

boalt hall

transcript

PROSECUTING TERRORISM

DOES THE POST-9/11 LEGAL REGIME
THREATEN OUR LIBERTY?



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dean's message

Taking over in the middle of an academic year on one week's notice has been incredible in the truest sense of the word. Having been at Boalt Hall for more than two decades as an administrator and a faculty member, and being a graduate to boot, there was much about the place that I knew. There is also much that I am learning from this new perspective, including an even greater appreciation for the strength and resilience of our community. The unexpected resignation of Dean John Dwyer required the school to overcome a variety of challenges. But, as ever, the Boalt Hall community has taken a deep breath and moved forward. As I write these words, the building is humming with energy. Things here are on track and better than ever.

Amid the flurry of activity characteristic of the spring semester, the law school has begun the search for a permanent dean. Chancellor Robert Berdahl has appointed a search committee, chaired by Professor John Quigley, who holds appointments in the Economics Department, Goldman School of Public Policy and Haas School of Business. The committee includes five law school faculty members (Professors Robert Kagan, Rachel Moran, Joseph Sax, Samuel Scheffler and Howard Shelanski '92), as well as Assistant Dean Louise Epstein, alum Adam Sachs '87, students Ritu Bhatnagar '05 and Shanda McAndrews '04, and several other university faculty members. The committee will conduct a national search to find the right person to guide Boalt into the next era. We promise to keep you posted as developments arise.

As we face this turbulent time in our nation's legal history, the *Transcript* explores how Boalt alumni are working to balance our sometimes competing desires for security, privacy and freedom. In this issue, Jess Bravin '97 examines some of the far-reaching changes our legal system has undergone since 9/11. A legal affairs reporter with *The Wall Street Journal*, Bravin offers his own personal experiences, as well as the perspectives of several key players involved in the legislation and court cases that have altered our criminal justice system.

Also weighing in on the liberty vs. security debate are Ann Brick '75, an attorney with the American Civil Liberties Union, and Kenneth Wainstein '88, general counsel for the Federal Bureau of Investigation. Each contributes a personal essay addressing how the USA Patriot Act has altered the government's antiterrorism and law enforcement investigations. The essays offer insightful analyses of the benefits and costs of our quest to improve national security.

This issue also profiles Jeff Bleich '89. With his hands in many of the important legal issues of the day, from First Amendment battles to addressing the epidemic of youth violence, Bleich epitomizes the positive change our alumni foster in today's society.

I have enjoyed meeting many of you in the past few months, and I look forward to reconnecting with old friends and meeting new ones as I continue to travel across the country for our alumni luncheon series. May our paths cross soon.

All ideas and comments are welcome. Honest. My email is berringr@law.berkeley.edu.

Robert C. Berring Jr.
ROBERT C. BERRING JR. '74

in brief

BOALT'S MAIN EVENTS

Current Legal Issues Take Center Stage

Boalt Hall continues to host an impressive lineup of conferences and lectures. This fall the school's events explored many high-profile legal topics, including the enforcement of privacy rights, international judicial systems, youth gang violence and welfare reform.

September

High-ranking judges from around the world and the United States exchanged ideas about their diverse legal systems during the **Judicial Power and the Rule of Law: Comparative Perspectives** conference, which was sponsored by the Robbins Collection. (More on page 8.)

The Federalist Society hosted **A Discussion with Judges Stephen F. Williams and Laurence Silberman** of the U.S. Court of Appeals for the D.C. Circuit. The lively dialogue included questions from Professors Jesse Choper, Robert Post and John Yoo, who is on leave while serving as a U.S. deputy assistant attorney general.

Professor Patty Blum and plaintiff Carlos Mauricio spoke about the ground-breaking federal civil case Mauricio, with the help of Boalt's International Human Rights Law Clinic, won against two former Salvadoran generals. The talk, "*Romagoza v. Garcia: A Case of Justice for Victims of Torture*," reviewed the July verdict by a Florida jury that awarded \$54.6 million to Mauricio

and two others who were brutally tortured in El Salvador.

The Boalt Hall Women's Association, *Berkeley Women's Law Journal* and Center for Social Justice sponsored a **lecture by prominent attorney Maria Vullo**, who described several landmark cases she has litigated, including one in which she represented Planned Parenthood in a lawsuit against the creators of an anti-abortion website that threatened abortion providers. (More on page 5.)

The Earl Warren Legal Institute introduced a new lecture series on constitutional law with "**School Vouchers: Federal Constitutional Issues After the Cleveland Case**." Professor Jesse Choper discussed the recent U.S. Supreme Court decision in *Zelman v. Simmons-Harris* that upheld the constitutionality of school vouchers in Cleveland. (More on page 6.)

For an international perspective, Boalt hosted the **Law and Society in China** conference, which aimed to broaden and deepen the understanding of the interaction of law and society in China. The event featured experts who shared insights from their research in China. (More on page 6.)

The **Spencer-Grimes Appellate Judges Seminar**, organized by Professor Jesse Choper, attracted state judges from across the nation, who enjoyed presentations by Boalt faculty on many current legal topics,

including privacy and the Internet and recent Supreme Court decisions. (More on page 8.)

October

Attorneys and scholars from across the nation came to the law school for the fifth annual **Litigating Regulatory Takings Claims** conference, which honored the scholarship of Professor Emeritus Joseph Sax. Panelists explored takings challenges to land use, environmental and other regulatory programs. (More on page 5.)

November

Law Professor Peter Edelman of Georgetown University gave the Judge Mario G. Olmos Lecture, "**Beyond Welfare Reform: Economic Justice in the 21st Century**." The lecture opened **Whose Welfare? Income Transfers and Economic Justice**, a Center for Social Justice conference examining welfare from legal, economic, public policy and historical perspectives. (More on page 4.)

The Samuelson Law, Technology and Public Policy Clinic organized **Enforcing Privacy Rights**, with leading experts analyzing privacy enforcement and generating ideas to better shape legislation and determine effective remedies. (More on page 5.)

The Death Penalty Clinic and the Center for Social Justice invited Father Greg Boyle, the dynamic founder of Jobs for a

Future, to present “Youth Gang Violence: Teenage Suicide for the Urban Poor.” His talk explored the psychosocial forces that shape the lives of young gang members in urban Los Angeles. (More on page 7.)

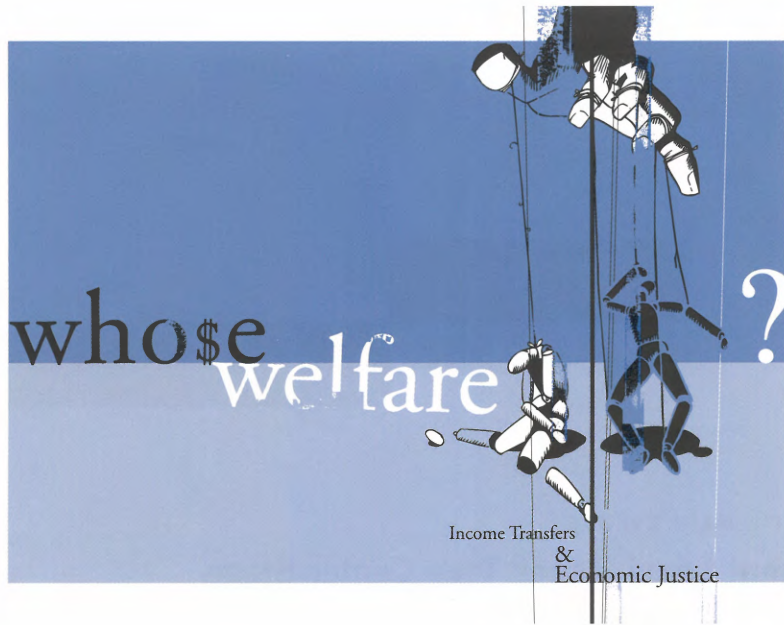
Larry Kramer, New York University law professor and associate dean for research and academics, questioned the current Supreme Court’s expanded judicial authority during this year’s Brennan Center Thomas M. Jorde Symposium, “Popular Constitutionalism: Circa 2002.” (More on page 7.)

The Kadish Center for Morality, Law and Public Affairs hosted the Kadish Lecture, “Law, Interpretation and the Point of Political Philosophy,” which was presented by renowned legal philosopher Ronald Dworkin, a faculty member of New York University’s law school and philosophy department. (More on page 9.)

December

The *Ecology Law Quarterly* hosted California’s Crisis on the Colorado River and the Proposed Imperial Valley-San Diego Water Transfer, which featured the lead counsel and interest groups in the pending State Water Board hearings on the nation’s largest proposed water transfer. The symposium was moderated by Boalt lecturer and water-law expert Tony Rossman.

A tradition was born when the law school hosted the first annual **California State Bar Admissions Ceremony**. Boalt graduates who recently passed the state bar exam took the attorney’s oath of office before Justice Kathryn Mickle Werdegard ’62 of the California Supreme Court, Judge Thelton E. Henderson ’61 of the U.S. District Court for the Northern District, and Judge William A. Fletcher of the U.S. Court of Appeals for the 9th Circuit, professor emeritus at Boalt. (More on page 8.)



REFORMING WELFARE

Conference Calls for Economic Justice

“Working families have been caught in a squeeze that’s gotten worse over the past 30 years,” says Peter Edelman, Georgetown University Law Center professor. “Wages have stagnated and the cost of living, especially for housing, has gone up very substantially. The number of people who can’t make ends meet is far larger than the number of people we say are ‘poor.’”

According to Edelman, these factors must be addressed to truly reform welfare. He presented his views on the system’s problems, as well as proposed solutions, at the Mario G. Olmos Memorial Lecture held in November. Edelman has worked throughout his career to improve the system, most notably as assistant secretary for planning and evaluation at the Department of Health and Human Services under President Bill Clinton. He resigned in protest after Clinton signed the 1996 Welfare Reform Act.

Edelman’s talk opened the conference *Whose Welfare? Income Transfers and Economic Justice*, sponsored by Boalt’s Center for Social Justice. A series of panels examined the intent of welfare, public perceptions of the system, the impact of welfare reform, and legislative strategies for

reform. “Our goal was to bring together experts from a variety of fields to discuss how the welfare system should be reformed to truly advance economic justice,” says Professor Mary Louise Frampton, center director and conference organizer.

The conference featured leading academics, including Professors Joel Handler of UCLA School of Law and Felicia Kornbluh of Duke University; government officials, such as Assemblywoman Dion Aroner and Rachel Gragg of the late Senator Paul Wellstone’s office; and prominent practitioners, including Clare Pastore of the Western Center on Law and Poverty. Panelists examined the system from legal, economic, public policy and historical perspectives, paying particular attention to the Welfare Reform Act reauthorization debate.

“The challenge is to change the terms of the debate, not just from welfare to poverty but from poverty to talking about how to get an adequate income to everyone,” says Edelman. “California is a great place to start this debate,” he adds. “It has all the problems I’ve mentioned; it is America’s largest state; and it often leads the way for the country.”

