurel Fletcher



International Human Rights Norms Violated

In December 2004, five Asian countries were hit without warning by a tsunami that swept away people, families and villages. Little more than eight months later, America’s Gulf Coast was struck largely as forecast by a hurricane that also killed people and devastated communities.

The disasters were a study in contrast, said Clinical Professor of Law Laurel Fletcher, director of Boalt’s International Human Rights Law Clinic. The developing countries and the world responded to the tsunami quickly and decisively, she said. The United States, as the world saw, did not. It failed its people and violated international human rights standards, she said.

“The response was much faster in the tsunami. You had governments all over the region on the ground in the area within hours. People were reached much more quickly,” said Fletcher, who conducted a study on the tsunami.

In the case of Hurricane Katrina, she said, “the government knew there were thousands of people in a government-designated safe area that were not reached. That’s an incredible breach. You don’t tell people, ‘Come here, you’re going to be safe,’ and then not feed them, not give them water, not give them any way out.”

The Bush administration, she said, violated international human rights standards and United Nations principles for the treatment of people who are displaced within their own countries by natural disasters, wars and conflict. The standards—the U.N. Guiding Principles on Internal Displacement and the Sphere Project’s Humanitarian Charter and Minimum Standards in Disaster Response—set guidelines for access to food, shelter, sanitation and medical assistance as well as for the reconstruction and resettlement of communities.

International humanitarian relief workers also strive to keep families and communities together, even as they are moved away from the site of a disaster. Fletcher said that wasn’t done in Katrina’s wake.

“They (displaced residents) were sent all over the country,” she said. “When communities that have been close-knit and social networks get disrupted you will often see stress, which exhibits [itself] in alcohol abuse, domestic violence and dropout rates because people no longer have the support system that ties them. ...It’s communal ties that supply sustenance to communities. When you disrupt that, negative consequences occur.”

Along the Gulf Coast, the question now is whether the United States and state and local governments will follow guidelines for allowing residents to help decide how their communities will be rebuilt, she said.

“International standards say they need to be consulted,” she said of displaced residents. “They need to be included in these decisions. Is that going to happen so that community voices make a meaningful contribution to the shape and culture of New Orleans as it gets rebuilt? That’s what I think we have to monitor and push for and see.”

Fletcher said the law clinic and UC Berkeley’s Human Rights Center are proposing to do independent research that will provide data to community groups and government officials as they make decisions about redeveloping New Orleans. The research would focus on, among other things, under what conditions the city’s residents would return home.

www.hrcberkeley.org/afterthetsunami/



Jim Block

Clinical Professor Laurel Fletcher

“I don’t think anybody’s imagining that Louisiana ought to pay. What would they pay with anyway? But some people might think the whole country has to pay. That’s kind of the FEMA idea.”

—Stephen Sugarman

Picking Up the Tab

The dispersion of New Orleans residents has created unique and interesting legal and policy questions with no readily apparent answers, said Stephen Sugarman, Roger J. Traynor ’27 Professor of Law, a torts specialist.

“One important issue has to do with what, if any, attention should be given to the cost of benefits and services that are now being provided by other local and state governments that would have been provided by Louisiana and New Orleans,” he said. “You’ve got all these people who have moved out of state. Their kids need to go to school, some of them are on welfare, some are on Medicaid, some are on SSI.

“Normally, when people move, they just get to send their kids to school in the new place. They don’t charge the old state and the feds don’t pick part of it up.”

Is it different when a natural disaster forces people out? That’s unclear, Sugarman said, because it’s probably never happened on this scale before in the United States. “When have we had such displacement from a catastrophic event?” he asked. “I can’t remember an example.”

Just as some border states have asked the federal government for money to underwrite services for illegal immigrants, some states and cities are seeking help to pay for services for an influx of Gulf Coast evacuees, he said. “There is a controversy about immigrants, about whether they’re a burden or a benefit,” he said. “So, too, about so-called New Orleans evacuees.”



Jim Block

Stephen Sugarman, Roger J. Traynor '27 Professor of Law

Sugarman predicted that Houston and Texas, in particular, might have the strongest claims for help financing additional classroom slots, fire and police protection and social services, the normal things that go hand in hand with population growth.

“I don’t think anybody’s imagining that Louisiana ought to pay,” he said. “What would they pay with anyway? But some people might think the whole country has to pay. That’s kind of the FEMA idea.”

The biggest area of litigation, though, Sugarman predicted, “is going to be between policy holders and insurance companies over whether the exclusion for floods is applicable. The standard policy excludes floods. If you want flood insurance, you have to buy it from a government-sponsored flood insurance program.”

But most people in New Orleans did not.

They still have one recourse, however: wind damage, which is covered by insurance, Sugarman said. “So there’s a real question for some people whether their house was destroyed by the wind or destroyed by the water. Surely, there was some of each.”

Some people will be “really stuck,” he said. Consider the possible scenario of an insurance company insisting that a house was destroyed by the flood while the flood insurance program says it was destroyed by the wind. That, Sugarman said, is where the lawyers come in.

www.law.berkeley.edu/faculty/profiles/

High Cost of Misinformation, Obsession with Crime

Federal, state and local officials failed to rescue New Orleanians from rooftops and attics; they failed to feed them in the Superdome and the Convention Center. Then they failed them again, in a way that could reverberate through New Orleans and the entire nation for years, said Jonathan Simon '87/'90, associate dean of Boalt's Jurisprudence and Social Policy Program.

The officials, from the president to the governor to the mayor to the city's police chief, shifted the blame to the victims. They spun tales of uncontrollable crime, rape and even murder, spreading misinformation that led to more deaths and resurrecting racial stereotypes that continue to dog African Americans and could impair the country's legal system for decades to come, Simon said.

By labeling New Orleans residents as "looters" and describing them as less than civilized, public officials were protecting themselves from accusations of incompetence, according to Simon. They were making excuses when they should have been taking action, he said.

Because the media relied so much on police and other officials for information, the exaggerated and downright false stories spread quickly, slowing the rescue effort further, Simon said. As evidence, he pointed to word that a bullet had been fired at a government helicopter, an allegation that temporarily halted helicopter flights—and rescues and food drops—in the ravaged city.

"We can be virtually sure that people died because of this misinformation," Simon said.

In retrospect, he said, "There was apparently not a single major crime. The mayor and chief of police were claiming there were rapes and murders in these places where the government told people to come. It's interesting that these government officials considered that useful misinformation to spread because it shifts the blame to the pathology of the New Orleans residents."

In fact, Simon said, many of the so-called "looters" were engaging in what likely was a lawful act of self-help. He noted that it is a complete defense to commit a lesser crime to avoid a greater one, or a greater harm, in this case, death or illness.

"Now we learn that these 'thugs' were taking food and water and other essential life-sustaining products and distributing them in communities at a time when the government was doing little or nothing to help its citizens," he said. "And time and time again, the behavior of citizens was described by media as criminal. If the west coast of Florida was hit—it's largely white and middle class—you would have found the same amount of looting. It would have been described as 'self help, showing initiative.'"

Simon said the politicians employed a "tried-and-true" strategy, albeit one that has dangerous, long-term ramifications.

"We can see New Orleans as an example of the way fear of crime is manipulated by political leaders, with the active complicity of the media, in ways that shift responsibility for basic government competence off of political leaders," he said.

The difficulty now, he said, is digging out, literally and figuratively. Following decades of decline, predicated to a great extent on racism and the belief that urban centers are havens of crime, America's cities recently have undergone a kind of renaissance. "I'm afraid these images of New Orleans are going to take us back," Simon said. "More unfairly, this is going to stigmatize the people of New Orleans. Think of them—hundreds of thousands living in other cities!"

Further, Simon said, the Katrina disaster could harm the judicial system by feeding racial biases. Simon said one element of his criminal law class is to demonstrate "how much cultural knowledge and misinformation...forms a very important part of how criminal law decides on who to punish and how much." It determines where police patrol and influences arrest rates, it affects how black defendants are treated in court, he said.

Simon's upcoming book, *Governing Through Crime: The War on Crime and the Transformation of America, 1960-2000*, will be published by the Oxford University Press in the spring of 2006. He wrote it before Katrina struck.

"What New Orleans revealed to us," he said, "is how enormously costly this obsession with crime is."

www.law.berkeley.edu/faculty/profiles/



Associate Dean Jonathan Simon '87/'90

Jim Block



Thinking Through Answers

Daniel Farber normally teaches environmental law and constitutional law. But when Hurricane Katrina struck, he began thinking about a new field: disaster law.

“Nobody’s really focused on this as a coherent set of problems about how you handle huge risks. So I’m interested in starting to think about how the whole could be more than the sum of the parts,” said Farber, Sho Sato Professor of Law and director of the California Center for Environmental Law & Policy. “From one perspective, there are a whole bunch of interesting legal issues from different fields. But on a broader perspective, maybe there’s something to say about how law in general should think about these issues.”

So he’s creating a new class to figure it out. In the spring, Farber will teach a seminar called “Disasters and the Law: Katrina and Beyond.”

From hurricanes to earthquakes to terrorism, “when you think about it, there are a dizzying number of catastrophes,” Farber said. Perhaps, he suggested, there could be some models for how to respond. For instance, following September 11, 2001, Congress created a special fund to compensate victims and their families. That’s one potential model.

“One hopes these kinds of issues don’t come up very often, but when they do, it’s good to think about them in advance,” Farber said.

His law students will do more than think about disasters. Farber wants them to come up with proposals for dealing with the legal ramifications of catastrophes and make them available to a broad audience.

Among the topics, he said, will be the role of the federal and state governments in responding to disasters, and the president’s ability to deploy the military to deal with domestic emergencies. The Defense Department recently issued a paper outlining a greater role for the military on the home front, but, officials have said, in very limited circumstances.

Farber also is concerned about the interaction between wetlands policy—in this case, management of the Mississippi River

and development along the Gulf Coast—and disaster prevention. “One of the things that seems to be clear is that the loss of wetlands contributed to the problem because the wetlands function as a buffer,” he said. “I think there’s a real question about how land-use policy, which is joint federal and state, contributed to this situation and how that can be changed in the future.”

Other issues his students will examine include insurance coverage, bankruptcy and eminent domain. How many times, Farber asked, should the government permit someone to rebuild in a flood plain using insurance subsidized by Washington or the states? Should the court system be burdened by what could be tens of thousands of insurance disputes that could take decades to resolve? Is the new bankruptcy law, which took effect in October, fair to people who lose homes or businesses to a natural disaster? Under what conditions should a city be able to invoke eminent domain to take people’s property and change the way land is used

following a catastrophe?

Farber also has been working with Boalt’s library to set up a website (www.law.berkeley.edu/library/disasters.html) on legal issues related to Katrina and other recent hurricanes, and he represents Boalt on a university task force working to establish a center on catastrophic risks. Further, he and Mary Louise Frampton, the executive director of Boalt’s

Center for Social Justice, are planning a one-day forum on the environmental and social justice issues arising from Katrina.

“One of the lessons from Katrina is that levees are a civil-rights issue,” Farber said. “When the levees fail, who gets hurt? It’s the black community and the poor. ...It seems to me one of the things Berkeley ought to be about is to promote new ideas and fresh perspectives, and this could be an opportunity to do that. One of the dean’s mottos is ‘Boalt makes a difference.’ So this is a way to do that.”

www.law.berkeley.edu/faculty/profiles/



Jim Block

**Daniel Farber, Sho Sato
Professor of Law**

Helping Survivors Find Firmer Footing

Poor people not only were disproportionately harmed by Hurricane Katrina, but they likely will have a tougher time regaining their footing, at least in the short term, said lecturer Jeff Selbin, executive director of the East Bay Community Law Center (EBCLC). That's not only because they have fewer resources to rely on, he said, but because government "recovery efforts aren't designed with them in mind.

