

boalt hall transcript



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THE OPPORTUNITY TO MAKE
BOALT HALL SECOND TO NONE

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Boalt Hall Transcript

Editor

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Linda Anderberg

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Writers

Kate Callen
Professor Goodwin Liu
William Rodarmor

Contributors

William Benemann
Demian Bulwa
Amy Johnson Conner
Karen Eisenberg
Leslie Gordon
Michael Rosen-Molina
Colleen Sharp
Eilene Zimmerman

Cover Photograph

Jim Block

Photography

Jim Block
Bob Chinn

Illustrations

Jennifer Hewitson
Neil Shigley
Tom Voss
Leon Zernitsky/Images.com

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Please address all correspondence to:

Boalt Hall Transcript
University of California, Berkeley
School of Law
205 Boalt Hall
Berkeley, CA 94720-7200

Phone: 510-642-6073

Email: transcript@law.berkeley.edu

www.law.berkeley.edu

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Dean's Message

Serving as interim dean has been a great honor. When I graduated from Boalt Hall on that gorgeous day in May of 1974, I never considered that I would have a chance to join the faculty, let alone serve as dean. The economy was bad in 1974, and I was not entirely sure I would get a job of any sort. Had you whispered in my ear that some day I would be passing out the diplomas, I would have advised that you seek professional help. Joaquin Andujar was right—you just never know.

As a student here in the '70s and as a law librarian and a professor through the '80s, '90s and '00s, I have seen many changes. Recalling my law school days in a world with no Internet, no email, no personal computers and only the hint of LEXIS on the horizon, I might say that it is a different world. But what strikes me are the continuities. There is a spirit about this place. Traveling throughout the country and meeting alumni old and new, I have been impressed with the real commitment our graduates have to Boalt Hall. Boalt merits the affection.

It is a tribute to how powerful we are that, despite not even finishing in the top 30 schools in per capita resources or student/faculty ratio, we stay in the top 10 overall in the contentious *U.S. News* rankings. The quintessential characteristic of Boalt is our penchant for overcoming challenges.

That is the spirit of Boalt Hall. Undercut by Proposition 209, blindsided by a cascade of state budget cuts, we sail on through. Our students arrive festooned with brilliant credentials but also with something extra. There is something different about this place. It is never complacent and seldom tranquil, but great things happen here. It is a joy to be a part of them. Each day I step into a classroom I feel privileged.

As this is the last time I shall write in this space, I want to thank the faculty, staff and students for their support and patience. Special thanks to Jan Vetter for shepherding me through my first semester and to Kathy Abrams for pulling the oar as associate dean this year. David Lieberman, our other associate dean, stayed on an extra year (to merit four years in his thankless spot, he must have ridden with Genghis Khan in a past life). Kathleen Vanden Heuvel '86 took control of the law library. Assistant Deans Louise Epstein and Victoria Ortiz deserve more thanks than I can convey. And then there are our alumni. You keep us going. This year I learned how special you are. Thanks.

Handing the reins over to our new dean, Christopher Edley, is an honor. There is tremendous excitement in the Boalt community about Chris' appointment, and we are all looking forward to his arrival in July. You can read more about his distinguished career in this issue of the magazine.


ROBERT C. BERRING, JR. '74

MAKING THE CASE

Clinic Wins Precedent-Setting Asylum Claim

Attorneys practicing asylum law often find themselves in the difficult position of trying to fit a client's complex story into the government's traditional 1951 definition of a refugee. For Kate Jastram '86, visiting professor with the International Human Rights Law Clinic, this challenge seemed particularly formidable in the case of Mary*—an HIV-positive woman fleeing social persecution and an abusive husband in Uganda.

At age 19, Mary was forced to marry the man who had raped and impregnated her. Shortly into her marriage, her husband's continued infidelities caused her to contract HIV. After learning of her illness, her husband subjected her to recurring beatings and claimed she had infected him.

"Because of the enormous stigma and shame attached to HIV in Uganda," says Jastram, "Mary kept her status a secret. But once she started to exhibit visible signs of AIDS, she suffered from severe social ostracism and discrimination, as well as increasing brutality from her husband."

In Uganda Mary had nowhere to turn for help. "Treatment is available only to the very wealthy," says Jastram. "Even

medical professionals in government-run hospitals shun and dehumanize AIDS patients. At one hospital where Mary sought treatment, she was told to stand in the corner facing the wall, away from the doctor, before speaking to him."

Though her own family rejected her, Mary decided to flee her husband. She began working with other women dying of AIDS, helping them make memory books for their soon-to-be-orphaned children. However, because of her condition, she could not get a job, rent an apartment or walk through the streets without being harassed. Realizing she faced certain death in Uganda, Mary fled to the United States in 2002. Once here she sought the help of the clinic.

In the fall of 2002, clinic students Gabriella Raymond '04 and Maria Weydemuller '04 began the difficult task of

fitting Mary's story into the confines of a politically oriented treatise that fit the U.S. government's standard for a refugee. "Claims based on stigmatization due to HIV status present a tremendous challenge," says Jastram. "Very few have been brought and even fewer have been successful."



The fact that Mary was denied access to medical treatment was not sufficient grounds for asylum. The students had to demonstrate that the Ugandan government persecuted her or that the government was unable or unwilling to protect her from non-state persecutors.

"Our strategy was to emphasize and expose the close relationship between HIV status and social and political persecution in Uganda," says Raymond. In order to accomplish this, the students pulled together evidence of the social, cultural, legal and political harassment Mary encountered as a result of her condition.

After six months of waiting while the case was reviewed at the asylum office headquarters in Washington, D.C., the clinic received word in July that Mary's petition had been approved. "My hope is that this decision will help future asylum applicants in a similarly dire situation in their own home countries," says Raymond.

With this ordeal behind her, Mary is finally receiving medication that has greatly improved her health. She is currently taking classes to become a certified nurse's assistant so she can continue her work with people living with AIDS.

"Mary was in a very literal sense given a second chance at life," says Jastram. "The clinic was privileged to play a part in her victory."

** The client's name has been changed.*

RECOGNIZING EXCELLENCE

Alumni Honored at ABA Annual Meeting

Each year the American Bar Association (ABA) singles out a few of the nation's top attorneys to be honored at its annual meeting. Among those receiving awards at last August's meeting in San Francisco was Joanne Garvey '61, who received the Margaret Brent Women Lawyers of Achievement Award from the ABA Commission on Women in the Profession. The award recognizes women who have excelled in the legal profession and helped pave the way for other female attorneys. Currently a partner at Heller Ehrman White & McAuliffe in San Francisco, Garvey is the co-founder of California Women Lawyers and the Women's Caucus of the American Bar Association. She has served on the Boalt Hall Alumni Association Board of Directors since 2001.

In addition the ABA's Section of Individual Rights and Responsibilities presented Dale Minami '71 with the Thurgood Marshall Award. This prestigious award recognizes long-term contributions by a member of the legal profession to the advancement of civil rights, civil liberties and human rights in the United States. Minami, a partner at Minami, Lew & Tamaki in San Francisco, is best known for his work as lead counsel in three landmark U.S. Supreme Court cases overturning the convictions of Japanese-American men who refused to be interned during World War II.

Student Helps Farmworkers Fight for Back Pay

When Tim Griffiths '04 received a Dean's Summer Fellowship to clerk at the California Rural Legal Assistance (CRLA) office in Salinas, California, he did not expect to be learning the ins and outs of bankruptcy law. But when the CRLA took on the case of 10 Mexican immigrant workers denied pay after their employer secretly declared bankruptcy, Griffiths quickly learned all he could about creditors' rights.

"The workers came to the CRLA office because their employer, a rancher in Pescadero, had not paid them in over a year," says Griffiths.

Their situation became even worse when the rancher lost the lease on his fields and the workers were forced to leave their housing. During the process, they learned that the rancher had declared bankruptcy more than a year earlier without informing any of his employees, who had continued working with the expectation that they would eventually be paid.

Because the rancher now has bankruptcy protection, it is extremely difficult for the employees to collect wages owed to them. "We worked very hard to come up with a creative argument that would enable these people to collect some of their money," says Griffiths.

To explore one option for circumventing the rancher's bankruptcy protection, Griffiths helped research and write a brief asking the bankruptcy court for a stay—arguing that the rancher has abused the system and is not entitled to the court's protection. If the stay is granted, the workers will have the opportunity to file a suit against the rancher for back pay.

Regardless of the suit's outcome, Griffiths believes the CRLA provided some help to the workers. "Because the CRLA and others generated publicity about the situation, we were able to raise some money to help these guys find temporary housing, which they desperately needed," says Griffiths.

"It was great to learn that even with the limited legal skills of a law student, I can work to make a positive impact on somebody's life," he adds.



During the Eighth Annual Berkeley Law Foundation Auction Extravaganza, emcees Professor Mary Louise Frampton, Dean Robert Berring, Jr. '74 and Joe Morris '06 (left to right) take bids from the audience. Auction proceeds help fund the foundation's Phoenix Fellowships, which encourage admitted students of color to attend Boalt and pursue public interest careers.

EDUCATIONAL EQUALITY

Conference Calls for Activists to Rekindle the Spirit of *Brown v. Board of Education*

In the wake of *Grutter v. Bollinger*, experts are scrambling to predict what the decision means for affirmative action and the future of American education. During the symposium Rekindling the Spirit of *Brown v. Board of Education: A Call to Action*, lawyers, professors and education activists gathered at Boalt to reflect on the troubling history of racism in education and speculate on the challenges of the future. The two-day event took place in November and was sponsored by the Center for Social Justice.

Elaine Jones, president and director-counsel of the NAACP Legal Defense and Education Fund, opened the event by stressing that *Brown* and *Grutter* showed social justice and equality in the classroom could not be achieved through courtroom battles alone.

"The days of a lawyer going into court with his briefcase are over," said Jones. "*Grutter* wouldn't have been won without the engagement of students around the

country. It was a massive political, social and legal campaign."

The symposium also included workshops on ways the legal community could work toward ensuring quality education for all children. Many speakers echoed Jones' sentiments that lasting improvements need active involvement, not just by lawyers, but also by community activists, teachers and parents.

In one workshop, "Litigators and Communities Working Together," Abdi Soltani, executive director of Californians for Justice, showed a film about a group of San Diego high-school students who held demonstrations demanding antiracist training for teachers.

"When these students told their school they were working with legal groups, it really encouraged the schools to listen to them," said Soltani. "The threat of litigation



Elaine Jones, president and director-counsel of the NAACP Legal Defense and Education Fund, delivers the Olmos Lecture at the opening of the Center for Social Justice's conference on educational opportunity.

is a powerful tool and it can lead to stronger, more systematic change."

Miranda Massie, an attorney with Scheff & Washington and lead counsel for the student interveners in *Grutter*, agreed lawsuits could not effect change by themselves.

"I know some Boalt students were in Washington on April 1," said Massie, referring to a pro-affirmative action demonstration staged outside the Supreme Court on the day of the decision. "I want to thank you. I think the demonstration was indispensable to our victory in *Grutter*."

"Our goal was to conduct ourselves in a way that maximized the potential to get civil rights action going again," she continued. "We got affirmative action not from litigators but from grassroots organizing."

In the concluding panel, "Future Strategies: A Call to Action," legal experts discussed options for the future of public education in California. UCLA professor of law Gary Blasi stated that subconscious racism still exists in the system, and people can better combat it when they are made aware of it.

"We know that equality will help us all," said Blasi. "And one advantage of our position is that it's the truth."

Asian Law Journal Celebrates 10-Year Anniversary

In 1993 a group of Boalt students decided that issues affecting the Asian-American community were not being addressed by the current law journals. To fill the void, they founded the *Asian Law Journal*—establishing one of only two law journals in the nation dedicated to Asian-Pacific-American legal issues. In honor of its decade of success, the journal produced a special 10th anniversary edition. "Publishing the commemorative issue was a great feat that allowed the *Asian Law Journal* to come full circle and reconnect with legal scholars and activists who have made a difference in Asian-American jurisprudence," says Yoonie Chang '03, a co-editor of the journal.

Cole Fellowship Helps Attract Two Outstanding Students

To honor Professor Emeritus Robert Cole's deep commitment to the highest intellectual standards in teaching and his devotion to his students, former students and friends established the Robert H. Cole Fellowship in 2002. The fellowship was created to help Boalt Hall compete for students who show special promise for an outstanding career in the profession and are highly sought after by other law schools that have greater resources for scholarships and financial aid.

