

Fall 2021



Dear Friends and Alumni,

Twenty years ago, the Berkeley Law Death Penalty Clinic opened its doors to eight law students and asked them to devote a year of their law school careers to learning how to provide the very best representation to people facing capital punishment. At the outset, the clinic primarily represented two clients, one in Alabama and one in California, and litigated in the U.S. Supreme Court on issues related to discriminatory jury selection and the right to counsel in clemency proceedings. Two decades later, we have grown in every way: our 200+ alums are engaged in path-breaking work across the globe; the clinic continues to represent clients in California and Alabama, but has expanded its reach into Arizona, Georgia, Louisiana, Missouri, Virginia, and Texas, and has advanced legislative reform on racial justice issues. And, since 2008, we have added a third faculty member through our Fellowship Program, which allows us to enroll more than 20 students each year.

We regularly tell people that we have the best jobs in the world. We are so fortunate and honored to represent our clients. But to do so alongside our students, whose passion, brilliance, and persistence inspire us and teach us, is a joy that most lawyers do not have the opportunity to experience. As we gear up to celebrate our 20th anniversary in the fall of 2022, we know that we want to celebrate our alums — the work they did on behalf of clinic clients while at Berkeley Law and the work they have done since graduating. Our alums are family, and we are in awe of our family. We also can't wait to see you again. If you are a clinic alum, you should have received an email about the in-person reunion and anniversary celebration next fall.

As you will read in the newsletter below, we did not let the pandemic stop us from doggedly representing our clients in trial courts, appellate courts, and the U.S. Supreme Court. Our first foray into legislative advocacy — passage of legislation to address racial discrimination in jury selection in California — was successful beyond our wildest dreams. We continue to [engage with criminal defense colleagues in other states on similar efforts](#) and monitor developments across the nation.

This is the season when we 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 enroll as many students as we do without the talent, skill, and grit of the attorneys funded by the fellowship.

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

Along with Clinical Supervising Attorney Mridula Raman and Paralegal Heather Canfield, and, of course, our extraordinary students, we thank you for your steadfast support. We extend our best wishes to you and your family for health and safety in the coming year.

Sincerely,

Elisabeth Semel and Ty Alper
Co-Directors, Death Penalty Clinic

Our Work



Family members Tony Green (cousin) and Shanaye Poole (daughter) hold photos of Toforest Johnson, a prisoner on Alabama's death row represented by the Death Penalty Clinic and the Southern Center for Human Rights, who are working to win him a new trial.

Progress towards a new trial for Toforest Johnson

Clinic students continue to work on behalf of Toforest Johnson, a prisoner on Alabama's death row long represented by the clinic, the Southern Center for Human Rights, and DPC alum Kathryn Miller, now a clinical professor at Cardozo Law School. An unprecedented eight amicus briefs were filed in the state trial court on Mr. Johnson's behalf earlier this year by key stakeholders in the Alabama legal and faith communities, including Alabama's former attorney general and chief justice. Three jurors who originally voted to convict Mr. Johnson recently came forward to [renounce their verdict and call for a new trial](#).

Litigating the influence of race discrimination in how juries decide life or death

A team of students drafted pretrial motions on behalf of a Black defendant in a Southern state who is charged with the murder of a white police officer. One of the motions examines Black people's distrust and fear of police as compared to other racial and ethnic groups. The pleading, for example, traces the ways in which Black people have historically been subjected to discrimination by the over-policing of individuals and under-policing of Black communities. Another motion argues that the court should admit evidence of the pernicious influence of race discrimination in the administration of the state's death penalty as part of the defendant's case in mitigation so that the jury may consider whether the imposition of the death penalty on this defendant constitutes a qualitatively more severe punishment than it would in other cases.

Challenging the disproportionate exclusion of Black jurors from death penalty juries

The clinic has now litigated challenges to death qualification — the procedure by which jurors are selected in capital trials — in six cases in four California counties. This past year, two teams of students prepared to bring the challenge in pending Missouri capital trials. The motion demonstrates that death qualification strips capital juries of Black citizens and argues that the trial judge should decline to allow the procedure in the interests of ensuring a fair trial and because death qualification violates several state and federal constitutional rights.