Lawyers at the center learned that in 1989, about one year after they began serving low-income residents. When the Loma Prieta earthquake struck the Bay Area that October "the office was immediately thrust into disaster relief legal services," Selbin said. The lawyers there, he said, tried to help people with their immediate legal needs, including gaining access to FEMA and state disaster relief benefits and resolving landlord-tenant issues.

What they discovered was that FEMA regulations discriminated against low-income residents who moved around a lot, shared homes or lived in temporary residences, he said.

"Single-room occupancy residents in Oakland—tenants in fleabag motels—were not treated the same as homeowners in the Marina District (an affluent area of San Francisco)," Selbin recalled. Many were precluded from receiving financial assistance.

Whether this will happen to victims of recent hurricanes remains unclear, Selbin said. But there is at least one bright spot.

Following Loma Prieta, a group led by the Legal Aid Society of Alameda County sued FEMA for discriminating against low-income people who were living in hotels with 28-day residency limits or who were roommates, extended family members and sub-tenants of leaseholders—people who could not meet FEMA's



Jeff Selbin, Director, East Bay Community Law Center

Jim Block

30-day residency rule for financial assistance. They settled for about \$23 million, money that was devoted to short-term housing aid and the reconstruction of low-income housing. In the end, the Bay Area had more low-income housing after Loma Prieta than it did beforehand, according to press accounts.

After its experience with the earthquake, the East Bay Community Law Center assembled a group of volunteer attorneys to put together a training manual for lawyers working on similar disaster issues. This fall, the center shipped its manual to the Gulf Coast, he said.

Meanwhile, Selbin said, lawyers will be needed to help the 1,700 or so families who migrated from the Gulf Coast to the Bay Area in the wake of the hurricane. "They have a whole host of needs that are not going to be addressed by lawyers in Mississippi and Louisiana, and they're not going to be addressed by a lawsuit against FEMA," he said. The migrants, he said, will need help obtaining housing assistance, replacing lost identification papers, gaining medical assistance.

Selbin also is concerned that Bush hurt low-income and minority workers in the Gulf states by temporarily waiving provisions that require federal contractors to have affirmative action plans and to pay prevailing wages. The administration asserted the suspensions would speed reconstruction. (Faced with strong opposition, Bush reinstated prevailing wage requirements in late October.) "It's almost," Selbin said, "like he didn't see the same disaster that I did."

www.law.berkeley.edu/faculty/profiles/

Jodi Enda reports on politics and government from Washington, D.C. Previously, she covered the Clinton and Bush White Houses, presidential elections and Congress for Knight Ridder Newspapers.

Reaching Out to Katrina-Displaced Students

BY ABBY COHN

Jill Starrels never saw Katrina coming. In the days leading up to the hurricane and its devastating aftermath, the second-year student at Tulane Law School was completely absorbed in a writing project for a forthcoming journal competition. Holed up in her apartment in New Orleans' Uptown district, "I wasn't paying attention to anything," she recalled.

On August 27, a friend called to warn Starrels about the impending storm and urged her to get a flight out of town fast. Starrels booked a trip home to Philadelphia—noticing with some consternation that the on-line ticket prices had doubled in the span of 15 minutes. Thinking she'd return to school in a matter of days, she decided to travel light. "I brought a carry-on with my laptop and a pair of jeans," she said. Three days later, the levees broke and Starrels realized she wouldn't be returning to New Orleans—or Tulane—anytime soon.

At 9 a.m. exactly one week later, Starrels was among the first 13 Tulane students gathered at Café Zeb for orientation as visiting students at Boalt Hall. Joining dozens of law schools nationwide, Boalt invited displaced students from Tulane and Loyola School of Law—New Orleans to attend classes after the fall semester was cancelled at their home institutions. Starrels, 26, is among 18 Tulane students who took up Boalt's offer. The visitors include eight 3L students, eight 2Ls and two 1Ls. "I'm really grateful for everything Boalt is doing for us," said Starrels, reflecting on the rapid sequence of events that brought her to Boalt on September 6. "I can't imagine a better place to be right now than here."

At about the same time that Starrels was sending an email to Dean of Students Victoria Ortiz to inquire about coming to Boalt, the law school community began mobilizing. After watching the horrific images of the flooded city on *Nightline*, Professor Andrew

Guzman suggested to Dean Christopher Edley the idea of offering space to students from New Orleans. Edley fully endorsed the proposal, as did Boalt's entire faculty at their August 31 meeting. "It just seemed like it required really minor adjustment on our end," said Guzman. The faculty agreed to admit up to 20 students, and Guzman and Ortiz were tapped to coordinate the effort. "It was sort of nonstop for three or four days," Guzman said.

By the time Ortiz returned to her office that day, her voice mail was full. She had dozens of phone and email messages from Tulane and Loyola students in search of a temporary school. Giving preference to students with California residency or other connections

to the state, Ortiz began extending offers and helping students with housing, insurance, class selection, books and a multitude of other details. "It concentrated into a very few number of days the kind of work we do all year round," said Ortiz, who was joined in the effort by Holly Parrish, Boalt's student programs coordinator, and Polly Paterson, the student programs assistant.

Starrels speaks glowingly of the reception she has received

from Ortiz and her staff, along with the rest of the Boalt community. Ortiz "was amazing," Starrels said. "She was so warm." Alumni, faculty, staff, students and others rallied to lend assistance. "Everyone rose to the occasion," said Ortiz. "I had hundreds of offers of housing." Students offered clothing and help with class work and notes. The university's School of Optometry offered free eye care and eyewear.

"As a public institution, there's just more of an ethos of community sharing," observed Ortiz. "I think being in earthquake country makes it easier to walk in Tulane's shoes."

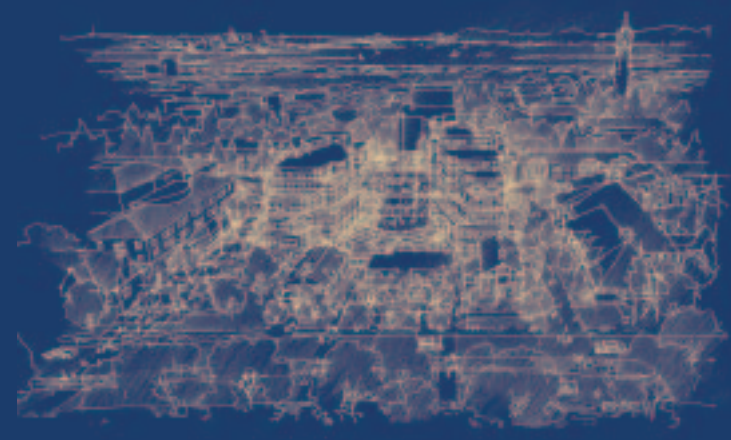


Starrels acknowledged that the loss and uncertainty have taken an emotional toll on her and her Tulane classmates. "Everyone's scattered everywhere," she said. Nonetheless, Starrels has persevered. "I've got a lot of good things from this experience that I'll keep with me. When I'm in a position to help, I will."

Abby Cohn is a staff writer.

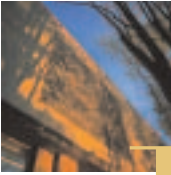


Tulane student Jill Starrels (center) with Dean of Students Victoria Ortiz (far right), Polly Paterson (far left) and Holly Parrish.

Jim Block



The Campaign for Boalt Hall



A Bold Ambition

Generation after generation, Boalt Hall has drawn together a remarkable intellectual community: bright, searching and superbly qualified students drawn to an institution admired for its brilliant and accomplished faculty. It's a center of learning renowned for innovation in curriculum and instruction; boldness in addressing ideas; and engagement in every sphere of the law, government and society. Now the law school stands on the threshold of a new era. Its future excellence depends on an added measure of commitment from alumni and friends to expand upon Boalt's tradition and help raise this unique institution to new heights.

We've long defined distinction in legal education. And our alumni include storied legends and unsung heroes, who have made and continue to make a difference in the world around us. Boalt students are taught to think deeply and creatively—to turn a problem on its head and spin it until a solution is found—and encouraged to assume leadership roles in various capacities.

"Lawyers are problem solvers," said Dean Christopher Edley. "A great law school, with the mission we've embraced, contributes to the solution of our greatest problems. From civil rights in California's Central Valley to intellectual property rights in the global economy—Boalt can make a difference. That's a cause I believe deserves support from alumni and non-alumni alike."

To continue making a difference, Boalt is embarking on its most ambitious fundraising venture ever—the Campaign for Boalt Hall, an effort to raise \$125 million from alumni and friends

as part of a long-term strategy to invest in students, faculty expansion, innovative curriculum and research enterprises, and a new landmark building. The goal is to secure Boalt's standing as one of the world's preeminent law schools—now and for generations to come. "This is the only way Boalt will remain one of the elite law schools in the country," said Professor Jesse Choper. Choper, dean of Boalt from 1982-92, led its last major capital campaign, which raised nearly \$14 million.

California's fiscal reality, and Boalt's, has changed profoundly since that last campaign. Over the past five years, the state's annual contribution to the law school's operating budget has fallen from more than half to less than a third. To compensate, Boalt fees have skyrocketed: 140 percent for nonresident students, 83 percent for resident. Those figures conceal the weight of the burden thrust upon the school and its students: most of the revenue realized from fee increases has been diverted away from Boalt to other needs throughout the University of California. Nearly none has gone to improving the law school.

The rapidly escalating cost of attending Boalt requires students to take on a much heavier debt burden. And higher tuition is eroding the school's position relative to peer institutions competing for top student talent. This year, nonresident students at Boalt will pay about the same as they would to attend Stanford Law School.

The fee increases, however, require careful financial aid planning to maintain one of Boalt's great assets—the quality of its student body.

"Students today are phenomenal," Edley told his audience at September's All-Alumni Reunion. "They're amazing; in many respects frighteningly good." One of the chief challenges the campaign is meant to answer, he added, is sustaining the caliber of our student body through expanded financial aid, opportunities for public-service fellowships, and after-graduation programs like Boalt's Loan Repayment Assistance Program.

"All of the things that give this law school its extraordinary character are at risk," Edley said. "We must have financial aid strategies that not only get the right people in the door but give those students freedom of career choice at the back end so they can pursue whatever career path they want."

But the impact on students is just one challenge Boalt Hall faces. The battle among law schools for the best students and the

BURDEN SHARING IS KEY

The campaign's investment strategy rests on burden sharing among three sources:

- ◆◆ funding from the state to support new faculty hiring;
- ◆◆ funding from current and future students, in the form of higher tuition, to support additional faculty and enhanced financial aid; and
- ◆◆ The Campaign for Boalt Hall: **\$125 million** in funding from alumni and friends to support expansion of our research centers, creation of new programs, renovation and construction.



best faculty—and for the highest reputation and ranking—is fiercer than ever. At the same time Boalt has been locked into a no-investment regime, private and better-funded public competitors such as the University of Michigan and the University of Virginia have developed new programs and facilities to attract the intellectual capital that defines a law school’s standing. “About a generation ago, Michigan saw the light about the value of alternate funding sources to secure its long-term excellence,” Edley said. “The result has been a creation of a culture of giving among alumni and friends that has further reinforced the school’s finances and, with wise program improvements, helped it rise in one ranking to the position of the top public law school in the United States.”

