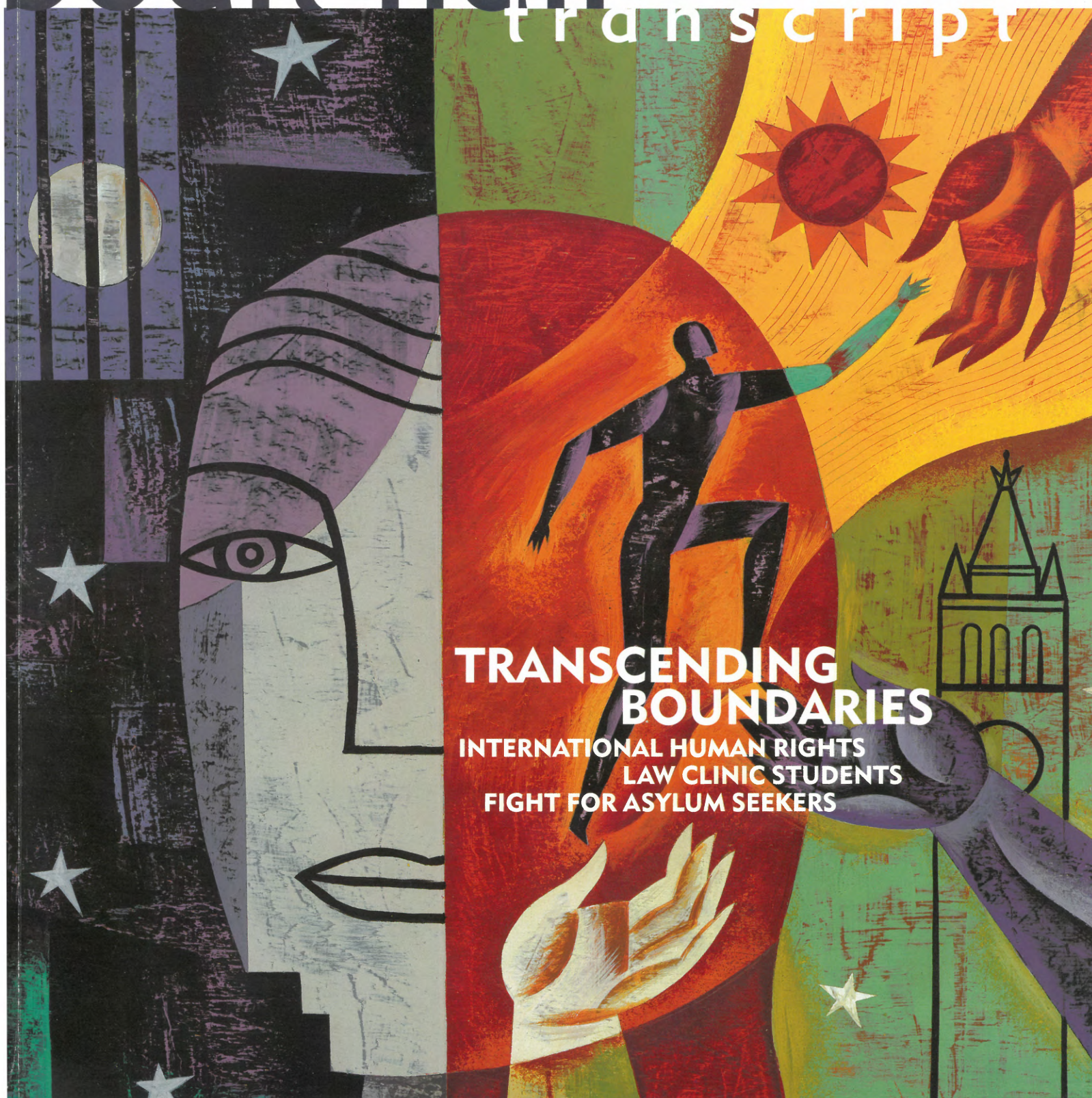


Boalt Hall

transcript



TRANSCENDING BOUNDARIES

INTERNATIONAL HUMAN RIGHTS
LAW CLINIC STUDENTS
FIGHT FOR ASYLUM SEEKERS

Boalt Hall Transcript
Spring/Summer 2002
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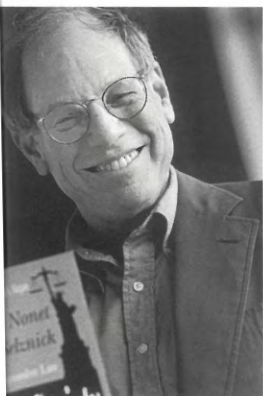


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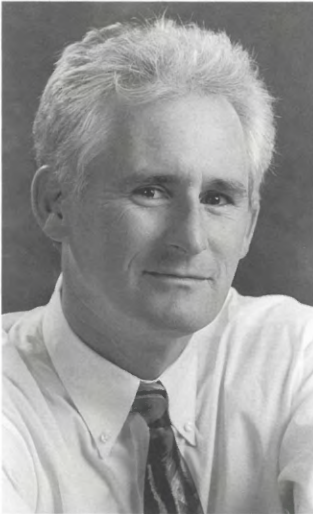
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dean's message

Long before “globalization” became a part of everyday usage, Boalt Hall was already leading the way in international and comparative law. Today Boalt’s reputation as an interdisciplinary center for legal scholarship and education attracts scholars and students from around the world. Our faculty, building on the legacy of giants like Stefan Riesenfeld ’37 and Dick Buxbaum ’53, enjoys an uncommon breadth and depth of excellence in both teaching and scholarship in areas ranging from international business law and international public law, to comparative constitutional law and comparative legal history.

Moreover, our faculty members organize and participate in distinguished conferences around the world. Last summer the law school’s Robbins Collection hosted a conference in Barcelona and Sitges, Spain, on the role of judicial power (see page 11), featuring high court judges from Europe and the United States. And Boalt’s Sho Sato Program sponsored an international symposium in Tokyo, Japan, on Japanese legal reforms (see page 7), attracting leading jurists from Japan, China and Europe.

Informed by principles of justice and the rule of law, the Boalt community is playing a crucial role in the global development of law and legal institutions. As leaders and problem solvers in an ever-changing global environment, our alumni, faculty members and students address complex issues in an emerging global community, combining legal expertise with a commitment to public service in the best tradition of Boalt Hall.

This issue of the *Transcript* highlights members of the Boalt community making a difference in a world in which national borders are increasingly permeable to the flow of capital, information, goods and services, and people.

The cover story on our International Human Rights Law Clinic features the success of our students in this field and celebrates the contributions of alumni promoting human rights as leaders in law, government and nongovernment organizations, many of whom were mentored by former Dean and Professor Frank Newman ’41.

Professor John Yoo’s essay explores presidential powers and the use of military force in response to the threat of international terrorism. Yoo, currently on leave serving as a deputy assistant attorney general with the U.S. Department of Justice, exemplifies the law school’s role in promoting vigorous, informed public dialogue about matters of vital concern to the body politic.

The profile of Jami Floyd ’89, ABC News law and justice correspondent, illustrates how our graduates are contributing to the conversation about the shape of justice in the global village.

As leaders in the legal community, fostering a commitment to justice and the rule of law is our responsibility and our privilege. The events of last September not only served as a shocking reminder of the fragility of these values, but also strengthened our resolve to advance them through the enormous intellectual creativity and professional expertise at our disposal. I’m proud of the work that our alumni, faculty and students are doing in this area, and I’m grateful for your support of the law school, which ensures that future generations of Boalt students will share this commitment.


JOHN P. DWYER '80

 in brief

INTELLECTUALLY SPEAKING

Boalt Hosts Events at Home and Abroad

In the past year, Boalt Hall sponsored numerous conferences and lectures that tackled issues ranging from the Supreme Court's role in shaping national politics to the current legal debates surrounding digital music on the Web. These events, some of which are highlighted below, challenged students and faculty alike to address many of today's most high-profile legal battles, as well as to give voice to issues that might otherwise not be heard.

In October the *Berkeley La Raza Law Journal* hosted a first-of-its-kind conference of Latino judges. **Raising the Bar: Latino Presence in the Judiciary and the Struggle for Representation** featured Judge Sonia Sotomayor of the U.S. Court of Appeals for the 2nd Circuit and newly appointed Justice Carlos Moreno of the California Supreme Court. (See page 6.)

Earlier that month the Center for Social Justice and the UC Berkeley Center for Child and Youth Policy came together to present **Critical Perspectives on Child Welfare: Who Speaks for the Child?** The conference featured Nina Bernstein, *New York Times* reporter and author of *The Lost Children of Wilder: The Epic Struggle to Change Foster Care*.

Students, faculty, practitioners and government officials gathered at Boalt in September for **In Critical Condition: The State of Women's Health and Access to**

Care, organized by the *Berkeley Women's Law Journal*. (See page 4.)

The faculty, staff and students from six law school clinical programs contributed to September's **Defining the Public Interest in Law and Technology**, the first national forum hosted by the Samuelson Law, Technology and Public Policy Clinic. (See page 8.)

The summer break was no mere vacation for Boalt's faculty members, many of whom traveled around the world to participate in conferences like July's **annual meeting of the Law and Society Association** in Budapest, Hungary. The conference was attended by more than 1,200 scholars from 56 countries, including Professor Robert Kagan, who co-presented a paper titled "Regulatory Regimes and Variations in Corporate Environmental Performance."

A delegation of professors, led by Professor Laurent Mayali, traveled to Spain in June to address the **Judicial Power and the Rule of Law: Visiones Comparadas** conference, co-hosted by the Robbins Collection at Boalt, Universitat Autònoma de Barcelona and Université Montpellier I in France. (See page 11.)

That same month, another group of professors headed in the opposite direction—to Tokyo, Japan, for an international symposium. **The Role of the Judiciary in Changing Societies** was

co-sponsored by Boalt's Sho Sato Program in Japanese and U.S. Law, and the Japanese Association of Law. (See page 7.)

In April the *African-American Law and Policy Report* sponsored **The Price of Democracy: Campaign Finance as a Civil Rights Issue**, which featured panel discussions on the current campaign finance system and its effect on people of color.

Boalt Hall also hosted a pair of international human rights events that month, beginning with a lecture titled **"Justice and Human Rights Since the Return of Democracy in Chile."** The lecture was followed by the panel discussion **In Pursuit of Justice: From Nuremberg to the Hague and Santiago**, which addressed criminal accountability for human rights abuses.

April began with **Music to Whose Ears? The Debate over Digital Music**, sponsored by the Berkeley Center for Law & Technology (BCLT) and the *Berkeley Technology Law Journal (BTLJ)*. Keynote speaker Chuck D of the rap/hip-hop group Public Enemy opened the conference, which examined the legal and policy issues raised by music on the Internet.

