

# Insight

Opinion, Editorials and more

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Paul Chinn / The Chronicle

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100 YEARS *UC Berkeley School of Law*

# Boalt looks to the future after a century on law's cutting edge

By Christopher Edley Jr.

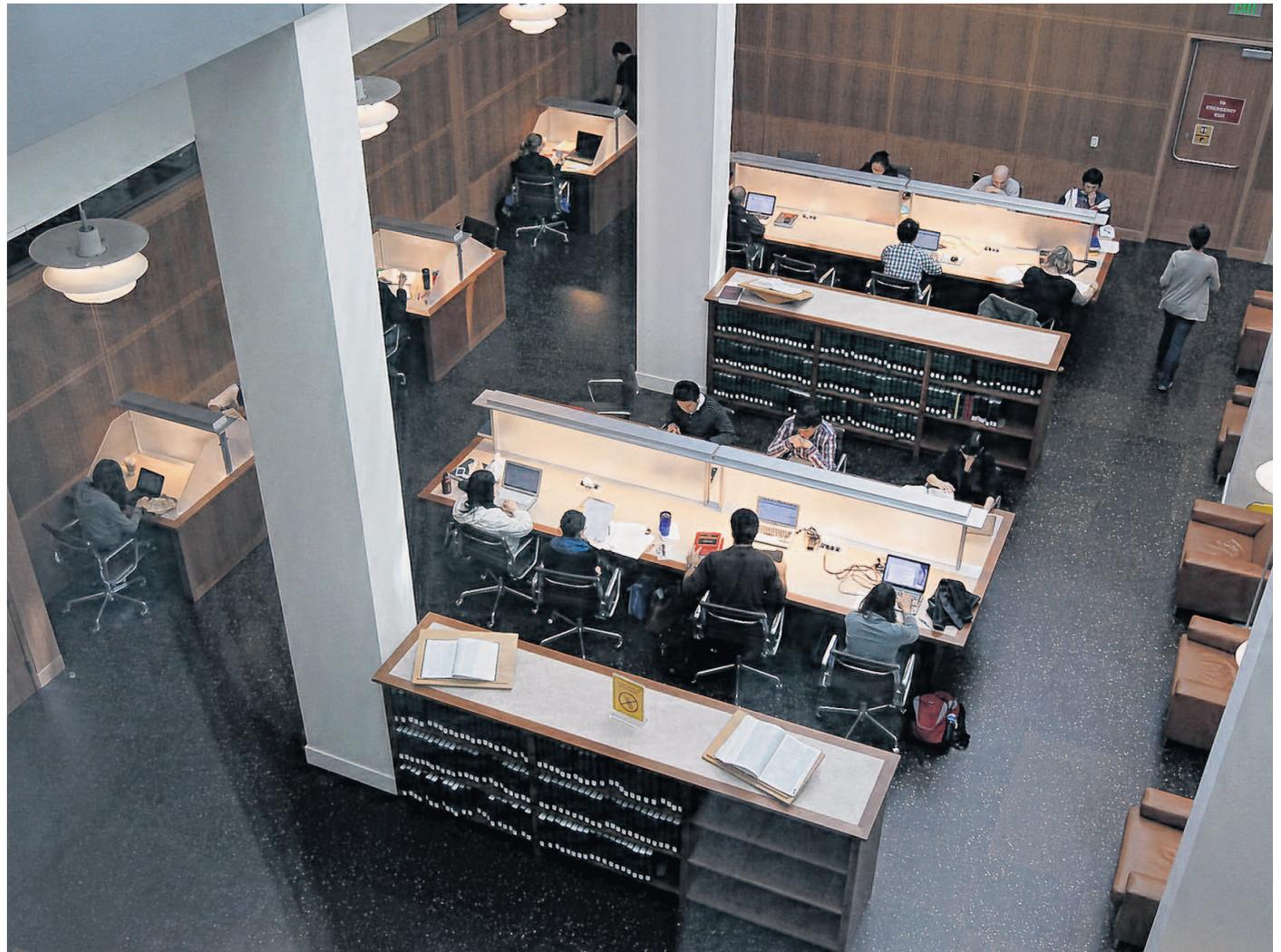
UC Berkeley School of Law celebrates its centennial this year and its long tradition of leadership in legal education. What sets us apart from other great law schools is our core mission of public service and public engagement. We want to be excellent with a purpose: to address the most difficult problems facing our society.

Boalt has a rich history among its faculty and alumni of drafting legal protections for the wrongfully accused, the disabled and the poor; of protecting our environment, our civil rights and our free speech. Our research centers tackle society's toughest challenges, including climate change, identity theft and patent protection. Some of these issues barely existed at the start of the 20th century. Today, they are full-blown concerns with global impact.

I think about the future in two ways. First, what problems will our lawyers and the law face in the 21st century? In an economy ever more dependent upon technology and global financial markets, lawyers are going to have to understand not only the law but also science, economics and business strategy.