"Our ability to provide financial support to excellent and deserving students from underrepresented minorities is crucial to Boalt's future and the profession as a whole," says Dean Robert Berring, Jr. '74. "The Cole Fellowship goes a long way in helping us attract exceptional students."

In the past two years, two incoming students with outstanding undergraduate records have come to the law school as Cole Fellows. In 2003 the fellowship was awarded to Jason Balitzer '06, a graduate of Western Washington University. Balitzer volunteered at the campus legal information center and received many academic honors. In 2002 the award was presented to Nicholas Spencer '05, a graduate of the University of Texas, Austin, where he was a member of several honor societies. This past year, Spencer was elected a member of the *California Law Review*.

"We are thrilled to have Jason and Nick at Boalt and look forward to watching the Cole Fellowship program grow," says Berring.



During the East Bay Community Law Center's (EBCLC) 15th anniversary celebration this past September, Michael Loeb (left), chair of EBCLC's board of directors, presents former Executive Director Bernida Reagan with a gift in recognition of her 13 years of dedicated service.

INTERNET ACCESS

Student's Article Cited in California Supreme Court Decision

Studying for the bar is enough to consume any new grad's summer, but Laura Quilter '03 received a welcome diversion this past June in the form of a California Supreme Court decision. Having worked on an *amicus* brief on behalf of the defendant in *Intel v. Hamidi* as a student with the Samuelson Law, Technology & Public Policy Clinic, Quilter was eager to read the court's decision.

She soon discovered that the state's highest court had cited her in its favorable decision—twice.

"It was the highlight of my summer," Quilter says.

Quilter's recent *Berkeley Technology Law Journal* article, "The Continuing Expansion of Cyberspace Trespass to Chattels," reviewed earlier decisions in cases similar to *Hamidi* and argued that they were problematic for the Internet.

"The court relied on that article in some of the policy judgments arguing whether expanding the rule of trespass to chattels would be a good policy decision," says Professor Mark Lemley '91, an author of the *Intel v. Hamidi* *amicus* brief Quilter helped research and edit.

A systems librarian who ran a multimedia instructional center and library at San Francisco's Exploratorium museum before entering law school, Quilter came to Boalt Hall specifically because "I was very concerned in general about issues of access to information," she says. Quilter is now a fellow at the Samuelson Clinic, where she continues to work on cutting-edge law and technology issues.



As the Samuelson Law, Technology & Public Policy Clinic Fellow, Laura Quilter '03 works with students on law and technology-related issues.

The California Supreme Court ruled last June that trespass to chattels does not include electronic communications that neither damage the recipient computer system nor impair its function.

FREE SPEECH IN CYBERSPACE

Faculty Members and Student Help Defend Free Expression Online

Disgruntled about being dismissed from his job at Intel, engineer Ken Hamidi sent an email to Intel employees in 1996 criticizing the company's human resources practices. Over the next two years, Hamidi sent a total of nine emails to thousands of employees. Predictably the emails did not go over well with Intel's management. The company sought an injunction to stop Hamidi, claiming that it lost productivity when recipients read and discussed the emails on company time.

With no existing law specifically addressing trespass with regard to email communications, the plaintiffs in *Intel v. Hamidi* decided to try to fit the square peg of old property law—specifically a doctrine called “trespass to chattels”—into the round hole that is the Internet. Their argument was effective in the lower courts—bad news for Internet free-speech advocates who watched the courts veer away from the idea that property owners must show actual harm to their property to claim damage.

“The *Hamidi* decision was one of a series of federal court rulings that have allowed those who run websites or email systems to control who has access to them, even if there is no harm to the system,” says Professor Mark Lemley '91.

Believing that the trend could lead to grave consequences for the Internet, Lemley and Samuelson Law, Technology & Public Policy Clinic Director Deirdre Mulligan

filed an *amicus* brief on behalf of Hamidi when the case reached the California Supreme Court. In the brief, which was submitted on behalf of 40 Internet law professors, Lemley and the clinic asserted that broad application of the trespass-to-chattels doctrine would interfere with the open working of the Internet, as well as Internet commerce, free expression and discussion.

Laura Quilter '03, who helped edit and research the brief and is now a fellow at the clinic, says the lower-court decisions in Intel's favor exemplify “the sort of overreaching that can happen when the law, especially old common law, is adapted to cyberspace.

“We really don't have earlier concepts that work very well with new models. We're trying to adapt them and some of them don't adapt very well,” says Quilter. Previous court decisions “really stretched the definition of what constituted a harm.”

“If you give everybody who owns a server the right to sue anybody who sent things without permission,” Lemley says, “a lot of the things we take for granted on the Internet today wouldn't be allowed,”

including search engines, which send automated signals to Web pages in order to read, collect and index data.

“If they had to get permission in advance because otherwise they would be trespassing, it wouldn't be economical to run a search engine,” he continues.

Specifically the court ruled in June that trespass to chattels does not include



electronic communications that neither damage the recipient computer system nor impair its function.

The professors think the court made the right decision, and Lemley praised the clinic's participation. “It's great that the clinic is involved in these really high-profile cases,” he says.

THE LEGAL TIES THAT BIND

Professor Leads Successful Campaign to Support Second-Parent Adoptions

When couples separate, the process is often painful for the children whose families are suddenly dissolving. The situation becomes even more complicated when the parents are a same-sex couple. During Sharon and Annette's 10-year relationship, Sharon conceived two sons through artificial insemination from an anonymous donor. Annette adopted the older son and was in the process of adopting the younger boy when the couple split up. After the breakup, Sharon withdrew her consent to the second adoption, leaving Annette with no legal tie to the child she regarded as her own son. The resulting case, *Sharon S. v. Superior Court of San Diego County*, challenged the legitimacy of all California second-parent adoptions, which have been routinely granted for the past 15 years.

These adoptions enable a birth or adoptive parent to retain parental rights as a child's "first" parent while consenting to a partner becoming the child's "second" legal parent by adoption. "To cast doubt on the validity of these adoptions now would undermine the security of thousands of families," says lecturer-in-residence Joan Heifetz Hollinger. "This case was about preserving existing families, as well as protecting the future of second-parent adoptions."

An expert on adoption law and policy, Hollinger worked with Boalt students and alumni to write several *amicus* briefs on behalf of children being raised by same-sex couples. The briefs urged the California Supreme Court to uphold the legality of second-parent adoptions because they formalize an existing relationship between a child and a person who fulfills the day-to-day role of a parent. "Second-parent adoptions protect children's economic rights," says Hollinger, "as well as provide the psychological and emotional benefits of a more stable family structure."

"The whole point of the second-parent adoption process is to give legal stability to what may otherwise be an unstable situation," says Andrea Goldsmith '03, who contributed to the briefs.

In August 2003, the state Supreme Court reversed an earlier California Court of Appeal decision and upheld the legality of second-parent adoptions. In her majority opinion, Justice Kathryn Werdegar '62 cited key points made in Boalt's *amicus* briefs.

"The ruling allows for not only same-sex couples, but also other unmarried persons, such as grandparents, parents or siblings, to adopt on a case-by-case basis," Hollinger says. "It ensures that the focus of the adoption process remains the welfare of the child."

HISTORY MYSTERY

Boalt Archivist Searches for Clues to Long-Lost Tradition

Boalt Hall has a mystery on its hands, and we are hoping our alumni can help solve it. In researching Boalt's history, law librarian and archivist William Benemann came across a description of an old Boalt tradition involving a statue of Daniel Webster, a prominent 19th century statesman. In *Law at Berkeley: The History of Boalt Hall*, author Sandra Epstein notes that in 1952 students petitioned to have the bust of Daniel Webster, complete with a green visor belonging to former Professor Alexander "Captain" Kidd, placed in the new library during exam week, as had been the custom in the law school's old building.

Intrigued by this vanished tradition, Benemann began a hunt for the statue, combing through the campus inventory of art, and questioning former students, faculty and staff until a colleague happened across a photo of the statue tucked away in some old files.

Now that the statue's existence has been confirmed, Benemann is turning to alumni to find out what happened to it. If you have any recollection of the statue or the tradition, please contact him by calling 510-642-8722 or sending email to benemann@law.berkeley.edu.

During his search for information about a Boalt tradition involving a statue of Daniel Webster, archivist William Benemann discovered this photo.



Faculty News

Faculty Highlights

Professor Explores New Method for Evaluating Law School Applicants

Professor Marjorie Shultz '76 is leading a study designed to help law schools select students based on predictions of their competence as attorneys rather than solely on their LSAT scores and undergraduate GPAs. Shultz and Sheldon Zedeck, a UC Berkeley psychology professor, are co-principal investigators of the study, which is funded by the Law School Admissions Council. Phase one of their research identified 26 "effectiveness" factors and 715 associated behaviors that define and measure successful lawyering, based on interviews, focus groups and questionnaire responses.

During phase two, the investigators are identifying—or, if needed, creating—tests designed to predict an applicant's *potential* effectiveness as a lawyer. Once these tests are validated, it may be possible to develop a "lawyering effectiveness index score" that allows schools to evaluate an applicant's potential for outstanding professional performance. This new predictor could then be combined with LSAT scores and undergraduate GPAs to identify the most qualified applicants for law school.

Five Professors Recognized for Accomplishments

Dean Robert Berring, Jr. '74 calls his training video, *Legal Research for the 21st Century*, "revenge" for the confusion he felt as a new law student. The video, a five-volume in-depth look at legal resources, won a 2003 Aurora Award for creativity and effectiveness. Judged by film and video professionals, the international competition recognizes excellence in these industries.

Berring also received kudos for extended and sustained service to law librarianship from the American Association of Law Libraries, which presented him with the 2003 Frederick Charles Hicks Award.

Only the second American to be named a Cassel Lecturer by Stockholm University's law faculty, Professor Harry Scheiber gave his talk "Federalism and the Traditions of American Law" at Stockholm University this past September.

For nearly two decades, an internationally distinguished scholar or public figure has delivered this prestigious annual lecture.

Professor Norman Spaulding's paper "Constitution as Counter-Monument: Federalism, Reconstruction and the Problem of Collective Memory" took top honors from the American Association of Law Schools (AALS) 2004 Scholarly Papers competition. He presented the paper at the AALS annual meeting in January.

The *Daily Journal Extra's* 2003 list of California's 100 most influential lawyers lauds the accomplishments of two Boalt faculty members. Professor Pamela Samuelson is praised for her leadership in cutting-edge technology and intellectual property issues and for founding the Samuelson Law, Technology & Public Policy Clinic. Professor Emeritus Joseph Sax is applauded for his authoritative water-law scholarship and his work as former counselor to the interior secretary under President Clinton.



Scholarly Study Scrutinizes the Relationship Between Congress and the Supreme Court

Growing tensions between the legislative and judicial branches of the government have provided Professor Jesse Choper with plenty of substance for a study sponsored by the American Academy of Arts and Sciences. Choper and Professor Robert Post, co-chairs of the study begun in 2002, are examining the changing relationship between Congress and the Supreme Court.

In addition Professor Philip Frickey is heading a major project within the study that is reviewing judicial decisions involving controversial questions of statutory interpretation, and comparing how the relevant legislation is enacted with how it is interpreted by the courts. This project also takes into account how the procedures of Congress and the processes of the federal courts are changing, and explores the ways these changes affect statutory interpretation.

FORGING INTO NEW TERRITORY

Rachel Moran

investigates interracial intimacy and integration issues



While an undergraduate at Stanford University, Rachel Moran successfully lobbied the Department of Labor to adopt guidelines for women in construction jobs as a way to encourage women to enter the field. Soon after, she drove past a woman in a hard hat working on the side of the road and thought, "Wow, the law *can* make a difference." Moran says that "immediacy in impact" convinced her to pursue a legal career.

But Moran's decision to go to law school was not completely spontaneous. Her father, an Irish-American, was a criminal defense attorney. "He enjoyed being a lawyer and I picked up a lot by osmosis at the dinner table," she recalls.

One of the country's leading legal experts in bilingualism, multiracial classifications on the

census, affirmative action, education and interracial relationships, Moran was also influenced by her mother, a teacher and an interpreter who is of Mexican descent.

Growing up in a family with parents who had intermarried helped shape Moran's unique legal specialty. "There's definitely an autobiographical component to my career," says Moran, who received her law degree from Yale University in 1981.

"My personal

experience has served as a springboard for broader understanding."

