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boalt hall transcript

WHAT CAN ENRON TEACH US?

EXAMINING THE LEGAL AND ETHICAL FAILURES THAT SHATTERED ONE OF AMERICA'S LARGEST COMPANIES

Boalt Hall Transcript

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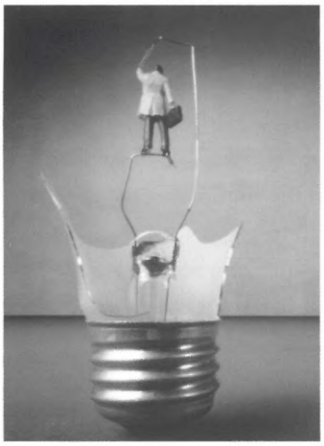
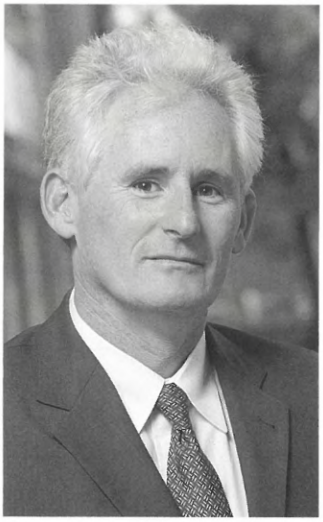
what's inside





dean's message

In reflecting on the past six months, I am struck by both the importance and the limits of law in maintaining our economic order. As the country attempts to recover from the damage caused by the collapse of Enron, WorldCom and other companies, the Boalt community is working to promote positive change. Through the contributions of our faculty and alumni —in the classroom, the courtroom and the boardroom—we are leading efforts to evaluate and reform laws regulating corporate governance as well as to define the ethical obligations of business leaders.

In this issue of the *Transcript,* members of the faculty analyze the corporate mismanagement and government regulations that led to one of the largest bankruptcies in U.S. history. Professors Dick Buxbaum '53, Steve Choi, Mel Eisenberg, Jesse Fried and Haas School of Business Professor Brett Trueman debate the key issues leading to Enron's demise and weigh the pros and cons of reforms.

Adding to the discussion, Professor Norman Spaulding reflects on the ethical responsibilities of Enron's corporate lawyers. Professor Choi also weighs in with an essay advising regulators to respect the market's ability to correct itself.

As leading lawyers, judges and government officials, Boalt alumni have a direct hand in shaping the country's economic and ethical climate. This issue profiles Helane Morrison '84, head of the Securities and Exchange Commission's San Francisco office. Charged with investigating corporate fraud in Northern California and five Western states, she is at the forefront of the battle to protect investors.

These and other stories highlight the many ways Boalt faculty and alumni are working to provide the legal framework in which corporate and government actions are judged and shaped. Perhaps the most significant contribution, however, will come from our students, who will leave Boalt to become the next generation of leaders. These future lawyers will take with them not only a solid understanding of complex law and policy, but also the lessons in professional responsibility and ethics instilled in them by their professors and demonstrated by our alumni. I am extremely proud of the example we have set and very grateful for your role in continuing Boalt's tradition of excellence.

Turning to a tradition of a different kind, I would like to invite you to return to the law school for a day of lively discussion and camaraderie at this year's All-Alumni Reunion on October 26. The reunion is a great opportunity to reconnect with classmates and faculty as well as explore topics of national importance, including the war on terrorism, slavery reparations and recent Supreme Court decisions. I look forward to seeing you at this wonderful celebration of our community.

JOHN P. DWYER '80

in brief

IDEAS, QUESTIONS AND DEBATES

Boalt Events Take Legal Issues Beyond the Classroom

This spring Boalt Hall sponsored an impressive range of conferences and lectures featuring prominent scholars, lawyers and government officials. These events brought together faculty, students, alumni and distinguished visitors for lively debates on some of today's most pressing legal and policy issues.

February

The Kadish Center for Morality, Law and Public Affairs hosted the annual **Kadish Lecture**, delivered this spring by Martha Nussbaum, a professor of law and ethics at the University of Chicago. In her discussion, "Shame, Stigma and Punishment," she argued against the use of shaming penalties for criminal acts. (More on page 5.)

Adonal Foyle, Golden State Warriors basketball player and founder of the nonprofit organization Democracy Matters, gave the talk **"What Does the NBA Have to Do with Campaign Finance Reform?"** Democracy Matters encourages grassroots involvement in the campaign finance reform movement.

Boalt's American Constitution Society held its inaugural event, "Justice and Mercy," a lecture by Chief Judge Mary Schroeder of the 9th Circuit. Judge Schroeder's noteworthy cases include *Hirabayashi v. United States*, which held that the internment of Japanese Americans during World War II was unconstitutional.

Justice and the Generals, a documentary featuring the work of Boalt's International Human Rights Law Clinic, aired on PBS. The film chronicles attempts to seek justice for three tortured Salvadorans and four murdered American churchwomen in El Salvador. In July the three Salvadorans won their case in federal court. (More on page 11.)

UC Berkeley hosted joint hearings of the Federal Trade Commission (FTC) and the Department of Justice (DOJ). The **FTC/DOJ Hearings**, "Economic Perspectives and Real-World Experience with Patents," explored the tension between innovation and antitrust in intellectual property. (More on page 5.)

The annual **Stefan A. Riesenfeld Symposium** featured a lecture, "Crimes Against Women Under International Law," delivered by Justice Louise Arbour of the Canadian Supreme Court. Justice Arbour spoke about her experiences as chief prosecutor of the International Criminal Tribunal for Rwanda and the former Yugoslavia. (More on page 12.)

March

The Berkeley Center for Law & Technology hosted the **Patent System Reform** conference. Nine renowned scholars proposed reforms that were debated by attorneys, judges, professors and government officials. (More on page 8.)

Yale Law School Professor Bruce Ackerman was featured at the annual **Brennan Center Thomas M. Jorde Symposium**. His talk, "Voting with Dollars: A New Paradigm for Campaign Finance," explored his proposal for giving Americans of voting age "patriot dollars" to donate to political campaigns. (More on page 10.)

The U.S. Court of Appeals held a session of court at Boalt for the annual **9th Circuit Day**. The opportunity to see and hear lawyers argue their cases before a three-judge panel was especially valuable for students.

Boalt's first annual Disability Awareness Week culminated in the conference **The Changing Face of Disability Law in the New Millennium**, at which experts explored emerging issues defining the status of disability rights. (More on page 8.)

Professor Lani Guinier from Harvard Law School, gave the talk **"Transforming Democracy with Cross-Racial Coalitions."** Guinier, who authored *Who's Qualified?* and *The Miner's Canary,* followed her lecture with a book signing.

The Boalt community celebrated the **Berkeley Law Foundation's 25th anniversary**, recognizing its important role in supporting public interest work. The event featured remarks from U.S. District Court Judge Thelton Henderson '62 and Bernida Reagan, former director of the East Bay Community Law Center.

April

Ocean affairs experts from seven countries gathered for **Bringing New Law to Ocean Waters**. The conference addressed new developments in ocean law and policy, including the role of the United Nations Tribunal on the Law of the Sea. (More on page 9.)

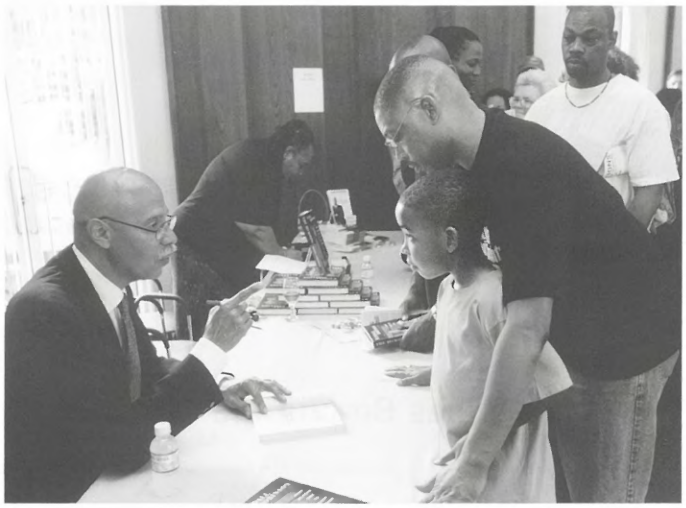
The **Robert D. and Leslie-Kay Raven Lecture**, "What America Owes to Blacks and What Blacks Owe to Each Other," kicked off the **Reparations for Slavery and Its Legacy** symposium. The two-day conference continued with panels examining proposed legislation, lessons from other movements and future strategies. (More on this page.)

This spring Boalt also hosted the **Jefferson Memorial Lecture.** University of California, Los Angeles Professor Kenneth L. Karst, an authority on multiculturalism and the law, gave the talk "Law, Cultural Conflict and the Socialization of Children."

The Federalist Society sponsored the lecture **"An Insider's Perspective on the Department of Justice and the War on Terror"** by Professor John Yoo, who is currently on leave while he serves as a U.S. deputy assistant attorney general.

May

The Federalist Society hosted the debate **"Do School Vouchers Violate the Establishment Clause?"** between Professor Jesse Choper and University of Southern California Professor Erwin Chemerinsky. The discussion focused on *Zelman v. Simmons-Harris,* a case concerning the constitutionality of a school voucher program in Cleveland, argued before the U.S. Supreme Court in February.



Author Randall Robinson signs a copy of his latest book, *The Reckoning*, after delivering the keynote address at the opening of the Center for Social Justice's reparations for slavery conference.

THE LEGACY OF SLAVERY

Top Experts Discuss Reparations for African Americans

"We cannot rightfully claim to be a land of equal opportunity until we have confronted the legacy of slavery in this country," says Mary Louise Frampton, director of Boalt's Center for Social Justice and organizer of Reparations for Slavery and Its Legacy. The spring conference drew experts from across the country to discuss compensation for the debilitating effects centuries of slavery have had on African Americans.

"UC Berkeley is once again on the cutting edge of the quest for social justice," said Randall Robinson, an internationally recognized human rights advocate, author and activist in the reparations movement. "Two and a half centuries of slavery plus another century of legally enshrined discrimination have, in many ways, shaped who and what we are as a nation," continued Robinson in his lecture "What America Owes to Blacks and What Blacks Owe to Each Other," which opened the conference. "An honest and thorough discussion of this reality is essential, not only for the psychological and emotional health of black Americans, but for Americans of every race, class and creed."

During the two-day symposium, scholars and lawyers from a variety of fields examined reparations from legal, historical and psychological perspectives and discussed proposed legislation, lessons from other movements and future strategies.

Panelist also debated the appropriate forms of redress. Some called for monetary payments while others argued for alternative compensation methods, such as improved healthcare and education credits for African Americans.

Panelists included Dale Minami '71, lead counsel in three landmark U.S. Supreme Court cases overturning the convictions of Japanese-American men who refused to be interned during World War II; Emma Coleman Jordan, professor of law at Georgetown University and civil rights scholar; Rennard Strickland, dean of the University of Oregon School of Law and an authority in Indian law; and Kristen Wells, minority counsel for the House Judiciary Committee. "We were extremely fortunate to have such a wide range of distinguished speakers," says Frampton.

FTC/DOJ Hearings Come to Berkeley

Recent high-profile cases—such as the antitrust suit against Microsoft, and Amazon.com's intellectual property case against Barnes & Noble.com—demonstrate the complexity of adapting existing legal standards to a rapidly evolving high-tech age. To help evaluate competition policy in the intellectual property context, the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ) held national public hearings at select locations around the country, including UC Berkeley.

