

Death Penalty Clinic Plays Critical Role in High Court's Miller-El Ruling



Acting Clinical Professor
Elisabeth Semel

Professor Elisabeth Semel greets a visitor to her law school office amid a whirl of activity—answering a string of phone calls, emailing documents to Washington, D.C., then fielding more calls. Semel, director of Boalt Hall's Death Penalty Clinic, apologizes and explains she and one of her students, Steven Hicks '06, are preparing information for members of Congress to educate them about a new Senate bill, the Streamlined Procedures Act, that would make it much harder for condemned state prisoners to get federal *habeas corpus* reviews of their cases.

For her, it's the latest front in a career-long fight to give criminal defendants "my fullest, most vigorous representation." It's that commitment which has informed her work for the past four years at the Death Penalty Clinic, which played a leading role in a June U.S. Supreme Court ruling that granted a new trial to a Texas death row inmate.

Clinic faculty and students (Racheal Turner '02, Jessica Simbalenko '04 and Portia Glassman '02), along with the Washington, D.C., law firm Sidley Austin Brown & Wood, wrote a series of *amici curiae* briefs for a group of former federal appellate court judges, a former deputy U.S. attorney general, a former FBI director, former state attorneys general, former assistant U.S. attorneys, and the former district attorney of Boston. All backed the effort to win a new trial for Thomas Miller-El, an African-American defendant convicted of a 1985 murder in Dallas County, Texas. The appeal was sparked by evidence that prosecutors had systematically dismissed African-Americans as prospective jurors.

In a 6-3 ruling, the Supreme Court said it "blinks reality to deny" that the state had barred certain members of the jury pool because they were black. The impact on Miller-El was swift: he won a new trial, though prosecutors have already announced their intention to again seek the death penalty. What's unknown, says Semel, is whether the ruling will have a wider effect in helping end discrimination in jury selection for capital cases.

"One obviously hopes that the impact is going to be broader than just getting relief," she says. "In the process of preparing the briefs in that case, we took a very hard look at whether or not Thomas Miller-El was purely an anomaly. And while the facts in Miller-El's case are probably more egregious collectively than you will find in most cases, there are aspects

of the discrimination in that case that go on in courtrooms across this country every day." *Miller-El* was closely tied to the history of the Death Penalty Clinic, as it was the first case the clinic accepted after it opened its doors in 2001. The clinic is also involved in two ongoing capital appeals in Alabama and California.

Semel says that beyond the crucial work of ensuring that those facing capital punishment get effective counsel, the Death Penalty Clinic offers students a challenging but effective grounding in lawyering skills that will be important in all realms of practice, not just in the service of criminal defendants. "What engages students, what interests them is being part of a legal team, learning how lawyers try to do it right," Semel says. "This includes more than writing a brief—interacting with witnesses, working with experts, developing evidence—the full range of skills [which] we on the faculty hope our students will have when they graduate. The clinic's work gives them a jumpstart to doing that."

And the clinic also prepares future lawyers for the human aspect of the attorney-client relationship. "If the students can feel—and they do—the degree of attachment and professional commitment to our clients, then we can be confident that they will have that same approach with respect to the clients they represent in whatever field of practice they have," Semel says. "And I think we want that for them."

—DAN BREKKE

www.law.berkeley.edu/cenpro/clinical/dpclinic/

EBCLC Helps Formerly Incarcerated People Get New Lease on Life

Ten thousand individuals return from jails and prisons every year in Alameda County and their convictions present obstacles to their reintegration into society. But a state law that allows people to say they no longer have convictions on their records is making a difference in their lives. And the East Bay Community Law Center (EBCLC) is taking a lead in working to give people with criminal records a new lease on life.

“Because of their criminal records, formerly incarcerated people are routinely denied access to basic services,” says Jeff Selbin, executive director of EBCLC and a lecturer at Boalt Hall. “Even minor convictions become, in effect, life sentences for people whose records prevent them from getting jobs, renting apartments or voting.” Kevin Gordon '03, a Perkins Coie Community Service Fellow working on the project adds, “I personally hope that [these remedies] will enhance people’s opportunities for self-sufficiency, especially regarding employment.”