Moran joined Boalt's faculty in 1982. In addition to teaching, she conducts research on interracial intimacy issues related to adoption, the census and marriage. She also analyzes how integration would be redefined in an increasingly multiracial society. Her book *Interracial Intimacy: The Regulation of Race and Romance* is the first book chronicling the legal regulation of interracial relationships. Published in 2001, the book is "likely to become a classic in its field," according to *Publishers Weekly*.

Professor Herma Hill Kay says Moran's diversity and race scholarship "serve as a beacon that attracts other scholars and students to Boalt to work with her."

In addition to her involvement at the law school, Moran serves as director of UC Berkeley's Institute for the Study of Social Change, an interdisciplinary research organization that studies race, class and inequality. Under her guidance, the institute analyzes minority issues—including city planning, higher education and urban problems like crime—in cities in the Western United States.

Moran received UC Berkeley's Distinguished Teaching Award in 1995 and was the first Latina to receive an endowed chair at a major law school. She holds the Robert D. and Leslie-Kay Raven Chair for a faculty member committed to social justice.

Characterized by students as both brilliant and accessible, Moran is known for offering treats during lectures and for toting her dog, Ralph, a corgi mix, with her everywhere. According to Moran, in addition to being a companion and an exercise partner, Ralph helps humanize her with students by dispelling the fussy law professor image. "He has a very relaxing presence," she says.

Dean Rowan '04, who took Moran's Torts class as well as her Cities, Stratification and Separation course, describes her as "friendly and approachable, yet a quintessentially professional scholar." He notes that Ralph is always by Moran's side, lying patiently by her desk even when her office is packed with students.

Wendy Lilliedoll '04, who took Moran's Education Law and Policy course, explains that Moran perfectly balances "being an incredible thinker and a really good person." For example, Lilliedoll described running into Moran on the streets of Berkeley and telling her how one post-law-school job opportunity did not pan out. "She was more devastated than I was," says Lilliedoll. "By the end of the conversation, I was consoling *her*."

Norman Spaulding

tackles underexplored area of law and ethics

"The law is not an abstract or purely intellectual inquiry. It has direct and immediate consequences on people's lives," says Professor Norman Spaulding.

Spaulding's life illustrates this point. His parents—an African-American man and a white woman—were married one year after the Supreme Court struck down a statute prohibiting interracial marriages in *Loving v. Virginia*. "From a very young age, I was struck by the fact that my parents' union, which seemed so normal and natural to me, could have been illegal only a few years earlier," he says. "I found it fascinating and disturbing."

Observe one of Spaulding's lectures on civil procedure or professional responsibility, and his fascination with the law is apparent. He wanders among his students as he talks, asking questions and engaging them in animated debate. "He brings what could be dry, procedural questions to life with compelling illustrations from history and the present," says Sheridan Pauker '04. "He uses a great mix of humor, practical information and doctrinal content to make his lectures entertaining and intellectually satisfying."

Spaulding became interested in teaching law at an early age. As an undergraduate at Williams College, he wrote his thesis on legal theory. He graduated from Stanford Law School in 1997 believing he was headed for academia. But a job practicing environmental law at Skadden, Arps, Slate, Meagher & Flom in San Francisco nearly derailed that plan. The firm represented corporate defendants in "superfund" cases, dealing with the cleanup of land contaminated with hazardous substances.

"I wasn't sure I'd be able to do the work and feel that I was not only a competent lawyer but

also an ethical one," says Spaulding. "But working there grayed my sense of ethics in a positive way. I learned how important it is to have a process for dealing with complicated disputes." He adds, "I loved being a lawyer and the tremendous feeling of being responsible for my clients."

Two clerkships—with Judge Thelton Henderson '62 of the U.S. District Court for the Northern California District and Judge Betty Fletcher of the 9th Circuit Court of Appeals—reinforced Spaulding's interest in practicing law. "I learned a lot about due process and what it means to give and get a fair hearing," he says.

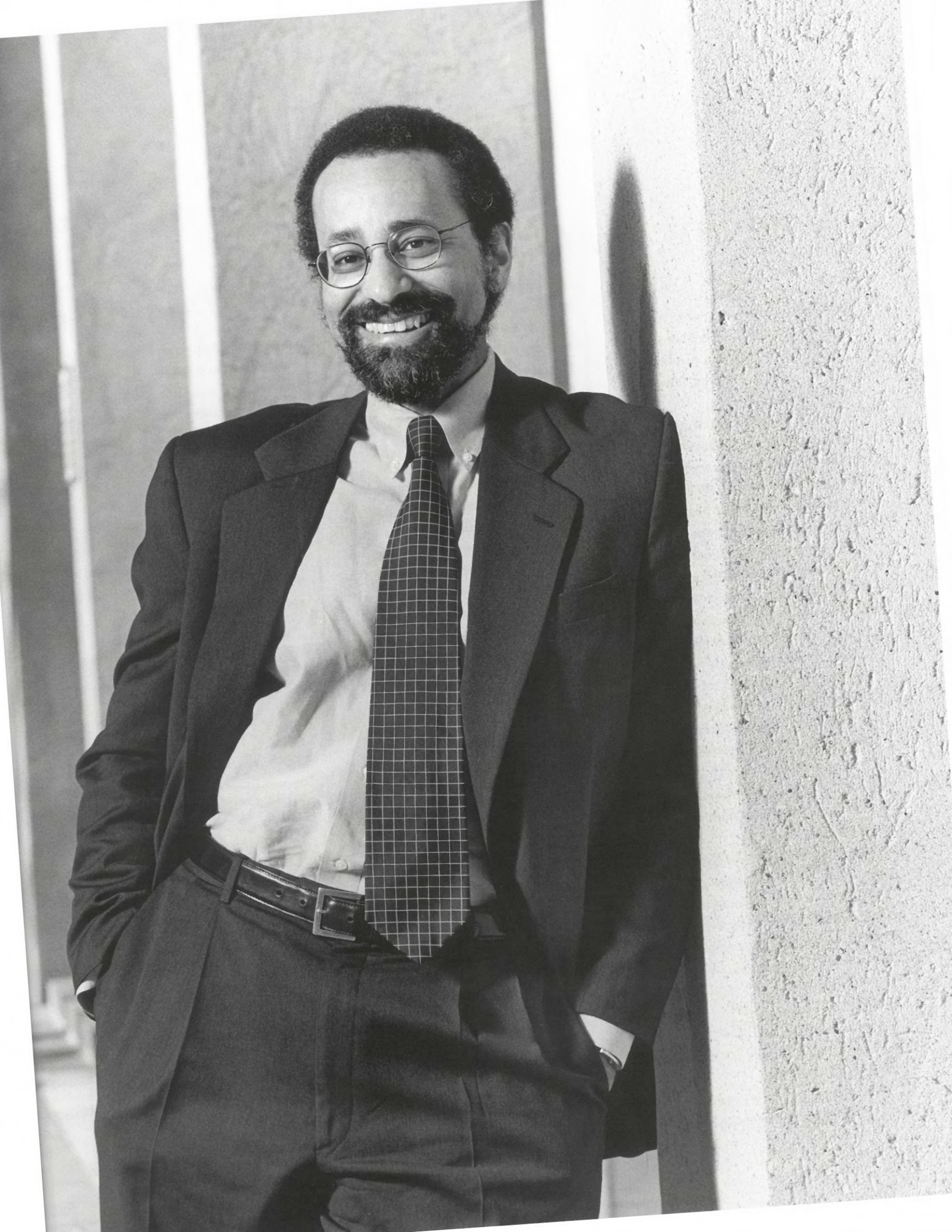
Spaulding was ultimately drawn back to academia by the prospect of teaching at Boalt Hall, where he joined the faculty in 2000. "Law teaching, like law practice, is a form of service, and there's no place better to perform that service than at a public school," he says. "Having the opportunity to teach at one of the few top-rated public law schools in the country is incredible."

Spaulding continues to delve into the issues of legal ethics and procedure that interested him as a young lawyer. In "Reinterpreting Professional Identity," published in the *University of Colorado Law Review*, he argues against the commonly held view that lawyers should only take clients whose moral and political views they share. "We need to ensure that everyone has access to

competent counsel," he says. "A universe in which lawyers' morality or self-interest determines access to legal services is a dangerous universe." Other recent articles authored by Spaulding explore the Reconstruction Amendments and the history of professional ideology.

Professor Philip Frickey commends Spaulding for tackling underexplored subjects. "It's rare to find a young academic who's interested in the ethical and practical problems of law," he notes. "Norman is becoming a nationally recognized force in the academy on these issues. He's challenging standard perspectives."





CHRISTOPHER EDLEY SEIZES THE OPPORTUNITY TO
MAKE BOALT HALL SECOND TO NONE

EMBRACING *The Challenge*

Christopher Edley, Jr.'s name has been bandied about as a dean candidate for several of the nation's top law schools, but Boalt Hall is the only one that captured his interest and imagination. The official announcement of his acceptance came in December 2003 and Edley will begin his tenure as 11th dean of Boalt Hall this July. "Boalt Hall is poised to capitalize on a moment of significant challenges and unparalleled opportunities," says Edley. "I have great expectations for our future."

"I am deeply honored and extraordinarily excited to become Boalt's next dean," continues Edley. "I am grateful to Chancellor Berdahl for his confidence in appointing me and privileged to succeed Bob Berring [74], who has done yeoman's duty as interim dean. I'm very proud to inherit the remarkable legacies of my predecessors, many of whom are actively engaged in the life of the school today."

A veteran of two tours of White House service and twice that many presidential campaigns, Edley has played a central role in the high-stakes world of national politics for nearly 30 years. He has also been a distinguished member of the Harvard Law School faculty for more than two decades. But it is, perhaps, his experience in politics, with its generous portions of triumph and heartache, that has led Edley to believe that bold ideas are the best way to promote change.

"At this point in my career, I've learned that if leaders are timid in their aspirations, they fail to generate the excitement that is essential to success," says Edley. It is a strategy he plans to bring with him to Berkeley.



“A great law school ... should be immediately and powerfully engaged in tackling the toughest problems that are facing California, the nation and the world.”

After receiving a standing ovation from students and staff, Dean-designate Christopher Edley, Jr. shared his vision for an “exciting future for Boalt” at his first town hall meeting in February.

Edley is a high-profile advocate for racial justice and was principal architect of President Bill Clinton’s “mend it, don’t end it” policy, yet he is quick to correct those who hope he will become a political champion for affirmative action at UC Berkeley and throughout California. “My academic mission is not servant to my personal views,” says Edley. “My job as dean is to advance broad social ends by helping to produce evidence, insight and well-trained leaders—not by waging political campaigns.”

In fact Edley was persuaded to take the job at Boalt in part because of the encouragement of UC Regent Ward Connerly—a vocal opponent of affirmative action. “Ward was a big supporter of mine during the search process,” says Edley. “He strongly encouraged me to come to Boalt Hall despite the fact that we disagree sharply on the affirmative action issue and have debated each other everywhere from C-SPAN to the Oval Office.” Connerly told *The Boston Globe* that Edley is simply the best man for the job.

Connerly’s was just one of many voices that persuaded Edley to come to Boalt Hall. “When I met with the search committee members for the first time in September, their presentation of the opportunities and challenges at Boalt was so compelling that my interest in the job increased dramatically,” says Edley. “And it just continued to grow as the fall went on and I became more familiar with the school. The students crackle with intelligence and enthusiasm. The faculty members I met are, to a person, supportive and eager to climb new mountains, both in their own scholarship and teaching, and in building an even stronger institution.”

In Boalt Hall, Edley sees a unique opportunity, not only to help enhance a preeminent research and teaching institution, but also to play a significant role in policy discussions and public discourse. “A great law school—especially within a public university widely

regarded as one of the world’s premier centers of learning—should be immediately and powerfully engaged in tackling the toughest problems facing California, the nation and the world,” says Edley. “Boalt is poised to play that role in a way that will stand out from the rest of the top law schools in the country and make us second to none.”

Edley is also eager to tackle the significant challenges the law school faces in light of dwindling state support. “The current budget proposals pose a grave threat to the character of the law school,” says Edley. “Access, affordability and inclusion are vital to Boalt’s excellence. So, too, are an expansion of the faculty to reflect increasing specialization in both the profession and the academic discipline; new resources to broaden the research agenda, especially in cross-disciplinary realms; and significantly more space to house these ambitions. I’m fervently committed to winning the kind of financial support we will need from alumni and others. We’ll do that by defining a bold strategy to secure Boalt’s preeminence in legal education for the decades ahead, with a distinctive emphasis reflecting our public mission. And we’ll do this in the face of stiff competition from our peer schools. Believe me, they aren’t standing still.”