In March the annual **Robert D. and Leslie-Kay Raven Lecture on Access to Justice** brought Radhika Coomaraswamy, United Nations special rapporteur on violence against women, to Boalt to deliver

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Judge Whyte Honored for Leadership in Technology and Law

The Berkeley Center for Law & Technology (BCLT) recognized Judge Ronald M. Whyte of the U.S. District Court for the Northern District of California during last October's sixth annual Distinguished Service Award dinner. Whyte has presided over numerous cases in the forefront of law and technology, including such high-profile cases as *RTC v. Netcom*, *eBay v. Bidder's Edge*, *Sun Microsystems v. Microsoft*, *Cadence v. Avant!* and *Adobe v. Southern Software*. He has also played a leadership role in educating lawyers and other judges about the intricacies of intellectual property law and case management.

"Judge Whyte is one of the most respected district court judges in the country," said Professor Mark Lemley '91 during the award dinner. "His experience in intellectual property cases is unmatched."

"In addition, he has gone out of his way to work with the bar to streamline the patent litigation process," continued Lemley, a BCLT director. "Indeed, he was the moving force behind both the Northern District's local rules for patent cases and their new model jury instructions."

The BCLT Distinguished Service Award is presented annually to individuals who have advanced the field of law and technology. Past winners include Marc Rotenberg, executive director of the Electronic Privacy Information Center; David Nimmer, a leading authority on copyright law; Tom Campbell, a former U.S. representative; Larry Sonsini '66, a partner at Wilson Sonsini Goodrich & Rosati; and Richard Gilbert '64, UC Berkeley economics professor and former deputy assistant attorney general in the U.S. Justice Department.



Professors David Caron '83, Charles Weisselberg and Pamela Samuelson (left to right) discuss legal issues surrounding the U.S. response to the September 11 attacks during a panel discussion this past fall.

Professors Address Legal Issues Emerging from September 11 Attacks

Following the September 11 attacks, there has been an intense focus on America's ability to provide security for its citizens. With proposals for new legislation being drawn just days after the attacks, civil libertarians and privacy experts cautioned that the price for increased security would be paid not only in dollars but also with a loss of privacy rights.

This past fall Professors Charles Weisselberg, Pamela Samuelson and David Caron '83 offered their expertise in civil liberties, law and technology, and international law during a panel discussion addressing various legal issues stemming from the U.S. response to the attacks.

"The events of September 11 are going to have a profound impact on the courts," said Weisselberg during his presentation on civil liberties implications. "When we think of civil liberties, we tend to think about the

way in which society and we as individuals interact with the government. But civil liberties may also imply how free we feel to go about our daily lives."

Samuelson devoted her time to addressing terrorism and antiterrorism developments in the rapidly evolving realm of cyberspace. "It is a time in which law enforcement [officials are] looking at the tools they have and asking, 'What do we not have now that we think would help us in the future?'" she said.

Caron's contribution focused on international law and law enforcement and the role lawyers will play in determining and interpreting the U.S. response to the attacks. In addition to the panel discussion, Caron also led an earlier talk that outlined the international legal framework guiding the military response.

COMING THIS SPRING

New Look for Boalt Website

This spring the School of Law will unveil its redesigned website, which will include many features to help alumni stay in touch with the Boalt community. The school's online presence will provide career support and class reunion pages, as well as news about Boalt and fellow graduates. It will also feature an event calendar, alumni directory and much more. The updated website will highlight distinguished alumni, faculty members and students whose accomplishments enrich the intellectual vitality of the school. The address remains www.law.berkeley.edu, so check back later this spring to see our new site.

RAISING THE BAR

Students Organize First-Ever Latino Judges Conference

In October Boalt Hall students hosted an unprecedented conference focused on the accomplishments of Latino members of the judiciary and the challenges currently facing Latinos aspiring to the bench. Spearheaded by the *Berkeley La Raza Law Journal*, the conference, Raising the Bar: Latino Presence in the Judiciary and the Struggle for Representation, brought together state and federal judges from across the country.

Timed to commemorate the 40th anniversary of the appointment of the first Latino to the federal judiciary, the event was organized by Victor Rodriguez '03, who began planning the symposium after attending a similar conference for African-American judges. "After doing some research, I found there was nothing like that for Latino judges," says Rodriguez. Though many warned him that the logistics of putting together such an event were too big

for a student group to handle, Rodriguez persevered. The result was the first national conference for Latino judges.

"There is a real and continuing need for Latino and Latina organizations like the ones sponsoring this event, as well as for many other community groups throughout the country, to exist and to continue their efforts to assist women and men of all colors in their pursuit of equality in the judicial system," said Judge Sonia Sotomayor of the U.S. Court of Appeals for the 2nd Circuit during the Mario G. Olmos Memorial Lecture, which began the conference.

The two-day symposium included a series of panels featuring Latino judges, practitioners, educators and political advocates. One panel dedicated to pioneers on the bench included such notables as former Justice Cruz Reynoso '58, the first Latino appointed to the California Supreme Court; Justice Carlos Moreno, recently appointed to the California Supreme Court; Judge Frances Muñoz of the Orange County Superior Court, the first Latina to serve in the California judiciary; and Chief Justice Patricio Serna of the New Mexico Supreme Court, the nation's only Latino chief justice. The panelists offered both congratulations and advice to law students in the audience.

"It's up to you to take it further when we go," said Serna, while choking back tears. "And I'm so proud to leave it in your hands."

In addition to a celebratory examination of accomplishments, conference participants took a critical look at the barriers facing Latinos and Latinas aspiring to gain judicial appointments.



Victor Rodriguez '03 and Judge Sonia Sotomayor of the U.S. Court of Appeals for the 2nd Circuit enjoy the reception following Sotomayor's keynote address for the Mario G. Olmos Memorial Lecture; Friday's event marked the beginning of the two-day symposium.

"In California a large percentage of the population is Latino, and we ought to have some representation of that population in the judiciary," says Reynoso. "I would hope that one of the results of this conference will be that it will energize those in the Latino community who are actively working to ensure that a greater number of Latinos be appointed to the bench."

Some of the most impassioned words at the conference came from those offering direction to students wanting to play an active role in improving Latino representation—both on the bench and in the nation's top law schools. "I come from a generation where the law was a tool for social change. Frankly that has changed," Sotomayor stated during her lecture.

"Change is going to have to come from the political arena and you can use your legal tools in that arena," continued Sotomayor. "The battlefield is going to be in the voting booth."



Former Justice Cruz Reynoso '58 of the California Supreme Court, Justice Carlos Moreno of the California Supreme Court, Judge Frances Muñoz of the Orange County Superior Court and Chief Justice Patricio Serna of the New Mexico Supreme Court (left to right) share their experiences during the Pioneers on the Bench panel discussion.

New Death Penalty Clinic Serves Vital Role

Racheal Turner '02 is working on an *amicus* brief in support of a client facing capital punishment who argues that the jury that convicted him was chosen by prosecutors in a racially discriminatory manner. In another death penalty case, Maria Lin '02 is helping write a brief in support of Texas lawyers who are fighting for the right to be compensated when they seek clemency. Jee Park '03 and Shannon Dyer '02 are part of a legal team representing a death row inmate in the South.

Four longtime public interest attorneys going about their daily work? No, law students getting invaluable real-life experience in Boalt's Death Penalty Clinic, which opened its doors this past fall.

Park, who enrolled in Boalt after working for a nonprofit organization that represents condemned prisoners, "jumped at the chance" to join the clinic. "Here was an opportunity," she says, "for me to do the exact type of work that motivated me to come to law school in the first place."

Lin says the clinic "provides much-needed legal assistance to defendants" who are "highly underrepresented." She hopes participating in the clinic will encourage more grads to go into criminal law, "which desperately needs talented and committed people."

Before coming to Boalt, Dyer was pretty sure she had an interest in the death penalty area. "Now, thanks to the clinic, I know I do," she says. Dyer realized after her first visit to death row that "no classroom experience could ever teach me what a prison smells like or sounds like."

With its hands-on emphasis, "the clinic

provides a different kind of legal education," explains Turner, "where we can put what we have learned in the classroom into action and make a significant difference to a very needy population."

According to Professor Elisabeth Semel, the director of the newest arm of Boalt's Center for Clinical Education, the clinic's objectives include teaching students how to work on complex, challenging and vitally important cases, and instilling in them the desire to use their skills to improve the quality of justice.

"Our students make a contribution by working as part of a legal team representing individuals who face the ultimate punishment," says Semel, a nationally recognized capital punishment litigator who formerly served as director of the ABA Death Penalty Representation Project. "Inevitably, students in the clinic will grapple with some of the troubling, systemic questions about the administration of the death penalty.

"Students gain experience that will make them assets to the legal profession, no matter what area of practice they choose," adds Semel.

By merging academia with the real world, the clinic successfully accomplishes dual goals: to teach and to provide critical legal services. As Professor Charles Weisselberg, the clinic's other faculty supervisor and the director of Boalt's Center for Clinical Education, says, "Many students and faculty members are finding the clinic a terrific way to learn about both law and practice—with cases that really matter."

CROSSING CULTURES

Legal Scholars and Jurists Examine Reforms to Japanese Judicial System

One of the most hotly debated issues in Japanese legal circles recently has been a set of proposed reforms to Japan's judicial system. This past summer Boalt Hall's Sho Sato Program in Japanese and U.S. Law joined the Japanese Association for the Sociology of Law in sponsoring an international symposium focused on these contested reforms.

Held in Tokyo, The Role of the Judiciary in Changing Societies symposium featured papers by Boalt Professor Harry Scheiber, director of the Sho Sato Program, and Kathleen Vanden Heuvel '86, deputy director of the law school's library. Using judicial reform in California as a case study, Scheiber's presentation focused on comparative legal change while Vanden Heuvel's discussion addressed technological innovations and the judicial system.

The event took place at Gakushuin University—one of Japan's top private institutions—and included lectures by Professor Takao Tanase of Kyoto University and Setsuo Miyazawa of Waseda University, both of whom have served as visiting Sho Sato professors. One of the co-directors, Professor Masayuki Murayama '79 of Chiba University, graduated with a Ph.D. from Boalt's Jurisprudence and Social Policy Program.

The conference also featured leading jurists from Japan, China and Europe (including a chief judge of China's supreme court for civil cases and a senior chief judge of a German state court), as well as legal academics from several countries. For more information about the conference, please visit www.soc.nii.ac.jp/hosha/english/eindex.htm.

Leigh Steinberg '73, a leading figure in sports management and marketing, spoke this past October at Boalt Hall about how sports representation has evolved and where it's headed today. Steinberg also covered such issues as how athletes can serve as role models, the keys to negotiating well and the effect of ancillary revenue sources on the sports management business.