EBCLC, founded by Boalt students in 1988, co-sponsored an expungement summit on April 2 with U.S. Representative Barbara Lee (D-California). With over 80 volunteer attorneys—the majority of them Boalt/EBCLC alumni—and more than 700 formerly incarcerated people in attendance, the summit served

as an effective promotion of the center’s efforts to help the community.

Staff Attorney Margaret Richardson '04 notes that in San Francisco and Contra Costa Counties, the Office of the Public Defender manages these remedies to criminal records. In Alameda County, however, EBCLC is the only provider that assists formerly incarcerated people free of charge. “This is a critical service to be providing at this time,” says Richardson. The dismissal of criminal convictions, as provided for in the California Penal Code, allows people who have completed their sentences to state truthfully on a job application that they have not been convicted of a crime. The convictions are not completely erased and the statute applies only to convictions where no prison sentence was imposed. This remedy provides

greater access to jobs, housing, state licenses and student loans.

After the April summit, EBCLC established a Criminal Records Clinic which assists formerly incarcerated people twice a week at the Wiley W. Manuel Courthouse in downtown Oakland.

Representative Lee actively continues to support criminal justice reform in Alameda County and spearhead the push for further legislation at the federal level. In early April, she urged fellow members of the Congressional Black Caucus to review the expungement policies in their home states and work to make those policies readily available to the public: “We need to make sure

that formerly incarcerated people have all the tools they need to reconstruct their lives and rejoin their communities.”

—CRISTINA BAUTISTA

“EVEN MINOR CONVICTIONS BECOME, IN EFFECT, LIFE SENTENCES FOR PEOPLE WHOSE RECORDS PREVENT THEM FROM GETTING JOBS . . .”

—Jeff Selbin
EBCLC Executive Director

www.ebclc.org

Jim Block



EBCLC staff lawyers Margaret Richardson '03 and Kevin Gordon '03 assist formerly incarcerated people move forward with their lives.

From Small-Town Lawyer

AMPAS

Best Motion Picture of the Year Academy Award winners Clint Eastwood, Albert S. Ruddy and Tom Rosenberg for *Million Dollar Baby*.



The practice it takes to land an Oscar rarely begins in the legal arena. But that was the case for Tom Rosenberg '72. *Million Dollar Baby*, the 2004 film he co-produced, netted Academy Awards for Best Picture (Rosenberg, Clint Eastwood, Albert Ruddy), Best Director (Eastwood), Best Actress (Hilary Swank) and Best Supporting Actor (Morgan Freeman). Eastwood praises Rosenberg as “an excellent film executive” with “a keen sense for the material.”

Speaking more modestly from his office at Lakeshore Entertainment in Hollywood, Rosenberg says: “A legal background helps you in anything you do. It helped me out when I was a small-town sole practitioner [and then] in real estate, and it remains important today. If you're running any sort of company, managing in-house legal people, making decisions that have legal repercussions, a background of law school training and years of practice are very important.

Henry Holmes '69, a Southern California entertainment attorney, agrees. “You need perseverance as a producer to get a

film made,” says Holmes, who is well acquainted with Rosenberg's work. “You have to be unrelenting. The law school experience [with its focus on the Socratic method] prepares you.”

When Rosenberg entered Boalt after teaching public school in his native Chicago, Hollywood was not in his game plan. “I never thought I would do this,” says Rosenberg, whose father was an alderman and a Cook County judge. “I have to say I never had a real plan in my life except I wanted to be a small-town lawyer. With that in mind, the self-described “Mother Earth hippie, back-to-the-lander” drove cross-country after graduation from Boalt

to find a town where he could be its only attorney. He wound up in Willow Springs, Missouri, an Ozarks community where he and his former wife bought an inexpensive piece of property, built a house without power tools, even raised their own food. “I put one foot in front of the other and just kept going,” he recalls. But even in the Ozarks, he began to think big, branching into real estate.