Our teaching can't simply echo the training of the past two centuries. It has to include a broad understanding of a range of disciplines. Second, how can legal training produce better business and government leaders outside of traditional legal practice?

From finance to health care to global poverty, legal training will make a difference. In a global market, the need to protect our civil liberties resonates on a grander scale. Take privacy: A breach could spew huge amounts of our personal data to a worldwide audience. The potential for



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**At Berkeley Law, the 21st century public mission is to think about legal problem-solving that benefits all humanity.**

harm is enormous, yet modern privacy law is still in its infancy. In the digital information age, how do you assess the damage of data breaches, and who pays the penalty?

Our 21st century public mission is not simply serving Californians or even Americans but being global citizens. We need to think about the kind of legal culture and legal problem solving that all of humanity needs. America's future security and prosperity depend upon it.

Every year, lawyers from dozens of countries enroll at our school to study fundamentals of U.S. law. Graduates include a municipal judge in Italy, a bank executive in Singapore, a human rights activist in El Salvador. These international students learn about our constitutional rights and laws and share that knowledge back home. We learn about their legal traditions and cultures, too. Globalization is in part about bringing the world to Berkeley, but it's also about taking Berkeley out

to the world.

Whether the issue is the economic development and the role of law in China, reforming our immigration statutes here in the United States or working on human rights in Bangladesh, the result will be to strengthen civil liberties at home and abroad.

*Christopher Edley Jr. is the dean of Berkeley Law and co-director of Berkeley Law's Chief Justice Earl Warren Institute on Law and Social Policy.*

**100 YEARS** *UC Berkeley School of Law*

# Creating a road map for punishment policy

By Franklin E. Zimring

Boalt Hall has had consistent success for a century in producing leaders for criminal justice in California, but our efforts to influence where we send convicted felons and for how long have had more mixed results. The institution that trained Justices Earl Warren, Roger Traynor and Rose Bird has had more success analyzing and evaluating the state's crime policy than in changing it.

The law school's most famous attempt to shape crime policy came in the 1960s when professors Arthur Sherry, Phillip Johnson and Sanford Kadish of Boalt Hall joined with John Kaplan and Herbert Packer of Stanford and Murray Schwartz of UCLA to write a new Penal Code. Hired by the Legislature in 1964, the professors were fired five years later when their proposals, such as reducing marijuana possession penalties, encountered hostility from law enforcement and legislators. That effectively ended the attempt to create a modern Penal Code in California.

So much for hands-on legislative impact. But the scholars were ahead of their time. Nearly all of their main proposals, such as partial decriminalization of small amounts of marijuana and diversion programs for felony drug offenders, have since become law.

Berkeley Law created a leading research program in 1985 to evaluate major changes in criminal justice, which led to landmark studies of California law and action. Our wide-ranging study of California's 1994 "three strikes" law became the book "Punishment and Democracy," published in 2001. Our research data correctly predicted overcrowding in state prisons and marked increases in state geriatric medical bills.

But these past 25 years of criminal-justice research are a case study in both the potential and the limits of empirical research for the politically charged arena of crime policy. The California version of "three strikes" is a dreadful law, but it's still on the books long after our critique was published.

Crime and punishment remain the third rail of California public policy, and no amount of empirical data can



Paul Chinn / The Chronicle

**Students and faculty move through the new wing at UC Berkeley School of Law. Academics have more success analyzing criminal law than changing it.**

create change in an emotionally charged political landscape. Our work provides a road map for intelligent reform when, and if, progress becomes a political possibility.

*Franklin Zimring is a Berkeley School of Law professor and distinguished scholar. He's the author of numerous books on criminology, including his most recent, "The City That Became Safe: New York's Lessons for Urban Crime and Its Control."*

# Pioneers of privacy to safeguard the public

By Paul M. Schwartz

William Prosser, the dean of the UC Berkeley School of Law, altered the path of American law in 1960. He did so with an article, simply titled "Privacy," in our law school's California Law Review. This article had an unparalleled influence on the development of the law, one still felt today.

When someone sues another for harm to his privacy, whether or not he knows it, he relies on the Prosser approach. Prosser defined the right of privacy as protecting individuals against certain highly offensive invasions.

After publication of his article, state courts and legislatures quickly adopted his framework, and today the vast ma-

majority of jurisdictions follow it. It's Prosser's world of privacy that we live in.

Prosser's tradition of the protection of privacy continues at Berkeley Law and the Berkeley Center for Law & Technology.

In 2002, Professor Deirdre Mulligan worked with Sen. Joe Simitian to devel-

op California's data-breach notification law, which was the nation's first. The consequence? If a company in California loses your personal information, it has to tell you exactly what happened.

Wondering about who is watching you online? Professor Chris Hoofnagle has revealed new secret methods that companies use to monitor users online, and he has advanced the cause of privacy in Web surfing.