"Berkeley was selected by the FTC because no other university in the country has such a concentration of expertise in the areas of intellectual property and antitrust law and economics," says Professor Howard Shelanski '92. At the hearings, he spoke about the relationship between competition and innovation.

Professor Robert Merges participates in the FTC/DOJ hearings held at Berkeley in February.

The hearings featured testimony by national leaders in business and academia, including Professors Mark Lemley '91, Robert Merges and Daniel Rubinfeld.

"It was wonderful to hear government officials say, 'We've read your work and we want to talk to you about it,'" says Merges, who discussed a proposal to involve competitors in the patent process as a means of preventing weak patents. "So often in academia you think you're just crying in the wilderness. It's great to know that these agencies are going to take our research and use it to improve antitrust and intellectual property law and policy."

Before giving her lecture, University of Chicago Law School Professor Martha Nussbaum greets Kadish Center founder Professor Emeritus Sanford Kadish.

SHAME, STIGMA AND PUNISHMENT

Martha Nussbaum Delivers Annual Kadish Lecture

Speaking to a packed auditorium in February, noted philosopher and legal scholar Martha Nussbaum drew on psychoanalytic, moral and political theory to argue against the increasing use of shaming penalties for criminal acts.

"Professor Nussbaum is one of America's most visible and eloquent philosophers addressing questions of justice, gender and public policy," says Professor Eric Rakowski, director of the Kadish Center for Morality, Law and Public Affairs. "Her work on shame and punishment joins an urgent and increasingly noisy debate about how best to lower crime without demoting humanistic values."

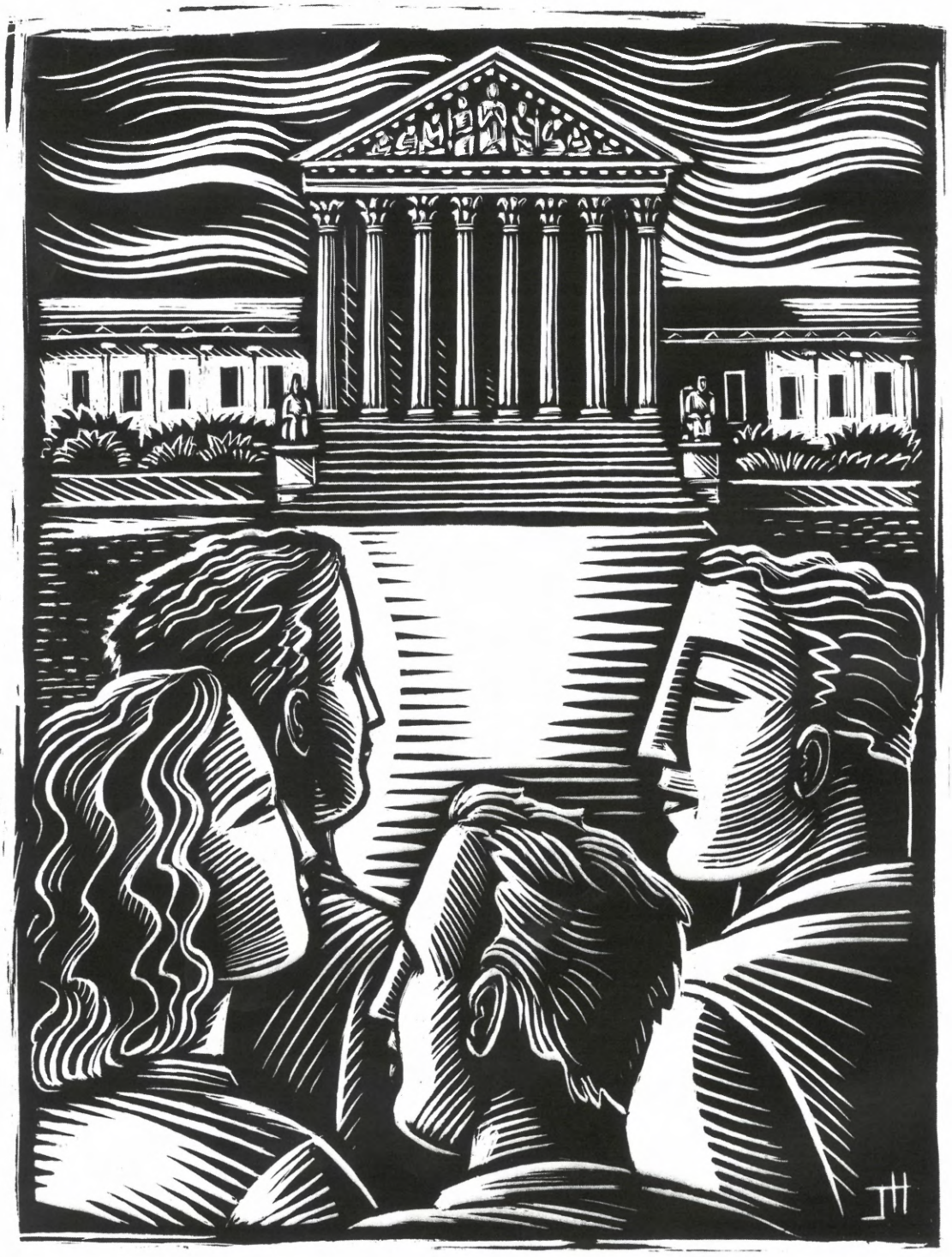
Following Nussbaum's Kadish Lecture, "Shame, Stigma and Punishment," Professor Christopher Kutz and Visiting Professor Seana Shiffrin commented on Nussbaum's argument—offering praise for her thoughtful analysis and outlining points of dissension with her position. "Nussbaum combines rigorous examination of the problems of life, community and polity with a commitment to social justice," says Kutz. "The result is to make clear to a sometimes skeptical audience that there is indeed a role for philosophy in the public world, not just in the comfort of the study."

The author of 10 books addressing a variety of philosophical and ethical issues, Nussbaum has taught at Harvard, Brown and Oxford Universities. Currently she is a professor of law and ethics at the University of Chicago.

Established in January 2000, the Kadish Center works to promote research and reflection on moral philosophical issues in law and public life, with a special emphasis on substantive aspects of criminal law.

Four Grads to Clerk for Supreme Court Justices in 2003

Charged with guarding and interpreting the Constitution, the U.S. Supreme Court is responsible for ensuring that all citizens receive justice under the law. In shaping the Court's docket and reviewing the merits of the cases accepted for review, the nine justices depend on their clerks to review petitions and briefs and help prepare opinions. In July 2003, four Boalt alumni will be among the select few who, as Supreme Court clerks, will help the justices interpret the nation's laws.



More than three months after a whirlwind 15-minute interview in December 2001, Pratik Shah '01 was selected to clerk for Justice Stephen Breyer. "It was well worth the wait," says Shah. He believes his clerkship experience will provide an excellent foundation for his future career as a law professor and is looking forward to working on cases that will decide important legal and social issues. "It's a rare opportunity to see the process at work," he says. Shah is currently a clerk for Judge William Fletcher of the U.S. Court of Appeals for the 9th Circuit. After finishing his clerkship with Judge Fletcher, a professor emeritus at Boalt, Shah will work for Munger, Tolles & Olson until he begins his clerkship with Justice Breyer.

Neil Siegel '01 has dreamed about clerking in the Supreme Court since high school. Yet when Justice Ruth Bader Ginsburg hired him right after the interview, he could hardly believe his good fortune. "I was sort of

numb," he recalls. Formerly a clerk for Chief Judge J. Harvie Wilkinson III of the U.S. Court of Appeals for the 4th Circuit, Siegel is eager to serve on the nation's highest court. "The greatest joy for me is when you have an insight and you see how a case should come out," he says. Siegel is currently a Bristow Fellow in the Office of the Solicitor General at the U.S. Department of Justice.

Diane McGimsey '02 admits that she was similarly shocked when Justice Clarence Thomas offered her a clerkship immediately following her interview in January. Her interest in the Constitution and its effect on public policy motivated her to seek the clerkship. "I'm particularly interested in learning how the law is interpreted at the highest level," she says. McGimsey is currently clerking for Chief Judge Wilkinson.

Currently working for the Civil Appellate Division of the U.S. Department of Justice, Sambhav "Sam" Sankar '00 will be clerking for Justice Sandra Day O'Connor. He looks forward to helping the Court address the nation's most difficult legal questions. "The biggest challenge is trying to convert complicated factual situations into something the law can work with," says Sankar. He previously clerked for Judge Fletcher and then Judge Louis Pollak of the U.S. District Court for the Eastern District of Pennsylvania.

"We are thrilled to have so many Boalt alums clerking on the Supreme Court at one time," says Professor Jesse Choper, a former clerk for Chief Justice Earl Warren '14 and mentor to generations of Boalt students. "Many apply but only a few exceptional candidates are chosen." In order to secure a clerkship, applicants must have excelled in law school and have outstanding recommendations, as well as strong lower-court clerkship experience.

FRIENDS OF THE COURT

Clinics Submit Briefs for Two Cases Before the U.S. Supreme Court

During a typical term, the U.S. Supreme Court has more than 7,000 cases on the docket but grants review to only a select group of approximately 100 cases. This year students and faculty from Boalt's Death Penalty Clinic and Samuelson Law, Technology and Public Policy Clinic submitted *amicus curiae* briefs for petitions for *certiorari* for two cases. *Miller-El v. Cockrell* and *Eldred v. Ashcroft* ask the Court to review laws governing race discrimination in jury selection and copyright term extensions, respectively. The Court granted cert in both cases.

In *Miller-El v. Cockrell,* the Death Penalty Clinic filed an *amicus curiae* brief on behalf of a former judge and a prosecutor, urging the Court to review the conviction and death sentence of Thomas Joe Miller-El—an African-American man sentenced to death in Dallas County for the 1986 murder of a white hotel clerk. The brief argues that the District Attorney's Office deliberately and systematically excluded African Americans from the jury.

"We believe that the Supreme Court precedent on jury discrimination was being misapplied by the lower courts," says Racheal Turner '02, one of the students involved in writing the brief. "It's essential that the Court review the case to ensure that no one is excluded from jury service because of his or her race."

After the Court granted review, the clinic also filed an *amicus curiae* brief on the merits of the case. A favorable ruling from the Court may prevent Miller-El's execution, as well as significantly change the way judges decide future claims of race discrimination in jury selection.

In February the Supreme Court also agreed to hear *Eldred v. Ashcroft,* which involves a constitutional challenge to the Sonny Bono Copyright Term Extension Act of 1998 (CTEA). The Samuelson Clinic had submitted an *amicus curiae* brief on behalf of the Internet Archive, urging the Court to review the case. After the Court granted cert, the clinic filed an *amicus curiae* brief on behalf of the Internet Archive, the Prelinger Archives and Project Gutenberg, arguing that CTEA should be overturned because the Constitution does not authorize Congress to extend copyright terms perpetually.

"Congress's repeated copyright term extensions during the last 50 years have prevented key cultural works from entering the public domain—instead, they are disintegrating," says Professor Deirdre Mulligan, director of the Samuelson Clinic. The clinic's brief argues that the copyright clause (Article I, § 8, cl. 8) of the Constitution and the First Amendment place substantive limits on Congress's ability to extend copyright terms.

A favorable ruling from the Court would allow such archives to preserve thousands of artistic, cultural and historic works from the early part of the 20th century.

Panelist Jan Garrett (left), executive director of the Center for Independent Living, speaks with a participant during this spring's disability law conference.