GOOD COP, BAD COP

Recent Grad Wins National Writing Contest

Alistair Newbern '00 was recently selected as the winner of the 2001 Ross Student Writing Contest for her article "Good Cop, Bad Cop: Federal Prosecution of State-Legalized Medical Marijuana Use After *United States v. Lopez*." Published in the October 2000 edition of the *California Law Review*, "Good Cop, Bad Cop" was chosen from a pool of more than 70 entries.

"The article argues that, under the Supreme Court's recent decisions limiting the scope of the interstate commerce clause—namely *Lopez* and *Morrison*—the federal government's power to prosecute the use of marijuana for medical purposes in states where it has been legalized is not the foregone conclusion it once was," explains Newbern.

Newbern became interested in this controversial topic when California was trying to develop a strategy to lawfully

Alistair Newbern '00 (second from left) celebrates receiving her award at the ABA annual meeting with her father, Judge David Newbern (far left), mother, Carolyn Newbern (second from right), and ABA Journal editor and publisher Danial Kim (far right).



implement Proposition 215, which legalized medical marijuana use in the state. "Most of the legal challenges on this topic in the past had been based on equal protection or due process arguments, and had not been successful. I loved the idea that *Lopez*, of all cases, could succeed where others had failed. It showed me that as an advocate, you have to look for your arguments in unexpected places," says Newbern. Now living in Nashville, Tennessee, Newbern works as an associate with the San Francisco-based law

firm of Lief, Cabraser, Heimann & Bernstein LLP.

Cosponsored by the *ABA Journal*/board of editors and the Section of Legal Education and Admissions to the Bar, the Ross Student Writing Contest is one of the most lucrative legal writing competitions in the country, with a prize of at least \$7,500 and a trip to the ABA's annual meeting. The contest is supported by a trust established more than 60 years ago by the late Judge Erskine M. Ross of Los Angeles.

Protecting the Public Interest: A Look at Technology Laws

What are the free speech implications of the Digital Millennium Copyright Act or the cultural ramifications of copyright term extensions? What are the legal issues surrounding reverse engineering and what is the impact of intellectual property expansion on the public domain? These are just some of the concerns presented by professors from university technology clinics and high-technology centers across the nation at Defining the Public Interest in Law and Technology, a forum sponsored by Boalt's Samuelson Law, Technology and Public Policy Clinic.

Lawyers from academia, government, nonprofit organizations and private practice convened this past September at Boalt to examine and discuss these issues and the effect of recent high-technology

laws and court cases on the public interest.

"The forum gave us the opportunity to collaborate on a larger scale with a greater number of colleagues," says Professor Deirdre Mulligan, director of the Samuelson Clinic. "The result is that we all drew on the strengths and creativity of each program, and we can work together to support our students and clients by offering the most comprehensive program possible."

Technology clinics now exist at Boalt, American University and Stanford University; and there are high-technology centers at Duke Law School, Harvard Law School and the University of Washington. After the public session of the forum, representatives from the growing number of these clinics and from nonprofits working in the

public-interest field of high technology held a private session to discuss how to balance the educational needs of students with the needs of clients and projects; build relationships with attorneys, faculty and organizations; identify emerging issues; and set goals and measurements for their clinical programs.

Several new collaborative projects were introduced, including Chilling Effects, a website that acts as a clearinghouse, cataloguing and providing analysis of technology-associated cease and desist letters, as well as additional information for recipients of such letters.

For more information about the forum, please visit the Samuelson Clinic website at www.law.berkeley.edu/academics/samuelson/.

COMMUNITY CONNECTIONS

EBCLC Recognized for Serving Low-Income Residents

The East Bay Community Law Center (EBCLC) works as an advocate for underserved members of the local community, championing a wide array of causes—including rent control, welfare reform and disability benefits for those with HIV and AIDS. Recognizing the center's impact on the community, UC Berkeley has selected the EBCLC as a notable University-Community Partnership Project for 2000-01. Presented in the fall by Chancellor Robert Berdahl, the award honors campus and community collaborations that use university resources to address the pressing needs of local residents.

"The award acknowledges the important linkage the EBCLC provides between the university and the community," says Bernida Reagan, executive director of the EBCLC. "It provides us with an opportunity to rededicate ourselves to our

community outreach and education purpose and to reflect on how we can continue to build stronger and more effective partnerships."

Since the center's founding in 1988, EBCLC staff attorneys have supervised more than 500 law students in handling over 15,000 legal matters for the community—making EBCLC the East Bay's largest provider of legal services for low-income residents. "Our goals include providing holistic, comprehensive, client-centered services and working in partnership with our students, clients, community partners and others to achieve justice through education and advocacy," explains Reagan.

In addition to providing a vital resource for area residents, the EBCLC also provides invaluable hands-on legal training to student interns from Boalt, who are

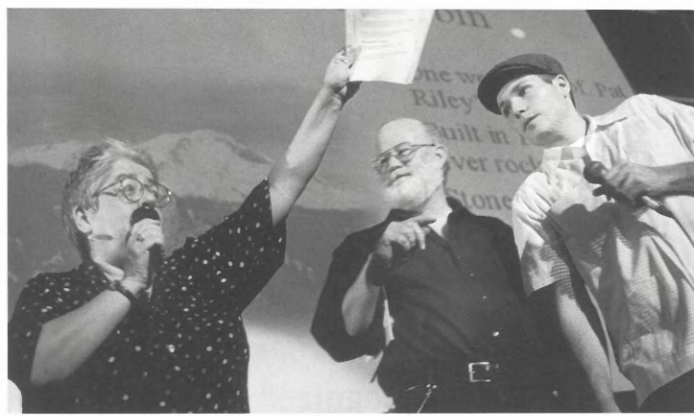
responsible for their own caseloads. "When you have a real deadline and a real client who's either going to eat or not, who's either going to have a roof over his or her head next month or not, it really helps focus your head on the issues," says David Lee '02, who has worked with the EBCLC since his first semester at Boalt. "Looking at a set of facts with a particular client in mind definitely improved my ability to do legal research and writing."

The EBCLC is also celebrating the development of the Bay Area Construction Sector Intervention Collaborative (BACSIC). The product of more than two years of effort from the center's staff and student interns, BACSIC is a support system designed to enable those previously excluded from construction sector employment to work in this high-paying industry.

Other notable accomplishments for the center in 2001 include working through the Low-Income Eviction Project to defend more than 1,000 tenants in eviction actions, and establishing a community credit union that offers desperately needed banking, credit and financial counseling services to area residents. In addition, Bernida Reagan was honored by the AALS with the 2002 William Pincus Award for Outstanding Contributions to Clinical Legal Education.

EBCLC staff and students attend the fall ceremony during which Chancellor Robert Berdahl honors the center as a 2000-01 University-Community Partnership Project.





Dean of Students Victoria Ortiz (left), Professor Robert Berring '74 (center) and Tom Clifford '03 (right) solicit bids during the Berkeley Law Foundation's live auction.

TO THE HIGHEST BIDDER

Offbeat Auction Raises Funds for Fellowship

In the past one of the few options for students looking for a little one-on-one time with a professor was a visit during office hours. Now, thanks to the Berkeley Law Foundation's (BLF) annual auction, students have the opportunity to join their professors as they let loose at a Latin dance club or play the ponies at a racetrack.

Quickly becoming a not-to-be-missed Boalt Hall tradition, the BLF Auction Extravaganza showcases hundreds of items donated by businesses, students, professors, staff and alumni—with the highlight being the offbeat offerings donated by Boalt faculty. This year's donations included a sing-along with feminist

legal scholar Angela Harris; an afternoon at the racetrack with constitutional law expert Jesse Choper; and the opportunity to direct a "live" chess game using professors as the pieces.

"This year's auction was so wonderful because of the collective effort of so many dedicated individuals," says Auction Chair Thuy Le '03. "It was great to see the Boalt community pull together to make the event a success." The auction raised more than \$35,000 and was attended by nearly 1,000 members of the local legal community—many dressed in costume or formal attire.

Proceeds from the event serve as the main

source of funding for the BLF's Phoenix Fellowship, which promotes diversity in the legal profession by encouraging minority applicants to choose Boalt and providing funding to students pursuing a career in public interest law.

"The BLF is a critical presence at Boalt," says Dean of Students Victoria Ortiz, who emceed the live auction. "The auction raises funds that are used to help attract and support students who are committed to public interest legal work. It is a tremendous community builder."

HIGH-TECH TRAINING

BCLT Takes the Federal Judiciary into Cyberspace

In the past decade, the United States has enacted more pages of copyright law than during the prior two centuries. The extension of patent law to cover software, business methods and gene sequences has caused the number of patent applications and grants to skyrocket. Adding to this flood of new issues surrounding intellectual property rights, the race to claim domain names has fueled an unprecedented number of trademark disputes.

Recognizing the tremendous challenge these developments pose to the country's already overworked judiciary, Professor Peter Menell, executive director of the Berkeley Center for Law & Technology (BCLT), contacted the Federal Judicial Center (FJC) in 1997 to offer the services of the nation's top IP program. The FJC, the education and research agency for the federal courts, immediately took Menell up on his offer, inviting BCLT to organize a three-day

training program in IP and cyberlaw for 40 judges the following summer.

The challenge then fell to Menell and other members of Boalt's IP faculty to develop a comprehensive program covering patent, copyright and trademark law as well as the rapidly evolving field of cyberlaw. Confronted with the task of condensing this wealth of material into a three-day program, Menell developed a series of interactive multimedia presentations using movie clips, music and images to demonstrate the intricacies of IP law and offer concrete examples of IP-related disputes.

To assist in the program, BCLT's faculty also assembled a team of some of the nation's top IP experts, including Boalt Professors Robert Merges, Pamela Samuelson and Mark Lemley '91, as well as copyright expert David Nimmer, trademark expert J. Thomas McCarthy Jr. and leading practitioners from BCLT's extraordinary

group of law firm sponsors.

Following this initial program, BCLT and the FJC have forged a unique and highly successful relationship—making the IP retreat an annual event. Over the years, the program has received stellar reviews from its participants. Judge Fern Smith, director of the FJC, described the retreat as "one of the best that I have ever attended" and commented that the FJC "looks forward to a long and mutually productive relationship [with Boalt Hall]."

In addition, the FJC has drawn on BCLT to organize nearly a dozen other programs, which have reached more than 800 federal judges over the past four years. For the 2001-02 academic year, BCLT has organized two successful half-day programs, in San Diego and New Orleans, as part of the FJC's national workshops. Currently, BCLT is gearing up for this summer's annual IP program.