Professor Jason Schulz and Jennifer Urban of the law school's Samuelson clinic have played a key role in persuading the California Public Utilities Commission to adopt the nation's first set of rules protecting the privacy and security of information gathered by smart me-

ters. These rules are critical as Pacific Gas & Electric and other utility companies install these devices in our homes.

For American businesses, one of the biggest worries today is how international privacy regulations affect their bottom line. Since arriving at Berkeley in 2005, I have sought to bridge the gap of understanding in this country and elsewhere concerning international privacy law.

The protection of privacy rights must continue, and Berkeley Law will be in the vanguard of this effort.

*Paul M. Schwarz is a professor of law, and a faculty director of the law school's Berkeley Center for Law & Technology.*

100 YEARS *UC Berkeley School of Law*

# Committed to building a more just society

By Mary Louise Frampton

Generations of Berkeley Law graduates have been leaders of social movements and judicial pioneers. Thelton Henderson, class of '62, was the first African American appointed to the Northern District federal bench; Cruz Reynoso, '58, was the first Latino to serve on the California Supreme Court; and Rose Bird, '65, was the state high court's first female justice.

Steeped in progressive legal realism in its infancy, Boalt Hall attracts students with a hunger to make a difference. From civil rights to environmental justice, criminal reform to fair-labor practices, our students, faculty and alumni are committed to building a more just society.

Our scholarship has led to state and national social reforms. Herma Hill Kay, a former dean and professor, co-authored California's no-fault divorce law, calling it a "movement whose time had come."

It eventually spread to every state. She also seeded Equal Rights Advocates, a San Francisco nonprofit that protects women's legal rights.

Professors John Coons and Stephen Sugarman argued successfully for K-12 financial reform based on the Constitution's "equal protection" clause. Lawmakers "embraced the idea of education

equity," says Sugarman. Although limited by Proposition 13, the legal ruling reduced financial inequalities between rich and poor school districts. New Jersey and other states soon followed California's lead. Four decades later, Gov. Jerry Brown's proposed school finance reform is based on an article co-written by Justice Goodwin Liu when he was an associate dean.

Our public education lens today is focused on "restorative justice." Considered unconventional by some educators, that's a disciplinary tactic that encourages accountability and relationship building instead of harsh punishment.

Results from our first-ever empirical study are dramatic: In one West Oakland middle school, suspensions dropped by 87 percent, and expulsions dropped to zero.

It's a marked improvement for



Paul Chinn / The Chronicle

Students learn advanced legal research techniques in a class taught by Associate Dean Kathleen Vanden Heuvel at the UC Berkeley School of Law.

youngsters who ought to be in class, not detention. Our results provide hard data for lawmakers seeking to reform K-12 education. It's an innovative idea that deserves a closer look.

Mary Louise Frampton is the UC Berkeley School of Law faculty director of the Thelton E. Henderson Center for Social Justice. Send your feedback to us through our online form at [sfgate.com/chronicle/submissions/#1](http://sfgate.com/chronicle/submissions/#1)

## School's environmental law roots run deep

By Daniel Farber

When Joe Sax joined the Berkeley Law faculty in 1986, he had already pioneered a new approach to protecting natural resources. His legal strategy found a receptive audience in the courts. Sax's "public trust doctrine" fueled a series of legal efforts by Californians to protect the state's streams, lakes and tidelands from pollution, overdevelopment and private exploitation.

Sax's strategy helped save Tomales Bay in Point Reyes from commercial development. It stopped Los Angeles officials from draining Mono Lake. His achievements stand alongside the brilliant work of law Professor and Berkeley Chancellor Michael Heyman, who fought to protect Lake Tahoe's

ecosystem through smart land-use planning. Heyman also taught one of the first environmental law courses in the country.

"It traces back to work done at the law school, to community activists and to people in public office," says Sax. "We need the legal basis to get

the job done, and the place where that happens is in the law school."

Decades before Sax, Professor William Colby was a guiding light in the early days of the Sierra Club. Colby was the Sierra Club's secretary for almost 50 years.

He also chaired the State Park Commission and helped launch California's renowned state park system — the first in the nation.

Today, my colleagues, our students and a host of law school alumni continue the effort to defend endangered species, promote sustainable development and protect California's waters.

The school's Center for Law, Ener-

gy & the Environment works with business leaders on ways to address climate change and increase sources — and storage — of renewable energy.

In short, the legacy of Colby, Sax and Heyman lives on — not only in Berkeley Law itself, but also in the wetlands, lakes and mountains they fought with such ingenuity to protect.

Professor Daniel Farber co-directs UC Berkeley School of Law's Environmental Law Program and its Center for Law, Energy, and Environment. Send your feedback to us through our online form at [sfgate.com/chronicle/submissions/#1](http://sfgate.com/chronicle/submissions/#1)