Takings Conference Honors Professor Joseph Sax

In October attorneys and scholars from across the country convened at Boalt Hall to discuss takings challenges to land use, as well as environmental and other regulatory programs, at the fifth annual Litigating Regulatory Takings Claims conference. This year's conference honored the work of Professor Emeritus Joseph Sax, who recently retired after 40 years of teaching.

"It was such a fitting occasion at which to honor Joe," says Professor Andrea Peterson '78, a takings expert and conference panelist. "His articles on the takings clause are major contributions, and we were all eager to hear his views on current issues."

The conference included detailed discussions of the Supreme Court's recent ruling in *Tahoe-Sierra Preservation Council Inc. v. Tahoe Regional Planning Agency*, a case that involved the constitutionality of planning moratoria. Leading scholars, including Sax, also made presentations on the constitutional, political and economic issues raised by takings claims, and panelists discussed how to integrate these insights into day-to-day legal practice.

Sax was honored at a special dinner, attended by many of the students, lawyers and professors who have worked with him throughout the years.

PROTECTING PRIVACY RIGHTS

Experts Examine the Effectiveness of Current Laws

Privacy has become a pivotal issue in domestic and global debates involving international trade, healthcare and Internet commerce. And it is central to the debate concerning the U.S. response to terrorism and the need for domestic security. Yet many experts believe too little attention has been paid to the effectiveness of current privacy enforcement tactics and remedies. To analyze the effectiveness of privacy rights laws in the United States, the Samuelson Law, Technology and Public Policy Clinic held the Enforcing Privacy Rights conference in November.

"In the face of very real threats of terrorism, Americans remain deeply skeptical of the promised but seldom realized trade-off between privacy and security," says Jim Dempsey, executive director of the Center for Democracy and Technology and a conference panelist. "What we need to do is find ways to protect both privacy and security, and to promote e-commerce while protecting sensitive personal information."

The conference brought together leading policy experts, practitioners, scholars and government officials, including John Podesta, former chief of staff to President Bill Clinton. Panelists discussed how to better shape legislation and addressed complex legal questions in areas such as electronic communications, healthcare, e-commerce, international data transfers, financial data and government surveillance.

"This conference is the first major meeting to focus squarely on the topic of privacy enforcement and remedies," says Professor Deirdre Mulligan, director of the Samuelson Clinic and conference organizer. The event was co-sponsored by the Institute for Law and Economic Policy and the *Hastings Law Journal*.

"The Samuelson Clinic and Boalt Hall are leading centers for the development of Internet policy today," says Dempsey. "The ideas that emerged at this conference will feed directly into policy decisions being made in Washington and in state governments."



During the Enforcing Privacy Rights conference, John Podesta, former chief of staff to President Clinton, discusses the effectiveness of current privacy laws.

Attorney Maria Vullo, who served as lead counsel for Planned Parenthood in a case against anti-abortion activists, discusses her litigation experience at a lecture last September. Vullo's talk was sponsored by the Boalt Hall Women's Association, the *Berkeley Women's Law Journal* and the Center for Social Justice.



Earl Warren

Legal Institute

Constitutional Law Lecture Series Opens with School Vouchers Talk

One of the most anticipated decisions handed down by the U.S. Supreme Court in its last term was *Zelman v. Simmons-Harris*, which upheld the constitutionality of a school voucher program in Cleveland, Ohio. Lauded by supporters as a remedy for failing public schools and criticized by detractors as an unnecessary mingling of church and state, the decision affects school districts across the nation. In September Professor Jesse Choper addressed this controversial ruling with "School Vouchers: Federal Constitutional Issues After the Cleveland Case," the inaugural lecture of the Earl Warren Legal Institute's new series on constitutional law. "From the standpoint of constitutional doctrine and important national policy, the Cleveland voucher case was the most significant decision of the Supreme Court's last term," says Choper.

UC Berkeley Is New Home for Law of the Sea Institute

Last spring the Law of the Sea Institute (LOSI), a distinguished international organization of scholars and policy officials, relocated to Berkeley's Earl Warren Legal Institute (EWLI). Founded nearly 40 years ago, LOSI promotes the concept of a global treaty for ocean governance. Formerly headquartered at the University of Miami, LOSI has sponsored more than 20 international conferences and a large number of workshops. LOSI will be administered by Professor Harry Scheiber, EWLI director, and Professor David Caron '83, who plan to continue the institution's program of international conferences as well as its publications, symposia and working sessions. This spring the institute is hosting scholars and jurists from seven countries for a conference on the problems of multilateralism in contemporary resources management on the high seas.

Legal Experts Examine the New Face of China

Since economic reform began in 1979, China has been the site of an ongoing legislative explosion. In the past 20 years, the country has developed a legal system that provides rights previously unknown to the nation's citizens.

This changing legal landscape, along with the growing pluralism in Chinese society caused by the interaction of new values with established Maoist traditions and institutions, makes this a pivotal time in Chinese history. In September Boalt Hall hosted the Law and Society in China conference to showcase the work of scholars who have recently conducted field research in China.

Sponsored by the law school, the Institute of East Asian Studies, the Center for the Study of Law and Society, and the Center for Chinese Studies, the conference featured panel discussions by U.S. and international scholars on labor relations, police-administered sanctions, intellectual property and the overall development of China's legal system.

"It can be very difficult to do field research in China because of the many bureaucratic obstacles," says Stanley Lubman, Boalt lecturer and conference chair, "but in recent years, some scholars have been able to do interesting on-the-spot research." The conference included a presentation by Elisabeth Greenspoon, who holds a Ph.D. from UC Berkeley and spent more than 18 months in a remote Chinese village studying how residents settle land disputes. UC Berkeley Professor Kevin O'Brien and Professor Li Lianjiang of Hong Kong Baptist University presented an evaluation of peasants' attitudes toward the legal system.

"Boalt is a place where the study of foreign legal systems is deemed an extremely useful part of a legal education," Lubman says. "A conference like this, which focuses on how legal institutions work or don't work, is integral to the effort to gain a better understanding of China."

CHALLENGING THE HIGH COURT'S AUTHORITY

Larry Kramer Advocates for Popular Constitutionalism

In November New York University School of Law Professor Larry Kramer visited Boalt Hall to discuss what he calls the overreaching role of the modern Supreme Court. His talk, "Popular Constitutionalism, Circa 2002," was the keynote address for the Thomas M. Jorde Symposium.

"The Rehnquist Court has acted aggressively to enlarge its authority," Kramer argued, "by claiming that the Court alone can interpret the Constitution authoritatively, while discarding or constricting many of the doctrines and principles that have served to limit its power."

Kramer said this expansion of the Court's judicial authority has resulted in a growing movement that presents a valid, comprehensive argument challenging the Court's preeminence. He positioned this movement as the latest wave in a recurring struggle between advocates of popular constitutionalism and judicial supremacy.

Following Kramer's talk, Professor Erwin Chemerinsky of the University of Southern California Law School offered commentary arguing against many of the tenets outlined in Kramer's talk. Professor Robert Post also offered a critique of the lecture.

The annual Jorde lecture is sponsored by New York University's Brennan Center for Justice. The center holds two symposiums annually—one at Boalt and one at another prominent law school. The program was established in 1996 by Professor Emeritus Thomas Jorde.



University of Michigan Law School Professor Rebecca Eisenberg '79 receives the Berkeley Center for Law & Technology Distinguished Service Award from Professor Peter Menell, executive director of the center. The award, given to Eisenberg in October, recognizes her accomplishments in the fields of intellectual property and bioscience.

NOTHING STOPS A BULLET LIKE A JOB

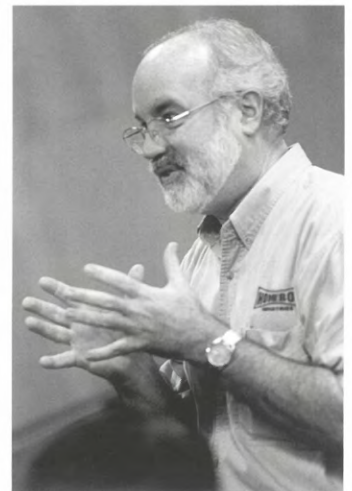
Father Greg Boyle Shares His Success at Curbing Gang Violence

As a priest in Boyle Heights, the area with the highest concentration of gangs in the entire city of Los Angeles, Father Greg Boyle experiences firsthand the climate of hopelessness that causes young people to turn to gangs. Determined to find real solutions to the violence in his community, Boyle developed his own program to reduce gang activity.

"We must have a high degree of reverence for the complexity of the problem in order to do something effective. Gang violence is a symptom of intense poverty, despair, unemployment and racism," said Boyle at Boalt during his November lecture, "Youth Gang Violence: Teenage Suicide for the Urban Poor."

During the talk, which was sponsored by Boalt's Death Penalty Clinic and Center for Social Justice, Boyle explained how his program gives a second chance to young people in the community. Convinced that many gang members would choose to earn an honest living if they had the opportunity, in 1988 Boyle created Jobs for a Future. Guided by the motto, "Nothing stops a bullet like a job," the program provides at-risk youth with a range of employment services, including job placement, counseling, community service opportunities and tattoo removal.

The organization also includes an economic development branch called Homeboy Industries. Designed to teach valuable job skills to those with little or no employment experience, Homeboy Industries brings former enemy gang members together to work side by side in the program's bakery, graffiti removal patrol, and silkscreening and merchandise ventures.



During his fall lecture, Father Greg Boyle describes the ways he has reduced gang violence among urban youth in Los Angeles.

OPENING THE DOOR

Angela Harris

makes the case for academia

Students describe Professor Angela Harris as an encouraging and giving teacher. "There is this enormous generosity about her, in her approach and the spirit of her work," says second-year student Tucker Culbertson '04. "Her work in legal studies and on critical race theory made me realize what was possible in legal scholarship."

The respect is mutual. Harris says that while Boalt Hall is filled with intellectual students, they are not arrogant. "They are open and idealistic, and that keeps me in touch with my own ideals," she says. "I don't want to lose that."

Harris, an African American, grew up in a family that struggled for generations to move from lower working class to middle class. Harris says her parents made it clear to her and her siblings that they would need to do better in school than others, just to be considered the same. "I always felt I had to be super-organized, super-smart and better prepared than anyone else. I grew up understanding racism," she says.

Her background fostered Harris's interest in feminist and race issues while an undergraduate at the University of Michigan. But her first love was fiction, and Harris focused on creative writing

for several years following college. She ultimately decided to pursue a path leading to a more stable career, and earned both her master's degree in social science and her law degree at the University of Chicago.

In law school, Harris focused on gender and race and took on provocative issues, such as helping scholar and activist Professor Mary Becker establish the school's first feminist jurisprudence class. "That was one of our big successes," Harris recalls. "Catherine McKinnon's work on sexual dominance was getting a lot of play at the time—it says that through men's domination of women, society is shaped in many important ways—and it was very powerful to talk about it in the classroom instead of just in the hallways."

