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Faculty News and Research Highlights

The recent government shutdown proved how vital it is for the US to reform its budgetary processes. Currently, budgeting differs from almost every other area of federal policy. When Congress and the President cannot agree on other kinds of legislation, existing law remains in effect. But with budget-making, there is no automatic default policy in the absence of congressional action, causing the government to stop functioning. In an Op-Ed piece for the *LA Times*, Prof. [David Gamage](#) and co-author [David Louk](#) propose ways to prevent government shutdowns, explaining that if lawmakers fail to agree on a budget, the previous year's spending plan should carry over until a new one is passed. [Read more>](#)

On October 19, Profs. [Robert Bartlett](#), [Eric Talley](#) and [Prasad Krishnamurthy](#) participated in the University of Chicago's *Sloan Conference on Benefit-Cost Analysis of Financial Regulation*. The conference explored whether government agencies like the SEC and CFTC should be required to comply with a benefit-cost analysis when they issue financial regulations and, if so, how that benefit-cost analysis should be conducted. Participants contributed their insights into how valuations of the benefits and costs associated with financial regulation can be calculated, or whether they can. [Agenda>](#)

The 2012 LIBOR scandal may prove to be one of the most significant events associated with the global financial crisis. In an attempt to inflate profits and appear creditworthy, banks misreported the interest rate they paid when borrowing from other banks. The scandal played out over two "phases": (1) the distortion of LIBOR reports because of banks' derivatives positions, and (2) the under-reporting of the cost of debt to avoid external scrutiny by regulators and watchdogs wary of banks' credit risks. In "Financial Regulation and the World's Most Important Number: LIBOR Reporting Behavior during the Credit Crisis," Prof. [Eric Talley](#) focuses on the second phase. He asserts that regulators' and watchdogs' reactions - and thus banks' incentives to misreport - are most significant during episodes of economic crisis/uncertainty. Talley supports his thesis with the [analysis](#) of daily LIBOR reports from 2006-2010. During this time, the data show that participating banks' reported credit spreads relative to US treasury yields appear to "shrink" (not grow) during moments of heightened economic uncertainty.

Curriculum Highlights

Spring 2014 New Courses Overview:

[Thomas Brown](#) will teach [The Law & Policy of Modern Consumer Payment Systems: Or what you need to know to launch the next Visa, PayPal or Square](#). This course will use the consumer payment industry as an example of how legal skills may be applied to business problems that are heavily affected by economic policy, and how competing interests intersect to shape the law. The class will also examine the persistent antitrust challenges that have been directed at the payment industry and explore how the industry has responded to these challenges. Through this lens, students will gain insights into how practicing lawyers use their legal training to help their clients solve complex business and legal problems.

Brown is a partner in the Antitrust and Competition and the Global Banking and Payment Systems practices at Paul Hastings.

[David Mendel](#) will teach [Introduction to Accounting and Finance](#). This course, through practical examples, will guide students to understand financial accounting and techniques in finance and business analysis. This two-part course will focus on the basics of using financial statements to learn how money flows through businesses and how to utilize those skills on increasingly complex real world issues. In the process, students will analyze various types of businesses, the players, securities and financing transactions, and will show how this knowledge might be used in future practice. The goal is to give students the necessary tools to add value to a practice by providing business advice to its clients.

Mendel has more than 25 years in the investment management business. He also invested in and founded numerous start-up companies.

Lectures Recap

On October 17-18, BCLBE and Crowell & Moring LLP co-sponsored "[Managing Tax Audits and Appeals](#)," a two-day seminar that addressed recurring audit issues affecting large corporate taxpayers, correcting mistakes before and after filing returns, and best practices for the Compliance Assurances Process.

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On October 26, Profs. [Robert Bartlett](#) and [Justin McCrary](#) presented their paper “[Shall We Haggle in Pennies at the Speed of Light or in Nickels in the Dark?](#)” at the Empirical Legal Studies Conference in Philadelphia. Bartlett and McCrary demonstrated how recent proposals to modify the penny-based system of stock trading may have simultaneous and opposite effects on the incidence of high frequency trading and the trading of undisplayed, or “dark”, liquidity. [Agenda>](#)

The Network Highlights

The Network provides an online forum for academics, professionals and students to engage in dialogue about the impact of law and regulation on business and the economy. The Network invites you to submit posts and comments to: BCLBE@law.berkeley.edu. The following are selections from recent posts:

Recently, the Securities and Exchange Commission released new rules for crowdfunding under the 2012 Jumpstart Our Business Startups (JOBS) Act. Crowdfunding gives startups a way to raise capital through the Internet and thereby reach a large, diverse set of investors. [Read more>](#)

The California Public Utilities Commission (CPUC) recently voted on a proposal to regulate the relatively new industry called [Transportation Network Companies](#) (TNCs) which includes car services such as Lyft, UberX, and SideCar. The CPUC asserted its jurisdiction over TNCs as a subset of chartered passenger services already under their [regulatory control](#). Until now, companies that provide smartphone apps connecting users to drivers had operated in their own [unregulated market](#). [Read more>](#)

Job Opening

BCLBE is currently looking for an Associate Director of Corporate & Foundation Relations to work closely with the BCLBE Executive Director and the Berkeley Law development team to secure grants and gifts to support BCLBE’s research, education, and policy activities. This is an exciting opportunity to join a dynamic team at Berkeley Law. Go to [Berkeley Jobs](#) and search #16419.

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Lectures Recap [cont.]

[Jozel Brunett](#), Chief Counsel for the California Franchise Tax Board, discussed franchise tax audits, including participation in California’s settlement program and methods for avoiding California’s severe non-economic substance transaction (NEST) penalty. Brunett also described recent and ongoing litigation such as the *Gillette* and *Cutler* cases, the new market-based sourcing rules for services and intangibles, revenue estimates for single sales factor apportionment, and upcoming Interested Parties Meetings (IPMs).

[David L. Veeder](#), Principal at Ryan LLC, presented on current developments in interest netting and deposits made to suspend the running of interest. [David M. Ernick](#), principal in the transfer pricing practice at PWC, explained how the recent OECD Base Erosion and Profit Shifting plan moves international audits in a new direction including addressing the challenges of the digital economy, neutralizing the impact of hybrid mismatch arrangements, strengthening CFC legislation, limiting base erosion through financial payments, countering harmful tax practices more effectively, preventing treaty abuse and preventing artificial avoidance of PE status.

Berkeley Law Prof. [David Gamage](#) and Crowell’s [Seth T. Perretta](#) provided a practical insight into anticipated tax issues under the Patient Protection and Affordable Care Act (PPACA). According to Gamage and Perretta, the PPACA is the biggest revision of the Internal Revenue Code since 1986, and is likely to have perverse incentives that harm low- and moderate-income employees. The harm is caused by effective taxes on low- and moderate-income employees that reduce employment opportunities and distort social and economic behavior. Gamage’s [Tax Law Review article](#) explores these assertions in great detail.

In the lunchtime program for students, “**Change in Financial Services Regulation? You Can Bank on It!**”, [Karol Sparks](#), partner at Barack Ferrazzano, and [Sara Kelsey](#) at Sara A. Kelsey Law drew on their careers in counseling financial services companies to provide an introduction to the opportunities and challenges of practice in this dynamic field. They discussed how financial services regulation is ever evolving and the impact this constant of change has had on their careers. [Listen to the recording>](#)

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