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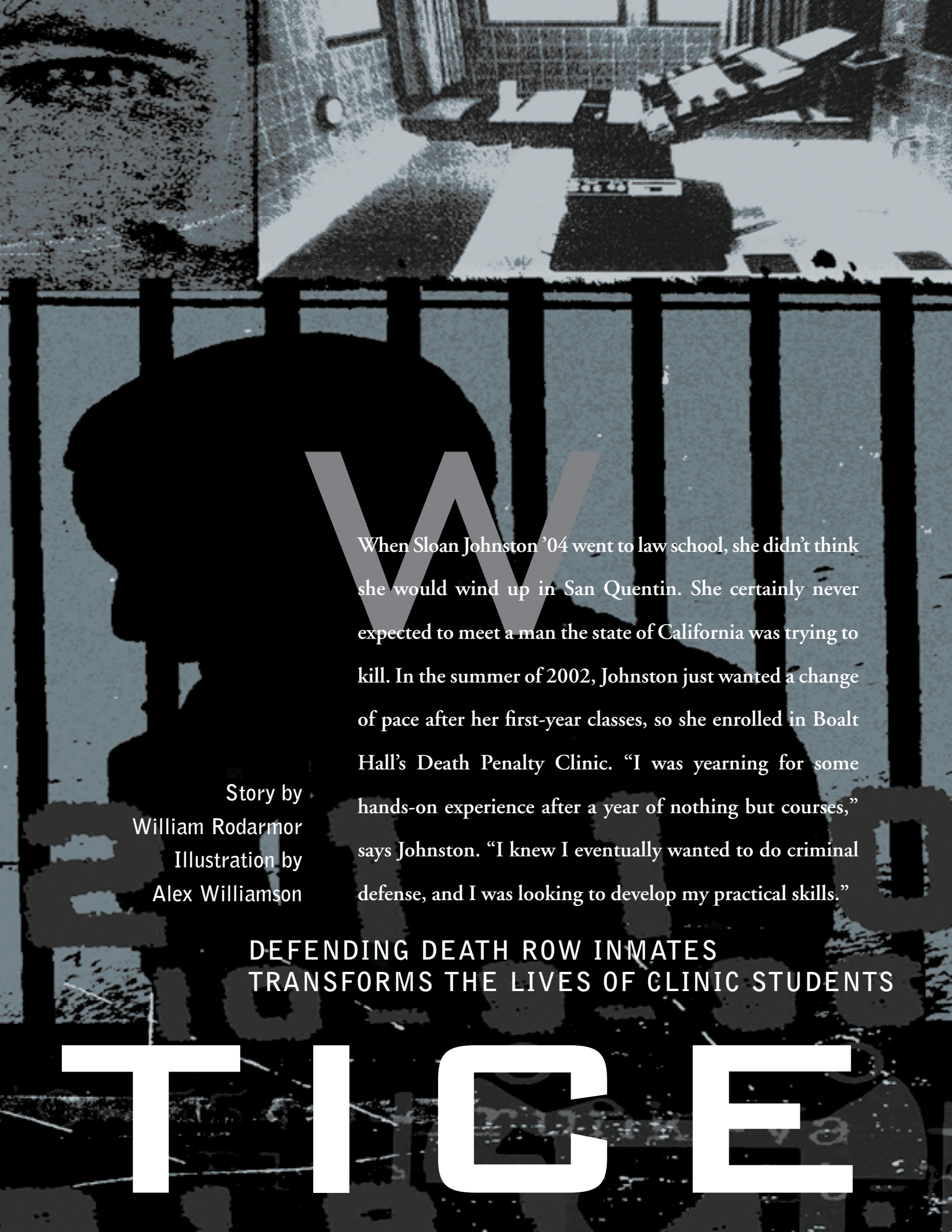
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When Sloan Johnston '04 went to law school, she didn't think she would wind up in San Quentin. She certainly never expected to meet a man the state of California was trying to kill. In the summer of 2002, Johnston just wanted a change of pace after her first-year classes, so she enrolled in Boalt Hall's Death Penalty Clinic. "I was yearning for some hands-on experience after a year of nothing but courses," says Johnston. "I knew I eventually wanted to do criminal defense, and I was looking to develop my practical skills."