The route from the Ozarks to Hollywood went through Chicago. After five years in Missouri, he returned to his hometown, becoming a prominent real estate developer as well as an attorney and a political organizer. He helped oversee two presidential campaigns and served as a fundraiser-adviser to Chicago Mayors Jane Byrne and Richard M. Daley. “I've known Tom a long time,” says Mayor Daley in an email. “He's a good lawyer and a very smart developer and investor. ... Those are good qualities to have, whether you're developing real estate or making movies. I was delighted when he won the Academy Award.”

Rosenberg, who recently received a Lifetime Achievement Citation from the Windy City, had no idea how his talents would play in Hollywood. But a Chicago friend talked him into

to Oscar-Winning Producer

co-founding a production company in 1989. In 1994 he struck out on his own as founder and chairman of Lakeshore. In addition to *Million Dollar Baby*, his feature films include *Runaway Bride*, *Autumn in New York* and *The Human Stain*. Slated for 2006 is *The Lincoln Lawyer*.

Although many producers don't get involved in the creative side of filmmaking, focusing exclusively on the business aspects, Rosenberg reads books for ideas and even hires actors. After reading the script for what became *Million Dollar Baby*, he sent it to Swank, with whom he had worked in *The Gift*. "I thought it had the potential to be a very good movie, but saw it as a smaller-audience film," Rosenberg explains. "When you think about it, going into it, it's a very tough story with a very tough ending. When Clint Eastwood agreed to be involved and also starred in it, the prospects changed for the film. When you're making a decision to make a film, you're not thinking about Oscars."

Says Eastwood, reached by email: "[Rosenberg] was essential

in putting together the financing and distribution for the film. He was able to offer both creative insight in terms of casting and the business acumen to get the picture made." Holmes, who has had business dealings with Lakeshore, says Rosenberg is an A-list producer running an A-list company. "I'm proud to have gone to the same law school."

These days, the film business fills Rosenberg's 12- to 14-hour days. While he maintains a home in Chicago, last year he sold his share of Capri Capital, his real estate company that was based in that city. Suggestions for Boalt alumni who want to produce films? "It's a very difficult business—and I would just say you have to learn it first. You can't just step in. You have to take your time and learn the skill of producing so that you're competent—take your time and go slowly. It's better to develop a foundation of skill than bluff your way through it."

—JANET SILVER GHENT

www.lakeshoreentertainment.com

Siino Merges Law, Technology and Entertainment at Yahoo!

Joseph Siino's home may be in Berkeley, a city, he says, he'll "never move from," but his workplace is global. Named Yahoo!'s vice president of intellectual property and deputy general counsel in February, Siino '89 is officiating at a marriage between Silicon Valley and entertainment—a convergence that is accelerating rapidly. That's why he closed his Berkeley practice to take on the challenges of the Sunnyvale, California, Web giant that serves more than 345 million users in 25 countries.

Credited with helping create the fields of intellectual property management and strategy, he founded his successful Berkeley firm, Siino Law and Technology Group, after he left Brobeck, Phleger & Harrison in 2002. Last year he also became a managing director of Inflexion Point Strategy, an intellectual property investment bank. But then Yahoo! approached him. "Initially, I indicated that I was not interested ... but the company persisted," he says. After meeting with key people, he became an "instant convert."

Siino grew up in Antioch and Pittsburg, California, with an extended Italian-American family in the construction business. He graduated from UC Berkeley with a physics degree and intended to pursue a doctorate. While interviewing at graduate schools, however, he realized that studying physics was very different from living the life of a physicist. "When you're out there, it's no longer about creating exciting inventions and making discoveries" but participating in large projects, he recalls.

Determined to stay on the cutting edge, Siino entered Boalt to combine

interests in law and technology through intellectual property. He didn't specialize immediately in the field after graduation. But he took notice that, during the early '90s, "when most large firms were not doing well," intellectual property was booming. "I recognized that this is going to be a booming field for a long time and I might as well focus on it," says Siino, an adjunct professor of intellectual property strategy at Boalt and an executive council member of the Berkeley Center for Law & Technology.

In Silicon Valley, a key focus of Siino's work with Yahoo! is to "leverage the historic opportunity it now has at the interface of the media and technology worlds. ... My role would be to help Yahoo! optimize its intellectual property assets." Meanwhile, he says, "It feels like 1999 again. We're hiring like crazy in all areas of our business, seeking people who can really produce intellectual property. ... It's a great place for Boalt graduates and UC Berkeley graduates."

