

A death-penalty deluge?

More Californians than their fellow citizens imagine could soon be executed, says Boalt capital-punishment specialist

By Cathy Cockrell
PUBLIC AFFAIRS

In the 28 years since California reinstated the death penalty, 11 of its condemned inmates have been executed. That's 11 too many for death-penalty opponents — but too few, by the numbers, to have pushed the ultimate punishment into the forefront of public consciousness, says Elisabeth Semel, director of the Death Penalty Clinic at the School of Law.

With less than one execution per year on average, she says, "We're able to think of them as isolated incidents, becoming extremely focused on an execution before it occurs, whatever side we're taking." Once the execution happens, however, "people don't need to think about it again for another 12 to 18 months."

But the three potential state executions on the near horizon — of Stanley "Tookie" Williams' on Dec. 12,

followed by Clarence Ray Allen's on Jan. 17 and Michael Morales's in February, if authorities have their way — are a sign of what's to come, she predicts. "We're inevitably going to be facing more executions more frequently."

An acting clinical professor at Boalt and a long-time practicing criminal-defense lawyer, Semel says the California electorate's "inevitable" appointment with the death penalty, and its attendant moral questions, has been long in the making. According to the California Department of Corrections the state has 647 condemned inmates, whose cases are in various stages of the judicial review — more than any other state in the nation.

In California, in particular, judicial review is a lengthy process, "having to do with a chronic short-

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age of lawyers, more cases than the California courts can possibly handle, and the complexity involved in the review of these cases," Semel says. Following a death judgment, it typically takes four to six years to appoint a lawyer for the automatic appeal in state court, and even longer before a lawyer is appointed for the *habeas corpus* appeal; subsequent reviews by the federal District Court, the federal Court of Appeals, and even, on occasion, the U.S. Supreme Court move more quickly.

Inevitably, however, death-penalty cases reach the end of the line, and that is what is gradually happening in a significant number of California cases, Semel says. "About 200 such cases, roughly one-third of the total, have made their way into federal court; several are at the later stages of review," she says.

motions, as in the case of Thomas Miller-El, a Texas death-row inmate who was granted a new trial in June by the U.S. Supreme Court.

The clinic has not been directly involved in the case of Stanley Williams, the co-founder of the L.A.-based Crips gang (and later an anti-gang spokesperson), whose pending execution has garnered international attention. However, recent Boalt grad Lorien Redmond, who worked on an Alabama death-penalty case while participating in the clinic, was instrumental in persuading her new employer, the New York-based law firm of Curtis, Mallet-Prevost, Colt & Mosle, to take on Williams' clemency petition on a *pro bono* basis. Gov. Arnold Schwarzenegger has agreed to hold a clemency hearing on Dec. 8.

"We've never had this many cases in federal courts. I don't think Californians have grappled with the prospect of putting 200 people to death, much less 647." (Nor, for that matter, have they considered the additional number to be accommodated by an expansion of San Quentin's Death Row by more than 100 beds, approved by the state in early November.)

"We are at a time of re-examination about the death penalty," Semel notes. "Polls certainly tell us that there is more doubt and mistrust about its application than there has been in decades."

Boalt Hall's Death Penalty Clinic represents clients in capital post-conviction proceedings in Alabama and California. It also prepares briefs, petitions, and pre-trial

With so much attention focused on Williams, Semel worries that Clarence Ray Allen and Michael Morales "will get lost. Not to say that Williams is not deserving of the attention. But I hope his case has a spillover effect, to raise the broader questions."

According to Amnesty International, Texas is far and away the leader in executions, with 355 since 1976, when the U.S. Supreme Court authorized the resumption of capital punishment. (Of those, 152 occurred under Gov. George W. Bush, who presided over more executions than any other governor in U.S. history.) A Virginia execution scheduled for Nov. 30, but reversed by a clemency ruling on Tuesday, would have brought the total number of U.S. executions since that date to exactly 1,000.