DEFENDING DISABILITY RIGHTS

Students Organize National Disability Law Conference

The Boalt Disability Law Society coordinated a conference, The Changing Face of Disability Law in the New Millennium, to focus attention on recent changes in disability law that have alarmed many disability rights advocates. The national conference attracted more than 175 academics and community leaders.

"I think it's critical to offer a conference like this," says former society president and conference organizer Bebo Saab '02, "especially since the rights of the disabled have been called into question by recent judicial decisions narrowing the scope of disability rights law."

The March symposium covered healthcare, education and technology, litigation strategy, community activism, and disabilities and the arts.

During the technology panel, participants addressed how America Online recently settled litigation over access to its Web browser for the visually impaired. "We had a senior attorney from AOL there to answer questions," Saab says. The panel also featured Cynthia Waddell, an internationally recognized expert in electronic and information technology for the disabled.

"It's through mobilization, community building and brainstorming that we come up with strategies to guarantee the rights of people with disabilities," Saab adds.

Arlene Mayerson '77 was thrilled to address the attendees as the keynote speaker at the conference's opening dinner. "I've been teaching disability rights law for a long time and I used to organize my own conference, so it was fantastic to see the students organize a conference on their own," says Mayerson, directing attorney for the Disability Rights Education and Defense Fund.

Boalt alumni participated as panelists, including Laura Heymann '97, senior counsel at America Online; Melissa Kasnitz '92, staff attorney at Disability Rights Advocates; Deborah Kaplan '76, executive director of the World Institute on Disability; and Stephen Rosenbaum '80, attorney at Protection and Advocacy in Oakland and lecturer at Boalt Hall.

REINVENTING THE PATENT

Conference Sheds New Light on Patent Law Reform

As stories of abuse and overuse of patents proliferate, the U.S. patent system has come under increasing public scrutiny. To help advance the dialog, the Berkeley Center for Law & Technology (BCLT) and the *Berkeley Technology Law Journal* hosted a symposium this spring exploring proposed changes to patent law. Patent System Reform brought together some of the nation's most renowned scholars, practitioners, judges and government officials to debate the pros and cons of patent law reform.

"Much of our discussion centered on how to improve the quality of patents being issued by the Patent and Trademark Office," says Professor Mark Lemley '91, a director of the BCLT and the conference's key organizer. "There is a great deal of public concern that the office is issuing bad patents, and that those patents may actually interfere with innovation." The conference also addressed pharmaceutical patents—specifically discussing solutions that would enable greater access to medications in poorer countries; international lessons for patent prosecution reform; and the benefits of specialized patent trial courts.

"Any worthwhile reform of the system is going to come out of conversations between scholars who have interesting new ideas and professionals who see how the system actually works," says Lemley. "I think we created a valuable forum for that dialog."

THE LAW OF THE SEA

Protecting Our Oceans

In recent years, the deteriorating ocean environment and rapid depletion of once thriving fisheries have received increasing attention in both environmental and government forums. Protecting our oceans, which occupy two-thirds of the earth's surface and provide essential resources, is widely recognized as a critical task.

In April ocean law and policy experts from seven countries came to Boalt Hall to examine recent developments. Organized by Professors Harry Scheiber and David Caron '83, the conference, Bringing New Law to Ocean Waters, focused on how to promote sustainable development and support ecological preservation and balance in the sea.

Participants addressed major issues in ocean law, including the controversial role of the World Trade Organization in protecting the ocean environment. "Among international institutions that have an impact on ocean resources, perhaps none is more important than the World Trade Organization with its capabilities for advancing trade—often at the expense of protecting ocean resources," says Scheiber.

Experts also discussed the effects of recent United Nations initiatives on fisheries and international dispute settlement—including the recent formation of the U.N. Tribunal on the Law of the Sea. Additional topics included the legal protection of underwater historical treasures, the mining of vital resources from the seabed, and legal issues concerning national boundaries at sea.

The conference also featured a presentation by Professor Caron, who spoke about his experiences as a commissioner with the U.N. Compensation Commission for reparation claims arising from environmental damage caused by the Gulf War.

Student Works to Help End Civil War in the Congo

In April Celina Schocken '02 received a call from a group of former Peace Corps volunteers in Sun City, South Africa. They needed her help in drafting peace documents aimed at ending civil war in the Congo. A former Peace Corps volunteer herself, she did not hesitate to accept the assignment. "I was on a plane the next day," says Schocken.

She arrived in Sun City to find 360 delegates from the Congo, as well as ambassadors and envoys from the United States, Europe and the United Nations—all involved in the peace negotiations. Representation from the Congo included members of three major armed fighting groups, the political opposition to the current government and representatives of Congolese citizen groups. Schocken, who speaks fluent French, and another negotiator, who speaks Lingala, met informally with each group.

"We would ask what they wanted and what they were willing to put on the table, and in that way, we kept communication flowing between the different parties," says Schocken. Although the agreement signed in Sun City is not complete, she is confident that the negotiators' work moved the process forward.

Schocken is a veteran of the peace-building process. She spent a summer interning in the U.N. Peace-Building Support Office and, later, after Guinea-Bissau in West Africa ended a civil war and elected a new parliament, she traveled there to assist in teaching novice public servants what it means to be part of a legislature. She also served as a maternal and child health volunteer in Guinea-Bissau. Schocken says she plans to continue working on African policy as she begins her career as a lawyer.

BEYOND SCHOLARSHIP

Richard Buxbaum '53 practices what he teaches

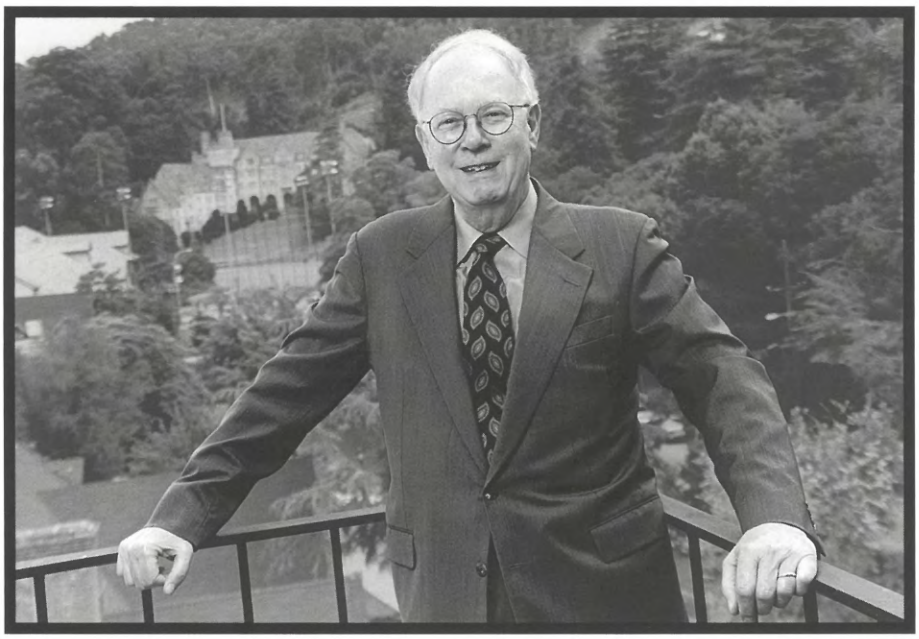
On December 3, 1964, 2,000 students entered Sproul Hall on the UC Berkeley campus to proclaim their dissatisfaction with an administration that had denied them the right to set up tables and hold political meetings on campus. That sit-in, which ended in the early morning hours with the arrest of nearly 800 students, brought the Free Speech Movement to national prominence. Among the five attorneys defending those students during their 1965 criminal trial was then newly tenured Professor Richard Buxbaum '53 (LL.M.).

Buxbaum says his involvement with the Free Speech Movement throughout the 60s—and with the Vietnam War and affirmative action movements that continued for another decade—was, in his view, a natural extension of his role as a teacher.

"I felt I was acting more appropriately as an attorney. There were a lot of criminal cases against students, especially from the Vietnam era. Many students were overcharged as felons, with high bail acting as a deterrent to student activism," says Buxbaum. "For a long time I was one of only a handful of lawyers at Berkeley doing this kind of work."

Professor Emeritus Robert Cole, a longtime colleague of Buxbaum's, says the two composed a significant part of the liberal wing of the law faculty back then. With characteristic modesty, Buxbaum was not interested in popularity or publicity, according to Cole.

"He was interested in protecting the right to be represented and in making sure the system worked correctly," says Cole. "He wanted to make sure the university was beyond reproach in dealing with students." Today Buxbaum—the Jackson H. Ralston Professor of International Law and a specialist in corporations law and international business transactions—is one of Boalt's most esteemed faculty members.



After finishing his studies at Cornell Law School, Buxbaum came to Berkeley in 1952 for a year of graduate work. His adviser and mentor was the late Professor Richard W. Jennings, who made significant contributions to the corporate and securities regulation field.

Two young professors at that time were also key influences: Albert A. Ehrenzweig and Stefan Riesenfeld. Like Buxbaum—who came to the United States from Germany at the start of World War II—both of these men were refugees from Europe. "I took their courses in international and comparative law and became fascinated by what they were working on," Buxbaum says.

After serving in the U.S. Army for four years, Buxbaum returned to the states in 1957 and began working for a law firm that represented the Haloid Company, which later became Xerox Corporation. Since the Haloid Company was establishing itself as an international business, he was quickly drawn into the international law arena.

In 1961 Boalt Hall offered Buxbaum a teaching position. "I was ready for the change," he says, "and it was very flattering to be asked to teach. I felt as if I had become a professor by an act of grace."

More than four decades later, Buxbaum is researching the legal history of reparations arising out of World War II. He was also recently appointed by the State Department as the U.S. member of an international property commission, which handles claims seeking restitution for forced labor and property loss under the Third Reich.

In addition Buxbaum still finds traditional corporations law compelling. "An Enron scandal every few years may be quite unfortunate for the victims," he says, "but it's great for the classroom."

SERVING THE PUBLIC GOOD

Deirdre Mulligan

helps shape the nation's technology debate

In June the *Washington Post* profiled Professor Deirdre Mulligan as one of the country's 12 most interesting thinkers in technology policy. Mulligan, director of the Samuelson Law, Technology and Public Policy Clinic, focuses on civil liberties and intellectual property issues and their intersection with technology. She has examined issues related to health information privacy, law enforcement's access to information and the application of campaign finance laws to the Internet.

Mulligan has also testified several times before Congress about online privacy issues and was part of a recent National Academy of Sciences committee examining the privacy implications of a national identity system.

"Much of this is about the way speech and privacy enable our society to be a robust, functioning democracy," she says. "I want to be a part of those discussions."

Her commitment to serving the public good was established early on. Mulligan's parents—a nurse and a social worker—were activists involved in the social and political issues of their time.

After graduating from Smith College, Mulligan worked in Washington, D.C., as a legal assistant at Arnold & Porter and tutored children from homeless shelters. She entered Georgetown University Law Center via its Public Interest Law Scholars Program and, in 1993, was a summer associate for the Washington Lawyers Committee for Civil Rights. During law school, she worked at the American Civil Liberties Union (ACLU) headquarters in Washington, D.C.

"Deirdre embodies a number of qualities that make her stellar in her field," says her mentor Janlori Goldman, director of the Health Privacy Project at Georgetown University's Institute for Health Care Research and Policy. "She is brilliant, thoughtful and able to hear different sides of an issue. She helps people reach a consensus, and she is tremendously persuasive."

Mulligan says it was clear that the issues the ACLU project focused on were only going to grow in importance and, as a result, she became interested in looking at privacy and free speech issues from a technological perspective.