A Plan for the Future

At Edley’s request, former Deans Jesse Choper and Herma Hill Kay have enthusiastically agreed to chair a broad faculty committee charged with developing elements of a strategic plan for the next decade. Months of introspection and discussion with all sectors of the law school community are expected to culminate in a draft blueprint for Boalt’s future. Choper says, “Chris is extraordinarily enthusiastic and ambitious. He hopes to capitalize on Boalt’s assets—a faculty whose scholarship is nationally renowned

and whose casebooks dominate law teaching, students who are among the nation's brightest, and a curriculum that is steeped in analytic rigor yet takes full advantage of the newest developments in other disciplines across the Berkeley campus—and seize the opportunity to make a major leap forward.”

At Harvard Edley combined his interests in academic and policy pursuits by establishing the Civil Rights Project, co-founded in 1996 with Harvard education and social policy Professor Gary Orfield. The project, a multidisciplinary think tank with some 20 staff, is now a nationally recognized authority on racial and ethnic justice matters. Its research and research-based policy prescriptions have been cited many times in federal and state legislative deliberations, in the media, and in litigation—including the Supreme Court's recent decisions in *Gratz v. Bollinger* and *Grutter v. Bollinger*, involving affirmative action at the University of Michigan.

Edley plans to continue his work with the Civil Rights Project by establishing a West Coast version at Boalt. “The project will be bigger, better, bicoastal,” says Edley. “In many respects, Berkeley is better suited to the project because it is more welcoming of the kind of interdisciplinary, cutting-edge work that is critical to understanding the challenges of racial justice. And California is ground zero for the demographic changes sweeping the nation.”

Edley also wants to expand on Boalt programs that are already recognized for their excellence—among them technology and intellectual property, environmental law, business law, social justice, and jurisprudence and social policy—while deepening the school's involvement in issues related to Asia and Latin America.

Tom Campbell, the dean of UC Berkeley's Haas School of Business, has known Edley since their days working together on the *Harvard Law Review*, and they are mutual fans. Campbell envisions several opportunities for joint projects between Boalt and the business school, and expects Edley to flourish here. “Chris is public-spirited and academically brilliant,” Campbell says. “We're lucky to have him.”

A Political Powerhouse in the Making

Some might argue that Edley was predestined for a career as a legal scholar and political advocate. His father, the late Christopher Edley, Sr., was one of only two African-American students to earn a law degree from Harvard University in 1953 and later served 18 years as president of the United Negro College Fund. Edley, born during his father's third year at Harvard, grew up with a profound interest in civil rights and social justice.

“From age 11 on, I was pretty clear that I wanted to be involved in public policy and I always saw law as both the tool and the

gateway to that,” says Edley. “The only time I can remember not wanting to be a lawyer was a brief period in eighth grade when I wanted to be a low-temperature physicist.”

Edley decided to study mathematics and economics at Swarthmore College, a socially conscious and academically intense college in Pennsylvania. With a social justice career in mind, he went on to earn a law degree from Harvard University and a master's degree in public policy from Harvard's Kennedy School of Government, with time out to work on the headquarters staff in the 1976 Carter-Mondale presidential campaign.

“Chris has always been bubbling over with energy and full of excitement about what is happening in the world,” says one of Edley's mentors, Philip Heymann, a Harvard Law School professor and former U.S. deputy attorney general. “You feel a little bit more alive when you're around him.”

Mend It, Don't End It

Though always connected to his academic life, Edley has never strayed far from shaping the nation's policy agenda. Perhaps his biggest impact came during his three-plus years of service in the Clinton administration, where he was responsible for White House oversight of budget, legislation and management issues as the associate director of the Office of Management and Budget and, later, served as special counsel to the president.

As special counsel, he was tapped in 1995 to direct a White House review of affirmative action with top Clinton aide George Stephanopoulos. The review came at a time when there was a contentious divide within the Democratic Party over the issue. “President Clinton started off the process quite unsure of what to do,” says Edley.

As conservative democrats pushed Clinton to abandon race-based programs, the party's more liberal pundits pressured him to stay true to the party's traditional base.

“The confusion in political signals was liberating. Clinton, [Vice President] Gore and those closest to the project could focus on a series of very substantive conversations aimed at helping Clinton discern what he believed was the ‘right thing’ to do.” Edley and a small group of senior aides embarked on a series of seminar-like meetings with Clinton and Gore in the Oval Office, during which they debated everything from social theory to empirical social science to legal doctrine. For Edley it was a chance to hold class for some of the most powerful people in the world.

“I was in Socratic mode, trying to draw out of Clinton his own set of commitments, working with him to make it a coherent whole,” says Edley.



“Our move to California is ... a dramatic and energizing change. It’s a new mountain to climb—with a view.”

Christopher Edley, Jr. (right), who begins his tenure as Boalt’s 11th dean this July, meets second-year law student Bryan Tollin.

As a result of these meetings, Clinton launched his “mend it, don’t end it” set of affirmative action policy reforms. “It’s rare that one has the luxury of the kind of sustained high-level attention that permits you to peel the layers of the onion and really think the issue through from core principles all the way to sound bites,” says Edley. “The result was enormously gratifying.”

Edley also transformed his findings from this experience into his 1996 book, *Not All Black and White: Affirmative Action, Race and American Values*, which explores arguments both for and against affirmative action.

A Return to the White House

Edley returned to the Clinton White House a final time as a part-time consultant in 1997 to advise Clinton on his “President’s Initiative on Race.” As the intended cornerstone of the initiative, Edley ghostwrote a book for Clinton detailing his vision of racial and ethnic justice in America. The book, however, was never completed. This happened in part because Clinton’s time became consumed by the tribulations plaguing him during his last two years in office, but also because a few senior aides objected to some of the book’s proposals. “There was some suspicion and even hostility toward ideas that were less incremental and more visionary,” says Edley.

The experience, however, was not a total wash. During the writing process, a senior White House staffer was charged with managing Edley’s progress. The staffer was Clinton’s Deputy Chief of Staff Maria Echaveste ’80. “Somehow through that difficult process, we managed to fall in love and ultimately get engaged,” says Edley. “The Clintons threw us an absolutely fabulous engagement

POLICY MATTERS

MARIA ECHAVESTE TACKLES THE NATION’S TOUGHEST PROBLEMS

On a late summer afternoon in 1972, Maria Echaveste ’80 stepped off a Greyhound bus to begin her freshman year at Stanford University. For the eldest daughter of immigrant farmworkers from Oxnard, California, the experience was like walking into a foreign country.

“In my freshman dorm, there were people who had traveled to Europe and all over the world, who knew three or four languages, who had already taken calculus and beyond,” says Echaveste. “It was very, very intimidating.”

Echaveste, however, managed to draw strength from the situation. “Somehow I learned during that first year

that it wasn’t that everybody was smarter than I was,” says Echaveste, “they had simply had different opportunities.”

It is a lesson she has carried throughout her impressive career, which has included stints as a corporate lawyer, a senior official with the U.S. Department of Labor, and White House deputy chief of staff under President Bill Clinton. “My experience at Stanford and the diverse environment I encountered at Boalt helped me not to be intimidated later on when I was the only Latina at a corporate law firm or around a table with the president,” says Echaveste.

Following college Echaveste worked for the U.S. Commission

party in the State Dining Room in 1999 right before we were married.” The pair has adopted two children: Elias, 3, and Zara, 2. Edley also has a 19-year-old son, Christopher Edley III, from his previous marriage. The family is moving to the Bay Area this summer and Echaveste will be taking on teaching posts both at the law school and the university’s Goldman School of Public Policy.

A New Mountain to Climb

Edley and Echaveste’s partnership is quite intense. “Maria and I eat public policy for breakfast and politics as a midnight snack,” says Edley. When they’re not influencing national policy or advising presidential candidates, they do find time to pursue a pastime or two. For Edley this means developing his

skills sailing, and for Echaveste it means gardening, sewing or running. Both are looking forward to their upcoming move. “Our move to California is a return home for Maria, but also a dramatic and energizing change for both of us on several levels. It’s a new mountain to climb—with a view.”

And Edley isn’t the only one enthusiastic about his arrival. Since his appointment was announced, Edley has been flooded with greetings from faculty, alumni, students and staff who are elated that he will be joining the law school community.

“As word of his appointment got out, we began to feel an enormous groundswell of excitement and energy on the campus,” says UC Berkeley Chancellor Robert Berdahl. “Christopher Edley is one of the great leaders in law and social justice and we are thrilled to have him here at Boalt.”



on Civil Rights, which fueled her interest in public policy and led her to law school. After earning her degree at Boalt, she specialized in corporate litigation at the former Los Angeles firm Wyman Bautzer and at Rosenman & Colin in New York. “I wanted to get the necessary legal training at a law firm and anticipated that private practice would be a two- or three- year stop on my road to a policy career,” says Echaveste. “As with all great plans, it changed completely

and three years turned into 12.”

Deciding it was time to jump into political work at full steam, Echaveste signed on to Clinton’s presidential campaign as a volunteer adviser in 1991. She then joined the administration as head of the U.S. Department of Labor’s Wage and Hour Division, where she managed programs and policy relating to federal labor laws.

“We enforced basic labor standards and there was a real sense that we were helping the

people who were working hard and getting a raw deal,” says Echaveste. “Fundamentally, it was exactly why I had gone to law school.”

Through this position, Echaveste helped the labor department crack down on retailers who used sweatshop labor in their manufacturing. “The department’s efforts really went a long way in building public awareness and forced retailers to insist that their manufacturing contractors obeyed the law,” says Echaveste.

Following her successes at the Department of Labor, Echaveste became Clinton’s director of the Office of Public Liaison and, in 1998, was tapped to serve as deputy chief of staff, coordinating Clinton’s entire range of domestic policy initiatives—from education to civil rights to bankruptcy reform. “It was both the most stressful and the most fascinating position I’ve ever had,” says Echaveste.

“In Maria’s case, the path to politics was really through substance,” says John Podesta, president of the Center for American Progress and former chief of staff for President Clinton. “She built a career as an extremely successful, high-ranking government official on her legal talent and ability to understand a broad range of problems.”

This summer Echaveste will settle in the Bay Area with her husband, Dean-designate Christopher Edley, Jr., and their two children. In California she is looking forward to continuing her work with the Nueva Vista Group, a strategic and policy consulting group she founded in 2001, as well as teaching at the law school and the university’s Goldman School of Public Policy beginning in 2005.

“The opportunities to engage in cutting-edge and exciting issues, particularly in the areas of Latino politics and public policy, are unparalleled at Boalt,” says Echaveste.



S A N D R A C O L I V E R '80 doesn't often drink champagne, but she's happy to indulge when the occasion warrants it. At a gathering in San Francisco last October, Coliver and her associates raised their glasses in an unusual toast: they were celebrating the first jury verdict ever rendered in the United States for crimes against humanity.

Coliver heads a San Francisco organization that brings lawsuits against perpetrators of human rights abuses. The Center for Justice & Accountability (CJA) is small—its budget supports only four full-time lawyers—but by enlisting pro bono help from private law firms, CJA can pack a punch.

EMERGING TREND PAIRS PUBLIC AND PRIVATE LAWYERS TO DO GOOD

intertwining
intertwining Paths of service
of service

STORY BY WILLIAM RODARMOR

ILLUSTRATION BY JENNIFER HEWITSON



**“I DON’T THINK THE ONLY WAY TO DO GOOD
IS BY TAKING A VOW OF POVERTY.”**

Last October two firms working with CJA did just that, winning a multimillion dollar verdict against a Chilean defendant living in the United States for his role in the bloody 1973 coup that brought Augusto Pinochet to power. Thanks to the efforts of Wilson Sonsini Goodrich & Rosati of Palo Alto and Kerrigan, Estess, Rankin & McLeod of Pensacola, Florida, the jury in Florida’s *Cabello v. Fernandez-Larios* case awarded \$4 million in damages to the family of Chilean economist Winston Cabello, who had been murdered by Pinochet’s “Caravan of Death.”

Boalt Hall has always produced many lawyers like Coliver, who think it’s more important to do good than to do well. What has changed in recent decades is the arena in which they work. Whereas some 1970s graduates viewed private practice as a betrayal of their social conscience, the more debt-burdened graduates of the following decades often could not afford to adopt that philosophy. And salaries in private firms took off just as jobs in public interest legal organizations started drying up.