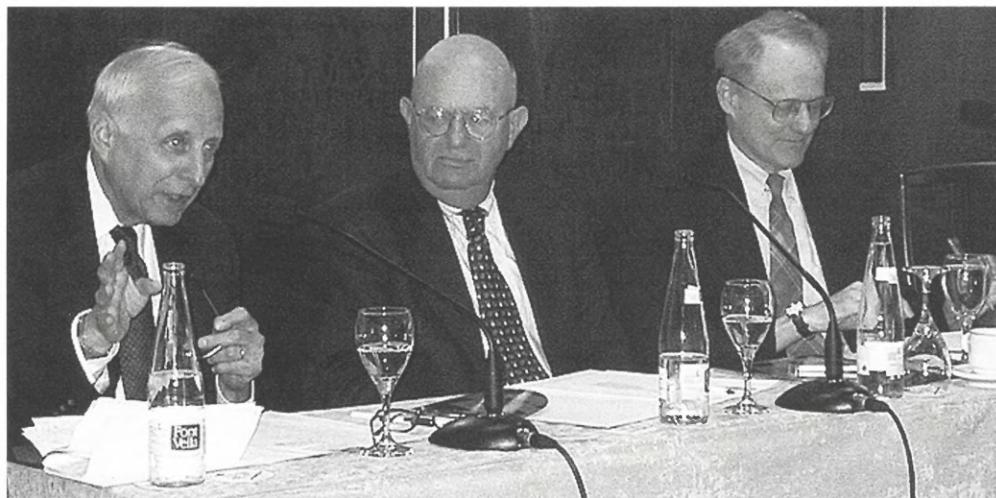
INTERNATIONAL PERSPECTIVES

Exploring Judicial Power in Democratic Societies

Boalt Hall's Robbins Collection, assisted by the Universitat Autònoma de Barcelona, Spain, hosted a conference in June 2001 for judges and legal scholars from France, Germany, Portugal, Spain and the United States. The multi-day conference, titled *Judicial Power and the Rule of Law: Visiones Comparadas*, took place in Barcelona and Sitges, Spain.

By bringing together some of the most important judicial officials and preeminent legal scholars in Europe and the United States, the conference provided a forum for examining in an unprecedented manner the relationship between the theory and practice of judicial power. Robbins Collection Director Laurent Mayali and Professor Antonio Serrano of the law faculty at the Universitat Autònoma de Barcelona, working in collaboration with Professor Bernard Durand, dean of the law faculty at the Université Montpellier I, were instrumental in organizing a distinguished group of conference participants. Speakers included the chief justices of the Catalan, French and Spanish supreme courts; the chief justice of the German federal administrative court; the former Spanish minister of justice; and prominent judges from the U.S. Court of Appeals.

The judicial portion of the conference reflected the diversity of political, social and cultural roles that the judicial system plays in contemporary democratic nations, and highlighted the most current and controversial issues facing their countries. It included a lively debate on the judicialization of public policy in the United States; a discussion of the challenges faced by the Spanish justice system as it has evolved in the post-Franco



Chief Judge Edward Becker of the U.S. Court of Appeals for the 3rd Circuit and Judges Laurence Silberman and Stephen Williams of the U.S. Court of Appeals for the D.C. Circuit (left to right) debate the judicialization of public policy in the United States during the conference held in Spain last June.

transition to democracy; several perspectives on government-by-judges and the quality of justice in France; and a presentation on the pivotal role of the judiciary in the deregulation of railways and telecommunications in Germany. The diverse style of discourse among the judges suggested notable distinctions between American and European judicial cultures.

Complementing the judges' discussions, legal scholars examined both the historical foundations and current functions of judicial power in Western democracies. Dean John P. Dwyer '80 and Boalt faculty members Jesse Choper, Eric Rakowski, Howard Shelanski '92 and John Yoo represented the United States. Rakowski and Shelanski discussed judicial, legislative and voter responses to suits seeking legal recognition of same-sex marriages in Alaska,

California, Hawaii and Vermont. Choper and Yoo debated the role of the U.S. Supreme Court in the 2000 presidential election, with Dwyer and Mayali moderating the American panels. A number of prominent European legal scholars presented similar national perspectives.

While the conference sessions were the centerpiece of the three-day meeting, the generous collaboration of the Spanish and Catalan governments added significantly to the program of events. Participants enjoyed the singular honor of attending a dinner hosted by the prime minister of Catalonia, Artur Mas, at the Palace of the Generalitat of Catalonia, a magnificent building that few visitors have the opportunity to view.

The success of this conference has led to plans for a second conference to be held September 2002 in Berkeley.

Screen Gems Give Professor's IP Classes a Little Glamour

In Professor Peter Menell's classroom, there are more stars than a Hollywood back lot. Bruce Willis is there. So is Jimmy Stewart. Alfred Hitchcock shows up occasionally, and even crooners like the Bee Gees and George Harrison make cameo appearances. OK. They don't show up in person—a couple of them are dead, after all. But expired or not, the stars help Menell give everyone from judges to law school students a taste of copyright law.

Menell hopes a little Tinseltown glitter will help his students stay engaged as they learn the complexities of intellectual property. "It's a new model for educating to use visual metaphors and digital media to capture the complex rules and institutions and to bring the actual work at issue in a case into the classroom in a visual way," Menell says.

The idea came to Menell in 1977 when he wrote to the Federal Judicial Center, a Washington, D.C.-based group that funds education for judges. Menell offered to put together a crash course on IP for federal judges. The course was a hit. "We've gotten a phenomenal response from the judges," Menell says. "Traditionally they have been a persnickety audience."

Menell has been refining the project over the years and using it in law and business classes and educational seminars for attorneys. The curriculum, included in a PowerPoint presentation, is replete with movie clips, sound recordings and images from major IP disputes. "Words on a page can't show the similarities" between two works of art, Menell says. But through computer animation, the similarities are tangible.

In one of his slides, the notes and words of two sound recordings—the Chiffons' "He's So Fine" and former Beatle George Harrison's "My Sweet Love"—appear side by side and then the songs are spliced together. One can see and hear why the Chiffons sued Harrison for infringement. Another slide shows a clip from the movie *12 Monkeys* in which Bruce Willis is in an interrogation room, pinned to a medieval-looking chair. When a Lebius Woods graphic appears next to the clip, a striking resemblance is apparent between the two.

Menell uses another movie to explain a complex copyright issue—the transfer of rights to derivative works. Alfred Hitchcock and Jimmy Stewart obtained rights to the film version of a dime-store detective story on which *Rear Window* is based. The author died before renewing his copyright and it was transferred to another fellow who sued Hitchcock and Stewart's production company for infringement. The presentation boils copyright law down to the "Newtonian level" to see what triggers infringement, Menell says.

Menell has taken his show on the road, including it in seminars he created with copyright experts David Nimmer, author of *Nimmer on Copyright*, and Lon Sobel, publisher of the *Entertainment Law Reporter*.

Menell's passion for teaching goes beyond the legal community. Every year he makes a presentation at his children's school. For his son's fifth-grade class, he "broke down one invention, a cheese slicer, to compare the parts and how the patent law applies."

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MAKING HER MARK

Student Launches Youth Volunteer Program

Nicky Ozer '03 doesn't just dream about making a difference, she takes action. While volunteering in her hometown of Palo Alto, Ozer discovered that junior high and high school students are willing to volunteer in their community, but often need some guidance.

Working with the Volunteer Exchange of Santa Clara County and the San Jose Junior League, Ozer launched Youth with Promise just as she began law school. It is a program that connects youths to quality volunteer opportunities and trains youth leaders in recruiting students to get involved.

"I found so many young people were excited to make a difference," says Ozer, "but 16-year-olds who are leaders of 200- to 300-person service groups really need some support."

Fueled by Ozer's dedication, the success of Youth with Promise caught the attention of *San Jose Magazine*, which recently honored Ozer as one of "20 Women Making a Mark in Silicon Valley."

"Helping young people see their power to improve the community and their own life is the greatest reward of working with the program," Ozer says.

In addition to her work for Youth with Promise, Ozer holds several student leadership positions and is a student member of Boalt's alumni board.

A Community Making a Difference

We at Boalt Hall take pride in the accomplishments of our distinguished community of alumni, faculty, students and friends whose contributions to the profession and our society are inspirational. We also appreciate the generous financial contributions of these people as we increasingly rely upon private support to safeguard Boalt's stature as one of the nation's preeminent institutions of legal education and research.

Robert '53 and Joann Burch, Ted '59 and Doris Lee, and Masako Sato—as well as a group of alumni and friends at Folger Levin & Kahn—exemplify this spirit of generosity. Their foresight and commitment are at the heart of what makes Boalt a leader in legal scholarship and education and sustains its tradition of excellence.

The Robert and Joann Burch Distinguished Professorship

An experienced tax lawyer, Robert Burch understands the important role faculty and students can play in tackling this complex field. In 1994 he and his wife, Joann Burch, created the Robert D. Burch Center for Tax Policy and Public Finance and the Robert D. Burch Chair in Law and Economics. The endowments have helped to develop a model interdisciplinary research and policy analysis program and entice the field's top scholars to the school.

Inspired by the success of these endeavors, the Burches also created the Robert and Joann Burch Distinguished Professorship, which focuses on tax law and policy. "I'm very appreciative of the university and its accomplishments," says

Robert Burch. "I want to augment its efforts to promote more intelligent and efficient tax policies." The Burches' generosity will help ensure that Boalt continues to be a leader in this field.

The Theodore Bo Lee and Doris Shoong Lee Chair in Law

In 1959 it was a rare individual who was willing to tackle a second discipline while pursuing a degree at Boalt Hall. Having earned an M.B.A. as well as a J.D., Ted Lee is familiar with the benefits and challenges of a rigorous interdisciplinary education.

"The flexibility and interdisciplinary nature of the academic programs at Cal provided an excellent preparation for my professional endeavors," comments Ted Lee. "I want to support these programs and promote the kind of multidisciplinary education necessary for high-quality professional practice."

In keeping with this sentiment, Ted Lee and his wife, Doris Shoong Lee, established the Theodore Bo Lee and Doris Shoong Lee Chair in Law. Distinguished visitors will teach about the intersection of real estate, land-use planning and related areas of environmental law, and help foster collaborative efforts between the law school and other campus departments.

The Sho and Masako F. Sato Fellowship

During his 30-year tenure, Professor Sho Sato and his wife, Masako Sato, were devoted members of the Boalt Hall community who committed themselves to the school's success. Through generous contributions, Masako Sato has continued this commitment even after her husband's death in 1986.

"I remember the scholarship my husband received to attend law school and how important it was to us then," says Masako Sato. "No qualified student should be prevented from attending Boalt because of financial need." In an effort to ease the hardships caused by the escalating cost of tuition, Masako Sato endowed the Sho and Masako F. Sato Fellowship to provide three-year grants for entering students. The fellowship will allow Boalt to continue to enroll the very best students regardless of their financial circumstances. Masako Sato has created an enduring legacy reflective of her long-standing commitment to Boalt Hall while at the same time honoring the accomplishments of her late husband.