Story by
William Rodarmor
Illustration by
Alex Williamson

DEFENDING DEATH ROW INMATES
TRANSFORMS THE LIVES OF CLINIC STUDENTS

T I C E

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Johnston's skills now include navigating San Quentin's locking sally ports, remembering not to wear denim or metal when visiting a prison, and being able to sit down and talk easily with a man condemned to death.

And Johnston is still learning. Even after she and Professor Elisabeth Semel, the clinic's director, had made half a dozen trips to the little brick outbuilding at San Quentin where legal visits are held, Johnston had never been inside the main compound. So she signed up for a tour of the prison.

"We saw the main line, the yard, a

dining hall, one of the tiers and the execution chamber," she says. "It was the first time I ever saw up close what my client goes back to—the cell where he spends 23 hours a day. It was a horrifying and emotionally difficult experience."

For students in the Death Penalty Clinic, going to San Quentin is an experience they will not get from reading *Palsgraf v. Long Island Railroad Co.* And that's the whole idea.

"We attract students who are politically opposed to the death penalty and see this as a life work," says Semel, a veteran criminal defense lawyer who became the clinic's

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founding director in 2001. “But we also draw students who may not know where they stand on the death penalty and see the clinic as a way to address the question for themselves.” Those students know they are probably never going to work in capital litigation,” says Semel—then adds with a sly grin, “or so they think.”

Semel makes it clear that the students’ political beliefs are less important than their performance. “This is a law office, and our goal is to represent clients effectively,” she says. “Political opinions are very much secondary to what we do, and they don’t define it.”

way. Second, the death penalty is critically situated in the South. More than 80 percent of executions have occurred in the South, and you can’t ignore that.”

And finally, she says, one of the most egregious facts about the death penalty is the lack of qualified lawyers. “People on Alabama’s death row have no right to a state-appointed lawyer in post-conviction review,” she says. “Execution without representation is a reality. So taking an Alabama case was a priority. A clinic that is going to have a mission of service as well as a pedagogical mission has to be responsive to that need.”

Professor Charles Weisselberg, who heads

charges for its tickets. So the clinic’s faculty members do a lot of fundraising, and they watch their budgets. “We fly cheap,” Semel says, “and we’re always asking, ‘How many students can we cram into a motel room? How many faculty members?’” The payoff comes in the trenches.

“The people in the clinic are incredible,” says Johnston. “For eight people to be able to go off to Alabama, work 14 hours a day, and still like each other is pretty amazing.”

Making Powerful Connections

When students head out to conduct interviews, they are closely supervised, in



Responding to a National Need

When the Death Penalty Clinic was established, it was assumed the clinic would focus on cases with a Northern California link. After all, San Quentin sits just across the bay from Berkeley, and local connections make investigations easier. So why is the clinic engaged in a pro bono case in Alabama?

“First, we’re dealing with a national issue, and we’re a national law school,” Semel says. “We can’t address this in an isolated, artificial

Boalt’s Center for Clinical Education and teaches with Semel in the clinic, says taking both California and out-of-state cases gives students “a perspective on the criminal justice system they can’t get any other way. I think it’s been enormously successful as a teaching device—as well as in providing first-rate legal service to people who wouldn’t otherwise have it.”

Still, Alabama is 2,300 miles from California, and even Southwest Airlines

both California and Alabama. “The room for error in the field is zero,” says Semel. “There has to be a certain amount of control over a student asking a question, because you never know whether the first interview will be your only one—although the goal is to have follow-up interviews, of course.”

The clinic students face a double challenge: adapting to a new environment and putting people at ease so they will talk freely. Many students need to scale walls of

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race, gender and background to make contact with the people they are trying to reach.