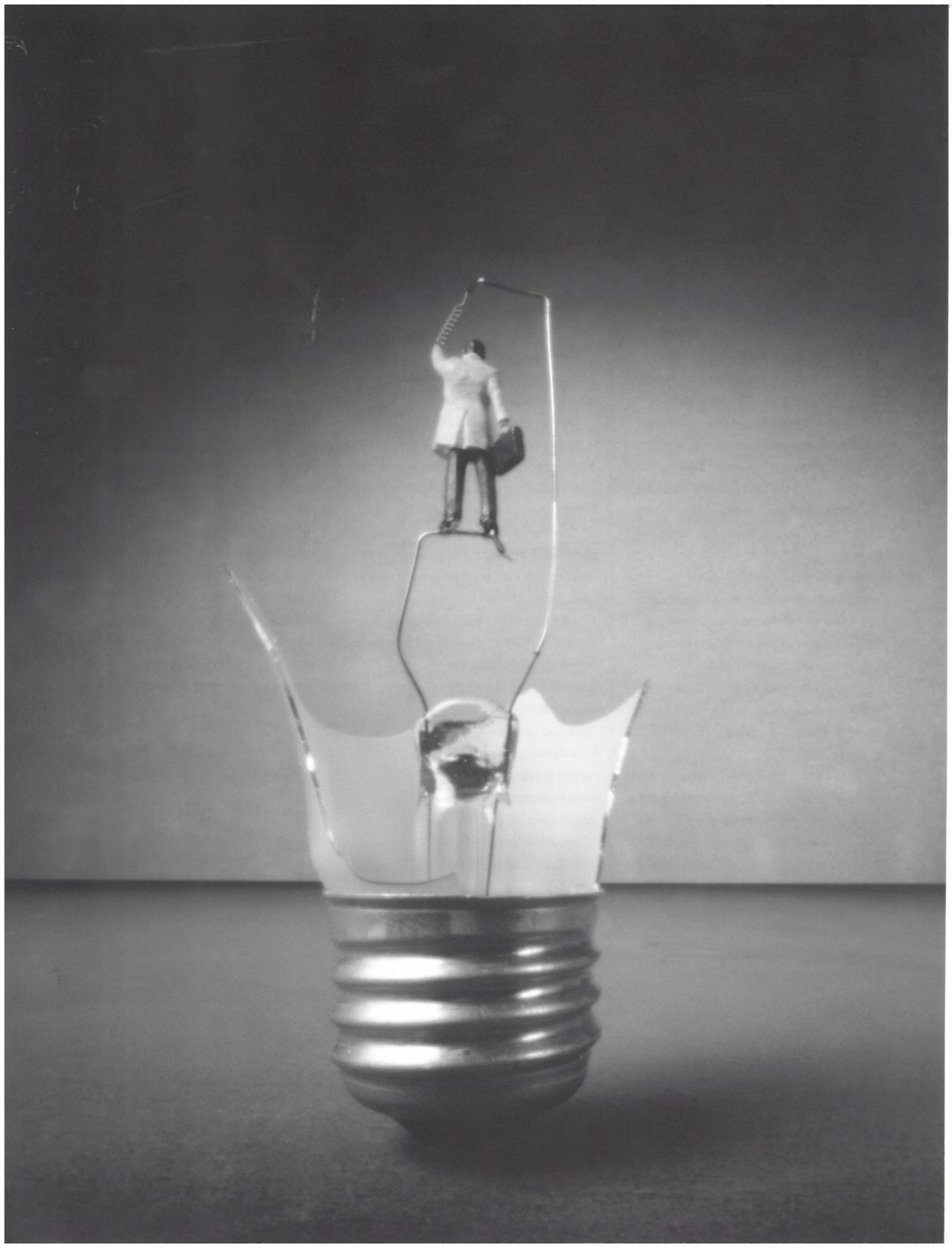
"It was evident to me, even in law school, that the Internet was the place where we would be wrestling with some of our most vexing societal issues," she says.

After law school, Mulligan worked on improving legal protections for privacy at the Center for Democracy and Technology in Washington, D.C. She left the center in 2001 to direct Boalt's Samuelson Clinic, where she trains the next generation of lawyers to examine the constitutional implications of the technological revolution.

Under Mulligan's supervision, clinic students submitted an *amicus curiae* brief to the U.S. Supreme Court that helped persuade the justices to hear arguments during their 2002 term on the constitutionality of the Sonny Bono Copyright Extension Act (CTEA) of 1998, which extends copyright terms by 20 years. The clinic also filed a second brief arguing that the CTEA should be overturned.

Recently her students—along with members of the Electronic Frontier Foundation and three other law school clinics—launched www.chillingeffects.org, a website that provides detailed legal information about cease-and-desist letters and intellectual property law. "Chilling Effects is a very creative model of lawyering," she says. "We're using the Web to provide information about complicated laws that, until recently, the average citizen was unaware of."

Mulligan says she enjoys working with students to bridge the worlds of law, technology and social justice. "The most exciting thing for me is the educational process—helping students learn how to assist our public interest clients in weighing in on the law and technology debates," she says, "and, ultimately, shaping the outcome."



Swallow a loss and learn a lesson.

—Ancient Chinese Proverb

what can ENRON teach us?

Five Berkeley Scholars Explore the Regulatory and Ethical Failures that Led to One of the Largest Bankruptcies in U.S. History

Edited by Kate Callen

FOR ALL THEIR MALFEASANCE (real and perceived), the agents of the massive Enron scandal have performed one good service: They have furnished educators in the legal and business arenas with a library of real-world lessons in corporate governance and professional ethics.

With that in mind, the *Transcript* enlisted five Berkeley scholars to begin sifting through the Enron rubble for nuggets of wisdom that might be equally valuable in the classroom and the boardroom—on Wall Street trading floors, in regulatory agency offices and along the hallways of Congress.

Over a period of six weeks this spring, the five faculty members engaged in a vigorous online roundtable discussion of four key issues in the Enron debacle: failures in corporate governance, breakdowns in mandatory disclosure, the potential for securities litigation, and the prospects for tougher insider-trading laws.

The roundtable participants brought unique perspectives to the virtual forum, and their give-and-take was as provocative as it was illuminating. Perhaps the best prevention of future

ENRON

Enrons lies in the law schools and business schools that are training the next generation of corporate leaders (and watchdogs). If that is the case, this roundtable could be taken as a very encouraging sign.

Four of the participants are Boalt Hall professors:

Richard M. Buxbaum '53 (LL.M.), Jackson H. Ralston Professor of International Law, has served on various state and national committees engaged in the drafting and review of corporate and securities legislation.

Stephen Choi, Professor of Law, has a doctorate in economics, and his research focus is on the theoretical analysis of corporations and capital markets.

Melvin A. Eisenberg, Koret Professor of Law, has published casebooks on the subjects of contracts and corporations and was chief reporter for the American Law Institute's *Principles of Corporate Governance.*

Jesse M. Fried, Acting Professor of Law, has published extensively on bankruptcy, corporate insider trading and corporate law.

The fifth participant is from the Haas School of Business:

Brett Trueman, Donald and Ruth Seiler Professor of Public Accounting, is director of the Center for Financial Reporting and Management. His research areas include managerial disclosure decisions and shareholder litigation.

Corporate Governance: One way to view the Enron fiasco is to take it as an example of corporate governance failure. How unique is Enron in this regard? Could its failures occur at other public corporations?

Stephen Choi: Enron represents failures on the part of a lot of checks—both legal and market-based—to protect shareholders. Perhaps the blame should fall on Enron's board of directors. But that board (and in particular its audit committee) was almost the poster child for good corporate governance prior to Enron's meltdown.

Some insiders sat on the board, but most directors were non-insiders. And a professor emeritus of accounting from Stanford chaired the audit committee.

The real question is what to do. We could try more disclosure (as the SEC seems to be moving toward) related to accounting issues. But in cases where company managers are intent on defrauding investors (with the cooperation of auditors), it's unclear what

Enron's Collapse: A Timeline of Key Events

July 1985: Enron, an interstate natural gas pipeline company, is formed by the merger of Houston Natural Gas and InterNorth.

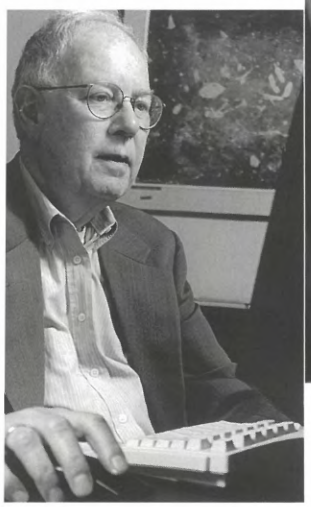
June 1994: Enron trades its first unit of electricity.

August 2000: Enron's stock hits an all-time high of $90.56 per share.

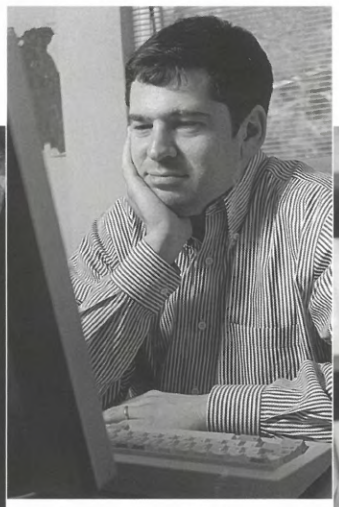
August 14, 2001: Enron President and CEO Jeffrey K. Skilling unexpectedly resigns and Chairman Kenneth Lay becomes CEO.

October 17, 2001: The SEC asks Enron for more information about the company's report of a $618 million third-quarter loss and a $1.2 billion reduction in shareholder equity, related in part to partnerships run by CFO Andrew Fastow.

October 24, 2001: Enron fires Fastow after reporting that the SEC has launched an inquiry into the partnerships Fastow was managing.

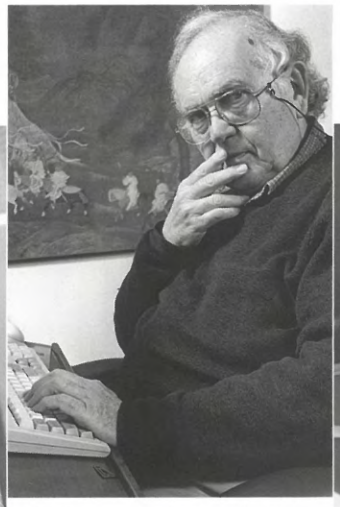


Professor Richard Buxbaum '53

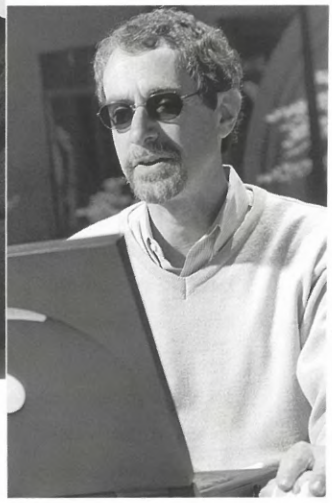


Professor Jesse Fried

Professor Stephen Choi and son Alexander



Professor Melvin Eisenberg



Professor Brett Trueman

more disclosure would accomplish. We could try putting greater liability on the board. But this may drive out good talent from the market for executive services.

Maybe we should focus more on other failures. A lot of the information on Enron's SPEs was publicly available well before its stock price started plummeting. Why didn't analysts catch this? Why didn't Janus (one of Enron's largest shareholders) ask harder questions?