Today money is tight and budgets are squeezed, but there is a greater need for public interest work than ever before. And the profession is responding with a growing commitment to pro bono work that increasingly unites public organizations with private firms, much like the team in the *Cabello* case.

**private attorneys,
public conscience**

In San Francisco, Eva Paterson ’75 has fought for civil rights for more than a quarter of a century. Last November she was named by *Black Enterprise* magazine as one of the country’s top black lawyers, and in 2002 she was named one of the nation’s top 100 lawyers by the *Daily Journal*. As executive director of the Equal Justice Society, Paterson knows firsthand how much good private firms can do.

“A lot of the best work in civil rights has been the result of firms throwing massive resources at problems,” she says, “either in class action suits or by helping individuals who are too poor to afford lawyers.”

In 1990, for example, lawyers from 15 San Francisco firms won close to \$1 million for 39 black firefighters who were victims of racial discrimination. “Without all those attorneys, we would never have pursued those discrimination claims,” she says. “I don’t think the only way to do good is by taking a vow of poverty,” Paterson continues. “You can stay in the firm and become a lawyer like Elizabeth Cabraser [’78], who has done incredible work, makes a great living and is very philanthropic.”

Another example of a private attorney with a public conscience is Ira Kurzban '76, a nationally known immigration lawyer in Florida who regularly brings class action lawsuits on behalf of poor immigrants and refugees.

In the mid-1990s, he represented some 35,000 Haitians seeking asylum after the 1991 coup against President Jean-Bertrand Aristide. Kurzban claims that his seven-lawyer Miami firm has done more pro bono work than any firm of its size in the country, donating \$4 to \$5 million in free legal services over the last 25 years.

breathing fire

According to popular thought, the 1970s produced fire-breathing world-shakers, while later decades turned out graduates mainly interested in making money. But while recent Boalt grads face different challenges, they burn with just as much fire to do good as their elders.

The year she graduated, Melissa Scanlan '99 founded Midwest Environmental Advocates (MEA) in Madison, Wisconsin, with the goal of protecting public health and the ecosystem.

"Melissa is very impressive," says student Jessica Owley '04, who worked at MEA through a Boalt summer fellowship in 2003. "She started taking on unusual environmental cases, like representing poor rural communities being poisoned by factory farms," Owley says, "and she did it right out of law school."

A sole practitioner of benefits and business torts in Berkeley, Thomas Ostly '00 recently won the 2003 State Bar President's Pro Bono Service Award. The *California Bar Journal* noted that during an eight-month period in 2002, Ostly donated hundreds of hours to help clients with HIV/AIDS solve landlord/tenant, employee benefit and insurance problems.

Anne Mahle '01, an associate with the business law firm Faegre & Benson in Minneapolis, contributes so many hours to environmental issues that she calls her firm "the hidden gem of pro bono work." She and her colleagues are currently involved with six major environmental lawsuits in federal court.

Boalt has a long-standing tradition in public interest law. Encountering one of the law school's many influential professors has had an impact on many Boalt students through the years.

For employment law litigator Angela Bradstreet '80 (LL.M.), that professor was the school's first female dean. "I was extraordinarily lucky to befriend Herma Hill Kay," she says. "All she has done to pave the way for women motivated me to try to learn from her example."

For earlier students, it was California Supreme Court Justice and former Dean Frank Newman '41. "I was lucky enough to take a class from Frank on international human rights law," says David Weissbrodt '69, who went on to become a leading scholar, advocate and

“SOMETHING LIKE 70 PERCENT OF ENTERING LAW STUDENTS
SAY THEY WANT TO DO PUBLIC INTEREST LAW, BUT ONLY
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IT’S A REAL BATTLE, AND YOU HAVE TO MAKE A LOT OF TOUGH CHOICES.”

organizer in the field. “He was just getting into the subject, so his enthusiasm was greater than normal.” Weissbrodt has served on the United Nations Subcommission on Human Rights since 1996 and is the first U.S. citizen since Eleanor Roosevelt to head the subcommission.

Boalt offers more than two dozen courses in social justice topics and three in-house clinics—focusing on international human rights law, technology and public policy, and the death penalty—as well as hands-on experience through the East Bay Community Law Center. Mentorship programs and externships give students opportunities to interact with the legal community.

In addition the Center for Social Justice supplements the curriculum with lectures, events and symposia to prepare students to address complex social problems. Professor Mary Louise Frampton, the center’s director, says: “If you are interested in social justice issues, I think Boalt is the most exciting place to be in the country—and it’s because of the students. They are very diverse and committed, and they are a lot of fun to teach.”

the money crunch

Between the 1970s and the 1990s, two things made it harder for a generation of law graduates to do public interest work full-time: a dramatic increase in student debt and a widening gap between private and public salaries.

Back in the 1970s, Barry Scheck ’74 was one of the lucky ones. Scheck, who made headlines as the defense team expert on DNA evidence in the O.J. Simpson case, is a professor at the Benjamin N. Cardozo School of Law in New York and co-director of the Innocence Project there, which has helped exonerate more than 140 people. Scheck says he graduated with no debt when Boalt’s in-state fees were \$354 a semester. “I used to go to the Emeryville poker room and win enough to pay for my tuition,” he says.

Just a few years later, the financial situation started to change. “In the early 1980s and into the 1990s, law students faced an increasingly large debt burden after they graduated,” says Jon Streeter ’81, “and it produced a kind of squeeze-out.” Streeter, an attorney with the complex civil and criminal litigation firm Kecker & Van Nest in San Francisco and president of the Bar Association of San Francisco, owed \$4,000 for his undergraduate and legal

education. "It sounds like an absurd amount now," he says, "but I was acutely aware of the need to pay off what I considered a lot of debt."

"Something like 70 percent of entering law students say they want to do public interest law," says Kate Gordon '02, the Baron-Brayton Fellow with Trial Lawyers for Public Justice in Oakland, "but only around 7 percent of graduates actually go into it." She adds, "It's a real battle, and you have to make a lot of tough choices."

For instance, a public interest firm typically won't hire until after the bar exam, she says, and bar courses can cost about \$5,000. Meanwhile big firms are paying for new associates' bar courses and giving them stipends of as much as \$10,000. Gordon has about \$60,000 in student debt—an amount she calls "reasonable"—but she has a job she loves. Gordon has recently served as co-counsel on a censorship case that charges the Texas state school board with rejecting an environmental sciences textbook for its alleged "anti-Christian, anti-free enterprise" viewpoint.

making partners

For many lawyers, an alternative path is to join a private firm and do public interest work on the side. "I'm a righteous believer in pro bono work," says Streeter. "I think lawyers should be stepping up to the plate, and I say so."

Taking his turn at bat is Allan Karlin '74, who is in private practice in Morgantown, West Virginia. Karlin recently handled a "Bible in the school" case for the ACLU and became involved with a civil rights case involving the National Organization for the Reform of Marijuana Laws. He also raises money to place local law students in public interest jobs. "Most of my practice involves discrimination and sexual harassment cases as well as personal injury," he says. "It's nice to make a living doing work that is consistent with one's social, political and moral values."

For other lawyers, however, landing a full-time public interest job is the ideal, despite the financial sacrifice. Tania Shah Narang '00 signed on with a big firm in Palo Alto after graduation. "Like 98 percent of my classmates, I went into corporate securities," she says, only half joking. After her fling with the corporate world, however, Narang left to take a nonprofit job. She now runs the California Minority Counsel Program in San Francisco, which helps minority attorneys network with each other and with in-house counsel.

Maria Stratton '79, the Federal Public Defender for the Central District of California, sees such career shifts all the time. Her Los Angeles office is swamped with applications from lawyers in small and large firms. Federal pay is not that high, so what makes the office a



MAKING PUBLIC INTEREST LAW CAREERS A REALITY

L For Elizabeth Kristen '01, student loan debt threatened to be a significant burden. But Kristen and other Boalt alumni working in public interest jobs are getting much-needed help with their student loans thanks to Boalt's Loan Repayment Assistance Program (LRAP).

LRAP covers part or all of the loan payments made by graduates working in law-related jobs for nonprofit organizations or government agencies—provided the graduates don't earn more than \$52,000 or owe more than \$55,500. Alumni have up to three and a half years after graduating to apply to the program.

"It's a great program," says Kristen, who works with the Legal Aid Society's Employment Law Center in San Francisco. "I probably would have gone into public interest law in any case, but LRAP let me do it right out of law school, instead of having to work in a firm for a few years to pay down my debt."

About 80 percent of Boalt students graduate with student debt—for the class of 2003, the average loan debt was more than \$50,790. Depending on interest rates, payments on that sum can be more than \$520 a month. That's a significant bite out of a typical public interest salary.

New York University Law Professor Lewis Kornhauser '76 found that starting salaries at Wall Street firms rose 60 percent in real terms between 1978 and 1991, while corresponding federal government salaries—to which many public interest salaries are pegged—fell by 16 percent. And the gap persists. Starting pay on Wall Street in 2002 was roughly \$125,000, says Kornhauser. For California firms, the average was \$90,000. At a typical nonprofit, it is about \$36,000.

In Oakland the National Center for Youth Law pays new lawyers just \$30,000. "It's very hard to handle student loans on a \$30,000 salary," says Director John O'Toole '74. "But we haven't seen a dearth of committed, hard-working students who want to work with us, and I find that heartwarming."

For Kristen—and other recent grads—Boalt's LRAP makes it possible to manage school debt and pursue a career she loves.

LRAP is supported by the university and private donations, including an endowment from the Justice Stanley Mosk Memorial Award. For details about LRAP or to support the program, visit www.law.berkeley.edu/currents/lrap.

“PUBLIC INTEREST AND PRO BONO WORK ARE BECOMING INCREASINGLY INTERTWINED. IN THE OLD DAYS, MOST OF THESE CASES WERE HANDLED ENTIRELY BY PUBLIC INTEREST FIRMS.”

magnet for wanna-be public defenders? Stratton thinks it's because her 50-lawyer staff does a great deal of writing and oral advocacy, represents many clients from first arrest to final appeal, and often wrestles with cutting-edge legal issues. “We do incredible habeas corpus work, we're diverse by age and gender, and we have great camaraderie,” she says. “In all modesty, my office rocks.”

Michael Posner '75 also has plenty of young lawyers knocking on his door. “There sure are a lot of people who want to work in human rights,” says Posner, who heads New York's Lawyers Committee for Human Rights, “and they're more talented and have more global experience than ever.”

That may be partly the result of tough political times. “In the two years since the 9/11 attacks, there has been a constitutional crisis involving fundamental issues of human rights in this country: questions of privacy; openness in government; and the treatment of immigrants, citizens, refugees and so-called security detainees,” says Posner, who believes these issues are more urgent than at any time since the Civil War. “Many young people coming out of law school feel that this is the battle of our lifetime, and that lawyers have a particular role to play in it.”

Public interest and pro bono work are becoming increasingly intertwined, says John O'Toole '74, the director of the National Center for Youth Law (NCYL) in Oakland. “In the old days, most of these cases were handled entirely by public interest firms,” he says. “*Brown v. Board of Education*, for example, was litigated by the NAACP Legal Defense Fund, and no private law firm was involved.”

That strategy has changed.

As an illustration of the emerging partnership between private and public organizations, O'Toole cites *David C. v. Leavitt*, a class action lawsuit the NCYL and a Salt Lake City firm filed several years ago on behalf of 10,000 abused and neglected children in Utah. The state's lawyers were running the small firm ragged—scheduling simultaneous depositions all over the state, for example. O'Toole decided to ask Morrison & Foerster in San Francisco for help.

“Morrison & Foerster gave us Harold McElhinny '75, the chair of their litigation department worldwide, and suddenly our problems ended,” he says. “That's just one example, but it's more or less typical of how we've handled every case in the last 15 years.”

O'Toole and his colleagues are grateful that private firms are willing to help. “It's a kind of marriage,” he says. “We couldn't survive without them.”

Brown v. Board of Education and *Grutter v. Bollinger* are bookends on five decades of litigation, policymaking and research toward improving educational opportunity. “Such an opportunity,” the Supreme Court said in *Brown*, “is a right which must be made available to all on equal terms.” Echoing those words almost 50 years later, *Grutter* underscored the imperative of ensuring that “all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.”