—JANET SILVER GHENT

www.yahoo.com



Joseph Siino '89 takes on new challenges.

Fellowships Foster Leadership in Social Justice Arena

Inspired to pursue creative legal approaches to social ills, six recent Boalt graduates have won competitive national fellowships supporting up to two years of work on behalf of underserved people and social justice causes. Terrence Galligan, associate director of Public Interest Programs at the law school, says the six fellowship awards constitute a banner year, demonstrating “the strength of the candidates and the support they get here.” Three of the recent graduates received Skadden Fellowships, two were handed Equal Justice Works Fellowships and one received a New Voices Fellowship. Still other 2005 Boalt graduates received prized in-house fellowships enabling them to launch their careers at public interest organizations.

Some 15 percent of Boalt’s graduates start their careers in public interest and public service. The law school’s commitment to public interest law is reflected in a tapestry of clinical programs and social justice activities, along with a close-knit network of students, faculty and mentors dedicated to such work. In addition to supporting projects addressing societal problems, the fellowships give eager graduates a chance to explore their passions and gain needed experience in a highly selective field of law.

—ABBY COHN

www.equaljusticeworks.org www.skadden.com newvoices.aed.org

RACHAEL KNIGHT '05

Equal Justice Works Fellowship

Rachael Knight '05 says it's a familiar scenario: a child who lives in a shoddy housing project is regularly brought into the ER for treatment of recurring asthma attacks. Sometimes the best prescription, Knight asserts, includes legal advocacy—and not just an inhaler.

“Doctors are constantly treating the symptoms of poverty, not the root causes,” says Knight, noting that the child’s asthma could be triggered by mold or other allergens plaguing a rundown apartment building. Childhood illnesses afflicting the poor often

are aggravated by such external factors as substandard housing, inadequate nutrition or lack of health insurance, she says.

The recipient of an Equal Justice Works Fellowship, Knight, 28, is starting a legal advocacy program on the San Francisco peninsula aimed at remedying underlying causes of ill health among low-income children. Based at Lucile Packard Children’s Hospital in Palo Alto, and the Ravenswood Family Health Center in nearby East Palo Alto, the new Family Advocacy Program is modeled after the Boston-based organization where Knight previously worked. Melissa

Rodgers, directing attorney at the Legal Aid Society of San Mateo County, says Knight’s project will assist disadvantaged families who might not otherwise seek out legal services. “They’re going to bring their children to the doctor,” Rodgers says.

Knight will train healthcare providers to identify their patients’ legal needs and refer patients to her when they suspect nonmedical factors are contributing to a health problem. Her advocacy could consist of writing a letter to a landlord or helping a family get food stamps, health insurance or other benefits. “To me, this is an access to justice issue,” says Knight.





Jim Block

ON THE MOVE: Nora Preciado '05, Rachael Knight '05, Tom Plummer '05 and Yungsuhn Park '05 bring passion and dedication to their fellowship projects.

YUNGSUHN PARK '05

Skadden Fellowship

Yungsuhn Park '05 was in middle school when her family's business was looted in the 1992 Los Angeles riots following the acquittal of police officers accused of beating Rodney King. Those explosive days awakened her political and social consciousness. "I observed what happened and became interested in studying why it happened," she recalls.

As a student at the University of Southern California, she participated in a boycott supporting low-wage Latino restaurant workers in Koreatown in Los Angeles. Although that stand challenged some practices of her own Korean community, Park "wanted to be involved in creating positive social change."

As a Skadden Fellow, Park, 26, will direct her passion for workers' rights to a project at the Asian Pacific American Legal Center (APALC) in Los Angeles.

In 1999 APALC litigated a historic suit resulting in a \$4 million settlement for Thai garment workers found virtually enslaved in an El Monte, California, sweatshop. Park plans to extend the center's successful ongoing advocacy for garment workers to vast numbers of laborers in janitorial, construction, home health and other low-wage jobs.