The Folger Levin & Kahn Endowed Diversity Fund

For 18 partners and associates at Folger Levin & Kahn in San Francisco, selecting Boalt Hall as the recipient of a generous gift was an easy choice.

"With so many Boalt alumni here, and with the backing of the firm's leadership, we all wanted to do something significant to enhance diversity at Boalt," says Adam Sachs '86. "Establishing this scholarship made sense. We in the firm got together and each committed to a five-year pledge so we could really have a positive impact on the lives of students."

Scholarships from the Folger Levin & Kahn Endowed Diversity Fund will be awarded annually.

Story by Leslie A. Gordon
Illustration by Rafael López

International Human Rights Law Clinic students

TRANSCENDING *fight to give asylum seekers a second chance* BOUNDARIES

CARLOS AND ROBERTO* were professionals in their native country of Colombia: Roberto, 39, was an attorney, and Carlos, 41, was a businessman. Soon after they moved in together, Carlos and Roberto began receiving threatening notes under their door, as well as extortion demands—all related to their sexual orientation. On several occasions, they were picked up by Colombian police and searched, threatened and beaten. They had to keep moving to avoid persecution. After a brief visit to the United States, they returned to Colombia and settled in a different town to avoid harassment. Within days, the threats started again. One day Carlos's brother—who looks exactly like Carlos—was driving Carlos's car and was shot. Realizing they were not safe anywhere in their homeland, Carlos and Roberto immediately left for the Bay Area. ➤➤

* Certain names have been changed to protect the confidentiality of clients of the International Human Rights Law Clinic and their families.





“THE STUDENTS WOULD BE WORKING AT THE CLINIC EVEN ON SUNDAYS AT 1:00 A.M. THEY WERE UNTIRINGLY WORKING ON OUR PROJECT. THEY WERE NOT JUST UNDERSTANDING OUR CASE BUT ALSO HELPING US TO ASSIMILATE.”

A Second Chance

Once here, the couple sought assistance from the Lawyers' Committee for Civil Rights of San Francisco, which referred the case to Boalt Hall's International Human Rights Law Clinic. Four Boalt students—a pair for each man—spent five months preparing petitions for political asylum before the Immigration and Naturalization Service (INS).

“It's emotionally difficult to talk about the details of your lives with people you don't know,” recalls Carlos, who is mustached and talkative. “But the clinic was tactful. In working with the students, we soon understood that we were not as bad as we thought. We had felt guilty and wrong for being homosexual.”

In preparing the asylum case, the couple met weekly—sometimes twice weekly—with the student advocates, who were in close telephone contact.

“The students would be working at the clinic even on Sundays at 1:00 a.m.,” Carlos remembers. “They were untiringly working on our project. They were not just understanding our case but also helping us to assimilate.”

Damir Arnaut '02 is one of the students who represented Roberto. A native of Bosnia

who was granted asylum himself as a teenager, Arnaut, 26, described representing Roberto as both “just wonderful” and “overwhelming.” He explains, “There was so much responsibility placed on our backs. In a sense, a person's life is in your hands.”

Together with his three clinic partners, Arnaut drafted the couple's asylum applications, which ended up being 14 pages, and assembled an evidentiary appendix about social cleansing groups in Colombia. (For ethical reasons, Carlos and Roberto were treated as individual clients with coordinated applications.) The students also conducted mock interviews so Carlos and Roberto would be prepared for their INS hearing.

In a formality not typical for an asylum hearing, the students made a request to the INS to give a closing statement. Arnaut says he wasn't nervous about his first oral argument. “My client was composed throughout the interview,” he recalls. “I thought, if he was able to do it, I should be too.”

Two weeks after the hearing, Carlos, Roberto and the four student advocates learned that asylum had been granted. “It was a really emotional moment,” Arnaut says.

“Our case wasn't easy,” adds Roberto, who

is quietly intelligent. “There were a number of grounds on which the INS could have denied our case. But the students did their homework as much as possible, so we felt we would win.”

Today, with asylum granted, Carlos works as a freelance bookkeeper and Roberto works at a social service agency. Both men spend free time volunteering for the San Francisco AIDS Foundation and Project Inform.

“I can't imagine how it would have been without the students,” Carlos says about the asylum applications and hearing. “It's such an involved process. And economically, we wouldn't have been able to hire attorneys.”

Real-Life Challenges and Rewards

Established in 1998, Boalt Hall's International Human Rights Law Clinic is part of the law school's Center for Clinical Education. The goal of the clinic is for students like Arnaut to discover the real-life challenges and rewards of working directly with clients and serving underrepresented members of society.

The clinic helps survivors of human rights abuses in two ways. First, students represent refugees like Carlos and Roberto who are seeking political asylum in the United States. To date, the clinic has won

PRACTICING COMPLEX DECISION MAKING AND
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every asylum case—nearly 30—in which the INS has issued a final decision.

Second, students work with human rights organizations on larger projects, which have included a study of the attitudes of Bosnian judges and prosecutors toward war crimes trials, international litigation regarding the treatment of Haitian migrant workers, and a globalization project that aims to improve labor rights in Mexico.

The clinic is funded primarily through private support, including foundations and individual donors. The clinic, which also receives support from the university's Human Rights Center, is directed by Professor Patty Blum, Boalt's asylum expert who lobbied to make the clinic the first project of the Center for Clinical Education.

About 12 students work in the clinic each semester, although demand from students is rising, says Professor Laurel Fletcher, the clinic's associate director. The directors look for students with enthusiasm and a willingness to learn and work hard. Depending on the current crop of active cases, being bilingual may be an asset.

Providing what Blum calls “very intense supervision,” she and Fletcher meet weekly

with the student teams and almost daily with individual students. Participants receive academic credit both for their work with clients and for taking the companion seminar that focuses on human rights law, lawyering skills (interviewing, counseling and case planning) and critical reflection on the role of the human rights lawyer.

Arnaut, who plans to pursue pro bono international human rights work throughout his legal career, explains there are no grades for the client work. “But you come to see the result of the case as your grade,” he says, “except the effects are so much greater.”

The Center for Clinical Education, the umbrella organization for Boalt's three in-house clinics, was established under former Dean Herma Hill Kay. In the early 1990s, Kay enlisted Professor Eleanor Swift to coordinate efforts to start a comprehensive clinical program.

“In researching clinical education, we learned the benefits of creating opportunities for students to act in the role of lawyer,” says Swift, “and to handle substantive, procedural and ethical issues in an integrated way in solving a client's problem.” She adds that both faculty and alumni have enthusiastically

supported the center. Practicing complex decision making and developing an ethical relationship with a real client “really opens up the world of law and makes students realize why they came to law school,” Swift says.

Unique Cases Large and Small

The International Human Rights Law Clinic gives students the opportunity to look beyond the U.S. legal system and practice law in a variety of venues, says Blum. The clinic chooses asylum cases from Bay Area human rights organizations such as the Lawyers' Committee for Civil Rights. Blum and Fletcher screen potential cases, weeding through garden-variety asylum applications for those with legal challenges that would benefit from student research. They look for a mix of legal issues and nationalities, so students get exposure to the spectrum of international human rights and asylum law.

One such case involved Thomas, a soft-spoken schoolteacher and playwright who had worked for social change in his native Kenya. After teaching his students the history of their country, Thomas was abducted and taken to a torture center in Nairobi. Once released, he was on the run. The police raped



“IN LOTS OF WAYS WORKING AT THE CLINIC ENRICHED MY SUBSTANTIVE COURSES. ... AND THE LITIGATION STRATEGY I LEARNED HAS MADE THE TRANSITION FROM LAW SCHOOL TO WORK MUCH EASIER.”

and mutilated his sister when they couldn't locate Thomas at his parents' home. He fled the country after police murdered his fiancée. As with Carlos and Roberto, clinic students represented Thomas and he gained asylum in the United States; he now runs a successful business in the Bay Area.

Blum and Fletcher also strive to provide interdisciplinary opportunities with the clinic's large human rights litigation and research projects. For example, on the recent globalization project focusing on Mexican labor issues, the clinic is working closely with the university's Center for Latin American Studies.

In another case, the clinic is co-representing Eduardo, a professor from the University of El Salvador, who was arrested and tortured by the El Salvador government because he was suspected of sympathizing with the opposition. Under two unique U.S. statutes, aliens and citizens can sue those who perpetrated human rights abuses, even if they occurred on foreign soil. Eduardo's case, based on those statutes, is scheduled for trial in 2002, and Boalt students helped to draft jury instructions, prepare clients and screen witnesses.

“The Boalt students [working on

Eduardo's case] have been very capable,” says Peter Stern '92, a litigation partner at Morrison & Foerster LLP who is working on the El Salvador case. “Students have contributed very useful legal research, have gathered evidence and have served as a sounding board for our ideas.”

Stern adds that law students with experience in international law are increasingly marketable. “In today's world, international law is connected to American law in important ways and is becoming more and more important for everyday practitioners,” Stern says. “Law firms ought to be paying attention to students who have that kind of experience.”

Anne Mahle '01 worked for more than two years on Eduardo's case, as well as the clinic's Bosnia war tribunals study. According to Blum, Mahle tracked down witnesses, helped prepare for the depositions of the defendants and their witnesses, and summarized books, articles and cases on everything from the structure of the Salvadoran military, to commonly used torture techniques, to obscure jurisprudence from the post-World War II military commission prosecutions. As a result, she won the Brian M. Sax Prize for Excellence

in Clinical Advocacy in her third year.

“In lots of ways working at the clinic enriched my substantive courses,” says Mahle, now a litigator at the Minneapolis law firm of Faegre & Benson LLP who continues to do pro bono work. “Evidence, for example, was infinitely easier after having actually responded to document requests. And the litigation strategy I learned has made the transition from law school to work much easier.”

Mahle adds that she received “fantastic mentoring” from Blum and Fletcher. And she gained a “perspective about what people endure, which is incredibly important in law school.”

But as much as the clinic benefits Boalt students, the real beneficiaries are its clients.

“Our lives are more at peace,” Roberto says about the asylum granted to him and his partner, Carlos. “We have more security. We're among people who understand us and care about us. We don't have to hide our sexual orientation from anyone.”

Carlos adds, “It was very difficult to leave our families, our work. But it was worth it in order to be who we are. Our families are over there and okay and we're over here a happy couple. And since then, no one has threatened us.”

Pioneering International Human Rights

FRANK NEWMAN '41 CREATES A LEGACY



On a 1978 ski vacation in California, Michael Posner '75, then a junior associate at a Chicago law firm, returned from the slopes one afternoon to receive this message: "Urgent call from Frank Newman."