From BROWN

Pursuing the Quest for Equal Educational Opportunity

Here are a few of my thoughts on the significance of *Grutter*—as a matter of constitutional law and as a matter of educational policy.

As a constitutional matter, some Court-watchers have said that *Grutter*, though important, was little more than a ratification of the status quo. The *Boston Herald* said the decision “truly represents mainstream thinking in this nation about race.” The University of Michigan’s diversity goal was defended by Ivy League institutions, Fortune 500 companies, and former U.S. military officers. Virtually every major sector of society weighed in with a statement explaining why racial diversity matters, and the Court, according to some, showed its usual reluctance to defy social consensus.

There is something to this; the Court rarely diverges sharply from social expectations. But I think this view of *Grutter* is like Monday morning quarterbacking. After all, there was a very coherent story to tell had the decision gone the other way.

For more than a decade, a 5-4 majority of the Court has used increasingly stronger

words to express discomfort with race-conscious policies, however benign their intent or consequences. Since the Court introduced “strict scrutiny,” no race-based policy voluntarily adopted by the government has survived at the Court until *Grutter*, except one: President Roosevelt’s executive order authorizing the internment of Japanese-Americans during World War II. During and after the civil rights movement, the Court limited the voluntary use of race to instances where it was necessary to remedy past discrimination by a governmental actor. For years this narrow remedial theory was thought to exhaust the reasons that could justify affirmative action.

Justice O’Connor fueled this perception when she voted in 1990 to strike down an FCC licensing policy that favored minority-owned broadcasters for the sake of viewpoint diversity. “Modern equal protection doctrine,” she wrote, “has recognized only one [compelling] interest: remedying the effects of racial discrimination.” Five years later, Justice O’Connor authored the *Adarand* decision, consolidating two decades

of doctrine into a toughly worded “strict scrutiny” standard that appeared “strict in theory, but fatal in fact.”

And so, in 2003, it was not clear that Michigan’s forward-looking, nonremedial interest in educational diversity would be sustained. The legal status of Justice Powell’s opinion in *Bakke*, which first articulated this interest 25 years ago, had been so uncertain that the 5th Circuit dismissed it in 1996 as merely a single justice’s view. *Grutter* did not resolve *Bakke*’s authority as precedent. Instead it embraced the diversity rationale *res nova*.

That is a very significant development in constitutional law. It is only the second time in 60 years that a voluntary race-conscious measure has survived strict scrutiny at the Supreme Court. Given the pains the Court has taken to define permissible remedial uses of race, it is interesting that the Court sustained a non-remedial affirmative action policy before ever sustaining a remedial policy.

Moreover, although *Grutter* is characterized as a 5-4 decision, the justices found educational diversity a compelling interest by a wider margin. Justices Stevens, Souter,

GRUTTER to and Beyond

ESSAY BY PROFESSOR GOODWIN LIU
ILLUSTRATION BY TOM VOSS

Together
Brown and
Grutter reflect
and legitimize

our under-
standing of
equality and
nationhood.
But the gap
between ideals
and reality is
one the law
cannot fully
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Ginsburg and Breyer signed onto Justice O'Connor's opinion. Justice Kennedy voted to strike down the Michigan policy on narrow tailoring grounds, but acknowledged racial diversity has educational benefits. Chief Justice Rehnquist also found the policy insufficiently tailored but said nothing about diversity as a compelling interest. Only Justices Scalia and Thomas said that educational diversity is not a compelling interest. So, on this key question, the vote was 6-2 with one abstention—a surprising result for a Court with conservative views on race.

Finally, perhaps most remarkable is how the Court articulated the diversity interest that it found compelling. *Grutter* was framed as a narrow debate over whether racial diversity has educational benefits. Yet the Court said: Because “education ... is the very foundation of good citizenship”—a quote from *Brown*—“the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity. ... In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. ... Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized.” This is not the narrow language of functional, educational diversity. It is, instead, a robust vision of a just society with equal access, participation and opportunity for all.

How much of this language will stick and what work it will do in future cases remain to be seen. But predictions aside, *Grutter* cannot be understood merely as judicial acquiescence with the status quo. That view overlooks the discontinuity between *Grutter* and prior doctrine, as well as the crucial role the Court plays in articulating and consolidating our national values.

What is the significance of *Grutter* in the contemporary quest for equal educational opportunity?

One answer is that the continuing need for affirmative action confirms that inequality still exists. Justice O'Connor's hope that affirmative action will be unnecessary in 25 years strikes many as naive. But I want to sound a note of optimism by addressing not simply how far we have to go, but how far we have come. Doing so will help illuminate the significance of affirmative action today.

Let me begin with three facts about affirmative action as currently practiced. First, contrary to popular belief, very little affirmative action exists in our higher-education system as a whole. After the Supreme Court granted *cert* in the Michigan cases, the *Washington Post* reported that the cases set the stage for “a historic battle ... over access to American higher education.” Well,

not quite. One-third of the nation's 4,000 higher-education institutions are community colleges, which typically have open enrollment or use race-neutral admissions criteria. The same is true for most four-year colleges. In fact, race is a substantial factor in admissions only at highly selective schools that serve only a small fraction of the nation's student body.

Second, minority students are highly qualified to attend those selective schools. Although racial gaps in SAT scores remain large, they have decreased considerably over the past three decades, even as the minority share of test takers has increased. At UC Berkeley, the middle half of admitted black freshmen had SAT scores between 810 and 1,070 in 1983. In 1995 the same middle range was 920 to 1,160, a 100-point increase. A student at the middle of this middle range (around 1,040) belonged to the top third of all test

takers. By contrast the beneficiaries of affirmative action in *Bakke* 30 years ago had test scores in the bottom third.

This trend is confirmed by the 1998 book *The Shape of the River* by William Bowen and Derek Bok. In a sample of selective schools, they found the percentage of black applicants with SAT scores of 1,100 or higher was 25 percent in 1976, but more than 50 percent in 1989. At the most selective colleges, the percentage of black

students who scored 1,100 or higher was 50 percent in 1976, but nearly 75 percent in 1989. Almost half of the black students who went to these schools in 1989 had scores of 1,200 or higher, placing them in the top 10 or 12 percent of test takers nationwide.

The same pattern is evident in graduate and professional schools. From 1995 to 2000, underrepresented minority students at the University of Michigan Law School had average LSAT scores of 159 to 161, compared to 168 for white students. Despite the seven- to nine-point gap, the average minority student landed within the top 15 to 20 percent of all test takers. These are talented students, and it is no wonder that all sides in *Grutter* agreed that the applicants admitted under the law school's policy were qualified. Indeed the plaintiff, Barbara Grutter, believed she was qualified, and her LSAT score was 161.

Finally, the achievement gap that remains must be put in further context. The gains by minority students, though significant, have not closed the gap entirely. For example, the black-white SAT gap at the selective schools in Bowen and Bok's study fell from 233 points in 1976 to 165 points in 1989, a narrowing of 68 points in 13 years. At this rate, it will be more than another generation before the gap disappears. It is important to note, however, that the average black SAT score rose 90 points, not 68 points, between 1976 and 1989. The gap-closing effect was offset by a simultaneous 22-point rise in the average score of whites. At UC Berkeley, although black SAT scores increased about 100 points between 1983 and 1995, white scores

increased even more. A 1,300 put a student at the 75th percentile among whites in 1983, but only the 50th percentile in 1995.

Competition for admission to selective schools has increased dramatically. If admissions standards today were the same as 30 years ago, many minority students would be highly competitive without affirmative action. Bowen and Bok report that in their sample, the average SAT score of black students in 1989 was higher than the average among *all* students in 1951, when the schools were virtually all-white.

So being "qualified" is as much about changing standards as it is about the candidates themselves. It is remarkable that minority students at elite schools have been closing the qualifications gap, even as the qualifications of white students rise. This is due to many factors, including the rising educational attainment of the parents of minority applicants. And that, in turn, is attributable to many causes—improvement in the economic status of minorities, federal financial aid, enforcement of antidiscrimination laws and, yes, 30 years of affirmative action.

The increasing talent of minority students does not settle the issue of fairness raised by affirmative action. Racial preferences remain controversial even when minority applicants are highly qualified. But the facts I have mentioned bear directly on the contemporary significance of affirmative action as a social and educational policy.

When it began, affirmative action vaulted educationally disadvantaged minority students into the nation's middle class. Today it is a springboard for qualified minority students into the nation's *leadership* class. To

be sure, today's beneficiaries of affirmative action are still far less privileged than their white peers. But the pool of minority students able to benefit from affirmative action is now larger, more talented and more promising than ever. This fact is cause for optimism that affirmative action will become less necessary over time, given continuity in educational attainment from one generation to the next.

One final thought: Affirmative action is an imperfect social policy. But its imperfection is not that it allows unqualified minorities to go to top schools, but rather that it does not touch the vast majority of minority students, many of whom go to racially isolated schools with high concentrations of poverty.

Grutter would not have been possible without the civil rights revolution unleashed by *Brown*. But while *Grutter* was about access to one of the nation's premier universities, *Brown*—let us not forget—was about an 8-year-old girl who believed she had a right to a decent third-grade education at the all-white elementary school four blocks from her home in Topeka, Kansas. *Brown* said there are some things the state cannot do; *Grutter* said there are some things the state can do. But neither case says what the state *must* do. Together *Brown* and *Grutter* reflect and legitimize our understanding of equality and nationhood. But the gap between ideals and reality is one the law cannot fully bridge. While *Brown* and *Grutter* capture the society we aspire to be, the unfinished work is up to us.

This is an abridged version of a speech Professor Liu gave to the Boalt Hall Alumni Association Board of Directors on September 11, 2003.

Ted Olson Represents the Ultimate Client in the Country's Highest Court

Story by Kate Callen

Photos by Jim Block

Supreme Advocacy

October 10, 2001, should have been a day of triumph for Theodore B. Olson '65. In his 16th appearance before the U.S. Supreme Court, Olson stood up for the first time as the nation's solicitor general, which meant that when he walked into court wearing the traditional pin-striped morning suit, he was representing the ultimate client: the citizenry of the United States.

Instead, Olson's Supreme Court debut as solicitor general in *Verizon v. Federal Communications Commission* was a wrenching experience. The most important person in his life was not there, and her absence was on everyone's mind.

Conservative commentator Barbara Olson was among the 3,000 people who died in the September 11 terrorist attacks, and the story of her final hours—how she had scheduled her flight so she could be home with her husband on the morning of his 61st birthday, how she called him from the plane just minutes before it hit the Pentagon—became one of the signature horrors of that day.

Just one month after enduring a tragedy of Shakespearean proportions, buoyed by a contingent of Barbara's friends led by Virginia Thomas, wife of Justice Clarence Thomas, Olson entered the courtroom with his customary poise. He remained composed as Chief Justice William Rehnquist formally expressed the Court's condolences to "General Olson." As expected, he delivered a vigorous 30-minute defense of the Federal Communications Commission's (FCC) interpretation of the 1996 Telecommunications Act. And also as expected, the Supreme Court aligned with Olson's reasoning when it ruled in the FCC's favor the following March.



Today Olson looks back on the fall of 2001 with stoic grace. “Barbara and I were exceedingly close—she was just incredible, a technicolor person—and when this hideous thing happened, I knew I would either fold up or survive,” he said in a recent interview. “That was a day when 3,000 victims left behind grieving families. Barbara was the best-known of the people who died, so I was determined to set an example by pulling myself together.

“Walking into court that day was very difficult, and it was a hard time for everybody—remember, we were in the middle of the anthrax scare—but sometimes you just have to put one foot in front of the other.”

KEEPING COOL IN THE EYE OF THE STORM

Olson has become one of the nation’s most accomplished attorneys by prevailing through four decades of high-wire lawyering. From his days at Gibson, Dunn & Crutcher, through his service as assistant attorney general in the Office of Legal Counsel, to his star turn on the winning side of *Bush v. Gore*, he has been a serene gladiator.

As his Supreme Court record of 23 wins and seven losses attests, Olson does not lack competitive zeal. And his longtime links to conservative Republican causes has led to charges of political zealotry, which surfaced most notably in his Senate confirmation hearings for the position of solicitor general. But Olson has remained in the eye of every hurricane, and his supple intelligence and cool demeanor have impelled his career.

“I like everything about being solicitor general—the breadth of cases, the intellectual challenge, the rapid-fire questions from the justices, it is all so exhilarating—but one of

“He stood before a court of tough, experienced, skeptical judges for a three-hour oral argument and engineered a tremendous legal victory for his client—the government—in the war on terrorism.”



the very best things about it is that I have the responsibility to represent the United States in the nation's highest court," he says.