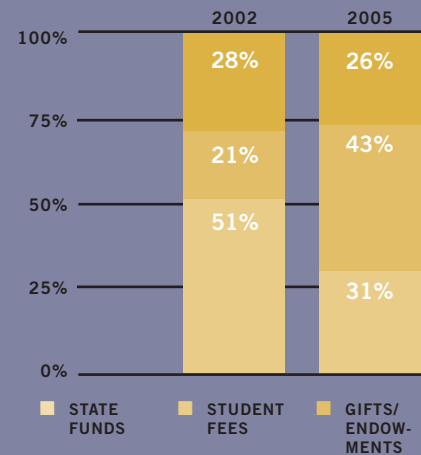
We can do the same. Boalt’s capital campaign is conceived as a comprehensive response to the needs and opportunities facing the law school. The \$125 million goal is the centerpiece of a burden-sharing financial plan that also includes state support for expanded faculty and student support in the form of a carefully planned and controlled increase in fees dedicated to Boalt programs. Overall, the law school plans to raise at least \$500 million on a capitalized basis to meet future needs and provide the resources necessary for building the Boalt of the future.

Charting the course of the law school for the years to come, however, will depend heavily upon the support of alumni and friends. The key to the campaign’s success, said Boalt Hall Annual Fund Chair Jim McManis ’67, is finding a way to reach and motivate “the 70 or 80 percent of alumni who have not become donors.” “This is a matter of giving back to Boalt,” said McManis, who notes he paid less than \$400 a year in tuition when he attended the law school. “Everything I’ve accomplished in my career,” he said, “I owe to Boalt.”

It’s our determination to define and exemplify all that a great law school—particularly a great law school with an important public mission—must be. We have a special responsibility to take on and solve the toughest, most important problems facing California, the nation and the world. And we can accomplish that together by making leaders, making ideas—making a difference.

—STAFF

ANNUAL BUDGET REVENUE



INVESTING IN BOALT’S FUTURE

- ◆◆ **Educating Leaders:** Investments in financial aid to ensure access to Boalt, freedom of career choice to debt-burdened graduates, and the special excellence and richness characteristic of the Boalt student body today. The campaign seeks **\$15 million** for financial aid in scholarships and loan repayment assistance.
- ◆◆ **Creating Knowledge:** Recruiting and Retaining Great Minds—A 40 percent increase in the size of our core faculty. The campaign seeks **\$15 million** for new endowed chairs, to help retain our top-caliber faculty and recruit new talent to our ranks.
- ◆◆ **Making a Difference:** Tackling the Problems That Matter Most—A collection of new and expanded multidisciplinary research centers to focus innovative work on research, policy, practice and curriculum. The campaign seeks **\$15 million** to fund this vision.
- ◆◆ **Housing Our Ambitions:** To update our existing facilities and erect a new landmark building to house our ambitions, the campaign seeks **\$60 million**.
- ◆◆ **The Boalt Hall Fund:** The Foundation of It All—The campaign seeks **\$20 million** for the Boalt Hall Fund, which supports the school’s vitality with unrestricted gifts that allow us the flexibility to act promptly on emerging needs.

ALUMNI, FACULTY AND FRIENDS JOIN CAPITAL CAMPAIGN CABINET

An extraordinary group of individuals has stepped forward to assume leadership roles as cabinet members of the Campaign for Boalt Hall. They include members of our distinguished alumni, professors at the law school and supporters of our ambitions.

- Steven Bochner '81
- Elizabeth Cabraser '78
- Jesse Choper
- Jerome Falk '65
- Robert Glushko
- Stuart Gordon '65
- Richard Greene '63
- James Herbert '62
- Jay Jones '80
- Herma Hill Kay
- James McManis '67
- Charles A. Miller '58
- G. William Miller '52
- Noel Nellis '66
- Richard Roeder '73
- James Rogers
- Adam Sachs '86
- Pamela Samuelson
- Art Shartsis '71
- Mary Jo Christensen Shartsis '72
- Richard Sherman '74
- Larry Sonsini '66
- Dana Welch '87
- Douglas Wolf '70
- Werner Wolfen '53

www.law.berkeley.edu/campaign



Jim Block

Chancellor Robert Birgeneau and Mary Catherine Birgeneau, Dean Christopher Edley, campaign cabinet members and supporters celebrate the law school's ambitions with a toast.



KEY

- | | | | |
|---|--------------------------------------|---|---|
| 1. Jay Jones '80 | 7. Werner Wolfen '53 | 15. Assistant Dean Louise Epstein (Alumni Center) | 23. Steven Bochner '81 |
| 2. Lecturer in Residence Maria Echaveste '80 | 8. Scott Adams | 16. Penny Nellis | 24. Noel Nellis '66 |
| 3. Associate Vice Chancellor Scott Biddy (University Relations) | 9. Arthur Shartsis '71 | 17. Richard Greene '63 | 25. Robert Glushko |
| 4. Mimi Wolfen | 10. Dean Christopher Edley | 18. Professor Herma Hill Kay | 26. Carroll Brodsky |
| 5. Nancy Falk | 11. Adam Sachs '86 | 19. Mary Catherine Birgeneau | 27. Chancellor Robert Birgeneau |
| 6. Jerome Falk '65 | 12. Mary Jo Christensen Shartsis '72 | 20. Dana Welch '87 | 28. Executive Director Jacqueline Ervin (Alumni Center) |
| | 13. Allison Roeder | 21. Professor Jesse Choper | |
| | 14. Richard Roeder '73 | 22. James Rogers | |

Educating Leaders

A Commitment to Access and Inclusion

From the law school days of Chief Justice Earl Warren '14 to those of the current 1L class, Boalt Hall boasts a proud tradition of educating innovative thinkers who care deeply about the world around them. Generation after generation, the very best students seek out Boalt. Joining an intellectual community that crackles with energy and ideas, students learn the theory, craft and principles of lawyering from a renowned faculty. Boalt graduates routinely head to the front lines of public and private service. They make a powerful impact in society as they assume



leadership roles in courtrooms, corporate boardrooms, statehouses and storefront legal clinics.

One of the pillars of the Campaign for Boalt Hall will ensure that the law school continues to attract the most promising students from diverse communities—and equips them with outstanding legal skills to pursue the broadest of ambitions. Today's Boalt students, however, face major financial hurdles. Sharp declines in state support have led to steep increases in the cost of a Boalt Hall education. In-state students now pay more than \$24,000 yearly, while nonresidents pay an annual tuition of about \$37,000, which is about market rate for private law schools. By contrast, Boalt graduates in 1986 paid just \$1,436 and \$5,252 annually for resident and nonresident tuition, respectively. Current tuition bills have exacted a significant toll: Some nine out of 10 Boalt students now receive some form of financial aid, and a typical Boalt student graduates with nearly \$60,000 in debt. To address those needs, the campaign has targeted \$15 million in student support as one of its top priorities.

"The bargain is gone," said Dean Christopher Edley.



"Students today face unprecedented financial barriers and debt burdens. Our mission of providing a world-class education that prepares leaders for all our communities and all parts of the profession requires a commitment to access and inclusion."

While Boalt is known for its generous financial assistance programs, the campaign will augment that support with a robust assortment of scholarship, fellowship and loan repayment assistance offerings, along with additional resources targeted toward student outreach and recruitment. "We want to make a substantial investment in financial aid to ensure Boalt continues to have the most generous aid strategy among its peers and freedom of career choice is assured," Edley said.

At the front end, scholarships, summer fellowships and outreach efforts will keep Boalt attractive, accessible and affordable to the most talented mix of aspiring lawyers. At the back end, the loan repayment assistance program (LRAP) and postgraduate fellowships will ensure that graduates enjoy a freedom of career choice. In this way, they can select employment based on their aspirations rather than strict financial concerns. At both ends, the assistance will make a dramatic difference in the lives of recipients and the work they pursue.

"When I graduated from law school, my undergrad debt and law school debt combined totaled \$110,000, and it would have been impossible to pay down my loans on a public interest salary," explained Alegría De La Cruz '03, an LRAP participant who works as a staff attorney for the California Rural Legal Assistance's Indigenous Farmworker Project in Fresno. "The availability of such a program allows me to have real career choices, and has greatly impacted my ability to choose a public interest law job immediately after graduation rather than having to take a corporate or higher-paying job out of need."

—ABBY COHN

Abby Cohn is a staff writer.

www.law.berkeley.edu/campaign





Creating Knowledge

Recruiting and Retaining Great Minds

Brilliant. Passionate about their teaching and research. Passionate about the world around them. The hire this summer of five dynamic tenure and tenure-track faculty signals a significant early success in Boalt's overall goal of growing its core faculty by 40 percent in coming years—growth unseen since the earliest days of the law school. “It’s an absolute joy to announce the successful recruitment of these spectacular new colleagues,” said Dean Christopher Edley. “They will strengthen our teaching and research portfolios in an array of specialized fields. This influx of talent not only creates exciting learning opportunities for Boalt students, but also enhances our intellectual firepower as we tackle some of the most complex problems on the horizons of legal scholarship and practice.”

Joining us as tenured faculty are Professor David Sklansky from UCLA and Professor Leti Volpp from American University, Washington College of Law. On the tenure-track front, Boalt has three additions: Acting Professors Molly Shaffer Van Houweling, Kenneth Bamberger and Erin Murphy. (Please note accompanying profiles of these new faculty members.)

These distinguished scholars and accomplished teachers and practitioners will make invaluable contributions to the curriculum and to Boalt's intellectual portfolio. The market for top talent, however, is fierce. So the law school's continued success in recruiting and retention will come at a price. Historically, the state has paid Boalt faculty salaries. But after years of financial crisis, the law school must create new resources for attracting and retaining outstanding scholars and supporting their teaching and research.

Beyond training tomorrow's leaders, faculty members engage in research that benefits not only Boalt, but the field of law and the public in general. In the highly competitive market for the most promising or accomplished scholars and teachers, Boalt often must provide non-salary packages. These may include, for example, start-up research funds, mortgage assistance and relocation expenses.

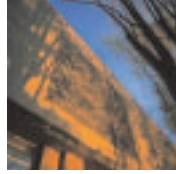
Boalt's more than two dozen endowed positions honor, among others, those instrumental in its founding (Elizabeth and John Boalt); giants in jurisprudence (Earl Warren '14 and Roger J. Traynor '27); a former dean (Herma Hill Kay); an international law practitioner who fought the World War II internment of Japanese Americans (Jackson H. Ralston); a pioneer in the field of wine law (Jefferson E. Peyser '23); an entire class ('41) and the name of the most prestigious firm in the field of technology law (Wilson Sonsini Goodrich & Rosati).

Our chairs and professorships represent an investment in strengthening Boalt's values of excellence in training, research, service and leadership. These endowments signify past generosity—and a challenge and invitation to continue this tradition into the future.

—STAFF

www.law.berkeley.edu/campaign

THINKING IN DEEP, NEW WAYS



It's hardly unusual to move from the courtroom into politics. **Kenneth A. Bamberger** did the opposite. After graduating from Harvard College in 1990, the native New Yorker spent a year as a Lady Julia Henry Fellow at Cambridge University. Afterwards, he returned to the other Cambridge and Massachusetts politics, where he worked for a city councilor and then for a state senator.

But his focus changed. He originally planned to pursue history in graduate school. He experienced, however, a “disconnect between academia and the facts on the ground.” In politics, he noticed that “long-term planning was often overshadowed by more immediately important issues—people who needed services or didn't get their welfare checks.” Deciding that becoming an attorney could provide the best of both worlds, he entered Harvard Law School (HLS), where he was president of the *Harvard Law Review*. “Law provides a wonderful way to both think in a long-term systematic way and ensure that what you're working on has practical effects,” said the 1998 HLS graduate.