Brett Trueman: I agree that what happened at Enron could happen elsewhere. If a company's managers want to manipulate the financial statements, they are likely to get away with it, at least for some time.

However, there are many checks that should raise red flags. The audit committee should be scrutinizing the financial statements and asking relevant questions of management and the external auditor. The external auditor should be ensuring that statements faithfully reflect the firm's financial health, rather than just complying with GAAP. Analysts should not be taking statements at face value.

PHOTOS BY JIM BLOCK

November 8, 2001: Arthur Andersen, Enron's accounting firm, receives a federal subpoena for Enron-related documents; Enron files SEC documents revising five years' worth of financial statements to account for $586 million in losses.

December 2, 2001: Enron files for Chapter 11 bankruptcy protection.

December 12, 2001: Andersen CEO Joseph F. Berandino testifies before Congress that Enron might have violated securities laws.

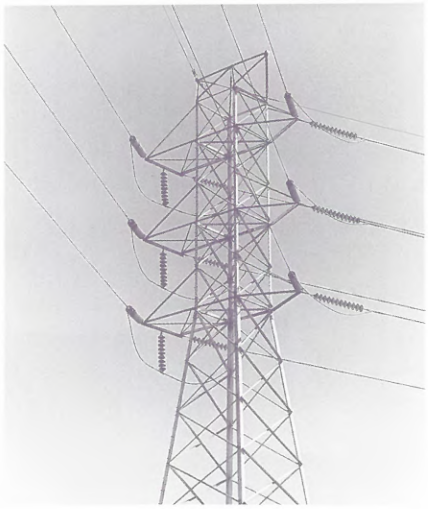
January 10, 2002: Justice Department officials confirm that they have launched a criminal investigation into the Enron collapse.

January 15, 2002: Enron is suspended by the New York Stock Exchange.

January 23, 2002: Lay resigns as Enron CEO; the FBI begins investigating Andersen's shredding of Enron-related documents.

January 31, 2002: Enron board meeting minutes show the board backed moving debt off the company's books.

ENRON



These checks did not work well at Enron. With all of the subsequent negative publicity, audit committees, external auditors and analysts will likely do better in the future. And the SEC should pass its proposal that the Form 10-K clearly disclose a firm's important accounting assumptions and their impact on the financial statements. The push for clearer and more detailed disclosures will have the biggest effect on curbing the types of behaviors that arose at Enron.

Jesse Fried: Steve says Enron's board, with its majority of outsiders, was a poster child for good corporate governance. True, it is desirable to have outsiders on the board. They might ask the CEO hard questions that insiders won't.

But whether outsiders challenge the CEO will depend on the costs and benefits of doing so. Enron board members received more than $300,000 in compensation per year. The cost to the outside board members of challenging and perhaps angering the CEO would have been prohibitively high. So Enron might have bought off its outside directors, rendering the board incapable of governing the corporation.

Richard Buxbaum: I prefer to restate the question in a broader context. The 1990s brought two developments that converge in the Enron case: in executive compensation and in financial disclosure.

Compensation: The academic call for aligning interests of managers and owners was endorsed by boards but ran afoul of one accident and one problem. The accident was the stock market's long and strong rise, which led to a stock-option bonanza beyond reason and to a culture of entitlement. The problem is that the composition of American boards renders them unwilling to impose discipline on compensation.

Using Steve's approach, I would argue that this calls for regulatory assistance to market corrections. That could mean requiring appropriate disclosure of hidden costs of compensation; it doesn't require caps on salaries!

Financial Disclosure: Let's say five suppliers of accounting/auditing services face 500 major corporate clients. The accounting profession should be in the driver's seat when faced with requests for "rules" that blur comparability of

GAAP IS PERVASIVELY CORRUPT. THE ACCOUNTING PROFESSION WAVED HONEY IN THE BEAR'S FACE, AND THE BEAR WENT FOR IT. THE BEAR WENT FURTHER; BAD ON THE BEAR. BUT THE ACCOUNTANTS SHOULDN'T HAVE WAVED THE HONEY IN THE FIRST PLACE.

– Melvin Eisenberg

February 3, 2002: Andersen announces that former Federal Reserve Chairman Paul Volcker will oversee Andersen's reform initiative.

February 4, 2002: Lay resigns from the Enron board of directors; the Senate Commerce Committee announces it will subpoena Lay to testify on February 12 (at that hearing, he invokes the Fifth Amendment).

February 15, 2002: The University of California Regents are named lead plaintiff in a class-action lawsuit against Enron and Andersen executives.

March 29, 2002: Enron is ordered to turn over documents to California investigators looking into the state's energy crisis; Enron seeks permission from a bankruptcy court judge to spend up to $130 million on employee bonuses and severance payments.

statements. They should reject such siren calls, and they should be able to uphold integrity without sacrificing profit. Instead, they became the lobby that overran regulatory barriers against such deterioration, and they nearly destroyed their legitimacy.

Why did this happen? Is it because the Big Five (Four?) are only networks of local franchises in a dog-eat-dog arena? Is it the revolving door between audit partner and CFO? Was it because the profession's leaders saw short-sighted profit in handing clients latitude? I believe this, and not the temptations into which Arthur Andersen fell, is the issue to consider.

Melvin Eisenberg: Enron was primarily a management failure and an accounting failure, and only secondarily a board failure. It was not a fraud in the classic sense. Andrew Fastow [former CFO] took in $30 to $50 million that he shouldn't have received, but that was a drop in the bucket to a company the size of Enron.

The big problem was that Enron management, in particular Jeffrey Skilling [former president and CEO], pushed to and beyond the envelope of GAAP. But the main way in which Enron violated GAAP was by not having an outside interest of at least 3 percent at-risk interest in its SPEs.

Suppose Enron had been able to round up the 3 percent. Would this have justified Enron's getting liabilities off its balance sheets to the SPEs' balance sheets, recognizing income generated by the run-up in its own stock, and creating non-economic hedges by taking puts from the SPEs?

I agree with Steve, Brett and Dick that the accounting profession was perhaps the major culprit—specifically by abdicating the responsibility of ensuring that either GAAP requires fair accounting, or that financial statements are required to be presented fairly.

GAAP is pervasively corrupt. The accounting profession waved honey in the bear's face, and the bear went for it. The bear went further; bad on the bear. But the accountants shouldn't have waved the honey in the first place.

The lesson is that we need a lot of regulatory action, primarily in the form of the SEC taking over GAAP and a prohibition of combining auditing and consulting for the same client. Will we get this? I'm not holding my breath.

Mandatory Disclosure:

Like any publicly traded firm, Enron is required to report certain information to the SEC—information made available to the market. Yet Enron was able to hide a substantial amount of important information from investors. Should SEC disclosure requirements be changed to force firms to reveal more? Or is this primarily a FASB issue?

Brett Trueman: All of the FASB's accounting standards are accompanied by a list of required disclosures, which are broad in scope. I do not believe that we can blame very much of the current wave of accounting scandals on the FASB's failing to require

April 9, 2002: David Duncan, Andersen's lead Enron auditor, pleads guilty to obstruction of justice in destroying Enron-related documents.

April 12, 2002: SEC rejects Enron's plan to give employee bonuses and severance payments.

April 24, 2002: The House of Representatives adopts an accounting reform bill that would create a new auditor oversight board.

May 7, 2002: Five current and former Enron directors testify at a Senate hearing that they were kept in the dark by the company and Andersen; internal Enron documents indicate Enron had a hand in manipulating California's energy market.

June 15, 2002: A jury finds Andersen guilty of obstructing an Enron investigation by illegally destroying paperwork.

June 20, 2002: The SEC approves plans for a Public Accountability Board that would strengthen oversight of the accounting profession.

enough disclosure. The breakdown occurred because some auditors did not require firms to make disclosures clear and forthright, and because the SEC did not have enough funds to oversee auditors.

The solution is not mandating additional disclosures. It is providing better incentives (penalties?) for auditors to do their jobs, and providing additional money for the SEC to do its oversight work.

At least one additional set of disclosures should be required. (A proposal along these lines is being circulated by the SEC.) Such disclosures would lay out in the MD&A section of the 10-K the major accounting assumptions behind a firm's financial statements and provide an estimate of the impact of these assumptions on the statements.

That might have forced Enron to plainly say that it was raising debt through SPEs (and give the amount of the debt raised) and that it was booking profits by selling assets to these entities.

Stephen Choi: I agree with Brett that disclosure standards are not primarily the problem. Enforcement is the more important task. But I'm not quite sure how to do that.

Suppose accountants in a given company conspire with managers to commit accounting fraud or push the envelope with aggressive accounting. The accountants and managers may be able to hide this from the board and the investing public despite disclosure requirements.

The SEC's disclosure proposal that Brett refers to may help caution managers against aggressive accounting. Antifraud liability may help deter aggressive accounting. But the SEC's proposed requirements are open-ended—what exactly is a major accounting assumption? And increasing requirements and liability on managers may encourage more nuisance litigation. I'm worried that plaintiffs' attorneys will have a field day bringing litigation against well-intentioned managers under the SEC's proposed MD&A accounting disclosures.

I'm in favor of focusing on structural changes. We could prohibit accountants from taking a position with an audited company for a certain number of years after leaving an audit firm. We could examine how analysts are compensated. Why are so many analysts part of large financial services entities where they come under pressure to provide inflated marks for clients?

Part of the reason may be that analysts can't capture all the value of their recommendations. Investors can "free ride" on recommendations, denying analysts the full return from their activities. Is there any way to provide a direct subsidy to independent analysts (perhaps paid for by companies that enjoy analyst coverage through a tax or listing fee)?

Jesse Fried: We all agree that Enron should not have been able to hide the fact that it was using SPEs to raise off-balance-sheet debt and to boost reported profits. The question is what to do about it.

It seems to me that both disclosure requirements and enforcement must be strengthened. The SEC should be given additional funding so that it can better oversee the work of auditors. Better SEC oversight would neither increase the amount of nuisance litigation nor drive talented managers out of the market.

And firms should be required to disclose their major accounting assumptions. I see no good reason—except to maintain proprietary secrets—why public companies should be able to hide from their shareholders material information relating to the companies' accounting.

However, imposing additional liability on managers could have perverse effects, as Steve suggests. A better approach might be forcing managers to return to the corporation the proceeds of any stock sales made while the firm was violating disclosure requirements.

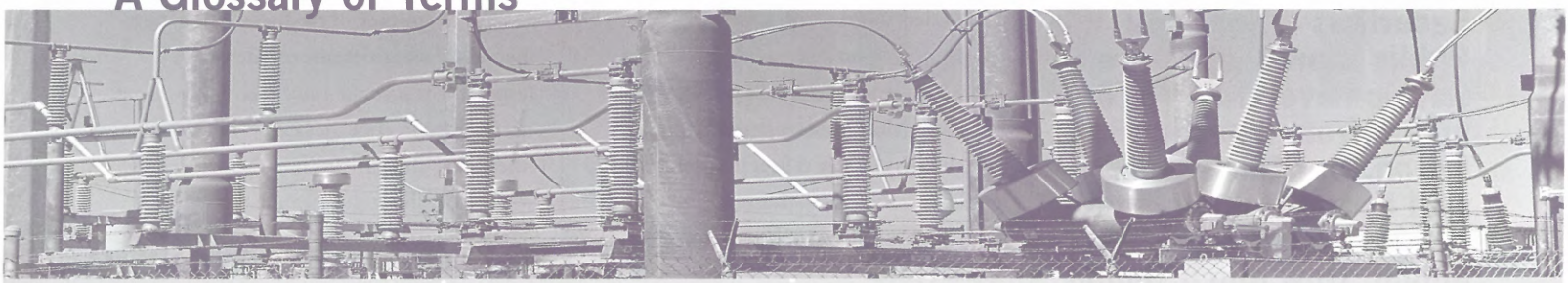
Melvin Eisenberg: GAAP is corrupt because the FASB process is corrupt. The FASB is put under pressure from business, the Big Five (Four) and Congress whenever it proposes to clean up accounting standards, and it almost inevitably gives way.

