



Governing and Living in a Time of Terror

September 8-9, 2006

The Berkeley Project on Law and Terrorism

Conference Program

Friday, September 8

8:00 - 8:45 am

Coffee and Registration

8:45 - 9:00 am

Welcome and Introduction

105 Boalt Hall

Christopher Edley

Dean and Professor of Law, Boalt Hall

An Introduction to the Berkeley Project

David D. Caron '83, C. William Maxeiner Distinguished Professor of Law, Boalt Hall

9:00 - 10:30 am

The Landscape of Law and Terrorism

105 Boalt Hall

To think about the era we find ourselves in, we need to get beyond reacting to the events of yesterday. This is not to say that those events are not important, nor should it suggest that they are irrelevant. But rather it is to emphasize that the Academy's role is to understand the larger context, to employ its freedom from the tyranny of today's emergency to understand the dynamics and trajectory of events, the range of choices available and the likely consequences.

In our opening session, an intellectual map of the law-and-terrorism landscape will be presented. It will be then be examined and expanded upon by a panel and conference participants.

Moderator:

Jonathan Simon '87, Associate Dean and Professor of Law, Boalt Hall

Panelists:

Dan Farber, Sho Sato Professor of Law, and Director, Environmental Law Program, Boalt Hall

Christopher Kutz, Professor of Law, Boalt Hall

Pamela Samuelson, Richard M. Sherman Distinguished Professor of Law, and Director, Berkeley Center for Law & Technology, Boalt Hall; Professor of Information Management, SIMS

Gordon Silverstein, Assistant Professor of Political Science, UC Berkeley

Steve Weber, Professor of Political Science, and Director, Institute of International Studies, UC Berkeley

10:30 am

Break

10:45 am - 12:30 pm

Terrorism Policy and the Academy
105 Boalt Hall

The endeavor we are initiating will have at its core the goal of generating important and relevant academic questions –important in the sense that we hope to encourage research into the foundational questions that animate governance and living in an age of terror; relevant in the sense that the research should, at some level, implicate legal policy choices across our range of topics. We hope, in other words, to generate research that is academically rigorous and pertinent to international, national, state and local policy debates.

How do we balance the need for research of high integrity with the obvious needs of the policy community for research that may contribute to a high level of policy choice? In this session, we ask our panelists to talk about the contributions academics can make to the policy realm.

Moderator:

Laurel Fletcher, Clinical Professor of Law and Director, International Human Rights Law Clinic

Panelists:

Tom Campbell, Dean, Haas School of Business and former member of Congress

Jesse Choper, Earl Warren Professor of Public Law, Boalt Hall

Joan Donoghue, former Deputy Legal Adviser, U.S. Department of State

Mel Levine, Partner, Gibson, Dunn & Crutcher; 1963-64 UC Berkeley ASUC president; and former member of Congress

12:15 pm

The Task Placed Before the Working Groups
105 Boalt Hall

12:30 pm

Lunch (by invitation)
The Goldberg Room

1:30 - 5:30 pm

Working Group Breakout Sessions

At this stage the conference will divide into smaller working sessions. The following working groups do not exhaust the range of topics presented, but represent broad clusters of issues developed by interested Boalt faculty over the course of the past year. Each working group is to consider and think through the scholarly agenda for its cluster of issues bearing in mind the questions and discussions raised in the morning's first session.

Among the key questions all working groups should bear in mind:

- *What are examples of things we do not know in the area of interest to you, and how can we generalize them? Would further research and investigation advance our knowledge?*
- *What can we learn from others outside the United States?*
- *What areas of scholarship have been well explored, and conversely, what are the main questions that are not being addressed by scholarship today?*
- *What are the analogous foundational questions in regard to other issues that should inform this endeavor?*

1:30 - 3:20 pm

**Working Group 1 -- Governance of the U.S. Effort to Address Terrorism
122 Boalt Hall**

An institutional focus on the federal government's organization, including its relations to the several states, to counter terror. Involves diverse issues from congressional oversight, intelligence, eavesdropping, accountability, financial sanctions.

Chairs:

Professor Daniel Farber, Sho Sato Professor of Law, Boalt Hall

Anne Joseph, Assistant Professor of Law, Boalt Hall

**Working Group 2 -- Law of War and the Rules of Counterterrorism
123 Boalt Hall**

Early in the current fight against terrorism there emerged a debate over the sufficiency of the rules of war—international humanitarian law, the Geneva Conventions, customary law of armed conflict, etc. There exists substantial room to develop this question by exploring not only whether the existing rules are sufficient, but by examining the content of those rules and the practice of governments when they use force against terrorism.

Chairs:

Richard Buxbaum '53 (LL.M.), Jackson H. Ralston Professor of International Law, Boalt Hall

David Kaye '95, Acting Director, Center for International and Comparative Law, Whittier Law School, and Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (on leave)

**Working Group 3 -- Computers, Terror and Privacy
115 Boalt Hall**

An emerging set of questions relate to the detection of terrorism in the United States, focused around such areas as computer/data security, cyber crime and the interplay of intelligence and law enforcement.