Professor John Yoo, who worked with Olson at the Justice Department, marvels at how the Solicitor General led the government's post-9/11 defense of the constitutionality of the USA Patriot Act before the Foreign Intelligence Surveillance Court of Review.

"Ted is simply one of the finest oral advocates that I have ever observed," says Yoo. "Ted quickly learned an entire area of law that is highly specialized ... [and] he quickly developed a winning argument that had eluded lawyers who had worked on the issue for years. Then he stood before a court of tough, experienced, skeptical judges for a three-hour oral argument and engineered a tremendous legal victory for his client—the government—in the war on terrorism."

STANDING OUT IN A CLASS OF STANDOUTS

Olson was born in Chicago, but his family moved to California when he was 7 years old. As an undergraduate at the University of the Pacific, he excelled in forensics, drama and journalism, and thus equipped with the tools to communicate and persuade, he decided to be a lawyer. "As the oldest of five children, I knew I would have to put myself through law school," he says. "Other schools offered more generous scholarships, but at the end of the day, all arrows pointed to Boalt."

Olson's memories of Boalt are uniformly enthusiastic. "On the first day of orientation, I thought, 'This is fantastic!' and from then on, it was like heaven to be surrounded by so many brilliant professors and colleagues." He loved working on the *California Law Review*, and he felt especially indebted to two professors: "Bob Cole, who taught me torts and con law, would ask an infinite variety of questions to make you look at different issues from many different angles," he recalls. "And Adrian Kragen, from whom I took tax law, taught me about problem solving and working your way through a challenge."

Professor Emeritus Robert Cole remembers Olson fondly: "Ted was a standout in an extraordinary Boalt class of standouts. He was one of those students you always remember. He radiated such warm intelligence and had such an impressive presence that you just knew he was going to be an outstanding leader of the profession."

After earning his J.D., Olson briefly flirted with the prestige of a clerkship. But a thirst for litigation pushed him into private practice. As he puts it, "I was anxious to get out in the real world and use what I had learned, and I knew that a big firm would give me the

best opportunity to challenge myself and gain a breadth of experience."

AN EXCEPTIONAL OPPORTUNITY

Olson moved to Los Angeles to join Gibson Dunn, where his clients included media heavy hitters like the *Los Angeles Times*, NBC and First Artists Production Company. He became a protégé of partner William French Smith, and in 1981, when Smith was named U.S. attorney general by his close friend President Ronald Reagan, Smith invited Olson and another Gibson Dunn lawyer named Kenneth Starr to join the Justice Department. Olson helped arrange for the Reagans' assets to be held in a blind trust, thus continuing a long-standing attorney-client relationship with the Reagans that crested when Olson represented the embattled president during the Iran-Contra hearings.

Olson was not eager to leave the litigation arena and his ocean-view home in Palos Verdes, California, for federal service in the nation's capital. But when Smith asked him to run the Justice Department's Office of Legal Counsel—a post previously held by William Rehnquist and Antonin Scalia—he took the offer because, as he says now, "You'd have to be crazy not to accept that opportunity; it's one of the most intellectually stimulating jobs in government."

Olson's fans readily point out (and many critics grudgingly agree) that he performs exceptionally well under pressure, and he has had plenty of it. After he defended the Reagan White House's claim of executive privilege

"If you look back on some of the things that Alexander Hamilton said about Thomas Jefferson, it was pretty nasty stuff. But undignified conduct never measures up to what American citizens expect of their judicial process."



during a 1982 congressional probe of Environmental Protection Agency Superfund cleanups, Olson became the target of an independent counsel investigation. The subsequent Supreme Court case of *Morrison v. Olson* ended in a landmark 7-1 decision upholding the independent counsel statute. (Olson was cleared in 1989 when Independent Counsel Alexia Morrison ended her inquiry.)

Almost two decades later, Olson's 2001 Senate confirmation hearings turned rancorous when Democrats complained about his ties to *The American Spectator*, a conservative magazine that had bedeviled Bill Clinton before and during his White House years. Ironies abound in the tangled world of politics: one of Olson's fiercest critics was Hillary Rodham Clinton, the junior senator from New York (and a favorite target of Barbara Olson), who accused the nominee of "raw political partisanship." Olson remained unflappable, and on the eve of the Democratic takeover of the Senate, he was confirmed by a 51-47 vote.

On the surface, Olson is philosophical about partisan battles. "This is nothing new," he says. "If you look back on some of the things that Alexander Hamilton said about Thomas Jefferson, it was pretty nasty stuff. But undignified conduct never measures up to what American citizens expect of their judicial process."

THE *BUSH V. GORE* MARATHON

As befits his demeanor, the most intense battle of Olson's career was remarkable for the mutual respect shown by its combatants. *Bush v. Gore* was, in Olson's words, "five weeks of nonstop, emotionally draining, intellectually demanding work—and the whole world was watching." The 2000 battle for the White House set two Supreme Court speed records. In the first *Bush v. Gore*, the Court took 14 days to vacate a Florida Supreme Court order for a ballot recount. Then in the second *Bush v. Gore*, the Court took just four days to stop another recount. Throughout the legal marathon, and despite the high stakes, the opposing teams cooperated to an extraordinary degree.

Olson argued both cases personally, and the two victories placed him in the pantheon of Supreme Court litigators. And, in an historic gesture, Chief Justice Rehnquist publicly thanked both sides for "exemplary briefing under very trying circumstances." Weeks later the *National Law Journal* gave its Lawyers of the Year honors to "Teams Bush and Gore," praising "the civility displayed by the attorneys toward each other."

Five months later, Gore's head attorney, Harvard Law Professor Laurence Tribe, submitted a letter on Olson's behalf during Olson's Senate confirmation hearings. Says

Tribe today, "My respect for his skills as a legal advocate might best be summed up by saying that he and I have sometimes worked together on the same side of a case, and have at other times opposed one another on a case, and I much prefer to have him on my side than opposing me."

Given his remarkable Supreme Court record, Olson is often mentioned as a likely Supreme Court nominee, and he responds to such speculation with adroit phrasing: "I've been asked if I would be interested, but it never went further than that. It would be a fascinating thing to do, but I enjoy immensely the role of being an advocate, and I haven't seriously thought beyond that."

These days Olson is much too busy keeping up with increasing demands on the Office of the Solicitor General, where a cadre of 20 career attorneys juggles a yearly average caseload of 65 Supreme Court arguments. On rare occasions when he takes time off, he vacations with his grown son and daughter and three grandchildren at a family retreat in Wisconsin, where he enjoys running, biking and hiking. He tries to be patient when false rumors circulate that he is contemplating remarriage and/or retirement. And he longs to jump back into the litigation arena.

"Somewhere down the road, I would like to return to private practice," he says. "One of the great things about the legal profession is that, knock on wood, as long as your brain is functioning and your health is good, you can keep doing what you love."

Alumni Return for Annual Reunion

Emerging Issues, Lasting Connections

This past October alumni from the last 50 years filled Boalt's halls for invigorating panel discussions, dining and dancing at the fourth annual All-Alumni Reunion. Alumni in attendance were treated to bright, clear Bay Area weather and a day full of insightful seminars on a variety of topics, including an examination of the future of the death penalty in the United States in the face of growing international opposition; a discussion of the opportunities and challenges facing today's female attorneys; and a look at the U.S. Supreme Court's most important recent decisions. The celebration continued long into the night as old friends reunited during an evening of class dinners and dancing in the courtyard.

The event was also the culmination of a successful 2003 Reunion Campaign. Through the hard work of this year's campaign committee, chaired by Michael Baker '73, and the generosity of Boalt alumni, the campaign far exceeded its \$1.3 million goal, raising \$1.45 million. "These important contributions will help support scholarships, faculty research, clinical and academic programs, and capital improvements," says Baker. "I look forward to turning the campaign over to next year's chair, Mark Pécheck '84, so we can continue to build upon Boalt's tradition of excellence."

Be sure to mark your calendar for the October 2, 2004, All-Alumni Reunion. The event will feature special class dinners for grad years ending in 4 and 9. For more information about this exciting program, visit www.law.berkeley.edu/reunion.

"Our 25th reunion was terrific! The best part was talking to so many classmates who told me about the warm friendships that they made at Boalt, and how they endure to this day."

—Holly Fujie '78



Boalt alumni take a tour of the law school and see how it has changed since they attended.



Laura Young '87 (left) and her husband, Frank Wang, chat with Professor Emeritus Thomas Jorde during Friday's leadership reception.



Alan Barton '63 (far right) and his wife, Ann (second from right), share a witty remark from Uncle Zeb's Comment Book with Elizabeth Riles '98 (far left) and Paula Weiser (wife of Paul Weiser '63).

"The students at Boalt are clearly much younger and smarter than they were when I attended. That is not a complaint, but an observation made with considerable satisfaction. It was good to see so many of them give up a perfectly good weekend to guide us clueless alums around the building."

—Jan Stevens '58

"Our reunion provided ample opportunity to visit and renew friendships with classmates, to gain greater insight into the state of Boalt Hall and to attend a number of thought-provoking panel discussions. I only wish that I lived closer to the law school so as to take in these types of activities on a more regular basis."

—Neal Brockmeyer '63



Carolyn Collins '73 and her daughter, Elizabeth, attend the "Glass Ceiling Redux" panel, which explored the opportunities and challenges faced by today's female lawyers.



Legal mystery writer Sheldon Siegel '83 (far right) discusses the representation of law and lawyers in novels with Professor Rachel Moran and fellow author John Martel '59.



"Full Court Press" panelist Professor Goodwin Liu remarks on some of the U.S. Supreme Court's most important decisions of 2003.

"It is always an uplifting experience to return to the law school and participate in the lectures. The speakers are all first-class. It makes me proud to have attended Boalt Hall."

—Fernando Hernandez '66



Frederic Harvey (left) and Lucian Vandegrift from the class of '53 enjoy the opening remarks of Dean Robert Berring, Jr. '74 about the state of Boalt Hall today.

"It was great to see old classmates, many of them for the first time in the five years since we graduated. I'll definitely continue to go to the annual reunions!"

—Fumi Knox '98



Classmates from 1993 Margo (Rabinovitz) Bradish, Elizabeth Pendo and Darci Lanphere Johnson (left to right) celebrate their 10-year reunion.

"Everyone seemed happy to be back—it was great to schmooze with folks from other years and with faculty."

—Neil Gould '74



Dean Robert Berring, Jr. '74 toasts the class of '53 during its 50th reunion dinner.



Marina Gracias '83 and her husband, Bernard Martis, take a turn on the dance floor after dinner.

"The reunion was a great opportunity to reconnect with old friends, some of whom I had not seen in 25 years, and to realize how strong the Boalt connections are, even for those of us on the East Coast."

—Mitch Cohen '78

"I had a wonderful time at the reunion, and was happy to learn about the diverse professional and personal lives of my classmates. It was especially gratifying to see how different individuals have shaped their careers around their own personalities, interests and needs. I've always avoided all types of reunions before, but found everyone to be so warm and friendly that I won't miss another."

—Connie Harden '83



Professor Steve Bundy '78 (second from right) moderates a discussion examining federal regulations that monitor confidential communications between accused terrorists and their lawyers. Panelists included Michael Halloran '65, partner with Pillsbury Winthrop; Leslie Caldwell, federal prosecutor; and John Steele, attorney with Rogers Joseph O'Donnell & Phillips (left to right).



Al Harris '68, Wendy Harris, Alison Anderson '68, Toni Alexander and Dave Alexander '73 (left to right) visit during the evening reception.



Violet Lui-Frank '78 (right) and Karen Stevens (wife of Jan Stevens '58) enjoy a conversation between panel discussions.

Class Notes

Submit and read Class Notes online at www.law.berkeley.edu/classnotes.

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James B. Davis reports that the Class of '56 held its annual Christmas lunch at North Beach restaurant in San Francisco on December 4, 2003. More than 15 members were in attendance.

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Retired Judge **Michael Ballachey** has joined Judicial Arbitration and Mediation Services (JAMS). Since 1999 he served as a mediator, arbitrator and discovery referee with Action Dispute Resolution (ADR) Services and the American Arbitration Association. Michael was appointed to the Alameda Superior Court in 1979.

Richard Bryan reports: "My wife, Nancy, and I became proud first-time grandparents this past summer. I continue to enjoy law practice. Instead of 'retiring,' Nancy has started her second year of seminary, seeking ordination to the Episcopal clergy."