Two things are clear: (1) As Brett says, there should be disclosure of the major assumptions underlying the financials; (2) there should also be disclosure of major risk elements that are not apparent on the face of the financials.

Steve is worried about nuisance suits. That has to be weighed against the consequences of nondisclosure. However, the costs of nuisance suits are trivial compared with the cost of an Enron bankruptcy plus post-Enron losses in the market. Jesse is right—more money for the SEC would ameliorate a lot of these problems.

Steve's ideas about structural changes are correct, although I'm unclear about legal rules concerning compensation of analysts. Perhaps we need a banner in big bold type at the top of sell-side analysts' reports: **"IF I DON'T MAKE A FAVORABLE RECOMMENDATION ON THIS COMPANY, EITHER MY COMPENSATION WILL BE DECREASED OR I WILL BE FIRED."**

A Glossary of Terms



Aggressive Accounting: This term relates to accounting choices that result in a company's financial statements conveying a more favorable impression of the company's financial health than may be warranted.

Corporate Governance: Corporations are governed by salaried executives (e.g., chief executive officers and chief financial officers), and those executives are governed by independent boards of directors who are elected by stockholders at annual meetings.

Financial Accounting Standards Board (FASB): Established in 1973, the Connecticut-based FASB is the designated private-sector organization that establishes and maintains standards of financial accounting and reporting.

Form 10-K: Under the Securities Exchange Act of 1934, companies with more than $10 million in assets whose securities are held by more than 500 owners must use Form 10-K as a guide in preparing their annual reports, which must be filed within 90 days after the end of the fiscal year covered.

Generally Accepted Accounting Principles (GAAP): Crafted by experts working in conjunction with the FASB, these principles govern the preparation of financial statements throughout the United States.

Insider Trading: Individuals with privileged access to inside information (e.g., a CEO who knows his or her firm is about to report heavy losses) are forbidden by the Securities Exchange Act of 1934 from using that information to profit from the sale or purchase of stocks.

Management's Discussion and Analysis (MD&A): Along with numerical data and accompanying footnotes, corporate financial statements are required to furnish an MD&A, according to the SEC, "to give the investor an opportunity to look at the company through the eyes of management by providing both a short- and long-term analysis of the business of the company."

Mandatory Disclosure: Corporate insiders, such as executives and directors, are required to disclose information about their trades of corporate stock after the trades are made.

Puts: When individuals or entities buy a put, they are buying the right to sell a stock at a specified price during a specified period of time. That right becomes valuable if the stock goes down. For example, company A (e.g., Enron) can enter into an agreement with company B (e.g., one of Enron's SPEs), whereby company B agrees to purchase designated stock currently held by company A at a set price during a set period of time, regardless of how far the stock price falls. In Enron's case, the problem was that the SPEs that gave Enron puts would not necessarily have had the money to purchase the stock from Enron.

Securities and Exchange Commission (SEC): Established by Congress in 1934 in response to the collapse of the stock market in 1929, the SEC is charged with regulating securities markets and brokers and with investigating misleading securities practices.

Special Purpose Entities (SPEs): These limited-financing vehicles are created by companies for the sole purpose of carrying out a specific activity or series of transactions directly related to a specific purpose. Enron allegedly borrowed money through its SPEs in order to reduce the reported level of debt on Enron's balance sheet.

ENRON

Securities Litigation: Public shareholders are said to have "lost" $70 billion from investing in Enron. But those who sold Enron stock to these shareholders "made" $70 billion. How much should public shareholders be allowed to recover? From whom should they be able to recover: Enron, its directors, accountants, lawyers, co-investors in Enron entities?

Brett Trueman: Compensating shareholders for a "loss" stemming from an artificially inflated stock price is tricky. How can we justify compensating unlucky investors who bought Enron stock at artificially high prices if we don't take away the profits of the lucky ones who sold at these high prices?

What about a stockholder who purchased a share of Enron in 1998 for $20 and sold in 2001 for $20? This person could claim a "loss" of $70 per share (relative to the highest price of $90). In reality the shareholder broke even. But employees holding Enron stock in retirement accounts have used this reasoning to claim billions in losses.

What about a shareholder who bought at the high point of $90? While this investor lost on Enron, he or she will make money, on average, on stocks whose prices aren't inflated, and things should even out.

There is always some risk that any stock price has been artificially inflated by financial statements. Compensating investors for the bad draws, while letting them keep the profits from the good draws, is not fair.

Jesse Fried: I agree with Brett that if stockholders who lost money can collect, there is a "heads I win, tails you lose" situation. Most losses suffered by public shareholders simply reflect transfers to lucky public shareholders—those public shareholders who sold the stock at greatly inflated prices.

However, some losses reflect transfers of value to Enron insiders who sold their shares at high prices before the market learned of Enron's true value. For these losses, public shareholders should be compensated, and the compensation should come from Enron insiders who personally profited.

Enron did not "destroy" $70 billion of market value—the underlying value was never there to begin with. It was an illusion. Enron might have destroyed real economic value by poorly managing real assets (like power plants) and/or by diverting management time and financial resources to sustaining the illusion. But these losses are likely to be much lower than the financial losses suffered by unlucky public shareholders.

Stephen Choi: I agree with Jesse and Brett. It's too easy to focus on an investor's loss due to fraud in a specific transaction without taking into account the corresponding gain to the investor on the opposite side of the transaction. Where both buyer and seller are non-insider traders in the secondary market, it's unclear whether they've lost in any systematic way—especially when you start averaging gains and losses over multiple transactions.

But fraud does have real costs, as Jesse recognizes. It may facilitate insider trading, and it may result in less accurate securities prices that may affect the allocation of real resources.

The magnitude of the social effect from inaccurate securities prices is debatable (especially if accurate information is released relatively soon after the fraud). But an interesting and perhaps broader problem is what to do about the measure of securities damages under the present federal securities laws.

Melvin Eisenberg: I can't see any plausible ground for maintaining that the losers in Enron shouldn't get back their losses because others made money. Suppose X steals A's radio, which is worth $50, and sells it to B for $10. A has lost $50; B has gained $40. Would anyone say that A's loss is only $10 because B has gained $40? Or what if, due to X's fraudulent misrepresentation, A buys the radio from X for $50, when it is only worth $10, and X then gives $40 to B?

The winner's gains in Enron have zero to do with the loser's losses. People who buy or sell stock take the risk of bad corporate luck and lousy management decisions. But they don't take the risk of fraud.

How to measure the losses is a different question. If A bought Enron at $20, rode it up to $90, and then rode it down to almost $0, there may be different ways of figuring A's losses. But not all the gain from $20 to $90—and not all the loss from $90 to $0—may have been due to fraud.

Also, it's not clear how much of Enron's value was there to begin with. Enron may have had a value of $90 as long as other traders were willing to do business with it and its credit rating stayed at a certain level. When people lost confidence, traders weren't willing to do business with Enron, and its credit rating sank. So, much of Enron's value might have been legitimate, even though it was destroyed by fraud.

Stephen Choi: I concur with what Mel is saying (up to a point). Why not make the perpetrator of a fraud pay for everyone's losses, even if he or she didn't capture all of the benefits?

My reservations come along two dimensions. First, securities damages often are paid not by the person who commits fraud but by the company itself. So shareholders take money out of one pocket and put it into another, minus high attorney fees. Shareholders who do not lose systematically from fraud may not want a corporation to play this shell game with their money.

Second, applying damages on the perpetrator has problems if courts are not 100 percent certain about the intentionality of the fraud. Well-meaning managers may get caught up in paying fraud damages, and you may deter other well-meaning managers from doing their job, or drive them out of the business.

Jesse Fried: Two more thoughts on the amount of the public's losses from Enron's improper accounting:

First, much of the increase in Enron's stock price—and much of the decline—was due to the fact that, in the words of one analyst, Enron had become a "faith" stock. Even if its accounting had been proper, it was trading at an unjustifiably high price, and investors would likely have lost money buying the stock at that price.

When Enron began disclosing losses and restating its earnings, the market lost its "faith" in Enron, and its stock was hit by a double whammy: earnings were restated downward, and the multiple the market was willing to pay for those earnings dropped.

Of course, absent its accounting tricks, Enron might never have become a faith stock. But the dot-com bubble teaches us that companies can become faith stocks even when they are dripping red ink.

Second, it might not be easy to identify the investors who lost money. The distribution of gains and losses is determined by who bought and sold during the relevant period. Those who sold at an inflated price gained, and those who bought at an inflated price and sold at the postdisclosure price lost.

But my hunch is that most of the people who bought and sold Enron stock did so indirectly as shareholders of mutual funds and beneficiaries of pension funds. Figuring out who made or lost money would require netting out various trades.

Insider Trading Laws: Enron insiders sold $1 billion worth of shares as Enron collapsed. Was this selling likely to be information-motivated? If so, does this suggest that insider trading laws need to be toughened? And if so, how should they be toughened?

Melvin Eisenberg: We can't know for sure whether the trading was improper. Maybe the Enron insiders were drinking their own moonshine. But we can safely assume it was improper. Given that, Enron doesn't tell us anything new about insider trading, but it sure illustrates the problem.

Three fixes can be suggested, not necessarily novel ideas:

- same-day (indeed, same-hour) electronic reporting of insider trades;
- pre-reporting of intended insider trades, as previously proposed by Jesse;
- reporting of the reasons for insider trades.

Jesse Fried: The Enron insiders sold their stock as the company was unraveling and as managers were touting the stock. We don't know whether the selling was information-motivated and, if so, whether it was illegal.

Perhaps the sales would have occurred in any event. But this is unlikely given the volume of the trades. It's more likely that at least some sales were information-motivated.

As Mel mentioned, I have suggested that managers be required to disclose their intended trades in advance. The market would then adjust the price of the stock to reflect the possibility that the trade is information-motivated. For example, if the CEO announces that he plans to sell an unusually large number of shares, the market would infer that he may know undisclosed bad news about the firm and adjust the price downward, making it more difficult for the CEO to sell his shares at an inflated price. Currently the CEO needs to report his sale several weeks after it occurs, at which point any adjustment in the market price will not affect his selling profits. Same-day (or, as Mel suggests, same-hour) reporting of trades would suffer from the same problem as the current system: the adjustment would take place after the manager had traded.

Requiring insiders to disclose the reasons for their trades probably wouldn't help much. A manager selling shares because he knows they are overpriced could report that he needed cash, and it would be difficult to prove he was lying.

ESSAY BY PROFESSOR STEPHEN CHOI

Reflections on the Enron Fallout

The other day I opened a bank account at a large financial institution near Berkeley. Out of curiosity, I asked the bank officer about FDIC [Federal Deposit Insurance Corporation] insurance coverage. As it turns out, we differed widely in our opinion on the intricacies of FDIC insurance. But, in the end, the bank officer said it didn't really matter because her bank was one of the largest banks in the United States and therefore was safe.

Then, after a brief pause, she added in a whisper, "But you never know. Anything could be another Enron." And I left the bank thinking that if nothing else, Enron has at least raised everyone's awareness on the pitfalls of investing (even in so-called "safe" bets).