This fall Bamberger joined the Boalt faculty as acting professor of law. He teaches Administrative Law, Corporations and Torts, and a seminar on Organizations in the Law. “I find the students amazing, the class discussions terrific,” said Bamberger, who hosts a discussion website for his Torts class. Bamberger came to Boalt from Wilmer Cutler Pickering Hale and Dorr in Washington, D.C., where his principal practice involved appellate litigation, focusing on issues around the intersection of public policy, government and business. After law school, he clerked for Judge Amalya L. Kears of the 2nd U.S. Court of Appeals and for U.S. Supreme Court Justice David Souter.

“Ken is the complete picture of what you would want in a beginning professor at a top law school,” says Associate Dean Howard Shelanski '92, citing Bamberger's credentials. “He has a very interesting way of thinking about corporations, not so much as business entities, but as regulated entities. He thinks in a deep and new way about the relationships between corporations and the administrative state.”

Bamberger, who was a visiting researcher at the Georgetown University Law Center in 2004, is currently examining the increasing delegation of regulatory administration to private organizations, among them entities that may include regulated parties themselves. The argument of his 2002 *NYU Law Review* article, “Provisional Precedent Preserving Flexibility in Administrative Decisionmaking,” was adopted by the 2005 U.S. Supreme Court decision in *National Cable & Telecommunications Association v. Brand X*.

Whether regulations are administered by a public or private organization, he said, the goals and concerns are the same: promoting effectiveness and ensuring that governing functions are accountable to the general populace and the society at large.

Bamberger has close connections on campus. His wife, Sara Heitler Bamberger, is launching a UC Berkeley program on religion, politics and globalization, under the auspices of the dean of International and Area Studies. When not pursuing professional interests, the Bambergers have another all-consuming job—raising 1- and 2 ½-year-old boys.

—JANET SILVER GHENT

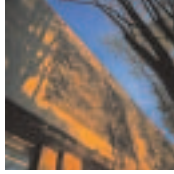
Janet Silver Ghent is former senior editor at the *Jewish News Weekly* and former features writer at the *Oakland Tribune*.

Jim Block



Kenneth A. Bamberger

AND THE LAW WON



“I’ve always been argumentative ... always prone to debating,” said **Erin Murphy**, explaining her longstanding attraction to law. Yet it wasn’t the initial academic path she followed. As a Dartmouth undergrad, she majored in comparative literature. But the fit wasn’t right.

“I always endeavored—unsuccessfully—to be the creative, free spirit,” she said. “Then I got to law school and immediately realized it was an easy fit. ... A lot of people struggle with learning to think like a lawyer. Up until then, I had struggled with learning to think *not* like a lawyer.”

Those struggles have ended. As acting professor of law at Boalt, Murphy is teaching Criminal Procedure and substantive Criminal Law.

“[She] has the performance skills of a trial lawyer and the practical ability to go with it,” said Shelley Cavalieri ’06, who sits on the student liaison committee for faculty appointments. “She uses real-life examples from practice to demonstrate the principles of criminal procedure better than any casebook could. You would not know in her classroom that she’s a first-year professor.”

At Harvard Law School, Murphy (J.D. 1999) was drawn in two directions: adult indigent defense work and the study of law itself. “I always had in the back of my mind that I would likely end up in an academic environment,” she said. “I was that nerdy kid in law school that loved every class. I was just dazzled by the idea that we as human beings might try to figure out—much less fix—the rules by which we wanted to live.”

A self-described backwoods girl from a small town near Orlando, Florida, Murphy honed her legal skills in several capacities in Washington, D.C. She clerked for Judge Merrick B. Garland of the U.S. Court of Appeals for the D.C. Circuit. “I always had a social justice bent,” she said, “but clerking for such a brilliant and thoughtful judge, who had also spent time in public service, inspired me further to work to provide quality representation to the poor.”

That realization led to a five-year stint at D.C.’s prestigious Public Defender Service, where she spearheaded a constitutional challenge to the district’s firearms law. “It was this weird fluke,” she said, noting that cases in the capital are under federal jurisdiction. Although district law forbade all possession of firearms, the U.S. Department of Justice had advocated extending Second Amendment rights to individuals. In her argument, she pointed out that the U.S. Attorney General could not prosecute acts that—under the Justice Department’s own interpretation—were protected under the Constitution.

Her current research article, “Without a Doubt: Appraising the Adversary System in the Age of Scientific Certainty,” focuses on how the peculiar qualities of DNA evidence upset the conventional understanding of how the criminal justice process should work. While Murphy has lectured at the Georgetown University Law Center, the fall semester marked her first experience teaching full courses. “I really love it,” she said. “Everybody told me that Boalt students were exceptional. My experience is that it’s 100 percent true.”

—JSG



Jim Block

Erin Murphy

GIVING SOMETHING BACK



David A. Sklansky still has a well-thumbed collection of Clarence Darrow's courtroom speeches, received as a bar mitzvah gift and marked up with a 13-year-old's zeal. And he still has the remaindered copy of Tom Wicker's book on the 1971 Attica prison riots, *A Time to Die*, that he bought while majoring in biophysics at UC Berkeley. Wicker's book helped steer Sklansky back toward his longstanding interest in the law. "It reinforced my sense that questions of justice and institutional reform and democratic politics were the questions that most excited me," he said.

After three semesters as a visiting professor at Boalt, Sklansky joined the law school this fall as professor of law. Previously, during a decade at UCLA School of Law, he won the campus-wide Distinguished Teaching Award and was twice voted that law school's professor of the year. At Boalt he teaches Criminal Law, Criminal Procedure and Evidence.

"We have been looking to bolster the faculty in the area of criminal procedure for a number of years," said Philip Frickey, Richard W. Jennings Professor of Law at Boalt, who chaired the Faculty Appointments Committee. "In David Sklansky, Boalt struck pay dirt. Without a doubt, David is one of the small handful of scholars and teachers in the United States at the very top of the field of criminal procedure."

He was raised in Orange County, California, where his father is a professor emeritus at UC Irvine and his mother a clinical psychologist. Sklansky graduated from Harvard Law School in 1984 and clerked for Judge Abner Mikva of the U.S. Court of Appeals for the D.C. Circuit and for U.S. Supreme Court Justice Harry Blackmun.

Sklansky, the author of a leading textbook on evidence, says one of his chief concerns as a scholar is reconciling the demands of law enforcement with commitments to liberty and personal autonomy.

How do such concerns play in the classroom?

"The Criminal Procedure course," he said, "is all about how we use law to strike the right balance between the desire for security and safety, and commitment on the other hand to a vibrant, free and democratic society. ... Similarly, there's not a day in the course on Evidence that doesn't touch on the tension between our desire for certainty and our acknowledgement of the inevitable possibility of human error. The Criminal Law course is all about how we have tried to balance our conflicting instincts for judgment and retribution with our instincts for passion and sympathy. It's a course ultimately about the dilemma of holding others in judgment."

Students can't praise Sklansky enough. "There's a real continuity between his research interest, his approach to teaching and the way he interacts with colleagues and students," said Chrysanthi Leon, Boalt Ph.D. student in jurisprudence and social policy. "His research is about democracy and you really experience that in the classroom."

Sklansky now lives in Oakland with his wife, Deborah Lambe '95, and their 5-year-old son. "This is a campus that has always meant a great deal to me," he said. "I'm grateful for the education I received as a college student here, and it's good to be in a position where I can give something back."

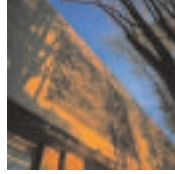


Jim Block

David Sklansky

—JSG

GO, SPEED RACER



Molly Shaffer Van Houweling was raised in Ann Arbor, Michigan, where her parents met as graduate students, but she came of age in cyberspace. When the Internet went commercial in the mid-'90s, she envisioned her future in law, pursuing intellectual property and technology policy issues. So after receiving a political science degree from the University of Michigan and working briefly on information policy issues in the Technology Administration of the U.S. Department of Commerce, she entered Harvard Law School. "As far as becoming an academic, I had some great mentors among my professors in law school, and based on other experiences, I knew I enjoyed teaching, public speaking, research and writing," she said.

The 1998 HLS graduate clerked for Judge Michael Boudin of the U.S. Court of Appeals for the 1st Circuit and Justice David H. Souter of the U.S. Supreme Court. Van Houweling enjoyed her experience at the High Court—"absorbing the pomp and circumstance and seeing how the Court works." "Justice Souter doesn't have a very public personality, but he is charming and gets to know his clerks well," she said.

Van Houweling, who joins Boalt as acting professor of law, will teach Property Law in the spring. She is currently engaged in two research projects related to intellectual property: the role of the Federal Communications Commission in copyright policy, and the application of real property theory (particularly new research related to servitudes) to intellectual property licensing practices.

Prior to joining Boalt, where she was a visiting professor for the 2004-05 academic year, Van Houweling had been an assistant professor at the University of Michigan Law School since 2002. "I decided to stay [at Boalt] in large part because of Boalt's strong commitment to intellectual property and technology law," she said. Her husband, Robert, will join the UC Berkeley faculty as assistant professor of political science.

As former president and currently a director of Creative Commons, a nonprofit that facilitates sharing of intellectual property, Van Houweling has helped develop flexible copyright licenses. She has also been a research fellow at the Berkman Center for Internet & Society at Harvard Law School and the Center for Internet and Society at Stanford Law School, and senior adviser to the Internet Corporation for Assigned Names and Numbers (ICANN). "Professor Van Houweling's background working at ICANN and at Creative Commons gives her an expertise that complements the intellectual property, cyberlaw and licensing expertise of Boalt's other high-tech scholars," said Boalt colleague Pamela Samuelson, Chancellor's Professor of Law and Information Management, and director of the Berkeley Center for Law & Technology (BCLT). "With her on board, BCLT can continue to grow in exciting new directions."

During off-hours, Van Houweling's "most serious" hobby is cycling. The 2004 Michigan State Road Race champion now races with San Francisco's McGuire Cycling team. During racing season, she trains five days a week and races weekly.

"I do a lot of good thinking while I'm riding my bike—multitasking," she said. "I've always found that the busier I am, the more efficient I am. I probably get more done in the rest of my life thanks to the time I spend on my bike racing."

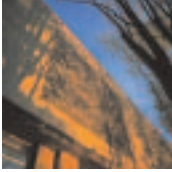
—JSG



Jim Block

**Molly S.
Van Houweling**

A MULTIDISCIPLINARY APPROACH



“America is a nation of immigrants,” Professor **Leti Volpp** writes in a review of Mae Ngai’s *Impossible Subjects: Illegal Aliens and Alien Citizens* for the *Michigan Law Review*. “This is the America with its gates open to the world, as well as the America of the melting pot.”

But for many aliens as well as citizens who are not accepted because they don’t “look” or “sound” American, those gates sometimes slam shut. That’s why Volpp turned her talents to immigration law. The scholar in law, feminism and culture joined Boalt this fall as professor of law.

“She is a leading voice on the intersections of immigration, citizenship, labor and gender,” said Muneer Ahmad, associate professor at American University, Washington College of Law, where Volpp formerly taught. “She is a marvelous scholar and teacher, and she brings to all the areas in which she teaches a tremendously rare voice and an ability to integrate in her work a multidisciplinary approach.”

Immigration Law, which Volpp teaches at Boalt, “is really a technically complicated course,” she said. “It’s important to me that [students] understand how the law works in practice and its impact on people’s lives. I have students go to immigration court and observe proceedings. They’re amazed by what they see. ... They can leave law school with the ability to make an impact.”