After graduation Harris worked briefly at Morrison & Foerster in San Francisco and, although she liked the firm, ultimately found the work unsatisfying. "It's just the way large firms are structured," she says. "You don't really get to uphold your ideals about justice."

When her former law professor and mentor Geoffrey Stone suggested academia, Harris was open to the idea. She became an acting professor at Boalt in 1988.

"I remember feeling that expectations of me were high," Harris recalls, as she was the school's first female African-American faculty member. She responded as she had to many challenges in her life—by excelling.

Today Harris is a noted scholar who writes in the areas of feminist legal theory and critical race theory. She is a frequent contributor to law journals and recently co-authored *Race and Races: Cases and Resources for a Diverse America*.

Harris believes academia was definitely the right choice for her. "It's hard to get disillusioned in the classroom," she says. "I work with a lot of progressive students who question the law, and that keeps me excited and interested."

Harris encourages students to consider becoming law professors. For example, she and Professor Christopher Kutz organized a panel discussion that gave first-year students the opportunity to explore academic careers. Harris is also an executive committee member of Boalt's Center for Social Justice, which sponsors a writing workshop for students interested in teaching.

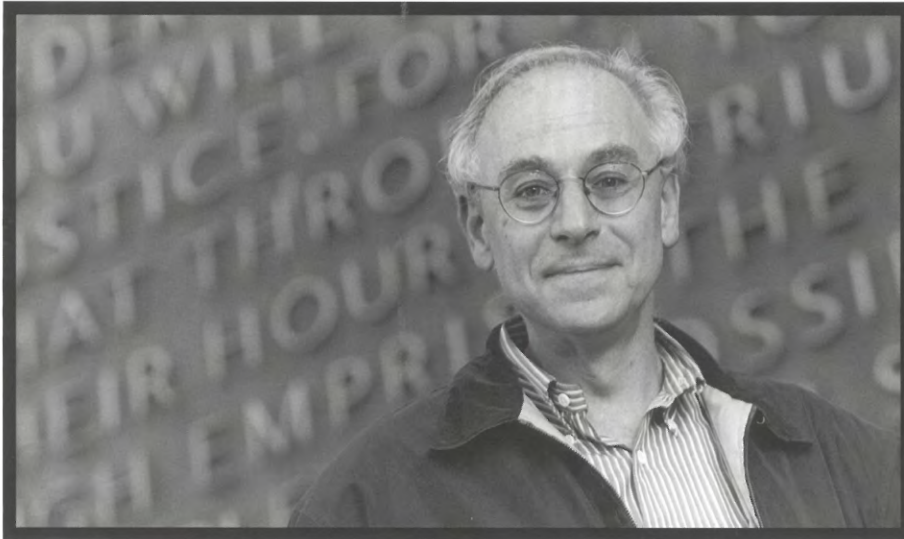
"I really want to open up teaching to people from nontraditional backgrounds," she says. "I think it's vital that all kinds of people teach the law."



CREATING AN INTERDISCIPLINARY APPROACH

Robert Post

examines the forces influencing constitutional law



Professor Robert Post studies and teaches constitutional law from an unconventional perspective—considering the law in a historical, sociological and philosophical context that relates law to the sociology of everyday life. “The argument I make to my students is that you can’t understand how the Supreme Court is going to decide something until you understand the underlying social and philosophical structures that drive the law,” says Post.

The renowned First Amendment theorist and constitutional law scholar is fascinated by the many ways legal rules are influenced by social structures. For example, says Post, “However much we may differ about large and abstract issues, there is surprising unanimity that surrounds such questions as how persons should behave in classrooms or libraries or town meetings. In my writings on the First Amendment, I argue that these patterns of sociological agreement affect and indeed comprise much of the law of freedom of speech.”

In his recent book, *Prejudicial Appearances*, Post argues that the equality values underlying American antidiscrimination law are also grounded in these living, discrete sociological patterns.

Post's interest in constitutional jurisprudence began early in his academic career. He obtained his undergraduate degree from Harvard University, earned his law degree from Yale University and returned to Harvard to acquire a Ph.D. in history. After clerking for Supreme Court Justice William J. Brennan Jr., Post worked for three years as a litigator for the Washington, D.C., firm of Williams & Connolly. He joined the Boalt faculty in 1983. Post has also served as general counsel for the American Association of University Professors.

Last summer Post was called upon by UC President Richard Atkinson to analyze the academic freedom implications of a controversy surrounding the course description for a class in the English Department called Politics and Poetics of Palestinian Resistance. Some faculty, students and community members took offense at the

description, which encouraged conservative thinkers to enroll in a different class section. Post's thoughtful analysis has been credited with assisting in defusing the controversy. (His letter to Atkinson appears on the Web at www.ucop.edu/pres/comments/postletter111.pdf.)

Among his current projects, Post is writing about the history of the Supreme Court in the 1920s, when William Howard Taft was chief justice. "Chapters from the book offer fundamental reinterpretations of such topics as Lochnerism, federalism, and the invention of federal judicial management," he says. The book will be the 10th volume in the *Oliver Wendell Holmes Devise History of the United States Supreme Court*.

Post is active in Boalt's Kadish Center for Morality, Law and Public Affairs, which encourages faculty, students and scholars to reflect on moral and philosophical issues in law and public life. He and Professor Samuel Scheffler organize the center's annual Law, Philosophy and Political Theory Workshop, which attracts top scholars from around the country.

Post's teaching is as challenging as his scholarly work. Because he believes students cannot understand the law if they study it in isolation, his classes are highly interdisciplinary, and he frequently shares the podium with philosophers, political theorists, sociologists and economists. His students receive a unique education. Sambhav "Sam" Sankar '00, a former student who will clerk for Supreme Court Justice Sandra Day O'Connor during the 2003 term, says, "When I was studying for the bar exam, I complained once to Robert Post that nothing he taught me at Boalt was helping me very much. He wasn't apologetic: 'I didn't teach you the answers,' he said. 'Answers change. I taught you how to ask the right questions.'"

A POST-9/11 LEGAL REGIME EVOLVES TO PROTECT US, BUT DOES IT THREATEN OUR LIBERTY?

Prosecuting Terrorism

Story by Jess Bravin '97

Photos by Reed Kaestner

When I first saw, from the window of my Brooklyn apartment, the gray smoke pouring from the World Trade Center's north tower, I thought I was looking at a fire story. As the towers fell and ash descended across New York, it became a disaster story, and then, as the culprits came into focus, a war story. It was all those things, all part of a human catastrophe without precedent. But the next day as I made my way to Ground Zero, I realized that, as much as anything, it was a legal story.

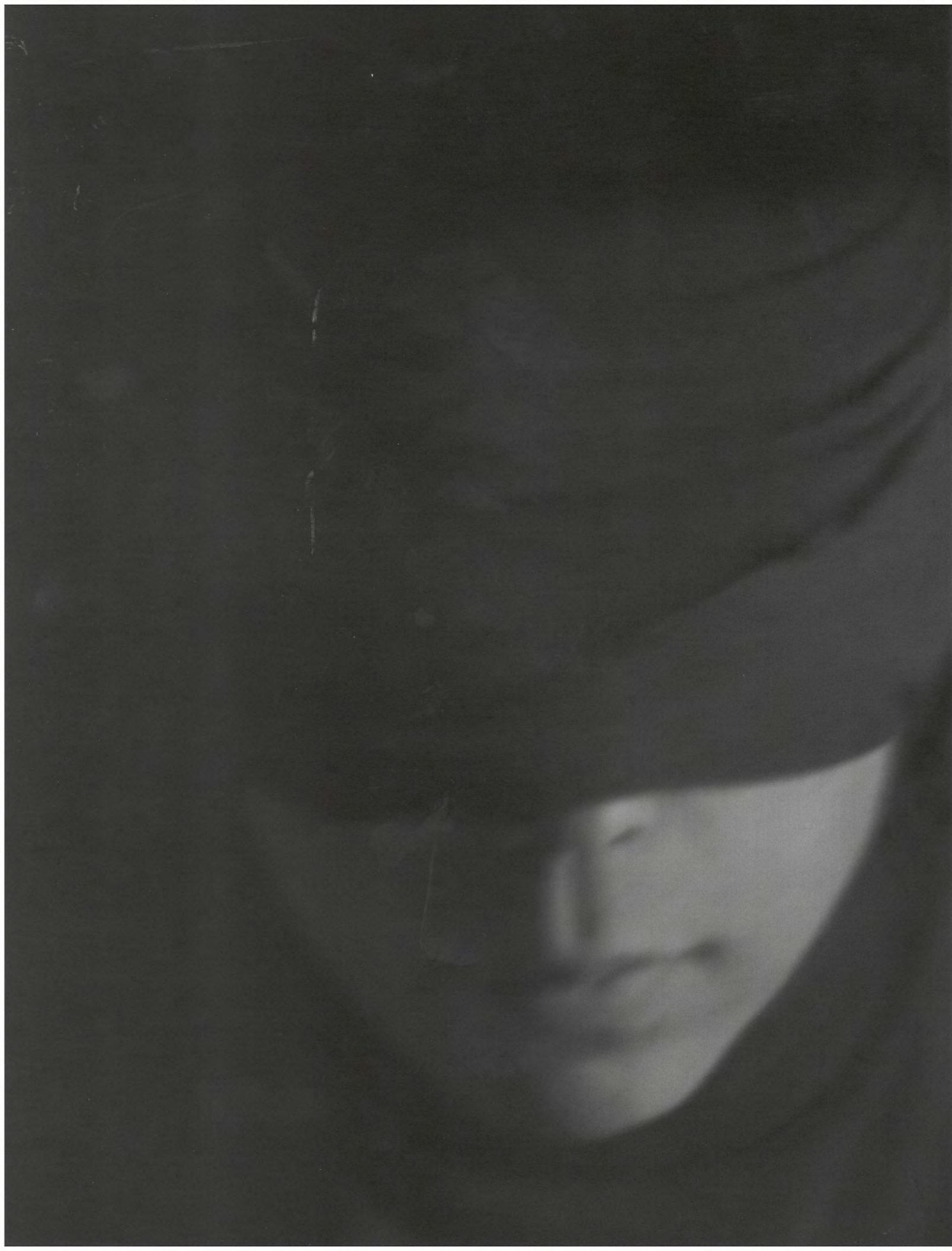
On that grim September 12, it was as if the legal framework that governs human interaction in the labyrinth of Manhattan had been wiped away. Traffic signals and parking restrictions meant nothing, and the difference between trespass and freedom of movement depended on the snap judgment of troops or police in position on street corners.

Alien as it had become, this was familiar ground. The newsroom where I worked was located across the street from where the Twin Towers used to stand, and my

commute used to terminate at the subway station beneath them. When I could not talk my way past a roadblock, I just walked until I found an unguarded intersection and proceeded deeper into a dust-choked, dreadful mutation of the neighborhood.