Upon reflection, given all the possible outcomes after Enron, simply elevating awareness and letting the market sort out how to deal with and price the possibility of future Enrons may not be such a bad thing. The Enron scandal was immediately followed by clamors to strengthen the oversight of the accounting industry, split apart consulting from accounting services, bar accounting personnel from going to work for their clients, and impose more stringent reporting standards on companies, among other things.

It's perhaps a bit premature to predict (at the time of this writing in early summer) what will become of many of these proposed reforms—although early indications suggest that at least some of the reform proposals may be enacted. Even without many legally mandated changes, the market has its own way of providing solutions. Soon after Enron, companies with opaque accounting practices were punished severely in the market. Once investors became attuned to accounting deficiencies (perhaps reciting the mantra that "anything could be another Enron"), other companies (such as Disney) reacted by announcing that they would voluntarily hire separate consulting and accounting service providers.

And it may not be so bad for lawmakers to take a cautious backseat to the market. After all, hasty legal responses may not necessarily work out the way they were intended. In the wake of scandal, often large waves of regulation come rushing in. Without the prodding memory of a recent

PHOTO BY JIM BLOCK

THERE MAY IN FACT BE AN ALMOST INEVITABLE CYCLE OF FRAUD, WHERE IMMEDIATELY AFTER A SCANDAL INVESTORS RAISE THEIR VIGILANCE, AND THE EXISTING REGULATORY APPARATUS UNDERGOES A STRESS TEST AND IS REINFORCED AS NEEDED.

scandal, lawmakers often lose both the incentive as well as the interest in advancing bulky pieces of legislation. But once in a scandal, lawmakers may overreact, often competing with one another to appear more pro-investor by imposing more stringent levels of regulation on the financial industry.

Completely preventing fraud, for example, may prove too costly. We could mandate each company to hire not only an auditor but a second independent auditor to monitor the first auditor. And then we could require yet another auditor to monitor the second auditor and so on. Or we could impose large personal fines on directors of companies that provide less than accurate financial statements. Of course, risk-averse, talented business individuals may react simply by choosing not to serve on boards of directors. Once in place, moreover, regulations (and the regulatory agencies empowered to interpret and enforce such regulations) often take on a life of their own. It took decades to repeal the Glass-Steagall Act* coming out of the Great Depression.

This is certainly not to say regulation has no role to play here. In times of crisis, it may be beneficial for the Securities and Exchange Commission (SEC) and other regulatory agencies to adopt and promulgate an unequivocal stance against fraud to bolster overall investor confidence in the integrity of the market. And to the SEC's credit, it has recently stepped up its enforcement efforts targeting accounting fraud. The point here is more that lawmakers should move forward cautiously and only after taking into account the market's ability to heal itself.

When investors are looking out for the next Enron, issuers and securities professionals already have a large incentive to take action to make it clear that the Enron risk is low. After all, what company really wants to be known as the next Enron, especially when this dubious honor may result in an unwelcome drop in the company's stock price?

Of course, over time investors may forget even about Enron. There may in fact be an almost inevitable cycle of fraud, where immediately after a scandal investors raise their vigilance, and the existing regulatory apparatus undergoes a stress test and is reinforced as needed. Then as memory of the scandal fades, investors gradually lower their guard, leading eventually to the possibility of another scandal.

No system can preclude fraud entirely. Our best hope is for a reasonably regulated market-based system whereby fraud, if not entirely eliminated, is at least quickly forced out into the open, thereby providing investors with a periodic, painful but cautionary lesson.

* *The Glass-Steagall Act of 1933 separated commercial banking from investment banking.*

ESSAY BY PROFESSOR NORMAN W. SPAULDING

Where Were the Lawyers? Enron and Legal Ethics

Enron tests Adam Smith's famous observation that "it is not from the benevolence of the butcher, the brewer or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk of our own necessities but of their advantages."

Self-love Enron-style has dashed many expectations—not the least of which are that energy deregulation would come without market manipulation and (perhaps more important in the long run) that the financial statements of Fortune 500 companies audited by Big Five accounting firms would bear some resemblance to reality.

Although we often think of ethics as a demand above and beyond the law—a duty to act or forbear even when the law is silent—in an important sense, Enron presents the problem of ethics in the absence of law, of conscience as the only check on self-interested conduct. Enron operated in a heavily deregulated market it helped create, and its professional service providers (lawyers and accountants) operate in increasingly competitive and largely self-regulated regimes. Conscience only infrequently fares well in such settings.

But while Enron's collapse is surely an occasion for moral lament—for asking why Enron managers did not play fairly, why Andersen failed to live up to its industry-leading multimedia promotion of business ethics, and, of course, why lawyers appear not to have protected Enron from its managers—I think attention should focus not so much on failures of conscience as on the law of professional responsibility.

There remains much to learn about the role of lawyers in Enron's collapse. Enron's long-standing outside counsel, Vinson & Elkins, has repeatedly insisted that its work for the bankrupt energy giant was beyond reproach. Publicly, it has followed a three-pronged approach: characterizing the company's fall as a tragedy in accounting, pointing the finger (rightly, it seems) at Andersen and Enron's huge in-house staff of 250 lawyers, and disclaiming any guilty knowledge. In court, the firm has moved for dismissal from pending securities fraud litigation by invoking *Central Bank of Denver v. First Interstate Bank of Denver*

PHOTO BY JIM BLOCK

BUT WHILE ENRON'S COLLAPSE IS SURELY AN OCCASION FOR MORAL LAMENT ... I THINK ATTENTION SHOULD FOCUS NOT SO MUCH ON FAILURES OF CONSCIENCE AS ON THE LAW OF PROFESSIONAL RESPONSIBILITY.

(511 U.S. 164), the 1994 case in which a sharply divided U.S. Supreme Court eliminated aiding and abetting liability under the Securities Exchange Act of 1934.

Blaming the accountants and in-house counsel can go only so far though. Misleading disclosures and transactions designed to manipulate the company's financial position may have stemmed primarily from "aggressive" or even fraudulent accounting, but the role of outside counsel in transactional matters is not so easily disaggregated from the role of auditors. If, as reports indicate, Vinson & Elkins advised Enron's managers and board regarding the structure of special purpose entities (SPEs), worked on disclosures for proxy statements and Securities and Exchange Commission (SEC) filings, and provided opinion letters vouching for the legitimacy of asset transfers between Enron and the SPEs, it is difficult to sustain the claim that the accuracy of the numbers was simply outside the firm's purview.

Beyond the numbers and generally accepted accounting principles, due diligence and zealous representation demanded inquiry sufficient to know (and advise its client) whether the deals and disclosures met appropriate *legal* standards. If they did not, and Enron refused to change course, the law of lawyering required the firm's withdrawal.

Instead, the Powers Report (prepared by a special committee of Enron's board of directors) suggests that, among other things, the firm aided in-house lawyers' efforts to avoid disclosure of former CFO Andrew Fastow's ballooning compensation from his position as general partner in one of the SPEs. This suggests that the firm either had guilty knowledge and failed to act appropriately on that knowledge, or was not asking the hard questions that competent service of its client required.

The trouble is identifying a viable enforcement mechanism should the alleged breaches in professional responsibility prove real. Unlike litigators, whose tactics are so often the focus of criticism in the discourse of legal ethics, transactional lawyers operate in a realm free from immediate judicial scrutiny and rarely intruded upon by bar disciplinary committees.

The Supreme Court compounded the problem in the securities context by eliminating a private right of action against secondary players (like lawyers and accountants) in *Central Bank.* The case turned on a strained application of the Court's new "plain meaning" jurisprudence to § 10(b) of the 1934 Securities Exchange Act, reversing decades of lower court precedent. The legal gap created by the decision has arguably permitted Smithian self-love to get the better of professional service providers ever since. (Other enforcement mechanisms, such as state law and the threat of SEC sanctions, have proved insufficient.) Malpractice liability is still a possibility, but the Damoclean threat of waiving confidentiality may affect Enron's desire to sue. Such a barren legal landscape asks too much of good conscience.

Helane Morrison gets tough enforcing securities regulations

Fighting Fraud

NO ONE SHOULD BE surprised that Helane L. Morrison '84 served as a U.S. Supreme Court clerk, was a partner in a prestigious law firm and currently runs the San Francisco office of the Securities and Exchange Commission (SEC), says Morrison's youngest sister, Margaret.

"Helane has classic first-child syndrome," Margaret says. "She excels at everything she does."

As head of the 70-person SEC office in San Francisco, Morrison leads the charge in investigating and suing companies and people who defraud investors. Her office—with jurisdiction in Northern California and five Western states—specializes in monitoring the high-tech industry.

"Under her leadership, the SEC's office in San Francisco has become a force to be reckoned with," says Randall Lee '89, Morrison's Los Angeles-based supervisor. "The office now has a real presence in Silicon Valley in particular."

But those who know her best point out that Morrison is not just a legal superstar. A tough-as-nails SEC enforcer, she is also warm and funny. She is both analytical and creative. A dedicated career woman and mom.

"She has a whole creative side," Margaret explains. "For a while she did some painting and created a detailed scene on a tablecloth. It showed such tenacity to work slowly and take on such a big project. When she took sewing back in school, she made an entire coat. She's always done well at what she puts her mind to do."

Covering the Legal Beat

Morrison spent her formative years in Cleveland with her parents and two younger sisters. After graduating from Northwestern University in 1974, she began her notable career on a decidedly non-legal path. Morrison entered the world of journalism because it was "fast-paced and where everything was happening," she says. She became a reporter for the *Fort Lauderdale News* and the *Milwaukee Journal.*

In Milwaukee Morrison was assigned to cover the courts, which triggered two of her most memorable news stories—one about a state court judge who made improper advances toward women, and another analyzing how federal court sentencing was influenced by a defendant's race.

The court beat piqued Morrison's interest in the legal profession and she eventually applied to law school because she wanted to be part of something "instead of on the outside looking in."

Accepted at several prestigious schools, Morrison chose Boalt Hall because the professors were supportive ("not out to humiliate students," as she puts it), and the school welcomed returning students like her. She enjoyed law school right from the beginning, particularly Criminal Procedure and Torts. Morrison has stayed connected to Boalt and sat on the alumni association's board, serving for a time as an officer.

Professor Stephen Barnett recalls, "Helane had been a newspaper reporter before law school and so her exams in my first-year Torts course were beautifully typed and read like polished articles—which was unusual, to say the least."

Morrison later became editor in chief of the *California Law Review.* "She had a talent

Story by Leslie A. Gordon

Photos by Elisabeth Fall

Helane Morrison '84 leads the charge in monitoring the high-tech industry from the SEC's San Francisco office.

for law, and a talent for leadership," remembers Professor Eleanor Swift, Morrison's Evidence professor.

Former classmate Susanne Lea '84 was in a study group with Morrison their first year. "She's incredibly focused and determined, and she's been that way from the beginning," says Lea, who remembers bingeing on M&Ms with the normally health-conscious Morrison during finals. "She's a high achiever but keeps her relationships up. She's a well-rounded person in that regard."

Another relationship that Morrison kept up throughout law school was with Harlan Grossman, a lawyer-turned-FBI-agent she met in 1980 in a Milwaukee federal building elevator. He worked there, and Morrison was reporting for the court beat. "I was quite taken by her," Grossman recalls. The two connected again at an FBI-sponsored 10K race and eventually married.

Once married, Grossman's job and Morrison's studies kept them geographically separated during much of her law school and post-law-school years. Now Grossman is a Contra Costa Superior Court judge, and he and Morrison live in the East Bay with their two sons, Ethan, 10, and Elliot, 7.