The daughter of a Chinese mother and a German father, Volpp grew up in Princeton, New Jersey, receiving her A.B. from Princeton University in 1986. A first-generation American, she said she has long been “concerned with questions of race and racism—a concern that extends not just to immigrants.”

She has written about the exploitation of immigrant women in the garment industry, where labor regulations are routinely violated. “The legal regime doesn’t think of an immigrant worker as a worker but as an alien,” she observed.

Discussing the concept of “alien citizens,” she cited the Japanese internment camps, which exemplify discrimination against those who are legal citizens but not perceived as such. She also studies culture and cultural differences—and how ethnocentric attitudes undermine minority groups. “If culture is only used to explain the behavior of certain people—and others are assumed to be rational—there’s something dehumanizing about this,” she said.

Volpp’s background is multifaceted. She holds master’s degrees in public health from Harvard University and in legal studies from Edinburgh University, and received her J.D. from Columbia Law School in 1993. Since then, she clerked for U.S. District Court Judge Thelton E. Henderson ’62 of the Northern District of California, worked as a public interest lawyer, and served as a Skadden Fellow at Equal Rights Advocates and the ACLU Immigrants’ Rights Project, both in San Francisco. She also visited at UCLA School of Law and, in fall 2004, was scholar in residence at Boalt’s Center for Social Justice.

Volpp comes with family ties to UC Berkeley, where her sister, Sophie Volpp, is associate professor in both Comparative Literature and East Asian Languages and Cultures. “I’m happy to be at Boalt and UC Berkeley in general,” said Volpp. “There is an amazing array of scholars that make me intellectually excited to be here.”



Jim Block

Leti Volpp

—JSG

www.law.berkeley.edu/faculty/profiles



Making a Difference

Tackling the Problems That Matter Most

Boalt's mission is to harness the school's excellence in teaching and training to take on the toughest, most important problems facing the public and private sectors in California, the nation and the world. To do this, we are reconfiguring and expanding the breadth of some of our existing research centers and creating a suite of others. The goal is to drive innovation in the law school's curriculum and mobilize intellectual resources not only within Boalt but across the University of California, Berkeley campus.

That last point is particularly important: Boalt Hall is situated within the world's premier research university, an institution gifted with world-class programs in business, economics, computer science and electrical engineering, molecular and cell biology, environmental sciences and natural resources.

The research centers, however, are built to do more than foster scholarly collaboration: the intent is to reach beyond the walls of our academic community and turn the fruits of our research into training and policy initiatives for business, government and community leaders. To be sure, the centers are already much more than an idea. Many are up and running—the long-established and widely acclaimed Berkeley Center for Law & Technology; the dynamic new Berkeley Center for Law, Business and the Economy; and our ambitious Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity.

These think tanks are already engaged in cutting-edge research on subjects ranging from corporate governance to the civil rights implications of the No Child Left Behind Act. What's more, the centers are buzzing with intellectual energy and excitement; witness, for example, our Center for Social Justice and its new Central Valley Initiative, an effort to focus attention—and develop policy strategies for—the social, political, legal and environmental challenges arising in the state's rapidly evolving inland communities.

In addition to our existing and new research centers, Boalt has developed a battery of clinical education programs that allow students to take the law they have learned in class and put it to work in the real world. Our clinics are focused on a wide array of interest areas, from technology and intellectual property to death penalty appeals and international human rights. Boalt's clinics have won both wide recognition for the training they provide and important victories for clients.

—STAFF

www.law.berkeley.edu/campaign



BERKELEY CENTER FOR LAW, BUSINESS AND THE ECONOMY

The intersection of law and business grows ever more complex and engaging in today's global economy. Under the leadership of Executive Director Dana Welch '87 and Professors Jesse M. Fried and Eric Talley, the center sponsors scholarship and policy initiatives in areas as diverse as tax law, corporate governance and ethics, and antitrust and regulation. It has created an enhanced business law curriculum based on closer ties with the Haas School of Business, and it continues to expand an already robust program in law and economics. Its courses examine business law issues from theoretical and applied perspectives. The curriculum is designed for students planning a private sector career focusing on transactional law, or business litigation or public interest law. As a think tank, BCLBE delves into specific industry sectors and geographic regions. In 2005, the center hosted the ninth annual three-day Latin American and Caribbean Law and Economics Association Conference. As part of an interdisciplinary working group exploring the vast bioethical, business, social, legal and economic implications of California's \$3 billion stem cell initiative, the center is charting bold new territory. This novel area is the topic of a symposium to be held in March 2006 in conjunction with our Berkeley Center for Law & Technology. Two other major conferences are planned for the spring: a symposium on Culture, Psychology and Corporate Governance in East Asia will feature leading scholars in the United States and Asia, and practitioners in the fields of law, business, psychology and economics; and a conference on post-Enron corporate regulation will evaluate and address the effects, intended and unforeseen, of Sarbanes-Oxley and other recent reforms. The center's noontime speaker series

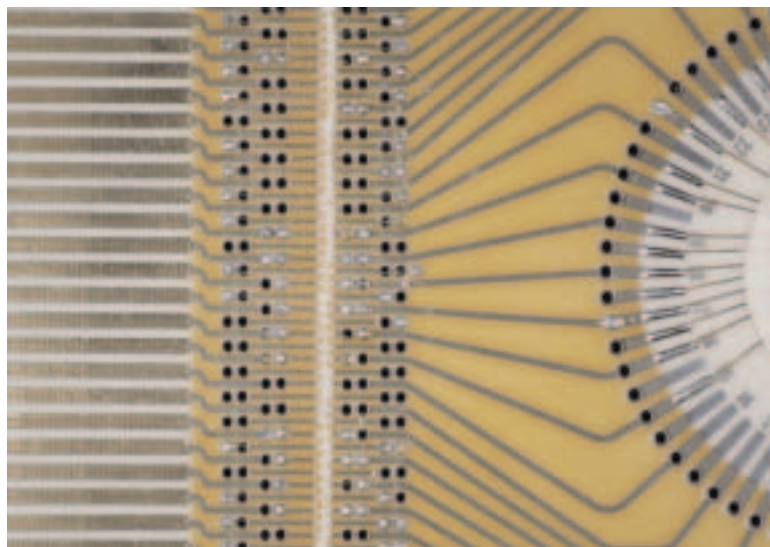
showcases Boalt alums who are leading practitioners in their fields. That was the case in October when, only hours after China's largest-ever Internet deal was struck, Kenton King '87 was at Boalt to offer an insider's view on the newly forged partnership between Yahoo! Inc. and Alibaba.com, China's biggest e-commerce company. King, a partner with Skadden, Arps, Slate, Meagher & Flom, represented Yahoo! in the multibillion dollar transaction.

www.law.berkeley.edu/centers/bclbe

BERKELEY CENTER FOR LAW & TECHNOLOGY

The Berkeley Center for Law & Technology (BCLT), founded in 1996, is a model for the successful research/policy enterprise: the center explores the most complex issues of law and policy raised by the rapid advance of technology in business and throughout society; it is deeply engaged in developing solutions and policy prescriptions; and it is active in training through a top-notch clinical program and as a sponsor of highly regarded conferences and symposia. Most recently, BCLT launched a novel partnership with the Microsoft Corporation, which gave a \$1 million gift to the center to fund new research on a range of critical legal and technology issues.

The center's excellence is widely recognized: *U.S. News & World Report* ranks BCLT's Law & Technology Program in the top slot. The program features three essential components: strong foundational courses taught by Boalt faculty using their own leading casebooks; diverse, challenging and regularly updated advanced courses taught by eminent practitioners (such as Larry Sonsini '66, one of the world's foremost securities specialists); and closely supervised, analytical writing and research-oriented courses.



es with a specific emphasis on law and technology issues. Each year, the *Berkeley Technology Law Journal* publishes the *Annual Review of Law and Technology*, which includes more than two dozen student articles on critical developments from the prior year.

BCLT's high standing, which owes much to its stellar faculty—Professors Pamela Samuelson, Robert Merges, Peter Menell, Deirdre Mulligan and Howard Shelanski '92—continues to draw exciting new talent. Robert Barr, an internationally recognized authority on intellectual property and patent law and former vice president at Cisco Systems, signed on as BCLT's executive director in July. Professor Molly Shaffer Van Houweling, a star in cyberlaw and intellectual property, joined the BCLT faculty this fall from the University of Michigan. The center's Samuelson Law, Technology & Public Policy Clinic, led by Deirdre Mulligan, is immersed in several of the hottest topics in the technology world: development of reliable, secure new voting technology, regulation of spyware, and studying the privacy implications of new surveillance technologies, to name a few.

As BCLT has grown, it has broadened its mission beyond the intellectual property core to encompass antitrust, electronic commerce, entertainment law, biomedical ethics, telecommunications regulation, cyberlaw, privacy and many other areas of constitutional and business law that new information technologies have affected.

The center holds at least one major conference and multiple smaller roundtable events each year. Recent convenings include: spyware: The Latest Cyber-Regulatory Challenge (March 2005). This spring, BCLT will co-host with BCLBE a conference on California's stem cell initiative, and will host a conference on patent reform, which will include among its topics the hot-button issue of patent trolls. And each year, the center works with the Federal Judicial Center to provide training for members of the federal bench.

www.law.berkeley.edu/institutes/bclt

CALIFORNIA CENTER FOR ENVIRONMENTAL LAW & POLICY

California has long been a center of environmental innovations, and it remains in the forefront today on issues ranging from global warming to coastal zone management. The California Center for Environmental Law and Policy (CCELP—pronounced “sea kelp”) represents Boalt Hall's initiative to take on and solve the most pressing environmental issues—from species and habitat preservation to the increasing debate over eminent domain.

CCELP builds on the strong foundations of the law school's Environmental Law Program, which was a pioneer in the field, and will continue to publish *Ecology Law Quarterly*, the nation's leading environmental law journal. Professor Daniel Farber, an internationally recognized expert in environmental law and constitutional law, is the center's faculty director.

Students have the opportunity to take a broad range of environmental law courses, including international and comparative law; engage in cutting-edge research and writing; explore interdis-



ciplinary perspectives on the environment; obtain vital practical experience; and connect with the Bay Area's environmental law community, one of the most dynamic in the country. Each year, students have the opportunity to meet with leading experts and members of the policy community through the Workshop in Development and Environment, which selects a major public project in California and places it under sharp environmental scrutiny.

As a response to the serious environmental challenges facing California, CCELP plans to launch an Environmental Policy Innovation Clinic. The clinic will address environmental issues by bringing together Boalt experts in the field, Boalt students, and UC Berkeley's multidisciplinary strength on the full spectrum of environmental issues and science. The center is also the sponsor of numerous events. This past summer, it offered a well-attended panel discussion on public takings that intersected with major Supreme Court decisions on government exercising eminent domain. In the fall, it hosted Wyoming Governor David Freudenthal for a wide-ranging discussion on federalism and natural resources—a controversial debate in states such as Wyoming

that have a high proportion of lands under federal control. Upcoming events at Boalt include a one-day conference on the impact of Hurricane Katrina (January 19, 2006); and a major two-day conference, California and the Future of Environmental Policy (February 16-17, 2006).

www.law.berkeley.edu/centers/envirolaw

CENTER FOR SOCIAL JUSTICE

The center brings faculty and students together with the bar and bench in a variety of forums to explore more effective ways for the law to fulfill the nation's promise of equality for all. CSJ plans to enhance its work through the greater integration of traditional courses with research programs and clinical education in poverty law. Dean Christopher Edley chairs the center; Professor Angela Harris is its faculty chair; Lecturer in Residence Mary Louise Frampton is its director.