There seemed to be no one in charge at Ground Zero, only independent contingents carrying out self-appointed tasks. Construction workers showed up to cut through debris looking for survivors; fire companies searched for their lost brothers; and doctors waited for victims to treat—all in vain. Some lifted souvenirs or snapped pictures of their friends in front of the moldering pile. The lobby of the American Express Building, part of a complex that housed my newsroom, had become a combined mess hall, rest station and morgue. When debris suddenly fell from above, someone yelled "Run!" and a wave of people, fearing they would be crushed under another skyscraper's collapse, fled through the haze. I never ran harder or faster, swallowing clouds of dust and leaping

Jess Bravin '97, a former University of California regent and Berkeley police-review commissioner, covers legal affairs for *The Wall Street Journal*.



"It's al Qaeda's real efficacy that has made us take a very different view of the law. Every other revolutionary group we've seen has been winningly incompetent."



aboard the back of a pickup truck just as it pulled away.

Portentous as it sounds, a new order would come out of this chaos.

During those tense weeks, order seemed to spring from the ground up. Inside the federal building on Varick Street, police threatened me with arrest if I did not leave the 11th floor, where the immigration court is housed. I was permitted to enter the anteroom of the immigration court in Newark, New Jersey, but a clerk, who spoke to me through a crack in the door, said the docket was secret, as were any hearings that might be underway.

Finding the government cracking down was not unfathomable. What did surprise me was that in many instances, particularly concerning access to government records or proceedings, officials cited no clear authority for concealing information. Like all of us, government officials were improvising, and evidently going to do whatever they felt necessary, and only court orders could stop them.

A New Legal Regime Evolves

The September 11 attacks hit America harder than anything since Pearl Harbor and, in response, this nation of laws saw its legal regime transformed. Within days America's lawmaking apparatus was straining to respond, producing its first major piece of legislation on September 18, 2001: Senate Joint Resolution 23, which authorized the U.S. military campaign against Taliban-ruled, al Qaeda-occupied Afghanistan.

Uncontroversially, the resolution affirms the president's "authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States." Likewise, it also finds that the September 11 attacks "render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect U.S. citizens both at home and abroad." In the Senate and House of Representatives, only Berkeley's congresswoman, Barbara Lee, voted no.

But even this apparently straightforward resolution has produced unexpected legal consequences. For it is under the 291-word joint resolution, and not the 342-page USA Patriot Act, that two American-born men are being held incommunicado, indefinitely and without charge, by and within the United States.

The Bush administration is using the resolution to claim congressional authorization for importing the laws of war to American territory. Government officials cite those laws, whose principal aim is to permit effective military operations, to hold Yaser Hamdi, born in Baton Rouge, Louisiana, and Jose Padilla, born in Brooklyn, New York, in Navy brigs, classified as enemy combatants rather than criminal defendants. Hamdi—who grew up in Saudi Arabia after his father returned there from a job in Louisiana—was captured in Afghanistan following the same riot of Taliban prisoners that brought forth John Walker Lindh. Padilla was arrested at Chicago O'Hare International Airport after returning from Pakistan, allegedly to

research a plan, at al Qaeda's behest, to explode a radioactive or "dirty" bomb in an American city. Ultimately the U.S. Supreme Court may decide if the administration has understood its powers correctly.

This issue is one of the most dramatic new questions the courts are tackling as a result of 9/11. As time progresses, the legal impact in matters far removed from terrorism will become clearer. Already the Justice Department has announced the first use of its Patriot Act authority in a case having nothing to do with national security. Federal prosecutors in New Hampshire say their new surveillance powers allowed them to bust an illegal Montreal-based telemarketing ring and seize \$4.5 million allegedly stashed offshore.

Examining Executive Powers

A lawyer from the upper-middle ranks of the Bush administration says that 9/11 was a legal catharsis, providing for the concentration of authority under a "unitary executive"—one that could exercise war powers without interference from other branches of government. To be waged effectively, war requires decisive action, not lengthy deliberation, the official says.

The growth of executive power makes Representative John Conyers Jr. fume. "We are now in the throes of an imperial presidency, pure and simple," he says. "This is like nothing we've ever had before."

That is quite a statement, given all that Conyers has seen since Detroit voters first sent him to Congress in 1964. He was a

member of the House Judiciary Committee that adopted articles of impeachment against President Nixon, and is now the committee's ranking Democrat.

In a remarkable legislative twist following 9/11, Conyers teamed up with the Judiciary Committee's Republican chairman, F. James Sensenbrenner Jr. of Wisconsin, to craft a draft of the Patriot Act that substantially reduced the powers sought by the Bush administration. Every member of the famously polarized committee voted for the bill.

But the White House did not care for the compromise, so the House Republican leadership sent the full House a bill closer to the administration's liking. Conyers voted against the final product along with 65 other House members, but this version of the Patriot Act passed.

Unable to prevail in Congress, Conyers has taken to the courts. In January 2002, Conyers, along with two Detroit newspapers, challenged a September 21, 2001, order by the chief immigration judge requiring that all "special interest" deportation cases be heard in secret. In August 2002, the U.S. Court of Appeals for the 6th Circuit ruled that the government needs to show reasons for closing each case to the public. With the 3rd Circuit reaching the opposite conclusion in October 2002, the case appears destined for the U.S. Supreme Court.

Then in February 2003, Conyers and five other House Democrats, along with several soldiers and parents of soldiers, filed suit in

Boston federal court contending the October 2002 congressional resolution that authorizes President Bush to use armed force against Iraq falls short of constitutional provisions giving Congress the power to declare war. The suit was dismissed within days, but an appeal may be forthcoming.

Viewing Terrorism as War

But even without taking any action in Iraq, haven't we been at war since 9/11?

"The major change is seeing terrorism as war and armed conflict, rather than as crime," says legal scholar Ruth Wedgwood. "George Schultz [former secretary of state] took that view in the 1980s. What's new is its widespread acceptance by the political branches and polite society."

Wedgwood, a law professor with appointments at Yale and Johns Hopkins universities, is one of a few academics with influence over the new legal regime. She helped vet regulations to govern the military tribunals that may someday try suspected terrorists, winning public praise from Defense Secretary Donald Rumsfeld. She sits on the Pentagon's Defense Policy Board and the United Nations Human Rights Committee.

"It's al Qaeda's real efficacy that has made us take a very different view of the law," she says. "Every other revolutionary group we've seen has been winningly incompetent. The Weather Underground and the Black Panthers—much less the Symbionese Liberation Army—were not about to overthrow American society," she says.

But today “the law has to recognize that a private group can be as dangerous as a state, and therefore you would use the same kind of measures you would against a state.”

Wedgwood says that change to war footing has “palpable costs.” She adds, “It’s easy for me to say that Padilla and Hamdi look like combatants, because they have been to Afghanistan and that’s not a normal tourist destination. But you would worry about the outlier cases—someone who provided one night’s shelter to a friend who happened to be in al Qaeda.”

In war “you may not wait for long, discursive processes to exhaust themselves,” and in the meantime, such outliers may find themselves out of luck. Likewise, she says, the crackdown on immigrants has “been as hard on Senegalese cabdrivers and their sisters as on anyone that’s culpable” for terrorism. “They are among the saddest victims of bin Laden’s violence,” she adds.

The government believes that the amorphous forces of terror are keenly tuned to American legal procedure and have identified its Achilles’ heel: letting prisoners challenge in open court the evidence underlying their imprisonment. “People will want to think through surrogate forms of verifying evidence that don’t necessarily mean ripping open your bodice for all the world to see,” Wedgwood says. “The expectation of what’s supposed to be public has changed.”

And so has the expectation of what is supposed to be private. Last July Attorney General John Ashcroft told the Senate Judiciary Committee that “a new ethic of

information-sharing in government” would prove among the most valuable weapons against terrorism. Among other things, he was referring to how counterintelligence information gleaned from foreign-intelligence warrants—warrants that, unlike criminal warrants, can be issued without probable cause to suspect a crime has been committed—is no longer walled off from criminal prosecutors. Wedgwood says, “The most important reform since 9/11 has been the provision of the Patriot Act that permits the CIA to talk to the FBI.”

Jim Comey, the U.S. attorney for the Southern District of New York, agrees. Appointed last year, he inherited a federal grand jury that has been investigating terrorism for a decade. Asked to list the most important changes in the law since the attacks, Comey immediately cites the Patriot Act for “finally lowering the wall between intel and criminal in terrorism investigations. Distinctions that may have made some sense, to be charitable, in the classic espionage case made absolutely no sense in the terrorism context.”

He goes on to note other developments that have made his very tough job easier. Referring to Hamdi and Padilla, he applauds “the [re]emergence of enemy combatant designations to incapacitate those, including citizens, who would do us grievous harm, but who the criminal justice system is unable to incapacitate.” And he welcomes the use of immigration law “to incapacitate and disrupt potential terrorists and fellow travelers.” Changes like these, he says, make the country “a much safer place.”

Justice Delayed, Justice Denied

The Albert V. Bryan U.S. Courthouse in Alexandria, Virginia, is a 10-story postmodern tower that opened in 1996. In one of history’s countless coincidences, it rises from a suburban development modeled on Battery Park City—the Manhattan neighborhood partly built on landfill excavated during construction of the World Trade Center.

The Eastern District of Virginia has long been a favorite venue of federal prosecutors trying sensitive cases. The courthouse is a short Metro ride from Justice Department headquarters in Washington, D.C., but its jurors have proven less skeptical of government arguments than jurors drawn from the District of Columbia.

Add to that the judges’ traditional emphasis on speedy trials—called the “Rocket Docket”—and it was no surprise that the government selected the Eastern District for two of the biggest post-9/11 cases, those of Zacarias Moussaoui and John Walker Lindh. In some ways, though, it is the civilian justice system that is on trial there.

In November 2001, President Bush authorized military tribunals to try suspected foreign terrorists under a “military order” rather than an “executive order,” to help insulate the policy from judicial or legislative interference. The tribunals were needed, Ashcroft said soon thereafter, because prosecuting such suspects in civilian courts would invite tragedy by putting “juries at risk,” making “courthouses and



cities terrorist targets,” and revealing “important secrets of America’s defense.”

If there is one such person who seems to meet those criteria, it is Moussaoui. He is not an American citizen, he has pledged allegiance to Osama bin Laden, and he has openly prayed for the destruction of the United States and the reestablishment of Islamic theocracy from Spain to India, as in medieval times. And though he claims he came to America on a mission other than the September 11 attacks, government sources have called him the would-be “20th hijacker.”

Although several high-ranking lawyers in the Bush administration wanted Moussaoui put before a military tribunal, the civilian prosecutors of the Justice Department won the day. He was charged with civilian crimes, assigned a public defender and slated for trial before Federal District Judge Leonie Brinkema.

Moussaoui’s widely published mug shot suggests a hulking linebacker, but in person he casts a diminutive figure, towered over by the court’s lawyers and federal marshals. He makes petulant demands in a heavy French accent, sounding more like Inspector Clouseau than a sinister terrorist mastermind.