Chairs:

Deirdre Mulligan, Clinical Professor of Law, and Director, Samuelson Law, Technology & Public Policy Clinic, Boalt Hall

Pamela Samuelson, Richard M. Sherman Distinguished Professor of Law, and Director, Berkeley Center for Law & Technology, Boalt Hall; Professor of Information Management, UC Berkeley

Paul Schwartz, Professor of Law, Boalt Hall

Working Group 4 -- Impact of the War on Terror Abroad Dean's Seminar Room, Boalt Hall

This working group will address concerns about the extraterritorial effects of the U.S. war on terror. How has U.S. prosecution of the war impacted individuals outside the United States suspected of terrorism as well as their families and their home communities? What are foreign perceptions of the U.S. application of international laws and policies regarding the treatment of prisoners outside the U.S.? What are the international legal and policy implications the U.S. will need to address?

Chairs:

Laurel Fletcher, Clinical Professor of Law and Director, International Human Rights Law Clinic, Boalt Hall

Eric Stover, Director of the Human Rights Center and Adjunct Professor of Public Health, UC Berkeley

3:40 - 5:30 pm

Working Group 5 -- Governance of the International Effort to Address Terrorism Dean's Seminar Room

An institutional focus on the organization of international efforts to address terrorism, ranging from the formal arrangements, such as the UN, to less formal arrangements, such as the OECD country focus on terrorist financing to regional efforts.

Chairs:

David Caron '83, C. William Maxeiner Distinguished Professor of Law, Boalt Hall

Steve Weber, Professor of Political Science, and Director, Institute of International Studies, UC Berkeley

Working Group 6 -- Rule of Law and Counterterrorism 123 Boalt Hall

Controversies in the fight against terrorism have raised deep questions about the role of law, both domestic and international, in governing of counterterrorism policy. This working group will take up issues concerning

the rule of law in times of claimed emergency or exceptional circumstance, as well as the relation between executive and legislative authority. The group may also consider ethical questions concerning the role of legal and medical professionals in formulating and executing counter-terrorism policies.

Chairs:

Stephen Bundy '78, Professor of Law, Boalt Hall

Christopher Kutz, Professor of Law, Boalt Hall

**Working Group 7 -- Living with the War on Terrorism at Home
122 Boalt Hall**

In what ways have American society and citizenship changed since 9/11? How are the national efforts against terror felt at the state and municipal level?

Chairs:

Jonathan Simon '87, Associate Dean and Professor of Law, Boalt Hall

Leti Volpp, Professor of Law, Boalt Hall

**Working Group 8 -- Market and Private Responses to Terrorism
115 Boalt Hall**

Private markets and insurance are often nimble and responsive vehicles for responding to and spreading risks. But are they up to the task in the context of terrorism? This discussion group will address that broad inquiry, in addition to addressing a number of subsidiary questions. Is the sort of risk represented by terrorist activity analogous to that of other insurable risks? Does it matter, for example, that unlike natural disasters, terrorist actors are often strategic actors? Alternatively, does it matter that terrorist attacks are often intended to inflict harms of a significant magnitude on victims? To what extent would private individuals fully internalize the costs of terrorism activity? What steps are private organizations and/or individuals likely to take to prevent terrorist activity, and are all such steps beneficial to society? How might public insurance mechanisms (including tort reform) be designed to complement market responses?

Chairs:

Kenneth Bamberger, Assistant Professor of Law, Boalt Hall

Eric Talley, Professor of Law; Co-Director, the Berkeley Center for Law, Business, and the Economy, Boalt Hall

Working Group 9 -- Adjudicating Terrorism
107 Boalt Hall

Is it true that the law enforcement model does not work with terrorists? If it works sometimes, what circumstances lead to that result? The possibilities range from military tribunals to criminal prosecution; the experiences to investigate involve many countries.

Chairs:

Nancy Combs, Professor of Law, William & Mary College of Law

Tom Ginsburg, Professor of Law and Political Science, and Director,
Program in Asian Law, Politics and Society, University of Illinois College of
Law

7:00 pm

Dinner (by invitation)

The Women's Faculty Club

Dinner Address by David J. Neal, Q.C.

“The Strange but True Story of Jack Thomas (aka ‘Jihad Jack’)”

Introduction by Harry N. Scheiber, Stefan A. Riesenfeld Professor of Law
and History, Boalt Hall

Saturday, September 9

8:30 – 9:00 am

Breakfast

9:00 - 11:00 am

The Agenda for Scholarship and Policy

140 Boalt Hall

In this final session, representatives of each of the working groups come together for a discussion of how the Academy may contribute to a better understanding of the choices to be made in governing and living in a time of terror. It will be an opportunity for the working groups to compare notes, discover common questions and problems, and chart a course for the future of the Boalt project on law and terrorism.

Moderator:

Christopher Edley, Dean and Professor of Law, Boalt Hall