By increasingly contracting out work, manufacturers and retailers are skirting liability for such workplace abuses as minimum wage and overtime violations, Park asserts. Her project will study the needs of low-wage workers in Los Angeles, and address those needs through impact litigation, policy advocacy and community education.

"Without her initiative and the Skadden Fellowship, we simply wouldn't be able to expand our capacity to deal with this pressing problem," says Julie Su, APALC's litigation director.

NORA PRECIADO '05

Equal Justice Works Fellowship

Nora Preciado '05 knows firsthand the obstacles faced by immigrants who don't speak the language of their new homeland. Preciado, 28, spoke little English when her family moved to Orange County, California, from Mexico when she was 13. This fall she begins a fellowship aimed at ensuring that Spanish-speaking residents in the Los Angeles area get the translation assistance mandated by state and federal law when they seek medical care and other family and children's services.

"There's no impetus [for providers] to comply," says Preciado, who received an Equal Justice Works Fellowship to pursue a community education and litigation project at the Mexican American Legal Defense and Educational Fund (MALDEF) in Los Angeles. While actual compliance figures don't exist, Preciado says a state audit in 1999 revealed that only two of 10 state agencies were aware of the requirement to provide bilingual assistance.

The lack of interpreter services has potentially disastrous consequences, including misdiagnosis or failure to seek

treatment, according to Preciado. In some cases, small children are pressed into service as interpreters, placing youngsters in the risky position of communicating sophisticated details about medical conditions and treatment.

Preciado, who recalls how language barriers kept her parents from attending her parent-teacher conference and school open house when she first arrived in this country, says her own experiences shaped her desire to go to law school and pursue a career as a public interest lawyer. "I think it makes the most sense to help my community out," she says.

TOM PLUMMER '05

Skadden Fellowship

Despite “some really wonderful laws” in California barring discrimination on the basis of sexual orientation, gay youth often face overwhelming hostility in their daily lives, says Tom Plummer '05. Alarming dropout and runaway rates reveal the devastating toll exacted on youngsters who encounter abuse at school or in unwelcoming home or foster care settings.

“Lesbian, gay, bisexual and transgendered youth are still experiencing a lot of harassment,” says Plummer, who graduated with a J.D. and a master’s in social welfare. “Statistics tell us a disproportionate number of youth are running away.”

As a Skadden Fellow, Plummer, 31, will collaborate with San Francisco-based Legal Services for Children (LSC) to offer free legal assistance to gay and questioning youth in the San Francisco Bay Area. Teamed with a social worker to assess the needs of these vulnerable clients, Plummer will act as a legal advocate, bridging a gap “between forward-looking laws and what really is the lived experience of these students,” he says. Plummer will offer educational workshops and direct legal representation to gay youth on such issues as home placement, school discipline and medical care.

After working in a domestic violence shelter in Kansas, Plummer was inspired to pursue a career of advocacy for underserved youngsters and families. “I got the feeling there were enough social workers, but we didn’t have enough lawyers doing that kind of work,” says Plummer.

Shannan Wilber, executive director of LSC, says the project will target services to a population “sometimes overlooked in terms of child protection laws.”

NOURA ERAKAT '05

New Voices Fellowship

As the recipient of a New Voices Fellowship, Noura Erakat '05 is focusing on human rights work on behalf of Palestinians. Erakat was selected to develop a litigation project and serve as a grass-roots organizer for the U.S. Campaign to End the Israeli Occupation. Based in Washington, D.C., the campaign is a coalition of groups seeking to challenge U.S. policies in the Israeli-Palestinian conflict.

“The litigation project is definitely the innovative piece,” says Erakat, 25, of her two-year fellowship. Her Palestine Human Rights Litigation Project envisions taking three legal approaches: using the Alien Tort Claims Act to

prosecute human rights violators, suing U.S. corporations that sell products to Israel for military use, and protecting the rights of pro-Palestinian activists and scholars in the United States.

“I came to law school specifically to look at new ways of building social movements and actually winning victories,” says Erakat, a Palestinian American. As an undergraduate at UC Berkeley, she was active with the group Students for Justice in Palestine.