Moussaoui has, however, underscored much of the administration’s disdain for the civilian court system. He has flooded the court with angry, repetitive motions, filled with vicious insults of the judge and the public defender. Yet Brinkema has been fastidious in affording Moussaoui every conceivable protection, refusing to accept

his guilty plea and ordering the jail to install an Intranet connection so he can see government evidence. Already his trial has been postponed nearly a year, mocking the statue outside the Bryan Courthouse—a 12-foot high, forward-leaning Lady Justice atop a pedestal that bears down on a tortoise, titled “Justice Delayed, Justice Denied.”

But the real test lies around the corner, when an appeals court decides whether to uphold Brinkema’s order allowing the defense to subpoena Ramzi Binalshibh. Captured by American forces in Pakistan, Binalshibh allegedly is another participant in the September 11 plot who remained an overseas organizer because he was denied a U.S. visa. He is being held and interrogated overseas, his capture considered a major victory in the war against terrorism.

He also is identified in the Moussaoui indictment as a co-conspirator and would have information material to Moussaoui’s defense. Few scenarios could be more unappealing to the Bush administration than that of Binalshibh in the Virginia courtroom, offering testimony for the defense. Some administration lawyers have privately, and so far unsuccessfully, urged that Moussaoui be transferred to a military tribunal. The Binalshibh subpoena may put their arguments in a different light.

Is Justice Being Served?

Morrison & Foerster attorneys James Brosnahan and Tony West spent a lot of time in the Bryan Courthouse last year as part of the San Francisco legal team

The amorphous forces of terror are keenly tuned to American legal procedure and have identified its Achilles’ heel: letting prisoners challenge in open court the evidence underlying their imprisonment.

While Moussaoui drew a judge solicitous of defendants' rights, Lindh was haled before Judge T. S. Ellis III, a hard-nosed former Navy officer whose impatience bristled through every hearing.



defending John Walker Lindh, the young Californian captured in Afghanistan. When the Morrison lawyers joined Lindh's defense in late 2001, Morrison chairman Keith Wetmore sent a rousing email to his colleagues. By taking on this "difficult and unpopular" case, Wetmore wrote, they were reflecting "the highest tradition of the legal profession in general, and this firm in particular."

But after an uproar among the partners and complaints from some clients, Wetmore quietly stripped the firm's name from the case. All things considered, Wetmore said, it was better if the defense was handled "outside the firm."

Brosnahan was a natural for Lindh's chief counsel and had nothing to lose. He is a legendary fixture of the San Francisco bar, an outspoken liberal who testified against William Rehnquist at his confirmation hearing for chief justice and served as special prosecutor of former Defense Secretary Caspar Weinberger.

West, on the other hand, is just starting his political career. He has racked up the prosecutorial credentials that are particularly helpful for a Democratic candidate, and in 2000 he narrowly lost a Democratic primary for state Assembly; he is a good bet to do better should he try again.

Or at least he was until he took the Lindh case, according to a Democratic official in California. West says he signed up

because lawyers are supposed to defend the unpopular—and because it was the kind of case that comes rarely, if at all, in a career. Whatever the political cost, West gained a front-row seat to legal history.

While Moussaoui drew a judge solicitous of defendants' rights, Lindh was haled before Judge T. S. Ellis III, a hard-nosed former Navy officer whose impatience bristled through every hearing. Ellis rejected the trial calendar jointly proposed by the government and the defense, finding it too leisurely.

Then to everybody's surprise, the Justice Department cut a plea bargain with Lindh, landing him a 20-year sentence for providing support to the Taliban. President Bush personally approved the deal, but West says that result came from having "honorable line prosecutors on the other side. The fact that he pled was a testament to the trust that the lawyers had established."

West marvels at the rapid evolution of the justice system. "We've come a significant way since December of 2001," he says, when the country was stunned to learn that "a white middle-class kid from suburbia" had been captured in Afghanistan fighting for the Taliban.

Lindh, born in Washington, D.C., and raised in Marin County, California, was not eligible for trial by military tribunal, but he easily fit the administration's definition of an enemy combatant. Nonetheless, a government that was unsure how to treat him sent Lindh to the civilian justice system.

Time of Trial

Some Post-9/11 Legal Milestones

September 18, 2001: The Senate and House adopt Senate Joint Resolution 23, authorizing the president to use force against those who "planned, authorized, committed, or aided the terrorist attacks ... or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States. ..."

September 19, 2001: The Bush administration proposes the Mobilization Against Terrorism Act to expand the government's surveillance authority and power to detain immigrants. On October 26, President Bush signs an amended bill—the USA Patriot Act.

September 21, 2001: Chief U.S. Immigration Judge Michael Creppy orders that all "special interest" hearings, which largely involve Muslims arrested following 9/11, be closed. In August 2002, the 6th Circuit in Cincinnati voids the order, finding that the government can close hearings only when national security or other important objectives are in jeopardy. In October the 3rd Circuit in Philadelphia upholds Creppy's order, finding that immigration hearings, unlike criminal proceedings, are not entitled to the presumption of public access. The U.S. Supreme Court is likely to resolve the difference.

October 30, 2001: The Justice Department implements regulation extending the length of "special administrative measures" over certain prisoners in terrorism and other cases. Measures include blocking prisoners' contact with the news media and authorizing the monitoring of prisoners' discussions with lawyers.

November 13, 2001: Citing Senate Joint Resolution 23 as authority, President George Bush issues a "military order" authorizing military

tribunals to try noncitizens suspected of violating "the laws of war and other applicable laws." On March 21, 2002 Defense Secretary Donald Rumsfeld issues an order specifying that the tribunals comprise three to seven U.S. military officers; convictions require a two-thirds vote; and death sentences require a unanimous vote. The presiding officer has discretion to close the trials.

December 11, 2001: Although eligible for trial by military tribunal, French citizen Zacarias Moussaoui is charged in federal court with conspiracy in the 9/11 attacks. On February 12, 2003, U.S. District Judge Leonie Brinkema in Alexandria, Va., postpones trial indefinitely while the government appeals her order allowing defense access to al Qaeda witnesses. Government officials weigh transferring Moussaoui to a military tribunal.

January 11, 2002: At Guantanamo Bay Naval Base in Cuba, the Defense Department opens a detention center whose population eventually exceeds 600 al Qaeda and Taliban fighters. President Bush finds that the detainees are "unlawful combatants" and thus not entitled to prisoner-of-war status under the Geneva Convention. On July 30, a suit filed by relatives of some detainees is dismissed by U.S. District Judge Colleen Kollar-Kotelly in Washington, D.C., who rules that federal courts have no jurisdiction over noncitizens held overseas. An appeal is pending.

January 15, 2002: John Walker Lindh, a U.S. citizen captured in Afghanistan, is charged with conspiracy to kill Americans overseas and faces a possible life term. In a July 14 plea bargain, Lindh admits to providing material support to the Taliban and is sentenced to 20 years.

April 4, 2002: The Defense Department discloses that Yaser Hamdi, a Guantanamo detainee, was born in Louisiana. Hamdi is then transferred to a Norfolk, Va., brig where he is held without charge as an enemy combatant. On January 8, 2003, the 4th Circuit in Richmond, Va., rules that Hamdi's detention is legal.

May 8, 2002: Brooklyn-born Jose Padilla is arrested at Chicago O'Hare International Airport. On June 9, President Bush declares Padilla an enemy combatant, and he is transferred to a Charleston, S.C., brig. Officials say Padilla had returned to the United States at al Qaeda's behest and was researching plans to detonate a radioactive bomb. U.S. District Judge Michael Mukasey in New York finds Padilla has a limited right to counsel for a habeas corpus petition; the government objects.

November 18, 2002: The FISA (Foreign Intelligence Surveillance Act) Court of Review convenes for the first time to hear a government appeal of the FISA Court's first denial of a warrant application, and overturns the FISA Court's ruling. This ruling affirms the Patriot Act's FISA amendments, breaking down the "wall" by permitting communication among intelligence agents and criminal investigators or prosecutors for foreign intelligence purposes.

February 20, 2003: Federal prosecutors close a 10-year investigation of Sami al-Arian, a University of South Florida professor suspected of organizing and financing the terrorist group Palestinian Islamic Jihad. Officials say the Patriot Act helped prosecutors gain access to counterintelligence wiretaps allegedly showing al-Arian's role in financing attacks that killed more than 100 people. Al-Arian claims the prosecution is politically motivated.

Yaser Hamdi was captured alongside Lindh. But when his American birth was disclosed in April 2002, the administration took a different tack, sending him directly to indefinite detention in a Navy brig. Padilla, arrested on American soil, met the same fate.

What distinguishes their different treatment? In these and so many other cases springing up between the extremes of war and peace, American law has no clear precedent to follow. The answer may boil down to the constellation of events and personalities in play when the decisions are being made.

"With each thing government officials would do, I think they waited for the blowback," West says. "And when there was no blowback, they would then go and do the next thing. The government is much more emboldened." According to West, however, the pendulum will continue its swing.

"Historically, the blowback has come only when the middle of the bell curve of the body politic begins to feel the pressures, the adverse effects of lessened civil liberties." Anticommunism flourished during the early 1950s, West says, and at first only outsiders like the Rosenbergs fell victim. "It was only when you had Joe McCarthy push the envelope so far that it began to affect mainstream America" that public, and governmental, consciousness changed. "You'll get the blowback only when you hurt enough people."

Or, perhaps, if the changes in the law fail to protect them.

ESSAY BY ANN V. BRICK '75

PHOTO BY JIM BLOCK

*Assaults Basic
Constitutional
Protections*

The USA
PATRIOT ACT

The USA
PATRIOT ACT

*Enhances National
Security While Respecting
Civil Liberties*

ESSAY BY KENNETH L. WAINSTEIN '88

PHOTO BY LISA HELFERT



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THE TERRORIST ATTACKS of September 11, 2001, have affected our nation immeasurably. The tragic loss of life, the impact on our economy and the damage to our collective psyche are all readily apparent. But the events of September 11 have had another, equally fateful, effect: They have persuaded our government that it must sacrifice our precious freedom in the name of preserving it.

In its headlong rush to enact the USA Patriot Act—an act so voluminous, and

presented to the House of Representatives on such short notice, that most members never had an opportunity even to read it—Congress succumbed to Attorney General John Ashcroft's insistence that the need to safeguard security took precedence over safeguarding civil liberties. But as Justice Louis Brandeis so long ago observed, "Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent."

The Patriot Act is an unprecedented assault on basic constitutional protections. It eliminates the fundamental requirement that electronic surveillance in so-called "national security" criminal investigations be based on probable cause to believe that criminal activity is afoot; it sets up a system of secret surveillance with no meaningful judicial oversight; and it authorizes the

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FORTY-FIVE DAYS AFTER the attacks of September 11, 2001, President George Bush signed into law the USA Patriot Act. This legislation provides the government with needed new and enhanced investigative authorities to prevail in its war against international terrorism. Some have expressed concerns that the authorities provided by the Patriot Act will result in a loss of privacy and an infringement upon civil liberties. These concerns are understandable, and their discussion is vital to the democratic process that ensures

enforcement legislation is adopted and implemented in a responsible and constitutional manner. As part of that discussion, this article examines the Patriot Act provisions revising the 1978 Foreign Intelligence Surveillance Act (FISA) and concludes that the amendments are a well-considered response to the evolving terrorist threat against our country.