Daniel Olmos '04 and Jennifer Schlotterbeck '03, for example, learned how to blend into rural Alabama. A year ago, the students were jouncing around back roads in a rented car conducting field interviews.

Olmos wanted people connected to the case to talk to him, so he made a special effort to be approachable. "I cleaned myself up before I went there," he says. At the clinic's urging, he trimmed his long hair and shaved off his goatee. He also dressed neatly, but not so formally as to be intimidating: in khakis and a button-down shirt or a sweater.

Schlotterbeck did the same. "Before I left California, I went out and bought some skirts with hems below my knees," she says. "I figured that people in rural Alabama would expect to see women in skirts, not pants."

When the students knocked on doors, they were unfailingly polite, and they listened for as long as people felt like talking—an amazing five hours, in one case. "People get comfortable with you," says Olmos, "and they start letting out a side of themselves that doesn't come out at first glance or in the first conversation."

What emerges from those conversations can be powerful.

For Victor Rodriguez '03, an early

"The first moment you talk to a person whose life is centrally affected by what you're doing makes it all real. It's the oxygen that keeps you running for the next nine months."

morning flight to Los Angeles one week before Christmas felt endless. He was accompanying Semel and some other students for a meeting with a California prisoner's family.

Rodriguez was nervous, he says. "I mean, what if the family said, 'Who's this snotty kid from the law school coming to meet us? What's his stake in the outcome of our son's case? He's only been on the case for a matter of months; what could he possibly have to offer?'"

A great deal, apparently, because the family greeted all the students with open arms. "They were very happy, and very thankful and hopeful, because we had their family member's best interests at heart," he

Matching Roles to Talents

When giving assignments to their students, Semel and Weisselberg try to figure what will help clients most. Some students mainly do research and write, while others spend time in the field—in California or Alabama, sometimes both. And a select few actually meet the clients on death row.

Research and writing may be the most conventional aspects of clinic work, but the bar for these tasks is set higher than usual. "I don't think students who come to us have had the kind of supervised writing experience that we give them," says Weisselberg. "When they write a brief with

"Working late, coming down to the wire, knowing your brief is actually going to the Supreme Court. ... You feel really good about why you are writing it, and what its possibilities are." When the brief came back from the printer, Ray was surprised to see how small such a potent document was. "It was just a neat little booklet, about five by eight inches and 25 or 30 pages long. But holding it in my hand was a pretty heady moment."

Building a Relationship of Trust

Semel is extremely careful when choosing the students who will meet the clinic's death row



says. "I came away feeling completely blown away by the sense of trust and confidence they had in the work we were doing."

Times like those make the weeks and months of hard clinic work worthwhile, says Rodriguez. "It's one thing to read a file or discuss theory with your professors, but the first moment you talk to a person whose life is centrally affected by what you're doing makes it all real," he says. "It's the oxygen that keeps you running for the next nine months."

us, it can go through 15 or 20 drafts."

Writing was a natural for Sarah Ray '03, who came to law school after five years of dealing with writers and reading scripts in Hollywood. One of the clinic's first students, Ray worked with Weisselberg on a U.S. Supreme Court reply brief in a group of Texas cases that raised the issue of the right to counsel in clemency proceedings.

Ray says working on the brief was the high point in her law school career.

clients, weighing what the encounter will mean on both sides.

"With rare exceptions, clients who have been convicted and sentenced to death have lived lives of deprivation, abandonment, poverty and transience," she says. "And sadly, for many, that transience recurs in the lack of a relationship with their trial and appellate counsel."

Which leads to a paradox. Semel and Weisselberg make a commitment to stand

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by their clients for the duration of the case, but they ask the clients to develop a relationship with one or two students each semester. “They know the students will be there for only a year or 18 months,” says Semel. “That’s really difficult. It’s a lot to ask of the clients.”

For death row visits, Semel picks students who have some life experience, are compassionate and know how to listen. “Listening is huge,” she says. “Students have to be willing to sit in a room with us and the client for four hours and listen. Students who can do that are an enormous asset, because they may pick up on something that we totally miss.”

