

Death Penalty Clinic News



Our fall 2019 clinic team

Dear Friends and Alumni,

Accustomed as you are to my year-end email, we are at last able to send an electronic newsletter. While we would never substitute visual appeal for content, you can now see some of the Death Penalty Clinic students in action. The clinic has a [new landing page](#)—as part of a longer-term improvement of our web presence—that will make it easier to find and follow our work.

This was one of the most fast-paced and productive years since the clinic launched in 2001. And as we—faculty and staff—have come to expect, our students went to the mat with us to meet deadline after deadline on behalf of clients facing capital punishment in Alabama, Arizona, and California. The range and complexity of litigation is stunning: pretrial motions, state and federal habeas petitions, pre- and post-hearing briefing, and a petition for rehearing en banc in a federal court of appeals.

This is the season when I ask you to contribute to our [Fellowship Fund](#), which is supported entirely by your donations. The Death Penalty Clinic could not serve as many clients in as many jurisdictions, or supervise as many students as we do, without the talent, skill, and grit of the attorneys funded by the fellowship. This newsletter includes an update on past fellows and clinical supervising attorneys and a [profile of Mridula Raman](#), our newest clinical supervising attorney.

You can [click here to make an online donation](#) at any time. If you prefer to send a check, please make your check payable to “Berkeley Law Death Penalty Clinic Fellowship,” and mail it to: Berkeley Law c/o UC Berkeley, Donor Gift Services, Suite 400, 1995 University Avenue, Berkeley, CA 94704-1070.

More information about the Death Penalty Clinic is available on [our website](#).

On behalf of Associate Director Ty Alper, Clinical Supervising Attorney Mridula Raman, Paralegal Heather Canfield, and our extraordinary students, best wishes for the holiday season and the New Year.

Elisabeth Semel

Elisabeth Semel
Director, Death Penalty Clinic and Clinical Program

Our Work



Dagen Downard '20 presents to the weekly clinic seminar class.

National attention brought to bear on Alabama wrongful conviction

In one of the clinic's Alabama capital cases, students worked with co-counsel and investigators at the Southern Center for Human Rights to advocate in the Alabama courts following a long-awaited evidentiary hearing in Birmingham in June. The hearing was scheduled following a 5-4 victory in the U.S. Supreme Court, holding that the clinic's client, Toforest Johnson, could proceed on his claim that prosecutors unlawfully withheld evidence that their star witness was paid for her testimony. Students have drafted post-hearing briefing, and they continue to develop and analyze evidence that establishes our client was wrongfully convicted of murder. The case has generated [national and local media attention](#), including an in-depth article in *The Washington Post*, which concluded that "any system that could allow Johnson to be convicted, sentenced to die and remain on death row for this long, on this dearth of evidence, is a system broken to its core."

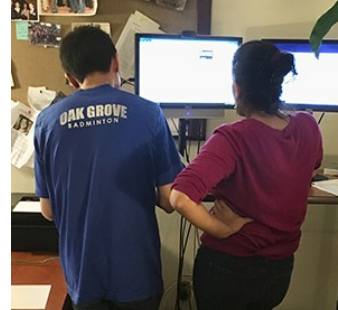
Challenging racially biased jury selection in California

This year, two teams of clinic students filed motions to oppose death qualification—the process by which capital juries are typically selected—in cases in Santa Clara and Solano counties. The clinic has now litigated these challenges in four California counties. The state and federal constitutional arguments are grounded in empirical research demonstrating that death qualification disproportionately excludes African Americans from capital juries. The motion puts county-based surveys on juror attitudes and decades of social science research into the historical context of race discrimination and the death penalty at the national, state, and local levels. After a hearing in which the clinic persuaded the Santa Clara County Superior Court, over the prosecution's objection, to take evidence on the motion, the District Attorney's Office dropped the death penalty. (While the clinic's motion was not dispositive, our challenge was integral to the overall litigation strategy.) The Solano County motion is pending, and the clinic is looking forward to an evidentiary hearing.