Background to the FISA Amendments

The debate over the meaning and application of the original FISA statute focused on the conceptual distinction between ordinary, domestic "criminal" investigations and "counterintelligence" investigations. Within this debate, ordinary criminal investigations were defined as those undertaken to develop evidence for arrest and prosecution of completed criminal acts



government to rely on a target's First Amendment activities as a justification for surveillance and other intrusions on privacy, even when the target is a U.S. citizen or permanent resident.

How the Patriot Act Invades Our Privacy **Wiretaps and Bugging Without Probable Cause**

Perhaps the most pernicious aspect of the Patriot Act is its expansion of the use of electronic surveillance under the Foreign Intelligence Surveillance Act (FISA), which permits such surveillance without a showing of probable cause. The vice in electronic surveillance is that it is truly a dragnet: It sweeps in all conversations regardless of the subject matter or the identity of the participants. Whoever uses the targeted telephone or computer, or is simply in the same room, falls victim to the government's surveillance.

Prior to the Patriot Act, FISA was understood to permit electronic eavesdropping only where the primary purpose of the investigation was to gather foreign intelligence information. As recently interpreted by the FISA Review Court, the Patriot Act now allows such surveillance where law enforcement is the primary, although not the sole, purpose. Thus, for the first time, eavesdropping is permitted in the pursuit of criminal charges under circumstances in which such surveillance would otherwise be unavailable, i.e., where there is no probable cause to believe that the target is involved in criminal activity.

Moreover, the scope of the surveillance order is quite broad. The government need not show that the facility to be bugged is being used in connection with the suspected offense—only that the target is using or

about to use the facility. The target never learns of the surveillance unless there is a prosecution. Even then the defendant is routinely denied access to the application upon which the surveillance order was based, thus making it extremely difficult to challenge the propriety of the surveillance order.

The gravity of this fundamental change in our criminal jurisprudence is compounded by the obvious danger that it will be abused. The history of the FBI's improper electronic surveillance of anti-Vietnam War activists, journalists, a member of Congress, the White House domestic affairs advisers, and civil rights heroes such as the Reverend Martin Luther King Jr. are all too familiar. Nor can these appalling incidents be shrugged off simply as transgressions of an earlier time. In May 2002, the FISA Court revealed that from 1997 through early 2001,

Fighting TERRORISM

This artificial obstacle, known as "the wall," particularly handicapped our country's efforts against international terrorism. ... The wall was still firmly in place when the terrorists struck on September 11, 2001.

such as domestic violence or armed robbery. Counterintelligence investigations, by contrast, were defined as those seeking information for its value in the effort "to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations, or persons, or international terrorist activities. ..."¹

While the president has the constitutional authority to conduct both types

of investigations, his discretion to conduct counterintelligence investigations has traditionally been subject to less scrutiny and review by the courts. Because counterintelligence relates to protecting national security against foreign threats, the use of electronic surveillance and searches for this purpose has never been subject to the Fourth Amendment warrant requirement that governs criminal wiretap and search warrants. As a result, from the invention of

the telephone up through World War II, the Red Scare and the upheavals of the 1960s, the executive branch had relatively broad discretion to conduct wiretaps for counterintelligence purposes.

That discretion came under intense scrutiny in the mid-1970s, when congressional hearings revealed allegations that the executive branch had used its counterintelligence authority to conduct electronic surveillance of Americans who

Targeting FREEDOM

The vice in electronic surveillance is that it is truly a dragnet: It sweeps in all conversations regardless of the subject matter or the identity of the participants.

on an “alarming number” of occasions, FBI agents disregarded safeguards imposed by the court or made “misstatements and omissions of material facts” in applications for electronic surveillance under FISA.

Monitoring Email and Internet Use Email and the Internet have transformed the way we communicate and obtain information. The Patriot Act has transformed the government’s ability to spy on our email and Internet use through the use of what are known as pen registers and trap and trace (PR/TT) devices.

When used in connection with telephones, these PR/TT devices allow the government to track the telephone numbers dialed to and from a particular telephone. Because the content of the calls themselves remains off-limits, the FBI can obtain a PR/TT order simply by certifying to a federal judge that the information sought is “relevant to an ongoing criminal investigation.” The court must then issue the order.

The Patriot Act authorizes PR/TT orders for addressing and routing information for Internet communications under

these same relaxed standards, not only under FISA, but for run-of-the-mill criminal investigations. When applied to Internet communications, however, content is no longer off-limits. Law enforcement has interpreted “addressing information” to include the subject line of an email, yet much content is often contained there. Moreover, because email moves in packets, addressing information is often in the same packet as the message. Someone needs to separate the two. The Patriot Act leaves that job to the FBI.

were involved in the anti-war and civil rights movements but had no allegiance to, or connection with, foreign powers or terrorist groups. In response, Congress and the executive branch created comprehensive legal and regulatory limitations on intelligence agencies (including the FBI, NSA and CIA) and established oversight entities—such as the Intelligence Committees in Congress and the Intelligence Oversight Board under the president—to enforce those limitations and prevent a recurrence of such practices.

Central to that effort was Congress’s requirement that the executive branch receive judicial approval before installing a wiretap for counterintelligence purposes. In 1978 Congress passed FISA, creating a special federal court to review applications for counterintelligence searches and electronic

surveillance. Under the statute, the FISA Court could approve an application only if it contained a certification that “the purpose” of the surveillance was to obtain counterintelligence and a factual demonstration of the statutory elements, including that the target was a foreign power or agent thereof. The statute also provided that no U.S. person could be considered a foreign power or agent thereof “solely upon the basis of activities protected by the First Amendment. ...”²

As drafted, FISA designed a sensible process for protecting against abuse of the government’s authority without hampering its investigation of legitimate foreign threats to national security. As implemented, however, the statute became an obstacle to that effort. The problem arose with the interpretation of the statutory requirement

that the purpose of any surveillance must be for counterintelligence. The courts were concerned that the government might use the FISA process to collect evidence for ordinary, domestic criminal cases without satisfying the evidentiary and disclosure requirements of a criminal wiretap warrant. The courts did not distinguish between cases directed against ordinary crime and cases of international terrorism or espionage whose investigation and prosecution clearly had the counterintelligence purpose—and ultimate effect—of “protect[ing] against espionage ... or international terrorist activities.”³ As a result, courts interpreted the purpose element to prohibit any FISA wiretap where the government’s primary purpose was collecting evidence for a criminal prosecution, even if it involved foreign spies or terrorists.

Law enforcement also claims that “routing” information includes the URLs of websites visited on the Internet. This interpretation permits the FBI to go where we have gone and read what we have read on the Internet.

Secret Subpoenas Section 215 of the Patriot Act vastly expands the provisions of FISA authorizing the use of secret subpoenas by the government. These subpoenas can be issued to any third party, including health-care providers, libraries, bookstores, newspapers and universities. No probable cause is required. The subpoena must be issued based on no more than the assertion that the request is related to an ongoing terrorism or foreign intelligence investigation. Nor is there any limit on whose records may be obtained. The FBI can ask a library for the

borrowing records of a particular individual or it can ask for the names of everyone who checked out a particular book. The subjects of the surveillance never learn that they have come under scrutiny, because the recipients of the subpoena are prohibited from disclosing the search to anyone.

How the Patriot Act Undercuts the First Amendment

The USA Patriot Act does more than threaten our privacy; it explicitly permits the government to obtain a FISA wiretap, PR/TT order or secret subpoena based in part on a target’s First Amendment activities, even though that person may be a U.S. citizen or permanent resident. Those the government has already singled out for scrutiny because of their religion or national origin may find themselves the victims of

the most intrusive surveillance based in part on activities that have always been protected by the First Amendment.

Moreover, because electronic surveillance inevitably affects not just those who are its object but those who share the same communications facilities, all of us must wonder whether we, too, have fallen under the government’s watchful eye. When we fear the government is looking over our collective shoulder, discretion becomes the better part of valor. Inevitably we think twice before we criticize the government—even when engaging in private conversation, participating in political protest or listening to the views of those who may be labeled “extremists.” In short, we adopt the attitude of those who have lost their freedom and have come to live in a surveillance society.

When determining the government’s primary purpose for seeking a FISA warrant, courts examined the extent of involvement by criminal investigators or prosecutors in the underlying investigation. The more coordination a counterintelligence agent had with criminal investigators or prosecutors, the more likely it was that his application would be denied. This analysis created what the FISA Court of Review called “perverse organizational incentives” against coordination between intelligence and criminal enforcement officials in the war against terrorism.

To ensure compliance under this analysis, the Department of Justice and the FBI adopted Intelligence Sharing Procedures that limited criminal investigators and prosecutors from having significant involvement in counterintelligence

investigations into foreign espionage or terrorism. Congressional hearings last fall highlighted how this artificial obstacle, known as “the wall,” particularly handicapped our country’s efforts against international terrorism. Intelligence agents were limited in their ability to discuss their terrorism targets with criminal investigators, who often had critical information about these targets, and with prosecutors, who control a historically proven means of prevention—incapacitation through arrest and prosecution. This untenable situation prevailed throughout the 1990s as al Qaeda operatives attacked American interests around the world. The wall was still firmly in place when the terrorists struck on September 11, 2001.

The Impact of the FISA Amendments

The FISA amendments in the Patriot Act remedied this problem by providing that the government need only show that counterintelligence is a significant—rather than the primary—purpose of a requested FISA wiretap. While still precluded from using FISA primarily for ordinary crimes, the government can now obtain a FISA warrant in a foreign espionage or terrorism investigation even though it has both counterintelligence and prosecutive purposes. The Patriot Act also expressly removed the wall by authorizing intelligence agents who are using FISA authority to consult with criminal investigators and prosecutors in order to coordinate their efforts to protect national security.

These amendments and subsequent revisions to the Intelligence Sharing

A Select Glossary of Terms

CIA (Central Intelligence Agency): Established by the National Security Act of 1947, the CIA conducts counterintelligence activities and related operations. The agency provides the president and his senior advisers with foreign intelligence related to national security issues.

FBI (Federal Bureau of Investigation): Started in 1908, the FBI is part of the U.S. Department of Justice. The FBI investigates violations of federal criminal law; protects the United States from foreign threats and terrorist activities; and provides leadership and law enforcement assistance to federal, state, local and international agencies.

FISA (Foreign Intelligence Surveillance Act): Passed in 1978, this statute defines the procedures for requesting judicial authorization of physical searches and electronic surveillance of foreign powers and their agents inside the United States.

FISA Amendments: Part of the USA Patriot Act, these amendments make modifications to FISA, including altering the FISA warrant requirements (e.g., foreign intelligence must be a "significant"

purpose, rather than the "primary" purpose, for warrant authorization); expanding the FISA Court from seven judges to 11; and permitting consultation among intelligence agents and criminal investigators or prosecutors for foreign intelligence purposes.