Erakat originally considered a career as an international human rights lawyer. She concluded, however, she could be more effective in the United States, using her legal skills within the American judicial system to address injustices she believes are committed against Palestinians.

She expects to divide her time equally between creating the litigation project and working as an organizer who trains activists nationally and collaborates with other organizations. The New Voices Fellowship is intended to develop diverse and progressive leaders in social justice movements.



Jim Block

**New Voices Fellow
Noura Erakat '05**

Skadden Fellow
Karen Tumlin '04



Elisabeth Voigt '04

KAREN TUMLIN '04

Skadden Fellowship

Karen Tumlin '04 fears that the rights of all workers are jeopardized when employers challenge the immigration status of foreign-born employees who file discrimination suits and workers' compensation claims. Seeking to protect those rights, Tumlin, 31, will litigate cases nationwide on behalf of immigrant workers as a Skadden Fellow in the Los Angeles office of the National Immigration Law Center (NILC), an organization supporting the rights of low-income immigrants.

Her efforts are a response to what Tumlin describes as an "inappropriate extension" of the *Hoffman Plastic Compounds, Inc. v. NLRB* ruling by the

U.S. Supreme Court in 2002. In that 5-to-4 decision, the Court held that a California company did not have to provide back pay to an undocumented worker who was fired for participating in union activities. "Since then employers have seized on that decision," Tumlin says, applying what she considers a limited ruling to the broader arena of workers' compensation and antidiscrimination protections.

Tumlin will litigate immigrants' claims of workplace discrimination and seek a uniform policy from regional Equal Employment Opportunity Commission offices protecting those claims. She also plans to work with state agencies to restore the rights of injured immigrants to workers' compensation.

Focusing on such "next-destination" states as Nebraska, Kansas and Georgia that have experienced a surge in immigrant populations, Tumlin will represent injured workers in administrative complaints and litigation.

"I believe in what [immigrants] add to the American community," says Tumlin, who earned a master's degree in public policy from UC Berkeley in 2003.

Microsoft Gives \$1 Million to Berkeley Center for Law & Technology

The Berkeley Center for Law & Technology (BCLT) continues its upward momentum with a \$1 million gift from the Microsoft Corporation, a move that secures and advances the center's position as the nation's premier think tank on cutting-edge law and technology policy issues. Both the Microsoft gift and the hiring of renowned patent expert and policy specialist Robert Barr as BCLT's executive director build on Dean Christopher Edley's efforts to catalyze the talent and energy of BCLT faculty and make the 10-year-old center a focus point for translating policy into research. Barr, formerly vice president of intellectual property and worldwide patent counsel for Cisco Systems, joined BCLT in July.

Professor of Law and Information Management and Chancellor's Professor Pamela Samuelson, faculty chair and a BCLT director, hailed the Microsoft gift as a key development for the center. "The exchange contemplated between BCLT scholars and Microsoft lawyers and technologists will be invaluable for deepening our understanding of real-world consequences of legal and policy changes that we wish to recommend, especially now that patent reform is under serious consideration in Congress," says Samuelson, a distinguished expert in the areas of copyright law, software protection and cyber law, and a 1997 MacArthur Foundation "Genius" Award recipient.

The gift will sponsor roughly two BCLT faculty research projects a year. It provides the BCLT brain trust of scholars, whose areas of expertise range from patent and copyright law to cyber law, the opportunity to meet with Microsoft each spring to discuss their research interests for the coming year and for each partner to weigh in on areas they believe are of particular import.

"We are looking forward to the opportunity to interact with such a distinguished group of scholars," said Brad Smith, senior vice president and general counsel for Microsoft. "This collaboration will enable our employees to discuss important issues facing the technology industry with some of the most respected researchers in the field."

Microsoft will give a total of \$1 million to BCLT over the next four years in the amount of \$250,000 annually to provide support for research on forward-looking law and technology policy issues. From the annual contribution, \$100,000 will be available each year to support the research of BCLT faculty and affiliated scholars at UC Berkeley, and \$150,000 will be placed in a term endowment to be spent over a 10-year period. Funds from the term endowment will be used to establish a Microsoft Fellow in Law and Technology.

— STAFF

www.law.berkeley.edu/institutes/bclt