Developing clemency strategy for Mark Jenkins

Clinic students drafted and filed a petition for certiorari in the U.S. Supreme Court in support of longtime clinic client, Mark Jenkins, who has been incarcerated on Alabama's death row since 1991 despite an intellectual disability that should render him ineligible for execution, and trial lawyers who failed to introduce any of the available, compelling evidence of his traumatic childhood. The petition in the Supreme Court garnered support in the form of amicus briefs filed on behalf of national social work and disability rights organizations, Sister Helen Prejean, and Tim Shriver, chairman of the Special Olympics, who also [wrote an op-ed](#) encouraging the Court to allow the clinic to present evidence of

Mr. Jenkins' intellectual disability. Unfortunately, the Supreme Court ultimately declined to consider the case and clinic students are now working with co-counsel Joe Flood to develop a clemency strategy.

Representing Willie Burgess, Jr. in Alabama Court of Criminal Appeals

Following the trial court's denial of all of Willie Burgess's post-conviction claims, a team of five clinic students drafted a major brief filed in the Alabama Court of Criminal Appeals. After more than a decade of litigation, the court rejected Mr. Burgess's claims of ineffective assistance of counsel, race discrimination, and juror misconduct — without even allowing the clinic to present evidence in support of these claims. The briefing in the appellate court argues that the trial court misapplied Alabama law to deny Mr. Burgess his day in court. The clinic is currently awaiting a ruling in the case.

Petitioning for cert in Mark Gonzalez's case

Clinic client Mark Gonzalez, a prisoner on Texas's death row, has had multiple significant developments in his case over the past year. Recently, the clinic filed on Mr. Gonzalez's behalf a petition for a writ of certiorari and a supporting reply brief in the United States Supreme Court. The pleadings, which present questions about the contours of the Sixth Amendment jury-trial right, reflect the work of six clinic students from different classes. Unfortunately, the Supreme Court declined to grant certiorari in Mr. Gonzalez's case. Moreover, Mr. Gonzalez recently had a state post-conviction hearing on many of the constitutional problems that plagued his trial, including ineffective assistance of trial counsel and jury misconduct. Clinic students' extensive investigation in prior years, conducted in conjunction with the Office of Capital and Forensic Writs, provided much of the evidence in support of the constitutional claims raised at the hearing. The clinic expects a decision from the state post-conviction court later this year.

More Clinic News

Student wins 2021 Sax Prize honor



Ellen Ivens-Duran '21 won the [2021 Brian M. Sax Prize for Excellence in Clinical Advocacy](#) for her outstanding work in the Death Penalty Clinic and the East Bay Community Law Center's Health and Welfare Clinic and Education Defense and Justice for Youth Program. At DPC, Ivens-Duran led her team in preparing a motion a state supreme court partially granted, making it more likely her client's unconstitutional death sentence will be overturned. At EBCLC, she won a disability appeal for a client who can now afford housing and helped an adult client seal his juvenile record. She says: "I

just can't imagine what law school would have been like if I hadn't done the clinics that I did. And particularly in the death penalty context, doing anything . . . that might give any of our clients a chance for relief is the most important work we can be doing."

Come celebrate DPC's 20th anniversary in fall 2022!

Founded in 2001 by Co-Director Elisabeth Semel, the Death Penalty Clinic turns 20 this year. The clinic's founding donors were Nick McKeown and Peter Davies, whose ambition — law students could be vigorous and visionary advocates for individuals facing the ultimate punishment — has guided the clinic since its inception. Over the past two decades, their financial commitment has been multiplied by the generosity of DPC alums, foundations, law firms, and numerous friends. If you are a DPC alum, you should have received an email with a link to a 20th anniversary alumni survey. The email included information about our plans to celebrate the clinic in the late fall of 2022. We hope to see you all there! (If you did not receive the email, please email [Sarah Weld](#) with your current email address.)

Clinical Program releases second annual report



It's been another busy year in Berkeley Law's clinical program, which welcomed the largest class ever of incoming clinic students this fall. To meet this growing demand, plans are underway to expand the program with five new tenure-track faculty over the next five years and to launch new clinics. [View our Annual Report](#) to learn how clinical students and faculty have continued to fight for racial, economic, and social justice.

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