In addition to hosting well-attended noon lectures by leading academics and practitioners in the social justice arena, CSJ hosts two major conferences each academic year. In the fall of 2005, the center kicked off its Central Valley Initiative with a symposium that examined the enormous challenges faced by the valley's most disadvantaged communities as well as showcased the innovative social justice work being accomplished. Access to quality education, the protection of agricultural laborers and immigrants, equitable land use and economic development, health and environmental justice, and political enfranchisement and civic participation were explored, and innovative strategies are under development to address these issues.

www.law.berkeley.edu/centers/csj

CENTER FOR THE STUDY OF LAW AND SOCIETY

The center's mission is to facilitate interdisciplinary discussion and research by faculty from the Berkeley campus and throughout the world. Founded in 1961, the center fosters empirical research and philosophical analysis concerning legal institutions, legal processes, legal change and the social consequences of law. Employment law specialist Lauren Edelman '86, Agnes Roddy Robb Professor of Law, directs CSLS. Through the center's Visiting Scholars Program, the campus socio-legal community has benefited from the presence (in residence) of international academics, whose areas of expertise run the gamut of disciplines: law, political science, sociology, criminology, economics, philosophy and history. They bring a stimulating comparative perspective to seminars and discussions at the center and, in some cases, become

involved in collaborative research and writing with UC Berkeley scholars. In this regard, the Visiting Scholars Program is one of the center's most important and fruitful activities, enriching current scholarship and stimulating new research ideas and ventures.

www.law.berkeley.edu/centers/lawandsociety

CHIEF JUSTICE EARL WARREN INSTITUTE FOR RACE, ETHNICITY AND DIVERSITY

California is ground zero for the racial and ethnic changes sweeping the nation, changes that reach into every corner of our society. Consider Boalt's mission: the idea of undertaking multidisciplinary work that leverages our intellectual capital to make a difference on the toughest, most important problems we face. Race and ethnicity rank right at the top of the issues demanding our attention. The institute, launched in the fall of 2005, is already engaged in several major research initiatives: voting rights issues arising from the 2000 and 2004 general elections; civil rights implications of the federal No Child Left Behind Act; exploring the issues surrounding public education financing and the legal campaign to establish a fundamental right to an adequate education.

The Chief Justice Earl Warren Institute for Race, Ethnicity and Diversity, named to honor the racial justice legacy of *Brown v. Board of Education* and other contributions of the Warren Court, is in significant respects modeled after The Civil Rights Project (CRP) at Harvard. That project was co-founded in 1996 by Harvard Professor Gary Orfield and Boalt Hall Dean Christopher Edley (then at Harvard Law School). CRP and the Warren Institute are collaborating on research funded by the Bill and



Ryan McVay/Getty Images

Melinda Gates Foundation, titled *Advancing National Policies to Bolster High School Education Reform: Using Implementation and Reform of No Child Left Behind to Design Policy and Practice for Vulnerable Students*.

In addition to research and policy work, education and training are part of the Warren Institute's mission. The institute seeks to promote curriculum innovation at Berkeley, and actively involves professional and graduate students as research assistants, student fellows, and through a student advisory committee. The Faculty Board is chaired by Dean Edley.

A quick overview of the institute's 2005-06 agenda:

- Voting Rights and Deepening Democratic Engagement
- K-12 Achievement and Accountability
- K-12 Adequacy, Financing, and the Fundamental Right to Education
- California's Proposition 209
- Unequal Treatment by Healthcare Providers
- Immigration Policy Reform
- Rethinking Discrimination and Racism

www.law.berkeley.edu/centers/ewi/index.html

GLOBAL CHALLENGES & THE LAW (*New Initiative*)

Global Challenges & the Law will expand Boalt's current international law program to integrate areas of comparative, private transnational and public international law. The center, under the

leadership of Professor David Caron '83, anticipates considering issues in sweeping categories such as prosperity and poverty, peace and security, health and environment, democracy and rights. Its mission is to select discrete topics within these categories and develop new research and policy projects to address them while building bridges to other disciplines and professions.

CRIMINAL JUSTICE RESEARCH & POLICY (*New Initiative*)

This is a new program of law and social science with a significant emphasis on empirical research and a particular focus on California data, policy and legal developments.

PUBLIC LAW AND GOVERNANCE (*New Initiative*)

This critical new center will focus on research, teaching and training on public issues affecting local, state and national governance such as regulatory reform, legislative processes, "initiative government," responses to terrorism, and regional government strategies. An annual California judicial conference will be created.

HEALTH (*Exploratory Strategic Planning Underway*)

KADISH CENTER FOR MORALITY, LAW & PUBLIC AFFAIRS

The center, directed by Professor Eric Rakowski, promotes research and reflection on issues of moral philosophy in law and public life, with special emphasis on the substantive aspects of criminal law. Boalt seeks to strengthen the Kadish program with resources to support collaboration with other faculties and research opportunities for J.D. and Ph.D. students.

www.law.berkeley.edu/centers/kadish

ROBERT D. BURCH CENTER FOR TAX POLICY & PUBLIC FINANCE

The center, a collaboration between Boalt Hall and the Department of Economics, promotes the study of tax and fiscal policies. The center has sponsored several conferences, including most recently the Conference on Aging, Financial Markets and Monetary Policy, cosponsored with the Deutsch Bundesbank in Frankfurt, Germany.

www.law.berkeley.edu/centers/burch



CLINICAL EDUCATION

Our clinical education program, directed by Professor Charles Weisselberg, provides students an opportunity to deepen their knowledge of the law and practice through immersion in real cases involving real people.

www.law.berkeley.edu/centers/clinicaled

Our four clinical programs are:

The Death Penalty Clinic

The clinic, directed by Professor Elisabeth Semel, assists in selected capital appeals. The DPC's faculty and students drafted *amicus curiae* briefs in *Miller-El*, a case that in June 2005 resulted in the U.S. Supreme Court ordering a new murder trial for a Texas inmate. The clinic is currently working on two death row appeals: one in Alabama, the other in California.

www.law.berkeley.edu/clinics/dpclinic

East Bay Community Law Center

In 1988, Boalt students founded the East Bay Community Law Center (EBCLC), the community-based component of Boalt Hall's Clinical Program. Lecturer Jeff Selbin is EBCLC's executive director. Under the supervision of center attorneys, students offer direct legal services to local low-income residents in the areas of benefits advocacy, estate planning, family law issues, debt relief and immigration. Students also address legal problems encountered by people living with HIV/AIDS.

www.law.berkeley.edu/clinics/ebclc

International Human Rights Law Clinic

As with our other clinics, the International Human Rights Law Clinic demonstrates a Boalt ideal: hands-on training in legal work that is important both in solving difficult problems and in improving the quality of life in society in a deep, enduring way. Students work on innovative human rights projects that advance the struggle for justice on behalf of individuals and marginalized communities that have been the targets of repression and violence. In addition, they prepare and conduct litigation before national and international judicial forums concerning human rights violations. They also engage in interdisciplinary empirical studies of the impact of human rights abuses—research that aims to achieve policy outcomes. A recent example illustrates the clinic's effectiveness and the commitment of its staff and students.

In October 2005, the Inter-American Court of Human Rights in San José, Costa Rica, ruled on behalf of clinic clients—two Dominican-born children of Haitian parents who had been denied birth certificates and basic rights such as education. The court ordered the government to pay damages and, more important, reform its policies on immigrant rights. The clinic and two allied groups brought the suit in 1998—the same year the clinic was founded. The victory promises not only official recognition for thousands of children who have been denied a national identity but a foothold for a better life.

Professor Laurel Fletcher directs the clinic. Roxanna Altholz '99, who as a student helped file the Dominican rights case, and later assisted Fletcher in its litigation, has returned to the clinic this year as lecturer in residence.

www.law.berkeley.edu/clinics/ihrhc/news.html

Samuelson Law, Technology & Public Policy Clinic

The Samuelson Law, Technology & Public Policy Clinic gives students hands-on training while providing a new voice for the public interest. The clinic aims to serve as the public's voice in legal and regulatory disputes presently dominated by lobbyists and the government. The clinic is currently engaged in a broad industry-government effort to develop an effective regulatory regime for the pervasive problem of spyware. As well, Professor Deirdre K. Mulligan, director of the Samuelson Clinic, is one of a group of academic experts who have joined in a national effort to improve the reliability and trustworthiness of electronic voting technology. Funded by a \$7.5 million grant from the National Science Foundation and based at Johns Hopkins University, A Center for Correct, Usable, Reliable, Auditable and Transparent Election Systems (ACCURATE), brings together authorities in computer science, law and usability in the first large-scale academic effort to improve electronic voting systems. Mulligan is a co-investigator with ACCURATE.

www.law.berkeley.edu/clinics/samuelson

—STAFF

Housing Our Ambitions

A Window onto Berkeley for the World, a Window onto the World for Berkeley

It's a balmy fall evening as the candidates in the next presidential election square off in a nationally televised debate from the UC Berkeley campus. More than 2,000 onlookers have gathered to hear the proceedings in an airy gallery that flows onto an outdoor amphitheater. The resulting exchange is spirited—and dominates the morning headlines.

That scenario offers a glimpse into the potential for the shared building now under design by Boalt Hall and the Haas School of Business. Intended to house many of Boalt's ambitions for the future, the building is destined to become a hub for scholarly collaboration and a signature locale for the campus community and the Bay Area. Planners also want to deliver an architectural punch: their current design calls for an innovative building shaped like an "H" or a "butterfly." It will command spectacular views of the hills to the east, and westward to the San Francisco Bay.

The building's centerpiece will be a three-story atrium, tentatively called "the Forum." It will provide a major stage for high-profile speaking events, concerts and ceremonies. "Our ambition is that this is *the* destination venue on the Berkeley campus," Dean Christopher Edley told Boalt alums as he unveiled preliminary

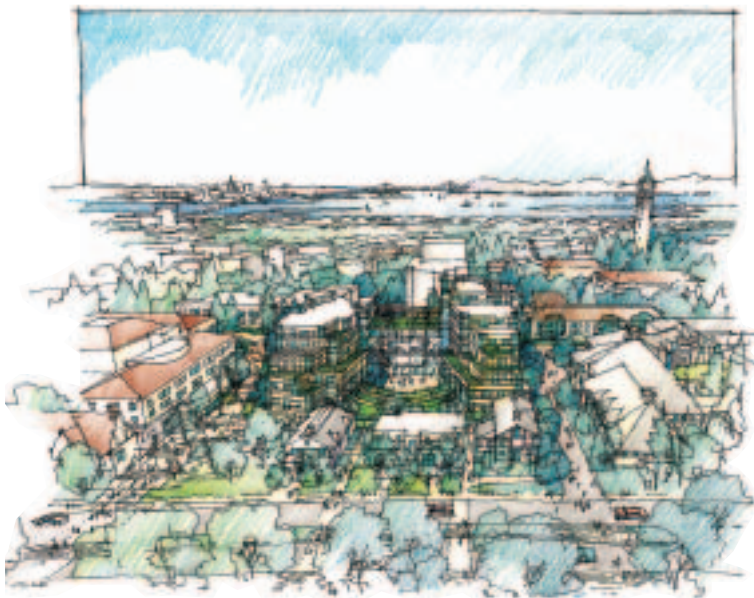
sketches of the new building at this year's All-Alumni Reunion. "This is where people are going to want to come, this is where C-SPAN will provide a window onto Berkeley for the world and a window onto the world for Berkeley."