It turns out that Newman, a professor Posner had known while a student at Boalt, was advising a group of New York attorneys who were founding a human rights organization and searching for the organization's first director.

"Frank told me, 'The application deadline's passed, but I convinced them to talk to you. Can you get to New York in three days?'" Posner recalls with amusement. "A week later I was offered the job and three weeks later I was living in New York."

Thanks to Newman, Posner became the executive director of the Lawyers' Committee for Human Rights, a position he still holds today.

Similar stories are echoed by many of Newman's former students and colleagues. A devout human rights activist, onetime Boalt dean and former California Supreme Court justice, Newman is legendary for energizing an entire generation of human rights lawyers.

A Passionate Advocate

Professor Emeritus Robert Cole joined Boalt's faculty in 1961, two weeks after Newman was appointed dean. "Frank was young, energetic, progressive and had a real vision of the future," Cole remembers. "He was very public-interested and

supported innovative research at the law school."

According to his colleagues, Newman was a reformist scholar and an unusual thinker, and as a result, his deanship, which he held until 1966, received mixed reviews among the older, more conservative faculty. But under Newman's tutelage, Boalt was on "a terrific upward trajectory" in the early '60s, according to Cole. "It was when our national reputation really got made—it was a period of terrific growth."

As a legal scholar, Newman was a regulatory law expert with an interest in legal education reform. Later in his career he developed a passion for international human rights, even advising the Carter administration in coining the term.

"Frank realized that there were few people working in the field of human rights and he also realized how much work there was to be done," Posner says. "He knew there was the potential for a few people to make a difference."

So in the 1970s Newman began building a community of young people dedicated to human rights. "he started having followers and started organizing groups of people to do collaborative work, particularly for the International Commission of Jurists in Geneva," Cole recalls. Through his professional contacts, Newman arranged fellowships for eager students and, Cole says, "he got them jobs all over the world."

Sandra Coliver '81, director of San Francisco's Center for Justice & Accountability, enrolled at Boalt

specifically because of Newman's reputation. For years Coliver served as his research assistant. "I continually run into people who've been influenced by Frank," she says. "It's a visceral connection. When we encounter problems in our jobs, we still think, 'How would Frank Newman deal with this?'"

In 1977 Newman began a five-year stint on the California Supreme Court. The bench, however, wasn't a good fit for Newman, an outside-the-box thinker who felt constrained by the formal court system, according to some who knew him. But Coliver, who externed for Justice Newman, says the bench allowed Newman to exercise both his love for administrative law and his knowledge of international law. He also enjoyed close relationships with his colleagues on the bench, she adds.

Returning Home

In 1982 Newman left the court and returned to Boalt.

"When he came back from the court, he plunged into human rights like a guy coming back to his homeland," Cole recalls. "It dominated the last part of his career. International human rights was a creative, new and innovative field, which appealed to his personality. It dealt with deeply progressive, humane issues and gave him a chance to really build something and a chance to work with younger people who were like his disciples."

Professor Patty Blum, director of Boalt's International Human Rights Law Clinic, describes Newman as

the clinic's "spiritual leader." She explains, "I was mentored by him as an academic. He was always into the practical implications of human rights theory. He believed that norms and structures were meant to concretely affect people's lives. Bringing it down to earth is very much what clinical education is about, and the International Human Rights Law Clinic inherits that mantle from him."

Indeed, Newman's influence is also felt by "international lawmakers and the next generation of human rights attorneys," adds Newman disciple David Weissbrodt '69, one of the first interns sent to the International Commission of Jurists in Geneva and now a professor of international human rights law at the University of Minnesota. "All of the students I've had have benefited from Frank directly or indirectly through me." Specifically, Weissbrodt, who chairs the United Nations Sub-Commission on the Promotion and Protection of Human Rights, co-authored with Newman a course book on international human rights law that is used by more than 50 law schools.

Until his death in 1996, Newman made yearly pilgrimages to Geneva's human rights conferences with colleagues and former students. He also organized picnics, hikes and ski trips that are legendary among international human rights lawyers.

"Frank did something not very many law professors ever do," Cole concludes. "He started a field and energized a large core of people who rose to positions of leadership and success."

When terrorists attacked the World Trade Center and the Pentagon on September 11, I was as shocked as everyone else in the nation as we witnessed those horrifying images on television and heard the stories of the men and women who died in the attacks, or of those who died trying to save them. I shared the anger at those who would so cowardly and viciously hijack airliners and use them as guided missiles against innocent civilians. Like others in the country, I wanted to do something to help our nation respond, and, luckily, I was in a place where I could do my part.

One of the most important issues that developed in the days following the attacks was whether Congress ought to declare war. I had recently taken a leave of absence from Boalt to serve as a deputy assistant attorney general in the Office of Legal Counsel (known as OLC), which advises the Justice Department, the White House, and the agencies concerning the interpretation of constitutional and statutory law. Although a small, relatively unknown office, OLC has been headed by people such as Chief Justice William Rehnquist, Justice Antonin Scalia, and Boalt alum and Solicitor General Ted Olson [’65], and generally has a reputation for defending the president’s prerogatives under our separation of powers. It has been called “the president’s law firm.” My particular area within OLC has been foreign affairs and national security law, which during peacetime usually involves interesting, if esoteric, questions about treaties, foreign affairs statutes and the like. During wartime, however, the office historically has advised the government on

issues involving the use of military force and international conflict.

These are subjects that I teach at Boalt in a seminar on foreign relations law, in addition to other courses on constitutional law, international civil litigation and international law. In one of my first articles, published in the *California Law Review*, I had argued that the president has more freedom to use military force abroad than most legal scholars assume, and that Congress’s power to declare war is significant mostly for its ability to change the legal status of the nation from one of peacetime to one of wartime. I have also written articles in the *Colorado Law Review* and the *Pennsylvania Law Review* expanding on these ideas by engaging the materials from the Framing Period on war making and by looking at the new type of international armed conflict in Kosovo from the perspective of the separation of powers.

With this background, I became immediately involved in the administration’s response to the September 11 attacks. During that first week, members of Congress, policymakers and lawyers debated whether to declare war. In the end, Congress chose not to declare war, but instead to issue a joint resolution, now Public Law Number 107-40. Section 2 of the joint resolution authorizes the president “to use all necessary and appropriate force against those nations, organizations or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the U.S. by such nations,

organizations or persons.” Based on his constitutional authority as commander in chief and as chief executive, and supported by this sign of legislative approval, the president subsequently ordered the U.S. Armed Forces to begin operations in Afghanistan against the Al Qaeda terrorist organization and the Taliban militia.

While I cannot discuss the deliberations that occurred within the executive branch concerning the question of whether to declare war, I can describe my own thinking as a legal scholar who has studied the issue. My view in that capacity is that a declaration of war in response to the September 11 attacks would have been unwise and unnecessary under our separation of powers.

The most important reason not to declare war, in my view, is that the United States does not declare war very often, and it has *never* done so against a non-governmental entity. The United States has declared war only five times: the War of 1812, the Mexican-American War, the Spanish-American War, World War I and World War II. A declaration of war is a constitutional decision of monumental proportions. Under the Constitution, for example, during a state of war the government is given enhanced powers in law enforcement, regulation of the economy and social legislation. A declaration of war also dignifies, in a sense, our opponents by recognizing their status as belligerents, in regard to whom certain rules apply concerning honorable standards of battlefield conduct developed over hundreds of years.

Some have argued that the United States could declare war against non-governmental entities by relying upon the example of the

Barbary Pirates conflicts. This example, however, does not support the notion that a declaration of war can be used against non-states. The United States never declared war against the Barbary Pirates, who in the late 18th and early 19th centuries preyed upon American shipping in the Atlantic and the Mediterranean. Instead, Congress authorized, by statute, the president to take military steps to safeguard American shipping in those waters, to take Barbary Pirate ships as prizes, and to engage in hostilities against their forces. (See Act of Feb. 6, 1802, 2 Stat. 129.) In fact, the Barbary Pirates are much closer

to being a state, under the modern understanding of the term, than the terrorist organizations we fight today. The head of the Barbary Pirates was the “Bey of Tripoli,” who exercised political control over subjects and territory, and conducted various governmental functions.

In fact, it seems to me that the president does not need a declaration of war anyway. As commander in chief, the president has engaged the U.S. Armed Forces in hostilities more than 100 times without a declaration of war. While many of these interventions were small, several were not, such as the

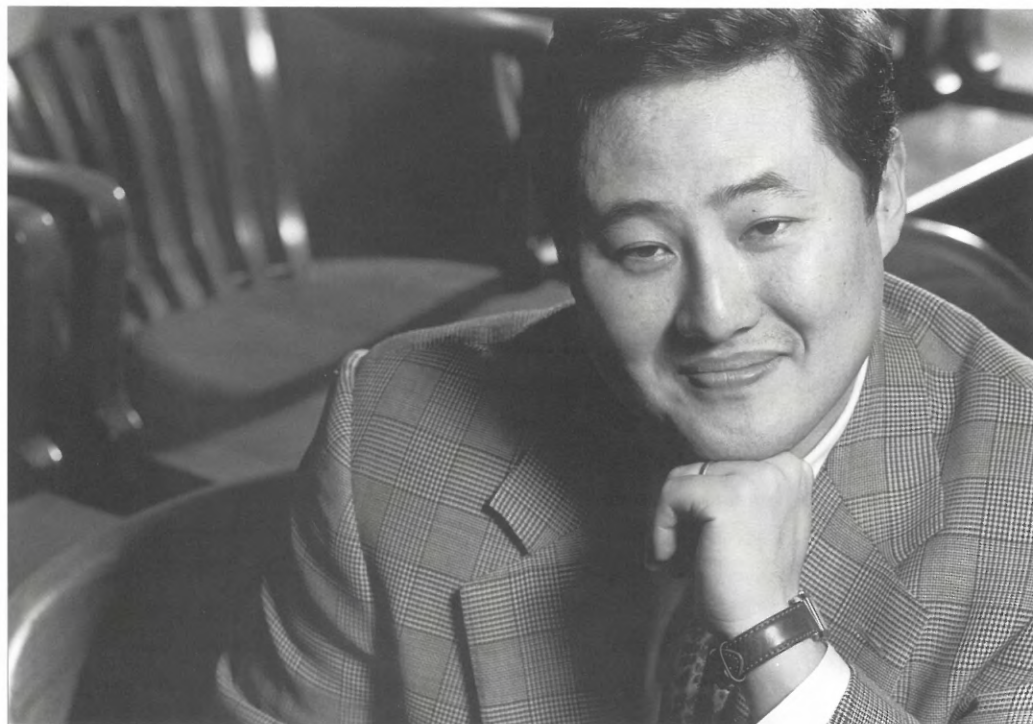
conflicts in Korea, Vietnam and the Persian Gulf. In regard to the war we are now engaged in, I believe that the president is acting at the apex of his constitutional powers in using military force to respond to a direct attack upon the nation. Even those who believe that Congress’s power to declare war gives it the authority to decide whether to initiate any military hostilities admit that the president must have the inherent constitutional authority to respond to attacks. Even in the War Powers Resolution, enacted in the wake of the Vietnam War in an effort to regulate the president’s war-making powers, Congress recognized that the president has the constitutional power to use force in “a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.”