FISA Court: FISA created a special federal court consisting of district court judges appointed by the chief justice of the U.S. Supreme Court. The FISA Court is responsible for reviewing all applications for authorization to conduct foreign intelligence searches and electronic surveillance.

FISA Court of Review: This three-judge panel, appointed by the chief justice of the U.S. Supreme Court, reviews appeals when the FISA Court denies applications for FISA warrants. The Court of Review convened for the first time in 2002 to hear a government appeal of the FISA Court's first denial of a warrant application, and overturned the FISA Court's ruling in November 2002.

NSA (National Security Agency): This agency is the nation's code-making and code-breaking organization. The NSA protects U.S. information systems and gathers foreign intelligence information.

PR/TT (Pen Register and Trap and Trace) Devices: A pen register device captures the telephone numbers associated with outgoing phone calls, while a trap and trace device captures the numbers associated with incoming calls. The Patriot Act modifies FISA's definition of PR/TT devices to include modern communications technology, such as the Internet.

USA Patriot (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) Act: In response to the terrorist attacks of September 11, 2001, Congress passed the Patriot Act in October 2001. The act's goals include enhancing surveillance procedures and domestic security against terrorism; taking measures against international money laundering; protecting U.S. borders; removing obstacles to investigating terrorism; providing for victims of terrorism and their families; increasing information sharing among federal, state and local law enforcement agencies; strengthening criminal laws against terrorism; and improving foreign intelligence operations.

Fighting TERRORISM

The FISA amendments in the Patriot Act represent a step forward for national security and a reaffirmation of civil liberties.

Procedures (which were initially rejected by the FISA Court but subsequently approved by the FISA Court of Review in November 2002), have enabled the government to combat terrorism through the full use and coordination of all counterintelligence and criminal investigative resources. Yet the government continues to do so within the legal parameters and procedural safeguards established by the original FISA statute, and under the careful scrutiny of the FISA

Court and the other oversight entities that have effectively monitored regulatory, legal and constitutional compliance since 1978.

The FISA amendments in the Patriot Act represent a step forward for national security and a reaffirmation of civil liberties. By addressing the operational impediment caused by the application of the original FISA statute without compromising the framework of constitutional safeguards and oversight, Congress has met the country's

security needs while fully observing our national respect for privacy and civil liberties. Congress's careful approach to this issue should give us confidence about the legislative process underlying the Patriot Act, and about the prospects for the continued vitality of our constitutional protections as we wage war against international terrorism.

¹ Executive Order 12333

² Ibid.

³ Ibid.

always GAME

JEFF BLEICH TAKES ON MOST ANY ADVENTURE—AS LONG AS THERE'S A GOOD STORY IN THE END

Essay by Kate Callen
Photos by Jim Block

Opposite: In the spring of 2000, Bleich receives a phone call from the White House while hiking with his family. President Clinton would like him to head the National Campaign Against Youth Violence and fly to Washington, D.C., immediately for the announcement of Bleich's appointment.

The résumé of Jeff Bleich '89 reads like a contemporary adventure novel. There was his feat of publishing seven law review issues in one summer. And his clerking for (and playing tennis with) Chief Justice William Rehnquist. And working for the Iran-U.S. Claims Tribunal, where he and an Iranian adversary teamed up to win a doubles Ping-Pong tournament. And accepting a White House post (on one day's notice) to lead a youth violence prevention effort. In every chapter of his remarkable story, it has been impossible to untangle the threads of talent, drive, discipline and serendipity that have always landed him in the thick of the action.

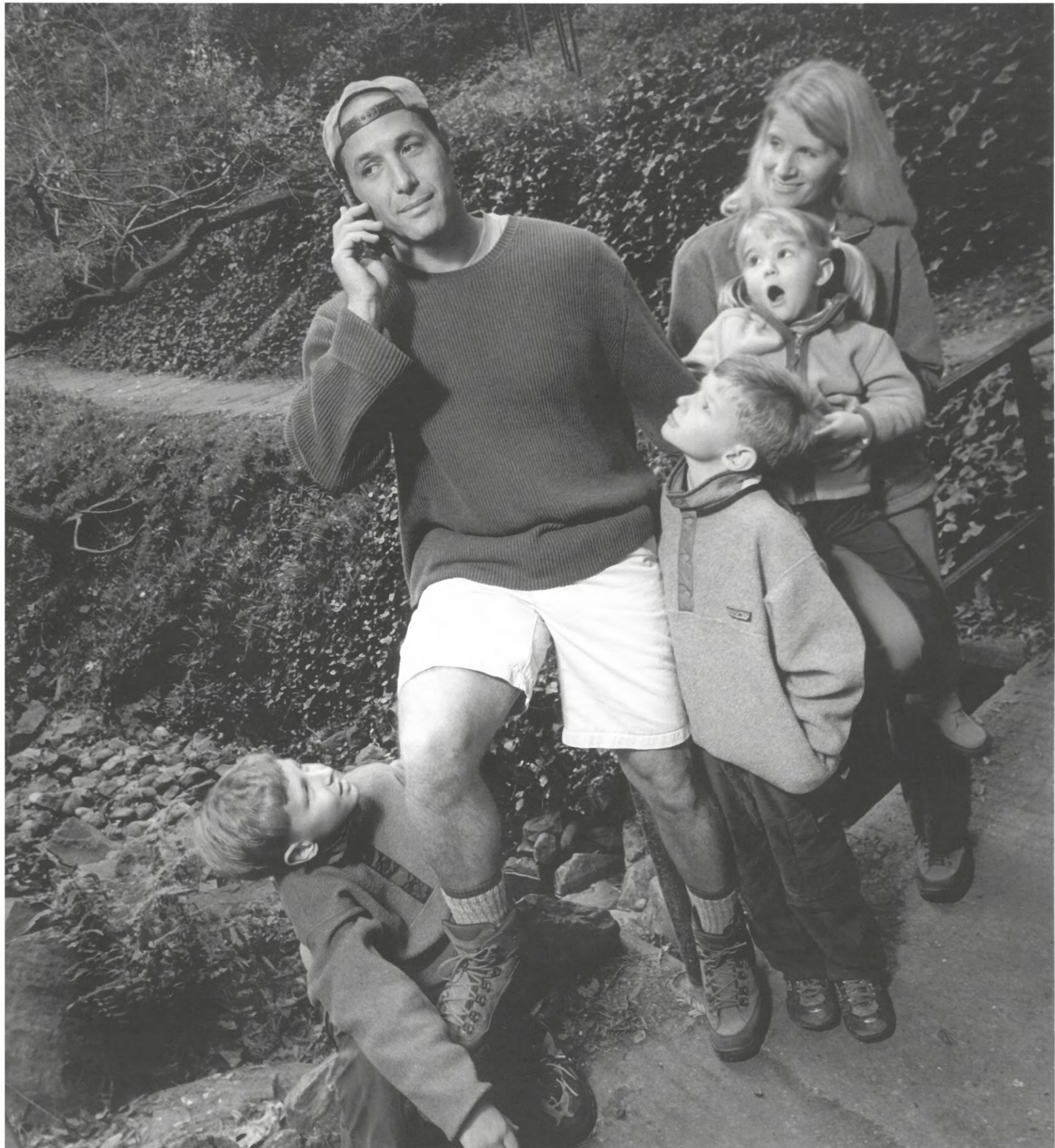
"With Jeff, it's never been about luck," says classmate and friend Jon Tigar '89, an Alameda County Superior Court judge. "There isn't a single opportunity he has had that he hasn't made himself. Everything that he's achieved, he has earned."

Now a litigation partner in the San Francisco office of Munger, Tolles & Olson, Bleich has tried a number of high-profile cases in a wide spectrum of arenas, from First Amendment battles to consumer class actions to pro bono cases for immigrants and homeless people. He also has taught first-year constitutional law at Boalt and provided legal commentary for ABC News and *The Wall Street Journal*.

Other attorneys might consider that a job well done. But Bleich is sizing up yet another challenge—he thinks the legal profession may need an overhaul and, as president of the San Francisco Bar Association, he has a few ideas about how lawyers can improve their public standing.

For starters: They can scale back their earnings.

"There is too much money in the legal system, and it skews how people behave," Bleich says. "If lawyers made less money, I think we'd have a fairer system. We shouldn't be in the business of selling time—we should be in the business of solving problems. We're



trying to solve our client's problems and also the adversary's problems. Our success should not be measured in dollars but in our ability to look our clients, the people across the table, and our families in the eye when our cases are over. We need to know the position we've advocated is one we can be proud of."

Such personal integrity is remembered fondly by Bleich's former professors and classmates. "Only a very small number of lawyers in any generation have Jeff's combination of scholarly intellect, practical wisdom, public spiritedness and sheer physical stamina," says Professor Stephen Bundy '78. "What makes Jeff truly special, though, is the way he combines those lawyerly qualities with compassion, self-deprecating humor and a gift for friendship."

Fulfilling A Dream

Bleich, who grew up in Connecticut, was inspired to become a lawyer by his grandfather, who attended night law school but could not find a law job during the Depression. "My grandfather wound up working for Sears, Roebuck," Bleich says, "but he always hoped that some of his grandchildren would grow up to be lawyers."

Bleich went to Amherst College, where he fell in love with Becky Pratt, a Mount Holyoke College student. The couple married after graduation and moved to Boston, where she worked for a neurologist and Bleich earned a master's in public policy at Harvard University.

Today, Becky Bleich says of her husband, "Jeff is unusually talented at a wide range of things. However, he also succeeds at so much because he is willing to try anything at least once. As long as there's a chance for a good story at the end, he's game."

While at Harvard, Bleich took a professional interest in juvenile justice, co-authoring a book, *From Children to Citizens*,

with his professor Mark Moore. After completing his master's degree, Jeff decided to pursue his grandfather's dream, and he looked west.

"I was always interested in Berkeley," he recalls, "and we wanted to move here because Becky's family was in the area. But when I came out for the first visit, I couldn't believe such a great school would have such ugly buildings."

Undeterred, he gained admission, helped remodel a first-floor area into a law review library, and competed in the Jessup International Moot Court Competition. By the time he graduated, he had a phenomenal résumé and a large cadre of admirers.

Says Tigar, "I would tell people, 'I've got this friend who graduated Amherst with a 4.0 and lettered in three varsity sports. He's got Order of the Coif; he's editor in chief of the *California Law Review*; he's been a Kennedy Fellow and a Coro Fellow; and because he doesn't have enough to do, he's writing a play and teaching himself to play bass guitar.' And people would think I was joking."

Bundy recalls, "Jeff was one of the students who is a constant reminder of how lucky all of us are to be able to teach at Boalt. He stood out even among his many memorable colleagues in the class of 1989, the class that founded the Berkeley Community Law Center [now the East Bay Community Law Center]."