Planned to rise from what is now the parking lot behind Boalt Hall, the new structure is a key element of the recently launched Campaign for Boalt Hall. It will provide state-of-the-art classrooms and seminar rooms built to accommodate small, interactive discussions and equipped with the latest technology. Students will have new space for journal activities, affinity organizations and other pursuits. The building will have offices for a growing Boalt teaching corps, making room for a planned 40 percent expansion in the size of the law school's core faculty of tenured and tenure-track professors. The building also will accommodate the law school's plans to create an array of multidisciplinary research centers that forge and share new knowledge on cutting-edge areas of the law. Think tanks like Boalt's top-ranked Berkeley Center for Law & Technology (BCLT) and its new Berkeley Center for Law, Business and the Economy (BCLBE)—centers that share natural intellectual connections with Haas—likely will occupy the facility.

As a physical and an intellectual bridge between Boalt and Haas, the structure creates a powerful partnership. That alliance will encourage scholars from both institutions to join intellectual forces to tackle evolving issues at the intersection of law and business. "A major element of the value proposition of this new building is precisely in enhancing the connection points between Boalt and Haas," said Richard K. Lyons, executive associate dean of the Haas School of Business. "There are already exciting connections in the joint research efforts between the two schools, including the areas of intellectual property and corporate governance. The new building will enable more new research programs, and it will promote expansion of existing curricular connections and collaboration."

By fostering a multidisciplinary approach to problem solving, the new building will help harness scholarly talents from throughout the campus to create new ideas on the frontiers of practice and theory.

To accommodate that big agenda, planners are calling for a bold architecture. Currently the design calls for two mid-rise towers, or "wings," to house classrooms, meeting rooms, space for



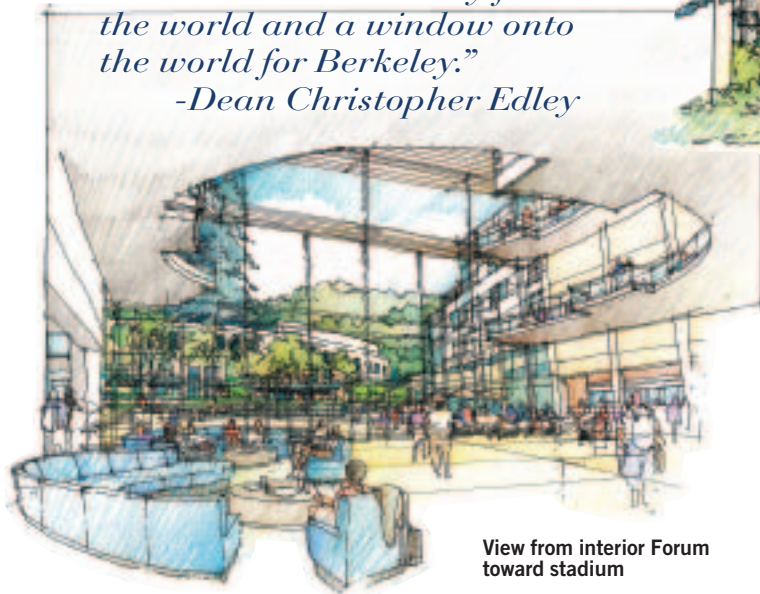
Aerial view looking west

“This is where people are going to want to come, this is where C-SPAN will provide a window onto Berkeley for the world and a window onto the world for Berkeley.”

-Dean Christopher Edley



View from College Way



View from interior Forum toward stadium

research centers and student activities. The three-story Forum would link those wings like the thorax of a butterfly. By day, students and faculty will gather in this busy piazza and café for casual meetings and discussion, to watch a televised debate or to study while enjoying lunch. In the evening and on weekends, the Forum will convert into an auditorium with ground-floor and opera-style seating for hundreds of guests. Glass doors will lead outside to a grassy amphitheater, providing seating for another 2,000 people.

Edley, who assumed Boalt's deanship after 23 years as a professor at Harvard Law School, said the design is inspired by the forum at the John F. Kennedy School of Government at his former institution. "Ours," he added, "will be better."

The new building, along with a proposed renovation of Boalt's 50-year-old current home and an expansion of the law library, constitutes one of the central goals for the law school's overall \$125 million campaign. These capital projects carry an estimated price tag of \$60 million. At the existing Boalt building, funds are needed to enlarge the library to fit a collection of 870,000 volumes now packed into a facility suitable for a collection half that size. In addition, classrooms and lecture halls will be remodeled to keep

pace with contemporary teaching approaches that call for smaller, more adaptable learning spaces.

The new building is part of the campus's proposal for a south-east-area renaissance announced in February by Chancellor Robert Birgeneau. "The exciting partnership between law, business and athletics is driving this huge project forward," said Edley. "Under Chancellor Birgeneau's leadership, we are remaking the Berkeley bureaucracy, while demonstrating a campus commitment to unite the aspirations of academic units and athletics."

As an architecturally significant addition to the campus, the new law and business structure will spotlight an important but underused gateway to the university. Plans call for a meandering pedestrian pathway leading to the facility, recreating the historic College Way entrance to the campus.

In May, the Santa Monica-based firm of Moore Ruble Yudell (MRY) Architects & Planners was selected to lead the building's design work. MRY's portfolio includes the acclaimed design for the Haas School of Business. That mini-campus, whose architecture is reminiscent of the California Craftsman style, was completed in 1995. Faculty, administrators and students from Boalt and Haas, along with other campus representatives, are active participants in the planning sessions for the current project. This summer, they engaged in a four-day "charette"—an architectural term for an intense, on-the-spot design effort—that explored many schematic and design alternatives. In keeping with the building's ultimate mission, the session was a decidedly collaborative affair.

—ABBY COHN

Abby Cohn is a staff writer.

www.law.berkeley.edu/campaign

E-Voting: Toward Fair and Accurate Elections

BY DEIRDRE MULLIGAN

The 2000 presidential election was a wake-up call to the nation. Ruling in *Bush v. Gore*, the Supreme Court found that discrepancies in the machines and processes that dictate how individuals vote and how votes are counted can be constitutionally significant. Simply put, the machinery of democracy matters.

In the aftermath of the 2000 election there was renewed interest in measuring the disparities among various election technologies. Research at Berkeley and other institutions found vast discrepancies in the performance of voting technologies and in some instances these innate discrepancies were magnified when used by historically marginalized voters. With disparities exposed, some states abandoned punch-card balloting machines. The stage was set for new generations of voting systems.

When states began purchasing new voting systems, few focused on why faulty machines had been federally qualified and sold for use in elections. While no single incident garnered the level of attention that Palm Beach County received in 2002, the 2004 election saw pockets of voters throughout the country disenfranchised or frustrated because of voting technology. Thousands of voting problems were reported, ranging from counting problems such as a voting system that failed to capture more than 4,500 votes because of limited memory, to a system that accidentally awarded 3,893 extra votes to President Bush while sending votes via a phone modem, to fairly simple balloting problems.

New voting systems, like those they replaced, were designed and approved for use in elections with insufficient attention to their capacity to provide security, privacy, equality and accessibility. Given the magnitude of the problems during the 2000 election and the depth of disillusionment and distrust they spawned, one would imagine that better technology would be available and

in use for 2004. Unfortunately while Palm Beach's butterfly ballot was rightfully criticized, it is emblematic of faulty procedures that currently govern how we certify, evaluate, and use voting technology. But this is old news. A host of technical problems with voting equipment identified in the 1960s led the federal government to adopt guidelines, aimed at eradicating voting machine failures. Too little attention after the 2000 election, however, was paid to the question of why this federal system was failing.

A little history is useful here. Historically, U.S. elections were relatively simple. Contests were decided by a show of hands, depositing objects in containers, or writing choices on slips of paper. Over time, as populations grew larger, ballots became more complex and with the introduction of complicated voting technology—exacerbated by unevenly distributed resources—this early technical simplicity eroded. At some point, the inconsistencies introduced by differences in technology choices and procedures become unconstitutional in the sense that there is no longer

Mike Simons/Getty Images



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a guarantee that every person can vote and that their votes are counted as intended to be cast. The result has been referred to as “disenfranchisement by design.” These disparities are of increasing concern to election officials, candidates, legislators and election monitoring organizations.

Because of technical failure in the 1960s and 1970s, the federal government charged the Federal Election Commission (FEC) with creating standards to guide the certification and testing of voting systems—the Voluntary Voting System (VVS) Guidelines. Today the Election Assistance Commission (EAC), created by the Help America Vote Act (HAVA) of 2002, is responsible for these guidelines. Their job is to translate the diverse values of equal protection and nondiscrimination (racial equality, multilingual access, disability access, and interjurisdictional equality), privacy, security, transparency, accuracy and auditability into specifications and requirements that reliably instill them in voting systems.

As past elections and guidelines illustrate, the distillation of these core democratic values into workable voting system requirements is a complicated process; and one which we have repeatedly failed with great consequence. Each version of the VVS Guidelines (1990, 2002, and those proposed in 2005) suffers from fundamental procedural and substantive flaws. First, the process of developing the guidelines and, to an even greater degree, the testing and certification of election systems, lacks transparency. Substantively, the VVS Guidelines fail to use discipline-specific approaches to certification and testing. The result is a one-size-fits-all, checklist method to evaluate the fitness of machines across a diverse range of requirements meant to represent unique values that call for different designs, performance metrics and testing modes.

Furthermore, the guidelines have no mechanism for evaluating and incorporating voter experiences with voting technology. Incredibly, the problems incurred during recent elections were neither harvested nor evaluated to generate new guidelines or recall malfunctioning machines. Finally, there is an unacceptable lag in updating and applying new guidelines, resulting in only two newer, rarely used systems that were qualified against the 2002 guidelines; the majority of voting systems used during the 2004 election were qualified under the 1990 standards. Notably,

even the 2002 guidelines fail to effectively address usability and auditability—despite that many of the serious problems during the 2000 presidential election included incompletely punched punch cards and poorly performing lever machines. Nowhere will one find core concepts such as equality reflected in the guidelines.

Here's where Berkeley comes in. A research team, A Center for Correct, Usable, Reliable, Auditable and Transparent Election Systems (ACCURATE), which includes myself and Professor David Wagner, UC Berkeley Computer Science Department, was awarded a multi-year grant from the National Science Foundation to improve the state of voting technology. This is an area where legal knowledge or computer science alone is unable to assure just and robust outcomes. Together technologists, social scientists and lawyers hope to contribute to the creation of a better system for approving voting systems and ultimately more fair, equitable, accurate and trustworthy elections. As a first step, we proposed an overhaul of the certification and testing process for voting systems to address many systemic problems.

Our research mandate is to consider the role of standards, certification, procedures, and procurement in conforming voting technology to public policy goals. We can design electronic voting systems that provide access to the disabled and the bilingual, are secure, private and auditable—but only if we are able to reduce these values to requirements that can consistently inform their design and use. Similarly, we can ensure equal treatment of votes across states and counties using vastly different technology, under different circumstances—but only if we begin to articulate standards that allow us to embed these goals in technology design. Voting systems must provide improved accuracy, access, privacy, equality and accountability. If we expect machines to respect these values, however, we must assist in translating them into rules that code can enforce. ACCURATE aims to bridge this gap and inform activity in other areas where technology is being rapidly embedded into core government functions.

Acting Clinical Professor of Law Deirdre Mulligan is the director of the Samuelson Law, Technology & Public Policy Clinic.

www.law.berkeley.edu/cenpro/samuelson

Measuring the Effects of Sarbanes-Oxley

BY ERIC L. TALLEY

The Sarbanes-Oxley Act of 2002 (SOX) has now become a focal discussion point for corporate boards across America. By most accounts, the legislation was path-breaking: for it was arguably the first statutory reform that effected significant changes in corporate governance, executive compensation, and securities fraud all at the same time.