While Semel is both a teacher and a litigator, she is quick to stress that her first loyalty is always to her client. “The client isn’t there to be observed by the students. He’s not a case study; he’s not a lesson,” she says. “If I were to funnel in a series of students over the semester, it would be an insult to the client and to the attorney-client relationship.

“It would teach absolutely nothing except the contrary of what we want to convey to the students, which is: The core relationship in any case is what you have with your client. And that’s a relationship of trust that is built, not one that happens by magic.”

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Changing the Future

For students, there is a big risk in getting involved with the Death Penalty Clinic. First, it takes over their lives, then it transforms them.

In a torts or contracts class, you can choose not to do a reading assignment, says Rodriguez, but the clinic does not afford you that luxury. “There are things that *must* be done, and they take priority over everything else,” he says. “I have yet to meet professors or students as committed to the work they do. They’re willing to sacrifice things they’re doing outside the clinic in order to make sure their work is absolutely

top-notch. Working with them makes you aware of why you came to law school in the first place.”

“I’m Mexican-American,” says Olmos, “and I say half-kiddingly that I’m obsessed with the way race intersects with the criminal justice system. I’ve always known I wanted to do public interest and civil rights law, but I didn’t know until I worked with the Death Penalty Clinic that I would do it within the criminal justice system.” He adds, “You’re not going to realize the depth of the emotion you’re going to feel, working on something like this.”

“I’m graduating with a certificate in

environmental law,” says Schlotterbeck, “but working at the clinic changed the course of my career. One thing I learned about myself in law school is the work I do has to involve risk—meaning there has to be something at stake I care about.”

“I’ve always thought of myself as a politically engaged person,” says Johnston. “But before I started working with the clinic, my understanding of the death penalty issue was really shallow. The clinic definitely feels like the most urgent and compelling work I’ve done at Boalt.

“And I think it will be difficult for me to leave this work now that I’ve started it.”

CREATING A CLINIC

The Death Penalty Clinic is the latest addition to Boalt’s Center for Clinical Education, which includes the International Human Rights Law Clinic and the Samuelson Law, Technology & Public Policy Clinic.

Professor Charles Weisselberg wanted to establish a criminal law clinic when he became the center’s director in 1998. The opportunity came two years later when Nick McKeown and Peter Davies, two Silicon Valley entrepreneurs, provided the initial funding for the clinic. “In the spring of 2001, we hired Elisabeth Semel to direct the clinic,” says Weisselberg, “and she started that July.”

Under the supervision of Semel and Weisselberg, clinic students learn how to conduct a capital case investigation, work with clients, interview witnesses, draft pleadings and prepare for hearings. They

also take a weekly seminar that covers substantive capital punishment law, habeas corpus practice and procedure, and litigation techniques, such as investigating, interviewing, and developing mitigation evidence. Because the litigation is so complex, students are required to enroll for at least two semesters.

The clinic mainly represents prisoners in capital post-conviction proceedings. Semel and Weisselberg are currently counsel for two death row inmates, one in California, and one in Alabama. Under the professors’ direction, students are working on a direct appeal and the habeas investigation in the California case; and on post-conviction proceedings in the Alabama case.

In the last year, the clinic was counsel in several Texas cases that raised the question of whether people sentenced to death are

entitled to lawyers in clemency proceedings and proceedings to determine if they are competent to be executed.

The clinic scored an early success in the case of Thomas Miller-El, who had been convicted of capital murder and sentenced to death in Texas in 1986. Thanks in part to two of the clinic’s *amicus* briefs, the U.S. Supreme Court ruled in early 2003 that Miller-El’s claim that prosecutors showed racial discrimination in their peremptory challenges during jury selection should be heard.

Jim Marcus, Miller-El’s attorney, had approached the clinic for assistance. “This was Thomas’ last chance,” he says, “and I really needed help in trying to draw the Supreme Court’s attention to this case.

“Without the clinic’s intervention, it’s questionable whether we would have even had a stay of execution.”