In enacting the joint resolution shortly after the September 11 attacks, Congress again acknowledged the president’s right to use force not only to respond to previous attacks on the United States, but to use the military proactively so as to stop future attacks. As the joint resolution declares, “the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States.” In this respect, Congress’s actions may signal the end of the arguments over whether Congress or the president has the constitutional power to decide on beginning military hostilities. In its joint resolution, in my view, Congress recognized the president’s inherent constitutional authority to use force in the nation’s self-defense to stop terrorist attacks. It also signaled a national unity in responding to terrorism that I hope will continue in the days to come.

Whether to Declare

ESSAY BY PROFESSOR JOHN CHOON YOO*

PHOTO BY JIM BLOCK



*My views here are my own and do not represent those of the U.S. Department of Justice.

Merging ■ Two Passions

Jami Floyd covers the beat where law and the media intersect

LIKE ALL REMARKABLE biographies, the life story of Jami Floyd '89 is a cat's cradle of recurring motifs. The girl who watched the World Trade Center being built becomes a reporter on the scene of the landmark's collapse. The devotee of TV courtroom dramas winds up on television analyzing real-life criminal trials. The former White House Fellow goes on to analyze the legal underpinnings of a historic battle for the White House.

"I guess when you look back at your life, you see patterns that you didn't notice while they were unfolding," says Floyd, 37, during a recent interview. "In my own life, there has been one clear thrust: I always wanted to be a lawyer. I can never remember a time when I wanted to do anything else."

Since 1998 Floyd has been a network correspondent in the ABC News law and justice unit. Her beat takes her wherever the law intersects with news, whether the story involves a Supreme Court decision, an innocent man sent to prison for a murder he didn't commit, or the largest sex discrimination suit ever filed against a private employer (Wal-Mart).

Floyd occasionally covers breaking news, like the September 11 terrorist attacks on the World Trade Center. "That day, it was all-hands-on-deck," she recalls. "I went to Ground Zero and interviewed rescue workers and relatives of victims. It was difficult, especially being a New Yorker myself, but it had to be done."

A week after the attacks, Floyd was back in the legal arena. "The nation's attention soon turned to things like the detention of suspects and material witnesses, patrolling borders, police powers and ethnic profiling," she says. "In every big story, there is always a legal angle. It's one of the things I love about my job."

Floyd's ABC News post is not her first foray into journalism. From 1996 to 1998, she was an

anchor and a correspondent for *Court TV*, where she provided in-depth coverage of the Oklahoma City bombing trials of Timothy McVeigh and Terry Nichols. *Court TV* had hired her away from the CBS news magazine *Day & Date*, and CBS had spotted her when she was a legal analyst for KPIX-TV in San Francisco.

Her path into journalism "was pure serendipity," she says. "I had a fellowship at Stanford, and I was teaching a class on the intersection of law and the media. It wasn't the traditional media law class. It was much more interdisciplinary—looking at legal issues from the perspective of the communication sciences."

"The O. J. Simpson case had happened right before I got to Stanford, and when reporters went looking for local experts, there I was," explains Floyd, "a woman of color teaching about law and media. When I was first approached by a radio station, I initially said no, but Kurt talked me into doing it."

Kurt Flehinger '90 is Floyd's husband of nine years; the couple has a 2-year-old daughter, Joelle. Like many of the people who are closest to Floyd, Flehinger entered her life as a fellow law student at Boalt Hall.

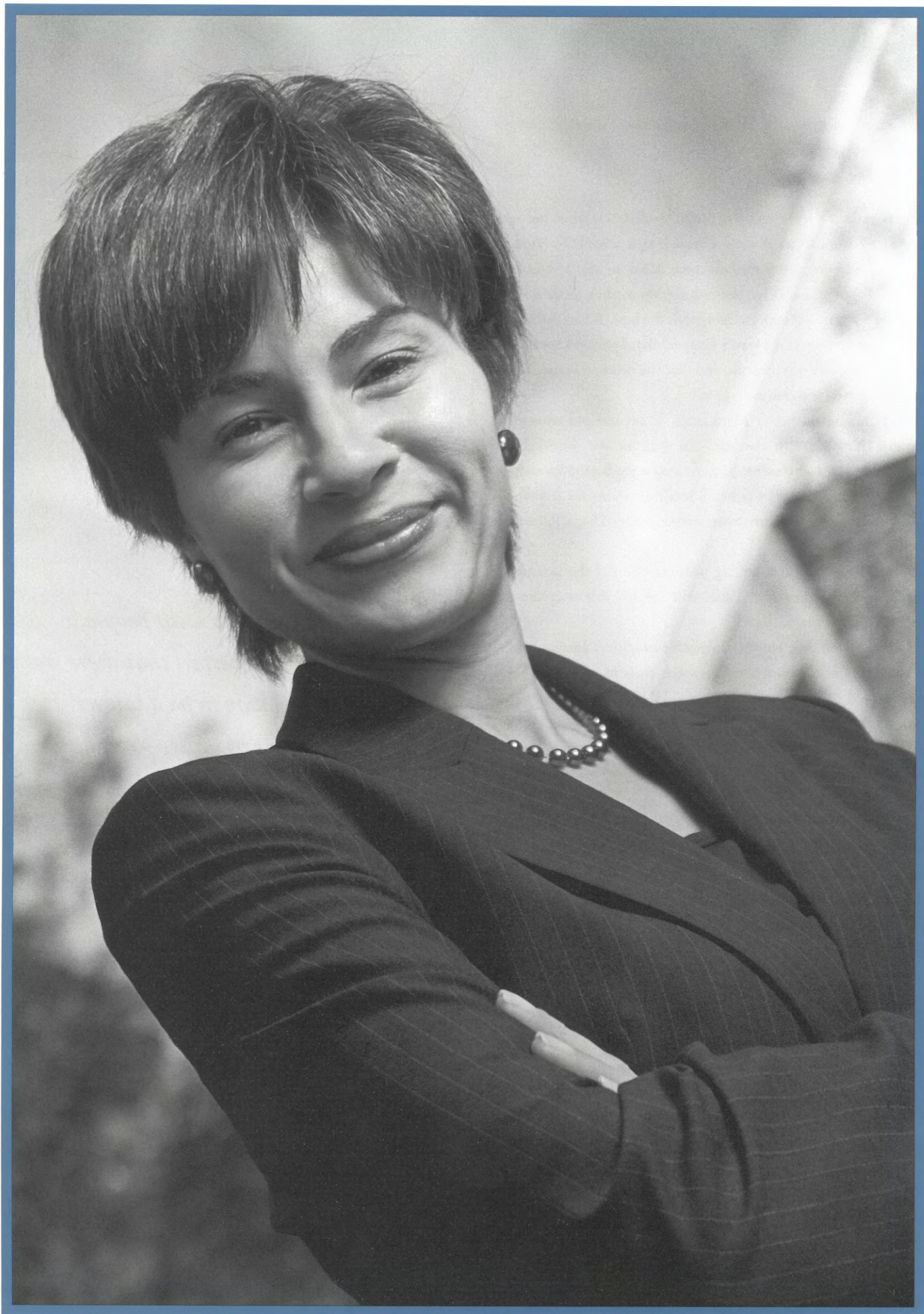
"We share a love of the law and intellectual pursuits," she says. "Back in those days, we would talk for hours about politics and legal theory. Even now, he challenges my world view, and I would like to think I challenge the way he looks at the world too."

Classmate and friend Carrie Avery '89 says, "I truly admire Kurt and Jami for how they manage the family-work balance. My husband, Jon [Tigar '89], and I have enjoyed a wonderful friendship with Kurt and Jami over the years, even more so since we left Boalt."

"One of the bonds we share is the distinction—some would say a rather dubious one—of having met our mates at Boalt. In addition, Jon, Jami and Kurt all worked in the San Francisco Public Defender's

Story by Kate Callen

Photos by Jim Block



Office. Even though we live far away, we visit one another when we are on the other coast.”

A Plugger

From her earliest days, Floyd was fueled by determination and self-discipline. “I went to an all-girls’ Catholic high school, St. Vincent Ferrer, and each year, the teachers were asked to select their best students,” Floyd recalls. “One year my algebra teacher, Sister Kieran, picked me, even though my grades weren’t the best. When she got up to talk about me, she said I was ‘a plugger,’ that I always kept trying, even when the work was difficult, and that she believed in me. Those words have stayed with me ever since.”

Floyd grew up in Lower Manhattan. “I am just old enough to remember New York in the late ’60s without the World Trade Center,” she says. Her mother, Jo Ann, taught graduate education at Long Island University. Her father, James (for whom she is named), had a triple career as an artist who studied under Diego Rivera, an architect and an engineer.

“My dad worked on some big projects—he did the interior of Tavern on the Green—and I can still see his influence around Manhattan,” Floyd says.

On his days off, Mr. Floyd indulged his daughter’s passion for the law and took her to courtrooms to watch trials in progress. “I was eight years old,” she remembers. “I was a HUGE *Perry Mason* fan—there’s the power of media for you—and I had an empathy for any innocent person wrongly accused of a crime, as in *The Fugitive*. And later on, I loved *The Paper Chase*. That show prepared me to appreciate the rigors of law school.”

In 1986 Floyd earned a B.A. in political science and communication from Binghamton University, and she briefly considered working as a journalist. “It’s funny: deciding between law and journalism after college was the first time I thought about doing anything other than practicing law. Now I’m back at that same crossroads, but I get to have them both.”

Learning to Think Like a Lawyer

Floyd was surveying law schools on the East Coast when her mother took her along on a business trip to California and she had a chance to tour Berkeley and visit Boalt Hall.

“The moment I saw Boalt, I knew it was the place for me,” she says. “I didn’t know anything about the UC system. I was very much an East Coast kid. But I just had to go to Boalt. My parents weren’t pleased to have me go so far away, but my college mentor, Dr. Edward Weisband, convinced them that Boalt was one of the best law schools in the country.”

Floyd describes her arrival at Boalt as “one of the happiest days of my life.” She adds, “I really wanted to learn how to think like a lawyer, and Boalt provided that. The faculty had a gift for determining what each student needed, and they helped you become the lawyer you wanted to become.”