Nevertheless, more than three years after its promulgation, the overall effect of SOX on publicly traded firms remains in dispute. Proponents of the Act have maintained that SOX mandates are beneficial to companies, facilitating access to the public capital market, encouraging transparency, and alleviating investor anxiety. Opponents of SOX, on the other hand, argue that the Act is a haphazard and hasty response to a temporary financial crisis, representing little more than an unnecessary regulatory burden.

Of particular interest in recent months has been the question whether, whatever its overall benefits/costs, SOX imposes a disproportionate burden on small issuers. Although the legislation made no distinction along size dimensions, advocates for small and midsize firms have long argued that the Act would retard competition and growth among these firms. Heeding these warnings, the Securities and Exchange Commission (SEC) recently decided to delay enforcement of the “internal controls” requirement under Section 404—widely thought to be the most onerous of SOX’s provisions—for companies with a market capitalization less than \$75 million.

For most of the past three years, the debates outlined above have been comprised of little more than anecdote, analogy, assertion and argument. Only recently, with some experience (and data collection) under our belt, have researchers been in a position to evaluate the relative merits of these competing claims as an empirical matter. But even here, designing a good “test” of SOX’s performance is quite challenging. For example, a number of recent studies have surveyed companies to determine the

stock	sym	high	low	close	chg	vol 100s	
5.25	5.12	5.16	+0.01	5.12	5.16	+0.01	19751
1.81	1.66	1.71	-0.09	1.66	1.71	-0.09	458
0.38	0.35	0.35	-0.03	0.35	0.35	-0.03	456
2.30	2.18	2.26	+0.05	2.18	2.26	+0.05	34954
1.12	6.89	6.99	-0.06	6.89	6.99	-0.06	5251

resources, time and money they are spending on SOX compliance. Most report that companies are spending a significant percentage of their resources on compliance matters, particularly smaller issuers. While such studies are informative, they can also be misleading for a number of reasons. They don’t account, for example, for the fact that companies may answer survey questions strategically. Nor do they account for the possibility that companies have merely reclassified some pre-existing compliance costs under the banner of “SOX Compliance.” Nor are they able to tell us anything about whether there are any corresponding *benefits* to the SOX mandates.

Another set of recent studies attempts to analyze SOX’s effects by looking at a population of firms for which the legislation is likely to matter most: companies at the threshold between public and private ownership, deciding either to go public through an IPO, or conversely to exit the public markets through a stock

Of particular interest in recent months has been the question whether, whatever its overall benefits/ costs, SOX imposes a disproportionate burden on small issuers.

buyout (sometimes called a “going private” transaction). Many of these studies conclude that SOX has been either neutral or costly, and they offer some evidence that smaller firms have been more affected by it. Although these latter studies focus on smaller populations of firms, they have somewhat more persuasive power, since firms at the public/private threshold are more likely to be considering *both* the costs and benefits of SOX, and essentially voting with their feet. Nevertheless, they still suffer from the lack of a good “placebo” group, i.e., a separate metaphorical petrie dish consisting of firms also at the public/private juncture, but who were *not* subject to SOX.

This shortcoming is understandable: In many policy settings, it is virtually impossible to find such a control group. Indeed, with some notable historical exceptions, national legal reform (like SOX) categorically reaches all individuals, leaving no one to represent a baseline for control. Without this baseline, it is difficult to conclude that any observed change in behavior was due to SOX itself, or rather some other independent event affecting global capital markets that happened to coincide with SOX.

In a recent study, I and two co-authors employed a unique data set that allowed us to provide for such a baseline in analyzing decisions to go private. What made the data set unique was the fact that it contained data on going private transactions not only for U.S. firms, but also for companies traded on *foreign exchanges*, which were not subject to SOX’s mandates. Specifically, we hypothesized that even though there may be some differences between U.S. and foreign companies surrounding their decisions to go private, we could account for those differences before SOX, and then ask whether the introduction of the Act induced those observed differences *themselves* to change. This approach is sometimes referred to by social scientists as a “difference-in-difference” approach, and is considered a much more reliable (though not infallible) way to infer causal relationships.

The results of our study were interesting. First, we found that at least in the first year after enactment, U.S. firms went private at a rate (relative to their foreign counterparts) 16 percent higher than before the introduction of SOX. Virtually all of this increase was attributable, however, to issuers with market capitalizations of less than \$20 million—with little apparent changes for larger-

cap companies. We also found that among small issuers, the *identity* of the acquirer changed as well, with acquisitions by companies that were themselves privately held (rather than public) increasing by nearly 50% (again relative to foreign counterparts). These findings are consistent with the assertion that SOX represents a net recurring cost for small firms, avoidable only by removing the company from the public capital markets. In short, smaller firms not

only can vote with their feet, but they apparently did so. Aggressively.

Does this mean, then, that from a policy perspective, SOX has been a bad idea, at least for small issuers? It may, but not necessarily. For example, although the effects we studied are quite pronounced with smaller issuers, they tend to dampen and eventually disappear if one goes out more than a year past SOX’s implementation. This disappearing SOX effect may well reflect a trend where maladapted firms exit the market immediately, leaving other firms that actually *benefit* from SOX. Moreover, most securities fraud investigations by the SEC are against smaller issuers, thus suggesting that the investors benefit more from SOX when it is applied to small companies. On the other hand, if one of the goals of the SOX legislation was to visit an even-handed regulatory burden/benefit on firms regardless of size, it likely shot wide of the mark.

Some of these questions will be answered through extensions of my own work (described above), or those of others in the field. But in any event, we are now entering an exciting period for corporate and securities scholars: The rare opportunity to measure the longer term effects of this significant legislative and regulatory reform.

Eric L. Talley is visiting Boalt Hall for the 2005-06 academic year from the University of Southern California Law School, where he is the Theodore and Ivadelle Johnson Chair in Law and Business. His principal subject areas include corporate and commercial law, securities law, law and economics, corporate finance, and empirical methods in the law. In addition to his teaching responsibilities, he is serving as faculty co-director of Boalt’s Berkeley Center for Law, Business and the Economy.

To read the study please visit www.ericталley.com

Alums Revivify Friendships



1



2

1 Marty Jimenez '86; 2 Vince Fong '75, Shirley Sanderson '75, Mario Barnes '95, Gloria DeHart '65 and Ramon Romero '80; 3 Richard Macias '76 and Quirina Orozco '05; 4 Carl Douglas '80, Eva Gorbis, Boris Gorbis '80 and LaVeeda Garlington-Mathews '80.



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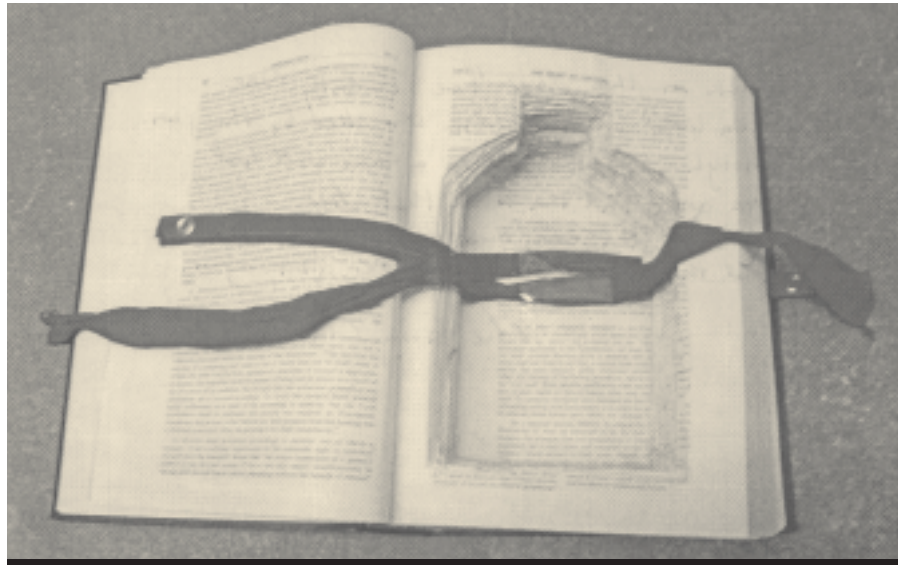
5 Judge Claudia Wilken '75, Scott Williams and Professor Mary Louise Frampton; 6 alumni dance by starlight in Darling Courtyard; 7 panelists Charles Renfrew and Professor Stephen Bundy; 8 Valerie Cox, Evan Cox '87 and Professor Eleanor Swift; 9 David Billingsley '95, Stephanie Deaner '95, Stephanie Powers-Skaff '95 and Joshua Kirsch '95.



and Ponder Pressing Issues



Secret clubs present an ontological predicament. There is no point in being a member of a secret club if no one knows about it, and yet if everyone knows about it, it is no longer a secret club. How then, if you are a clever bunch of Boalt students and want to establish a covert drinking club, do you let everyone know that there is something they are not allowed to know about? How do you broadcast your existence if your members have vowed silence “under no less penalty than to have my throat cut across, my tongue torn out by the roots, and my body buried in the rough sands of the sea, at low water mark, where the tide ebbs and flows twice in twenty-four hours”? (Well no, that’s what the Freemasons used to pledge, but one



The Gun Club, a secret society that first appeared at Boalt in the early 1900s, challenges the Boalt community to find this discarded library book reportedly containing a pint of liquor.

Eris Quod Sum, Ergo Bibamus*

trusts that a group of beer-soaked law students can dream up something equally gruesome and dire.)

Recently we received by anonymous courier (the only type employed by secret clubs), a mysterious poem from a group of law students who call themselves The Gun Club. We were delighted that the members obviously know their Boalt history, for the original Gun Club, founded during the early years of the last century, numbered among its members the law school’s most illustrious alumnus, Earl Warren ’14. While a student at Cal, Warren and his friends would gather on Thursday nights at Pop Kessler’s Rathskeller in Oakland for evenings of beer drinking and poetry reading. They favored Kipling, Burgess and Harte, poets whose work employed swaying meters easy to synch with the swing of a stein.

The missive from the resurrected club was both puzzling and disturbing, for it included obscure poetry which had been

Scotch-taped to a mutilated page from a discarded library book—a page which had been sliced into the shape of a liquor bottle. The poem mentioned “the Rule in Shelley’s Case” and directed us to 173 U.S. 276 “behind Garret McEnerney.” Having read the complete adventures of Nancy Drew as a young cub and being therefore no slouch in the sleuth department, we knew immediately that we should climb the stairs in the Main Reading Room and slither behind the portrait of the library’s namesake. Inside the cited volume at the cited page we discovered [*gasp*] a slender piece of paper inscribed with the following poem:

*Back in the days 'fore Twenty One
Men lived for the drink who died by the gun.
Though tales be told in a tome well hid
None could find the tome that did
Describe the men, their lives & fun
And the bond they shared o'er drink and gun.
The Gun Club*

A photocopy of the vandalized book on the verso of the poem promised that somewhere in Boalt Hall was hidden a pint of liquor concealed in a hollowed out book. We are not sure which upsets us more: that a library book (even a withdrawn one) has been horribly mutilated, or that a perfectly good bottle of booze has been taken out of circulation. Our curiosity overcame our outrage, however, and we followed the clues as far as we could, but came up liquorless. So we have decided to turn the hunt over to you, Dear Reader. Can you take up The Gun Club’s challenge and solve The Case of the Sequestered Flask? 🐾

For a closer look and more clues, visit www.law.berkeley.edu/library/gunClub.html.

*What you are, I was; what I am, you will be; so let’s drink.

From The Archives



J. Richard Johnston '39

DONALD GRUNSKY '39 AND ALFRED SPALDING '39