Lightning Strikes

After graduating from Boalt, Morrison clerked for Judge Richard Posner of the 7th Circuit, which she calls "the most fun job I ever had." She appreciated that his interaction with his clerks was primarily verbal, rather than just through memos. Morrison says the famed law and economics judge had "a wonderful sense of humor" and "made law fun and interesting," and she still visits him every year at his annual clerks' reunion.

Following Posner's clerkship, Morrison headed to Washington, D.C., to clerk for Justice Harry Blackmun of the U.S. Supreme Court.

"I've heard that getting an offer to clerk on the Supreme Court is like lightning striking, and that's definitely how I felt," she recalls. "The whole building is made of marble. There's brass trim and red carpeting. You feel like you're in the legal cathedral."

Morrison ate breakfast every morning with Justice Blackmun and his other clerks in the court cafeteria. "We talked about cases and current events. It wasn't a serious discussion but it was our time to socialize and have informal interaction," she says.

Hooked on Securities

Morrison later joined San Francisco's Howard, Rice, Nemerovski, Canady, Falk & Rabkin to practice public entity and constitutional law, a natural fit for her court background. Initially she shied away from the firm's securities work because, Morrison says, "it seemed so boring." But after becoming involved in a securities case, she was hooked.

"I found it fascinating," Morrison remembers. "I liked that you're working with an ongoing, living organism—a company that has to operate during the case—unlike First Amendment cases, in which the facts are completely done already."

By the time Morrison made partner at Howard Rice, she was focusing exclusively on securities and business litigation. To hone her trial skills, she took a three-month unpaid leave of absence to work at the Contra Costa District Attorney's Office. While there she won five of her six trials and learned "that trial work is not a mysterious process."

When her second son was born, Morrison says, she sought a lifestyle change and also "wanted to be a bigger fish than I had been at the firm." The SEC hired her in 1996 to head its enforcement program in San Francisco.

After being a partner at a prestigious law firm, becoming a government attorney was "a real eye opener," Morrison says with a laugh. "I found out why the commission has hardly any overhead costs—they don't pay for your business cards, a secretary or even office coffee."

Three years after joining the SEC, Morrison was chosen to lead the entire San Francisco office. Her Montgomery Street office is neat and spare, but decorated with her sons' artwork and pictures of her robe-cloaked husband and her sons.

"It's a terrific agency," she says of the SEC. "We're at the forefront of securities law. We must keep up with developments because we're out there bringing cases on novel issues."

Robert Mitchell '92 heads San Francisco's enforcement group under Morrison's supervision. Before Morrison took over, says Mitchell, there was a tendency to spread the commission's

"[The SEC] is a terrific agency. We're at the forefront of securities law. We must keep up with developments because we're out there bringing cases on novel issues."

resources too thin. Morrison instead emphasizes high-profile cases to deter fraud.

The best example, Mitchell says, is McKesson HBOC, the largest case ever brought by the San Francisco office. After McKesson, a San Francisco-based healthcare company, bought HBOC, an Atlanta-based medical software company, McKesson learned that top HBOC executives had falsely inflated the company's revenue. As a result, investors lost $9 billion.

"Our investigation was done very strategically," Morrison explains. "We wanted to get it done quickly so we focused on key issues instead of being exhaustive."

That investigation found, for example, that HBOC executives had backdated contracts to make it appear deals had been completed, and also deleted expenses from the books until after the auditors had reviewed them. (Analogies to the Enron case are unavoidable, though Morrison says she cannot comment on Enron's in-progress investigation.)

"Typically a case like McKesson HBOC would take years to process," Mitchell explains. "But our approach was to staff the case with more people and resources because it was high profile and, if handled quickly, would make more of an impact."

Just 14 months later, the SEC investigation, which paralleled a criminal investigation by the U.S. Attorney's Office, resulted in civil and criminal suits against HBOC executives.

"Our office is very happy she's in charge there," says David Shapiro, San Francisco's interim U.S. Attorney. "She's aggressive in wanting to do financial accounting fraud cases even though these 'cooking the books' cases are tough. Unlike regular fraud cases, you're dealing with a legitimate business."

Martha Boersch '86, chief of the securities fraud division of the U.S. Attorney's Office, adds that Morrison is "very smart, very focused" and willing to work out potential conflicts between the SEC and the U.S. Attorney's Office.

There's an inherent tension, Morrison explains, between the two offices' investigation timelines and styles. "But we've worked together, and it's an extremely high priority for us to have a good relationship with them and to bring cases at the same time. It just takes will and coordination."

A Personable Professional

For her part, Morrison's typical workday begins at 5:00 a.m., when she gets up to jog, ride her stationary bike or lift weights. By 6:30 a.m., her sons are up and she gets them ready for school. In her office by 8:15 a.m., she usually leaves at 6:00 p.m., often bringing work home with her. She spends personal time reading history books (she is in the middle of Winston Churchill's six-volume set about World War II) and mystery novels.

Morrison's husband describes her as driven. "She supervises 70 employees but is still involved with the kids' homework, lunches and field trips," Grossman says. For example, Morrison recently attended a fourth-grade overnight trip to the Gold Country and a first-grade field trip to tide pools near Bolinas. She does it all by being "very organized and very dedicated," Grossman says.

She is also sneaky, he adds.

"Being a former FBI agent, I pride myself on being an observer," he says. "But she surprised me with a 50th birthday party with my dearest and closest friends. She put it all together without me knowing about any of it. It shows she's resourceful and thoughtful. It was a night I'll never forget."

Morrison is also close to her sisters, who, like her, are working moms; and her father, who, after a career in the corporate world, graduated from law school at age 66. (Morrison's mother is deceased.) "I like to say that he followed in my footsteps," Morrison jokes about her father's late-blooming legal career.

Barbara Winters '85, a securities litigation partner at Howard Rice who also worked on the *California Law Review* when Morrison was editor in chief, describes Morrison as a "tough but fair" litigator who does not "depart from her calm and professional demeanor, even under stress."

But in addition to being a formidable SEC enforcer, Morrison is also a warm, thoughtful and loyal friend. "When my husband and I had been in a car accident and were not feeling especially chipper," Winters recalls, "Helane brought to our house a beautifully presented multi-course meal, complete with cutlery, glassware and dishes."

class notes

31

John G. Gabbert of Riverside, Calif., reports that he finds it hard to believe he has been retired from the California Court of Appeal, 4th District, since 1974. Following his retirement, John served as an adjunct professor in political science at UC Riverside, where he established an undergraduate moot court program, and a legal research and writing seminar for honor students. For the past several years, he has been traveling in order to research local and Western history for his writing. He adds, "I send my best to all surviving classmates."

59

Ernest B. Lageson retired after a 35-year career as a trial lawyer at the San Francisco firm Bronson, Bronson & McKinnon and the Walnut Creek firm Archer, McComas & Lageson. Since his retirement, Ernest has been writing. He published *Battle at Alcatraz: A Desperate Attempt to Escape the Rock* in 1999; and his latest book, *Alcatraz Justice: The Rock's Most Famous Murder Trial,* has recently been released.

62

40TH REUNION
OCTOBER 26, 2002

Louis A. Lipofsky, who is a partner with Lipofsky & Rubin, writes: "I cannot think of a better way to have spent the last 40 years. It has been a taxing but rewarding experience. To believe that disputes can be resolved with the tools of words, logic and intelligence instead of with guns and violence has enabled me to tolerate the otherwise intolerable. I am grateful that I have been able to participate in this very civilized pursuit."

California Superior Court Judge **W. Jackson Willoughby** retired in February 2002. He lives in Roseville, Calif., where he remains active in the Saint Clare Catholic Church and the Knights of Columbus Council, a men's social services organization.

63

Edward W. Bergtholdt is retiring to Springville, Calif., after 29 years as an administrative law judge for the Social Security Administration's Office of Hearings and Appeals in Spokane, Wash. Following graduation Edward spent four years in private practice in the Sacramento Valley and five years as deputy attorney general in the Office of the California Attorney General in Sacramento.

64

John Hardy writes he is retired and runs Hardy Books, a bookstore in Nevada City, Calif., that deals in old, rare and out-of-print books and ephemera. He adds that the store sponsors the annual Gold Rush Book Fair.

After 36 years in private practice in Monterey, Calif., **Daniel I. Reith** retired in early 2001. This January he was selected to serve as foreman of the 2002 Monterey County Civil Grand Jury, a 19-member body of citizens that oversees county and local government entities.

65

After retiring from a 12-year career at Pacific Gas & Electric, **Michael Cole** joined the Capital Projects Department at UC Berkeley as campus counsel and director of construction. He is involved in the university's $1.3 billion capital improvement program.

San Francisco attorney **Stuart Gordon** was named California's 2001 Civil Litigation Attorney of the Year by *California Lawyer* magazine. His diet drug team at Gordon & Rees settled more than 1,000 Phen-Fen-Redux cases pending in California and more than 5,000 cases filed in other states. Daniel H. Weinstein, who mediated cases not settled by Stuart, said Stuart succeeded because of his "absolutely religious preparation and knowledge of each case, dogged determination, forthright exchange and uncanny amount of patience."

Richard G. Hirsch writes that he was elected president of the American Board of Criminal Lawyers, an invitation-only society of outstanding criminal defense attorneys with members from the United States, Canada, Great Britain and the Philippines.

Kenny I. Kahn has added a new specialty to his practice—stand-up comedy. Kenny, a criminal defense attorney, says he hopes to become a full-time stand-up comedian. He has performed in Las Vegas at the Riviera Hotel's Comedy Club.

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On-Campus Interview Program
Berkeley
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510-642-4567

September 25
Alumni Luncheon
Featured Speaker: Professor Jesse H. Choper
"The Constitutionality of School Vouchers"
New York
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September 25
Public Interest/Public Sector Employer Night
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September 26
Alumni Luncheon
Featured Speaker: Professor Jesse H. Choper
"The Constitutionality of School Vouchers"
Washington, D.C.
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October 4
Alumni Luncheon
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"Under Penalty of Death"
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October 10 and 11
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October 26
All-Alumni Reunion
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November 2
First-Year Student Career Symposium
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November 14
Alumni Luncheon
Featured Speaker: Professor Harry N. Scheiber
"Lawyers in a Civil Liberties Crisis: A Chapter from World War II"
San Diego
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November 14 and 15
Economic Justice and Welfare Reform Symposium
Mario G. Olmos '71 Memorial Lecture Speaker: Professor Peter Edelman Georgetown University Law Center
Boalt Hall
Contact Center for Social Justice
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November 15
Alumni Luncheon
Featured Speaker: Professor James R. Gordley
"The Evolution of the Rule of Law"
Orange County
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November 15 and 16
Enforcing Privacy Rights Conference
Berkeley
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510-642-0499

November 18
Brennan Center Thomas M. Jorde Symposium
Featured Speaker: Professor Larry Kramer New York University School of Law
Boalt Hall
Contact Dean's Office
510-642-6483

November 21
Alumni Luncheon
Featured Speaker: Professor Elisabeth Semel
"Under Penalty of Death"
San Francisco
Contact Alumni Relations
510-643-6673

November 26
Kadish Lecture
Featured Speaker: Professor Ronald M. Dworkin New York University School of Law
Boalt Hall
Contact Kadish Center for Morality, Law and Public Affairs
510-642-3627

December 5
Alumni Luncheon
Featuring Professor Robert C. Berring Jr. '74
"Ricci's Paradox: Dealing with the Chinese Legal System"
Silicon Valley
Contact Alumni Relations
510-643-6673