Floyd’s most memorable first-year course was Torts with Professor Rachel Moran. “Professor Moran has an incredible mind,” Floyd says. “She can break down very complex ideas and present them in a

“Jami connects with people. ... And she always grasped that there is more than one way to be a lawyer. Her wide array of skills—oral advocacy, writing, political skills—helped her experiment with different visions of her professional identity.”



Jami Floyd '89 participates in panel discussions during last October's All-Alumni Reunion.

fresh and cogent way. And she uses the Socratic method, which in the hands of some professors can be very traumatic. She does it in a thoughtful and provocative way.”

Another favorite professor was current Dean John P. Dwyer '80, who taught Floyd's Property course. “He has become a wonderful mentor and friend throughout my career; I can't tell you how many letters of recommendation he's written for me.” And then-Dean Jesse Choper is the reason Floyd became a White House Fellow. “Dean Choper told me about the program and handed me a booklet,” she says. “I held onto it for years, thinking I wasn't ready. After President Clinton was elected, I filled out the form and sent it in.”

A Richness of Perspective

Floyd's former professors remember her as a standout. “She was a very active citizen in law school,” says Choper. “She always acquitted herself with great effectiveness and great charm. When she won the McBaine [Moot Court] competition, she gave one of the most polished, persuasive oral arguments I've ever heard.”

Like Choper, Dwyer says his most vivid memory of Floyd was how, as a second-year student, she became the youngest recipient of the McBaine Award for Best Written Advocacy and also the youngest recipient of the McBaine Award for Best Oral Advocacy. “Jami was just astonishing,” says Dwyer. “She had such raw talent and poise. You could tell then that Jami was going to be a lawyer with a lot of choices in life and that she wouldn't limit herself to doing the ‘expected’ thing.”

Moran recalls watching with pride as Floyd was honored at her 1989 graduation with the Stephen Finney Jamison [’69] Award for best all-around contributions to the student body. “Jami connects with people,” says Moran. “She has that certain emotional quotient. And she always grasped that there is more than one way to be a lawyer. Her wide

array of skills—oral advocacy, writing, political skills—helped her experiment with different visions of her professional identity. All those things together have given her a richness of perspective and a confidence that are quite rare.”

During her one-year White House fellowship, Floyd worked on Hillary Rodham Clinton's healthcare plan and on a crime policy initiative for Vice President Al Gore. “It was completely different than arguing cases—we were working to formulate laws and to get them passed,” Floyd explains.

After she signed on as an ABC News correspondent, Floyd found that her White House service became a factor in her choice of assignments. “I didn't feel that it was appropriate for me to cover President Clinton's impeachment trial. But the Gore-Bush standoff in Tallahassee was different. That wasn't an occasion for pontificating about who actually said what; it was a more straightforward story. Either someone had 52 votes in Volusia County or he didn't.”

When Floyd isn't traveling around the country in pursuit of a story, she stays busy contacting sources and trawling around online searching for story leads (“sometimes I wake up in the middle of the night and scrawl down an idea”). In her off-hours, she runs to keep in shape and feeds her soul with Shakespeare and the Dave Matthews Band. She reads (and sometimes writes) mystery novels, and she spends as much time with Joelle as possible.

“My greatest fun in the world is being with my husband and my daughter,” Floyd says. “I take Joelle swimming and shopping, and we all cook together. We probably treat her too much like a little adult, but we just love to be with her. She is the light of my life, and always will be.”

“Despite Jami's rise to national fame,” says Avery, “she remains one of the funniest and most down-to-earth people I know. When Jami was in Berkeley for this year's Boalt reunion, Jon and I were able to have dinner with her, and we somehow got on the subject of King Pin Donuts near campus, which produced some of the largest pieces of fried dough on record.

“It's good to know that the svelte and stylish Jami Floyd once ate crullers on Durant Street.”



class notes



28

At 100, **Robert McManigal** of Pasadena, Calif., is the oldest practicing attorney in the state. The president of the California State Bar honored him recently, commenting that McManigal “set the bar high for all of us.”

34

Retired Fresno County Counsel **Robert M. Wash** was honored with the Bernard E. Witkin [’28] Lifetime Achievement Award by the Fresno County Bar Association. At 93, Robert is the oldest attorney in Fresno county.

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Remarks from **Harold “Hal” Strom**, class secretary:

“Hi to you hearty Boalt ’39 survivors. If you recall, I took over writing our *Transcript* column about seven years ago. Some of this may be old news—and you ‘ole characters’ won’t send me any news.

Before she retired, Dean Herma Hill Kay called me to thank our ’39 classmates for our support, efforts and donations during her regime and to urge us to carry on with the new dean, **John P. Dwyer** ’80.

I wasn’t able to attend the 2000 All-Alumni Reunion but attended the 2001 affair. I arrived in time for the panel led by Professor **Robert Berring** ’74. It was a fascinating examination of the growing impact of China’s emerging legal system. At another panel, ABC law and justice reporter **Jami Floyd** ’89 explored the intersection of the media and law with distinguished litigators **Elizabeth Cabraser** ’78, **Mark Holsher** ’88

and **Brad Seligman**. Then on to a great lunch—after first searching for some ’39ers to sit with. I did find Judge **Wilson Cline** and we reminisced at length. We both thought that guys like **Alec Cory**, **Dick Johnston** and **Bill Blanckenburg** would show, but we could not find them.

In the evening I attended parts of two more panels and then took the Boalt tour. I was very proud that it included the Harold L. Strom Seminar Room, donated to Boalt in my honor by my ex-son-in-law, Tom Schrag, the eminent class action attorney. Through this medium I say once again, muchas gracias, Tom.

We did not have a class of ’39 dinner (fortunately) and so these tired old legs revived with a couple of cocktails and headed home, tired but very happy about how wonderful the reunion was.

I was given four copies of the ’39 graduation class photo. If any ’39ers want one, please write to me.

If our local surviving classmates, like **Frank Dill**, **Danny Goldberg**, **Dick**, **Wilson** et al., want to have another luncheon, I herewith ask them to call me and I’ll put it together. Also I would like to hear from you out-of-townners, like **Alec**, **John McComish**, **Dick Peterson** and **Renzo Del Pero** et al.

Were you as shocked as I was to learn in the dean’s letter of August 2001 that 5,600 applied for 270 seats in Boalt’s first-year class? And we thought we had it tough getting in and *staying in*. And how about diversity? Those gaining admission are from 35 states and 13 countries. Some 59 percent are women and 27 percent are people of color.

Through this medium, Dean Dwyer, please be assured of the continued support of the class of ’39.

Did you know that there is a **Richard W. Jennings** (our classmate) Professorship at Boalt? Or that Professor Philip Frickey won this coveted award? He came from Minnesota Law School, where he established a national reputation, especially in constitutional law.

You probably received the Boalt Hall annual report of gifts and read that the following ’39ers made donations this year: **Alec**, **Dick** (Peterson and Johnston), **Frank**, **John Westwick**, **Dwight Steele**, **Bill**, **John**, **Harold** and **Donald White**.

At the UC Berkeley class of ’36 reunion, chair Hal Strom was honored with the 2001 Perpetual Class Achievement Award. His name follows other well-known ’36ers on a beautiful plaque at Alumni House.

That’s it for now. Please drop Hal a line at 1734 St. Andrews Drive, Moraga, CA 94556.”

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50TH REUNION
OCTOBER 26, 2002

Judge **D. Lowell Jensen** of the U.S. District Court for the Northern District of California received the 2000 Lewis F. Powell Jr. Award for Professionalism and Ethics. He has served on the district court since 1986.

59

Retired Judge **John Campbell** was reappointed a part-time Family District Court judge in Hawaii. Before retirement, he served as supervising deputy attorney general.

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

Address Correction Requested

Boalt Calendar

March 13

Alumni Luncheon

Featured Speaker: Professor Harry N. Scheiber
"Lawyers in a Civil Liberties Crisis: A Chapter
from WWII"

Orange County
Contact Alumni Relations
510-643-6673

March 14

Alumni Luncheon

Featured Speaker: Professor Thomas Jorde
"Innovation and Antitrust: The Debate Continues"

San Diego
Contact Alumni Relations
510-643-6673

March 15

Disability Rights Law Symposium
Boalt Hall

Contact Robert Binion '03
510-643-2697

April 10

Judge D. Lowell Jensen '52 Public Service
Award Reception

Bay Area
Contact Alumni Relations
510-643-6673

April 12 and 13

Slavery Reparations Symposium

Raven Lecture Speaker: Randall N. Robinson
Author of *The Debt—What America Owes to Blacks*

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

April 16

Alumni Luncheon

Featured Speaker: Professor Elisabeth Semel
"Under Penalty of Death"

Washington, D.C.
Contact Alumni Relations
510-643-6673

April 17

Alumni Luncheon

Featured Speaker: Professor Elisabeth Semel
"Under Penalty of Death"

New York
Contact Alumni Relations
510-643-6673

April 18

Alumni Luncheon

Featured Speaker: Professor Elisabeth Semel
"Under Penalty of Death"

Boston
Contact Alumni Relations
510-643-6673

April 25

Alumni Luncheon

Featured Speaker: Dean John P. Dwyer '80
"Training Tomorrow's Lawyers"

Modesto
Contact Alumni Relations
510-643-6673

April 26

Alumni Luncheon

Featured Speaker: Dean John P. Dwyer '80
"Training Tomorrow's Lawyers"

Fresno
Contact Alumni Relations
510-643-6673

May 3

Citation and Young Alumnus Award Dinner
Honoring Justice Kathryn Mickle Werdegard '62 and
Professor Mark A. Lemley '91

Boalt Hall
Contact Alumni Relations
510-643-6673

May 7

Alumni Luncheon

Featured Speaker: Professor Robert Merges
"Intellectual Property at Berkeley: Progress and
Prospects"

Silicon Valley
Contact Alumni Relations
510-643-6673

May 14

Alumni Luncheon

Featured Speaker: Professor Linda Hamilton Krieger
"Subtle Discriminations: Retooling Civil Rights Law for
the 21st Century"

Chicago
Contact Alumni Relations
510-643-6673

May 15

Alumni Luncheon

Featured Speaker: Professor Linda Hamilton Krieger
"Subtle Discriminations: Retooling Civil Rights Law for
the 21st Century"

Denver
Contact Alumni Relations
510-643-6673

May 25

Graduation

Hearst Greek Theatre
Contact Holly Parrish
510-642-3263

June 5

Alumni Luncheon

Featured Speaker: Professor Mark A. Lemley '91
"Stupid Domain Name Tricks"

San Francisco
Contact Alumni Relations
510-643-6673

October 26

All-Alumni Reunion

Boalt Hall
Contact Alumni Relations
510-643-6673