Like many who were close to Bleich, Bundy still marvels at how the third-year student got the *California Law Review's* publication schedule back on track by putting out two years' worth of issues in one year (including seven issues in one summer). But few knew what that feat nearly cost him.

"Mark Abbott ['89] and I finally got the law review caught up in October 1988," Bleich says, "but it meant that I skipped classes; and in November, I had to focus on studying tax law for an exam." Bleich found a model exam from 1985 in the library and memorized it. Then, the night before the open-book test, he discovered that the tax code had been rewritten in 1986, and the 1985 exam answers were outdated.



Bleich's office is home to his collection of Elvis Presley memorabilia.

"We shouldn't be in the business of selling time—we should be in the business of solving problems."

After a sleepless night, Bleich went to the exam site and found providence waiting for him. "Because of a clerical error, the 1985 exam was handed out, it was open book, and so I had all the correct answers. We all wound up getting a 'credit' once the professor realized that a mistake had been made. But it seemed like proof that sometimes it's better to be lucky than to be smart."

Ping-Pong Diplomacy

Following law school, Bleich clerked for Judge Abner J. Mikva on the U.S. Court of Appeals D.C. Circuit. Then it was on to the U.S. Supreme Court, where he interviewed with four justices and got an offer the next day from the one he still refers to as "The Chief."

Despite their political differences, Bleich got along well with Chief Justice William Rehnquist. "In private Rehnquist was self-deprecating and engaging," says Bleich. "Before an oral argument, we would walk around the block and talk through the issues. He's confident in his views, so it never bothered him when I disagreed." Bleich also respected Rehnquist for his dedication to the public. "He could have made a fortune in private practice, but instead he chose public service."

The following year, Bleich clerked for Judge Howard Holtzmann at the 1992 Iran-U.S. Claims Tribunal at The Hague. "I liked clerking," he recalls. "I would have applied to an intergalactic court next, if they had one."

Bleich learned firsthand how legal systems differ, and he is now keenly aware of the challenges this difference poses for international law. "Our failure to sign basic international rights conventions has hampered the development of international law. It sends all the wrong messages to other nations," he says. "You cannot say you're an advocate for human rights if you aren't

willing to enforce laws that protect human rights. At some point, if we want peace, we have to have faith in a global society."

During his clerkship, Bleich engaged in Ping-Pong diplomacy at The Hague by teaming up with an Iranian clerk. "It was the first time players from the United States and Iran were paired up," recalls Bleich. "Mr. Mouri and I got along very well, and we ultimately won the tournament—I think because people were so surprised to see us cooperating there on the other side of the table."

In the spring of 2000, as the first anniversary of the Columbine High School shootings approached, President Bill Clinton decided to launch the National Campaign Against Youth Violence. The president's senior adviser Tom Freedman '91 and domestic policy adviser Bruce Reed had read Bleich's *From Children to Citizens*. They passed the book along to President Clinton, who then asked Bleich to visit the White House.

"I told Bruce at first that I wasn't the right person—there were so many experts in this area—but the president convinced me that busy parents and adults should slow down their lives and focus on the problem of youth violence," Bleich says.

White House Calling

Weeks later, while the Bleich family was hiking in Mendocino, California, Jeff's cell phone rang, and a White House operator was on the other end. "The president wanted to announce my appointment two days later," Bleich recalls, "so I flew to Washington and arrived the night before an early morning Oval Office ceremony."

There was only one problem: Bleich had neglected to pack dress shoes. "On my way to the White House, I scrambled to buy the best shoes I could find. When I got there, I

wound up waiting in the hall outside the Oval Office with [Attorney General] Janet Reno and [Education Secretary] Richard Riley. Janet Reno asked me, 'Have you done a lot of work in the youth violence field?' I said, 'Not really.' She asked if I had written much. 'No,' I said, 'just one book, and it's out of print.' She said, 'Are you a big donor?' I said, 'No.' Then she paused, looked down at the ground and said, 'Nice shoes.'"

In his 16 months as campaign director, Bleich worked closely with high-powered media magnates such as AOL's Steve Case and CBS-TV's Mel Karmazin. But his most vivid memories are of meetings with high-risk families in crime-ridden areas. "I went to hospitals where parents were grieving over their children. I went to memorial services where kids were mourning the deaths of their friends. I saw kids in agony, but I also saw families that were facing unbelievable odds and were still maintaining hope," says Bleich.

Based on his experience at the national policy-making level, Bleich says there are things that can be done to end the epidemic of youth violence, but not without the same type of national commitment that has reduced drunk driving and other dangerous behavior.

And when he looks at youth violence from the perspective of a soccer dad who dotes on his three kids (Jake, 10, Matthew, 7, and Abby, 4), Bleich is struck by the irony that "heroes are too often depicted as people with a capacity for violence. We can blame the media for that, but the media are only reacting to our cultural sense of ourselves. It's time we changed the whole notion of what it takes to be respected. Kids shouldn't believe that you get respect for walking around with a nine-millimeter gun." He adds, "The people who lead the most respected lives are those who aren't afraid to be nonviolent."

class notes



39

Hal Strom reports that although he's on dialysis, he manages to keep active as secretary of Cal's class of '36 and Boalt's class of '39 and as a contributor to *Cal Monthly* and the *Boalt Hall Transcript's* Class Notes. He recently celebrated his 64th wedding anniversary with his wife, Jewel, along with daughter Gay Schrag (co-manager of Lark Creek Inn); Gay's sons, well-known attorney Michael ('96) and TV star Dennis; their wives; and Mike's three children.

59

Allen P. Fields has been reappointed chief justice of the Supreme Court of the Republic of the Marshall Islands for an additional six years. He was also elected president of the Pacific Judicial Council, which consists of the chief justice of the supreme courts of the Micronesian nations of Guam and Saipan. Allen retired from the Sacramento Superior Court in 1993.

60

Leo Kanowitz reports that Carolina Academic Press has published his English translation of the Japanese edition of Professor Kazuo Sugeno's treatise "Japanese Employment and Labor Law." Leo's translation was also published by the University of Tokyo Press.

62

Dennis Kavanagh writes that he's been retired for six years from his position as a trial attorney in insurance defense litigation.

Prior to that, he was a lobbyist in Sacramento for 16 years. He recently served on the Marin County Civil Grand Jury for 18 months. He does pro bono work for the consumer hot line for KGO channel 7 and radio. He is also an attorney adviser for the Tamalpais High School mock trial team in Mill Valley and has been married for 45 years.

66

Thomas Simpson has retired after 20 years as a Los Angeles Superior Court judge. Tom began his judicial career as a judge of the former Long Beach Municipal Court; was elevated to the superior court in 1991, serving in the South Central District; and retired as site judge in San Pedro, Calif. He reports that he will sit "on assignment" for a few months and then turn from work to play.

67

Ruth Greenspan Bell shares this news: "A major thrill—the *Economist* sent me a plane ticket to fly to London to debate at the Royal Institution on the topic 'Can the Market Save the Environment?' This took place in September 2002, and was in part in response to an article I published in the spring 2002 edition of *Issues in Science and Technology*, 'Environmental Policy for Developing Countries' (with Cliff Russell of Vanderbilt University)."

Al Friedman writes, "I retired in 1995 from my position as general counsel to the Multistate Tax Commission (MTC). I am now a consultant to the MTC and serve as

a third-party neutral in matters involving the state taxation of multistate businesses. I am still married to Darlene after 38 years. I am playing golf sporadically and not so well—most often, a good walk gone bad. Both of my kids (Josh and Jeff) are finally getting married, and we eagerly await grandchildren to bore everyone about in future Class Notes."

Richard L. Friedman reports, "My wife, Carole, and I were married on August 28, 1966, and we have two married children: Melissa (31), who is the education director of Epic Theatre in New York City; and Jonathan (27), who works for Barnes and Noble in New York City. In May 2002, I suffered a cerebellum stroke that caused me to stop working."

Richard C. Hunt is a partner at a firm in Portland, Ore., that represents employers in labor law and employment matters.

Tracy Westen reports that after law school she worked for Covington & Burling in Washington, D.C., and then for the FCC. She also directed a public interest law firm, created a consumer advertising firm and taught communications law at UCLA School of Law and USC Annenberg School for Communications. She now works in campaign finance reform, covering such varied areas as ballot measure reform, judicial elections, media coverage of government, voter information and the digital divide. Tracy is also working on video voter information and citizen-to-legislator interface—and she is having a great time.

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

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Boalt Calendar

April 14

Berkeley Technology Law Journal Alumni
Banquet

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

Copyright Roundtable Discussion:
The CleanFlicks Case

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

Ruth Chance Lecture

Featured Speaker: Professor Lucie White
"Hard Labor: Women and Work in the
Post-Welfare Era"

Boalt Hall
Contact Center for Social Justice
510-642-6969

April 24

Alumni Luncheon

Featured Speaker: Professor Jesse Choper
"The Pledge of Allegiance Controversy"

San Francisco
Contact Alumni Relations
510-642-2591

April 25

Brian M. Sax Prize for Excellence in Clinical
Advocacy Award Reception

Boalt Hall
Contact Center for Clinical Education
510-643-4800

April 30

Business, Law and Economics Program
Banquet

Berkeley
Contact Business, Law and Economics Program
415-693-9805

May 2

Citation and Faculty Lifetime Achievement
Award Dinner

Honoring Elizabeth J. Cabraser '78,
Henry Ramsey Jr. '63 and
Professor Herma Hill Kay

Berkeley
Contact Alumni Relations
510-642-2591

May 7

Judge D. Lowell Jensen '52 Public Service
Award Luncheon

Honoring Justice Robert Puglia '58
Sacramento
Contact Alumni Relations
510-642-2591

May 24

Graduation

Guest Speaker: Barbara Ehrenreich
Hearst Greek Theatre
Contact Student Services
510-642-3263

June 4

Golden Boalt Alumni Luncheon
(For the class of 1952 and prior years)

Boalt Hall
Contact Alumni Relations
510-642-2591

June 5

Alumni Luncheon

Featured Speaker:
Dean Robert C. Berring Jr. '74
"The Revolution in Legal Research"
Contra Costa County
Contact Alumni Relations
510-642-2591

June 13 to 15

International Association of Boalt Alumni
Annual Meeting
Stockholm, Sweden
Contact Per Aberg '74
per.aberg@pharmacia.com

July 11

Alumni Luncheon

Featured Speaker:
Dean Robert C. Berring Jr. '74
"The Revolution in Legal Research"

Fresno
Contact Alumni Relations
510-642-2591

October

Berkeley Center for Law & Technology
Distinguished Service Award Dinner

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

October 17

Leadership Reception
(An exclusive event for major donors)

Berkeley
Contact Alumni Relations
510-642-2591

October 18

All-Alumni Reunion

Boalt Hall
Contact Alumni Relations
510-642-2591

December

Fourth Annual Advanced Patent Law Institute
Bay Area

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

Spring 2004

The Legacy of Chief Justice Earl Warren '14
Boalt Hall
Contact Earl Warren Legal Institute
510-642-5125

Telecommunications Conference

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