Eleventh Circuit to rule on rehearing petition in Alabama

Just weeks into the semester, an Eleventh Circuit panel affirmed in a 2-1 decision the denial of habeas relief for one of our clients on Alabama's death row. A team of six clinic students quickly began learning the case's 30-year history

and researching intricacies of federal habeas law. The students, along with lead counsel Joseph Flood, filed shortly thereafter a petition for rehearing en banc, arguing that the panel's decision on ineffective assistance of counsel and on intellectual disability conflicted with Supreme Court and circuit precedent. Various national advocacy organizations dedicated to the proper determination of intellectual-disability claims filed an amicus brief, drafted by Munger, Tolles & Olson. We are now awaiting the Eleventh Circuit's ruling on the rehearing petition. *(Above right: Clinical Supervising Attorney Mridula Raman and Bill Nguyen '20 make final edits late at night.)*



Preparing for oral argument in Arizona post-conviction proceeding

We have also been working with Phillips Black attorney John Mills on behalf of an Arizona client who is currently in state post-conviction proceedings. In prior years, clinic students helped to uncover juror misconduct through their investigation. This year, two students delved deep into the worlds of procedural bars, intellectual disability, and jury instructions, and drafted part of a pre-argument memorandum for the superior court judge. The students are also helping counsel prepare for the oral argument, set for December 2019, about the need for an evidentiary hearing.

Exposing race-based capital charging in California

On behalf of our California client, with our co-counsel James Thomson, the clinic has been litigating simultaneously in the San Diego County Superior Court, the California Supreme Court, and the United States District Court for the Southern District of California. After years of litigation in which several teams of students participated, the clinic obtained thousands of pages of charging documents and pre-sentence reports in San Diego County homicide cases, which became the basis of a social science study. The clinic has now presented empirical evidence to further support a claim raised in our first habeas petition that, at the time our client was arrested and tried, the San Diego District Attorney's Office systematically decided whether to charge special circumstances and seek the death penalty based upon race. A team of three students drafted detailed and extensive pleadings filed this month in the California Supreme Court and federal district court. These pleadings include another state habeas petition raising additional claims of ineffective assistance of counsel and challenging the constitutionality of the death penalty for clients under the age of 25, as well as a federal habeas petition comprising more than 400 pages of claims establishing the unconstitutionality of our client's conviction and death sentence.

More Clinic News

Clinic Student Wins 2019 Sax Prize

Nirali Beri '19 won the [2019 Sax Prize](#) last spring for her outstanding work in the Death Penalty Clinic and the East Bay Community Law Center's Housing Clinic. Nirali (with her parents, right) helped write a social history for a client's state habeas petition to demonstrate why he does not deserve a death sentence. During her three visits with the client on Texas's death row, she was "struck by the ways the system intentionally seeks to break our client's spirit and discount his humanity."



New Clinical Supervising Attorney

Mridula Raman recently joined the clinic as a clinical supervising attorney after five years as an Assistant Federal Public Defender in the Capital Habeas Unit of the Office of the Federal Public Defender for the District of Arizona. While there, she represented death-



sentenced prisoners in Arizona and Texas in federal habeas and state post-conviction proceedings. Mridula recently discussed how she came to represent death-sentenced prisoners, her year studying classical Indian dance choreography, the importance of storytelling, and what drew her to Berkeley Law [in this Q&A](#).

Former Clinic Faculty Updates

This fall, after three years with us, **Clinical Supervising Attorney Katy Miller** joined the faculty of [Cardozo Law School as a Clinical Assistant Professor of Law](#) and co-director of its Criminal Defense Clinic. Katy supervises students representing clients in Manhattan Criminal Court who are accused of misdemeanors from each case's inception through final disposition. She co-teaches the companion seminar, which offers intensive instruction in criminal law, criminal procedure, and evidence.

Bidish Sarma, who preceded Katy as the DPC fellow, now lives in New Orleans. He consults on capital cases in federal habeas proceedings in Texas. He also works with several people serving life-without-parole sentences in Louisiana, representing them in clemency proceedings. Over the past two years, Bidish has been collaborating with a team to document and amplify the voices of lifers. Their project will launch in 2020; stay tuned.

Kate Weisburd, the clinic's first fellow and later clinical supervising attorney, went on to found and direct the Youth Defender Clinic at the East Bay Community Law Center, where she practiced and supervised students. Kate is now in her second year as an [Associate Professor of Law at George Washington University Law School](#). She has become a leading scholar and advocate in the area of juvenile justice reform. Kate's scholarship research and her work at EBCLC were instrumental in launching the movement to end juvenile fees.

Director Elisabeth Semel Supports Executions Moratorium in Op-Ed

"The national trend toward abolition of the death penalty is unmistakable," writes **Clinic Director Elisabeth Semel** in an op-ed in the *San Francisco Chronicle*, following California Governor Gavin Newsom's decision to impose a moratorium on executions in the state. Lis wrote, "His announcement therefore invites each of us to reflect on the sorrowful history of California's death penalty, and augments our state's opportunity to effectuate long-overdue reforms that eradicate and redress the legacy of racial subordination." [Read the full op-ed here](#).

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