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Larry Sonsini was named one of the 100 most influential lawyers in California by the *Daily Journal Extra* in October 2003. He was praised for holding his Silicon Valley firm together through the economic downturn.

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Bhavna Agnihotri (LL.M.) is currently an associate with the firm Jones Day in Tokyo.

Michael C. Donaldson announces that the second edition of his book *Clearance and Copyright: Everything the Independent Filmmaker Needs to Know* was published in October 2003. It is being used as a textbook in 30 colleges and film schools across the country.

Jack L. Joyce, the president of Rogue Ales Brewery, opened a new pub in the North Beach area of San Francisco. The brewery also has pubs in Portland and Newport, Ore., and Issaquah, Wash.

In June 2003, **Michael Kalkstein** became managing partner of the new Palo Alto office of Dechert, a Philadelphia-based international law firm.

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Alison Anderson sends this update: "Both my sons (24 and 26) took the LSAT this fall and are finally seriously considering law school after several years in the work world. Meanwhile I am going in the other direction. I retired on January 1, 2004, from the UCLA law faculty. 'Retirement' in the UC system means I will continue to teach one semester a year—I still love teaching—and be professionally active. (I am currently serving a three-year term on the executive committee of our national professional

association, the Association of American Law Schools.) But I definitely look forward to more tennis, travel and time to read the newspaper in the morning. I am finishing my active career at UCLA by serving as the academic associate dean this fall, so retirement will feel particularly well-earned."

Anne Fraser writes: "Hi, friends! Although I attended Boalt only for my first year of law school (1966-67) before leaving for Boston to receive my J.D. from Boston University, memories of my year there and the friends I made are still vivid. I would be happy to hear from old friends and classmates. After B.U. I worked with Legal Assistance as a 'Reggie' Fellow in Boston. In 1972 I moved to Chicago to begin a sojourn in the community mental health field before my first son, Zach, was born. Returning from leave, I resumed my law practice with Isham, Lincoln & Beale, focusing on the Milwaukee Road reorganization and real estate work for more than five years. In 1983 I came to Allstate and have been here ever since, primarily doing real estate and environmental work related to Allstate's investments and operations. My practice has involved the full range of real estate transactions nationwide, including many transactions in California. I hope you are well and thriving!"

Mark Reutlinger is completing 25 years on the faculty of Seattle University School of Law (formerly the University of Puget Sound). He reports: "In addition to working

on updates for two of my own books, I will be one of the editors in chief for two new deskbooks, on probate and estate planning, to be written by and for practitioners, and published by the Washington State Bar Association.”

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Robert Marsel is a professor of law at the University of Redlands in California, where he focuses on the intersection of law, business and social policy. He teaches seminars on business ethics, mediation and the U.S. Supreme Court.

Edward Rusky was promoted to counsel and manager for National Commercial Services with LandAmerica Financial Group Inc., a real estate transaction services company in San Francisco.

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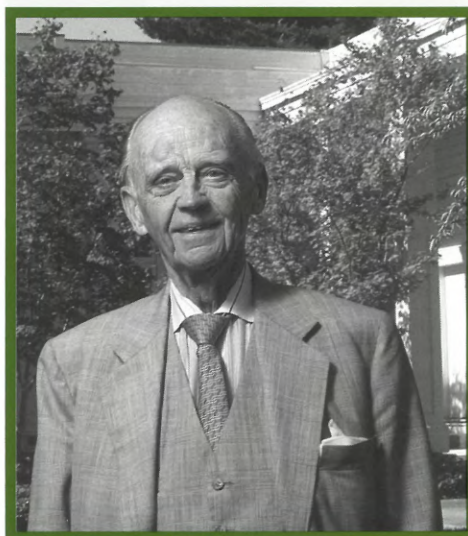
In October 2003, the *Daily Journal Extra* selected **John Schulman** as one of the 100 most influential lawyers in California. He was recognized for being the “top legal eagle” at Warner Bros. for 19 years and leading the fight against movie piracy.

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Raymond Diaz checks in to say, “I am still alive and well.”

Broadway Federal Bank President **Paul Hudson** was elected chairman of the Los Angeles Community Redevelopment Agency (CRA) this past October. CRA’s CEO Robert Ovrom says Paul has “fantastic credibility at city hall and in the development and financial community. He will be an incredible asset to our organization.”

Steve Kaus is living in Berkeley with his wife, Melissa Havilan, and two sons, Jason (10) and David (6). He is a partner at Cooper, White & Cooper in San Francisco.



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Bill Godward: Setting the Standard

At age 90, about the only thing Bill Godward ‘37 doesn’t do is practice law.

He still shows up daily at his powerhouse San Francisco firm, Cooley Godward, works as a trustee for several former clients, and roams the office, spreading what colleagues call his “friendliness.” Each afternoon he works out. On weekends he drives to his small Napa vineyard, where he spends time with his daughter and three grandchildren.

In his off-hours, Godward pours himself into his passion, serving as vice chairman of the board of the San Francisco Opera Association. As the association’s president during what he calls the “earthquake/out-of-the house years,” he played a key role in the renovation of the earthquake-damaged opera house. He also made sure the presentation of the opera continued at the Civic Auditorium and Orpheum Theatre while the house was closed.

After following his three sisters to Cal as an undergraduate, Godward put himself through Boalt Hall by working summers at a slaughterhouse in Shasta County. After Boalt’s class of ‘34 struggled with the bar exam, Godward and his classmates had a challenging tenure with the law school. “[The school was] trying to build a set of standards,” he says. “We were the original guinea pigs, taking tests all the time.”

Godward recalls being particularly downcast one day when former Professor Roger Traynor intercepted him. “He gave me a big smile and said, ‘Hello, Bill, how are you doing?’” The simple

gesture inflated Godward. “I’ve tried to adopt that”—a welcoming, encouraging spirit—“my whole life,” he says. Traynor later helped Godward land his job at Cooley in 1941.

Godward, a Navy veteran and former president of the Boalt Hall Alumni Association, helped build Cooley into what it is today—a national firm with five offices, 500 attorneys and an annual William W. Godward award, established to “celebrate and encourage the continued high regard for human values at Cooley.”

“Bill always put his clients ahead of his own interests,” says longtime colleague Myron Sugarman ‘67. Sugarman recalls a piece of advice that his father, Irving Sugarman ‘38—who knew Godward casually in law school—gave his son when he began working at Cooley 32 years ago: “My father said, ‘Figure out what Bill Godward does and do exactly the same thing.’”

Colleagues say when Godward was a corporate acquisitions specialist in banking, media and manufacturing, he was known for being hands-on, demanding early drafts he could shape, and having shrewd judgment and strong ethics. As the former chairman of the State Bar of California Ethics Committee, and in his own law practice, Godward insisted on transparency and threatened to abandon clients who suggested shady tactics.

“Your greatest strength is telling people the way it is,” Godward says. On his love of the law, he says, “You can be of assistance in developing something positive for a client. It’s nice to know.”

Patricia Herron: Judging Fairly and Living Wisely



Looking back on her 10 years as a California Superior Court judge, Patricia Herron '64 is hard pressed to identify her most significant case. "All of the cases were important," she says. "For each person who's in court, their own case is the most important one."

This sense of fairness has earned Herron the respect of many. After practicing the minimum 10 years required to be eligible for a Superior Court judgeship, in 1977 she became the seventh woman in California appointed by a governor to sit on the Superior Court. Within two years, her peers elected her presiding judge.

After graduating from Trinity College in 1949 and receiving her master's from Catholic University in 1956, Herron held jobs ranging from teaching psychology to selling real estate to serving as an administrator at Stanford University. Herron even spent three months at a Belgian convent before deciding that the nun's life was not for her. "I have a tendency to need freedom," she explains.

At Boalt Hall, Herron discovered the subject that would hold her fascination for the next four decades. "The law is a living, breathing thing," she says. "It is never static or boring."

After graduation Herron became managing partner of a small firm. "You might be working on a corporate case in the morning and doing estate planning in the afternoon," she recalls. She developed a specialty representing fathers in custody cases. "That was a day when people felt that the mother should always have custody," she says, "but I believe that some men are just as nurturing as women."

As a judge, Herron found she had the ability to separate her emotions from her job. "Most of the trial cases were criminal, and the evidence presented was violent and cruel," she says. "But a judge has to be objective, and my job was to apply the law to the facts presented."

She received many special appointments during her tenure, serving as assistant presiding judge,

presiding judge, criminal court judge and juvenile court judge. Her stint as law and motions judge, ruling on legal issues raised in civil cases, was especially stimulating.

Herron retired in 1987 but soon returned to law as a private judge, helping litigants pursue their cases outside of court. In 1990 she joined Judicial Arbitration and Mediation Services (JAMS). "She was selected because she's bright, knows the law, and could be trusted to do what is right," says JAMS president and retired Judge Coleman F. Fannin.

In another career twist, Herron has been co-owner of Barricia Vineyards in Sonoma County, California, since 1978. She plays a hands-on role in the vineyard's management, negotiating contracts with wineries and often walking the grounds with her manager to check the vines.

At 76 she sounds uncharacteristically settled. "There's something very satisfying about growing things," she says. "It fills your soul."

He reports, "I am a litigator, which, sadly, does not mean that I really get to try cases very much any more."

Steven McCoy continues to practice full time in the real estate area, working as general counsel for a real estate management and development company. He writes: "The work is quite varied and includes significant transactions in Hawaii, California, New Mexico, Texas and Connecticut, as well as in my home state of Ohio. My avocations are

my two grandchildren (2 and 4), golf, college sports (Ohio State), and breeding and racing standardbred racehorses. This past summer was especially exciting because my best horse won 12 races and more than \$57,000.

"I, regrettably, missed the 2003 All-Alumni Reunion. My three years at Boalt were among the best of my life, in large part because I was surrounded by such extraordinary people. My best to all of you."

The Recorder recognized **Peter Benvenuti** in its November 2003 list of top attorneys in the Bay Area for his nearly 30 years of practice in the field. His colleagues praised his work ethic and pragmatic approach to cases—qualities that have led him to success as the head of Heller Ehrman White & McAuliffe's Bankruptcy Practice Group in San Francisco.

Boalt Hall Transcript
University of California, Berkeley
School of Law
303 Boalt Hall
Berkeley, CA 94720-7200

Boalt Calendar

April 15

Robert D. and Leslie-Kay Raven Lecture
Speaker: Matt Gonzalez
San Francisco County Supervisor and
Board President
"The American City: A Tool for Progressive
Change in the 21st Century"
Boalt Hall
Contact Center for Social Justice
510-642-6969

April 15-16

The New Metropolis: Social Change in
California's Cities Symposium
Boalt Hall
Contact Center for Social Justice
510-642-6969

Patent Reform Conference

Berkeley
Contact Berkeley Center for Law &
Technology
510-643-6960

April 16

Golden Boalties Alumni Luncheon
(For the classes of 1924 to 1953)
Boalt Hall
Contact Alumni Relations
510-642-2591

Admitted Students Reception

New York
Contact Admissions Office
510-642-2274

April 20

Admitted Students Reception
Boston
Contact Admissions Office
510-642-2274

April 20-23

The 14th Conference on Computers,
Freedom & Privacy
Berkeley
Contact Samuelson Law, Technology
& Public Policy Clinic
510-642-0499

April 22

Alumni Luncheon
Speaker: Professor Jesse Choper
"A Momentous Year for the Supreme Court"
San Francisco
Contact Alumni Relations
510-642-2591

May 7

Citation Award Dinner
Honoring: Robert C. Berring, Jr. '74
Interim Dean and Walter Perry Johnson
Professor of Law
San Francisco
Contact Alumni Relations
510-642-2591

May 22

Class of 2004 Commencement
Guest Speaker: Walter Dellinger
Partner, O'Melveny & Meyers;
former Acting Solicitor General; and
former Assistant Attorney General
Hearst Greek Theatre
Contact Student Services
510-642-3263

June 18-20

International Association of Boalt
Alumni Meeting
Fribourg, Switzerland
Contact Alumni Relations
510-642-2591

October 1

Leadership Reception
(For annual donors of \$5,000 or more)
Berkeley
Contact Alumni Relations
510-642-2591

October 2

All-Alumni Reunion
Boalt Hall
Contact Alumni Relations
510-642-2591

Visit www.law.berkeley.edu/alumni/register for additional event listings and to register online.