



CREATE CHANGE

PUBLIC INTEREST AT STANFORD LAW SCHOOL

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Winter 2005

Supreme Court Clinic Equips Students with Wide Range of Appellate Lawyering Skills

As the nation's first legal clinic focused on providing law students practical training in representing clients before the U.S. Supreme Court, the Stanford Supreme Court Litigation Clinic caught the eye of many Court watchers at its launch almost two years ago.

Its impressive record since then, including the unanimous decision in favor of its clients in *Tum v. Barber Foods* in early November, has further cemented its position in the spotlight.

Pamela Karlan, the Kenneth and Harle Montgomery Professor of Public Interest Law and an experienced Supreme Court litigator, joined with Tom Goldstein and Amy Howe, lawyers in Washington, D.C., with a thriving Supreme Court practice of their own, to establish the clinic in January 2004.

Clinical students are involved in nearly every aspect of representing clients before the Supreme Court, from identifying noteworthy cases to filing petitions for certiorari to writing merits briefs to dealing with amici and sometimes the government. The only roles they do not play are those expressly prohibited by the Court itself—signing the briefs and presenting oral argument.

This term, the Clinic had five cases scheduled for argument, including one, *Domino's Pizza v. McDonald*, that raises important questions about the scope of a Reconstruction Era civil rights statute, 42 U.S.C. 1981, that protects the right to make and enforce contracts free from racial discrimination.

John McDonald, an African American entrepreneur, was the president and sole shareholder of JWM Investments, a corporation that had contracted with Domino's Pizza to build four restaurants. After the first restaurant was completed, relations between McDonald and Domino's soured. McDonald alleges that a Domino's representative told him that "I don't like doing business with you people anyway," threatened to pre-



PHOTO: L.A. CICERO

Third-year law students Darien Shanske, James Darrow and Lauren Kofke meet at the law clinics' new offices with Professor Pamela Karlan, second from left. Darrow and Kofke both worked on the *Domino's Pizza v. McDonald* brief.

vent any additional business from going to JWM, and warned him that company attorneys would bury him if he initiated court action to enforce the contracts. Domino's failure to perform ultimately led JWM to file for bankruptcy, ruined McDonald's credit rating and net worth, and precipitated serious health problems.

One issue at the heart of this case is whether an individual can bring a claim under section 1981 when he is not technically a party to the contract. Domino's argues that only JWM could have brought such an action, even if McDonald was the actual target of the alleged discrimination.

Karlan explains, "One compelling argument in our client's favor is that his claim—that Domino's wouldn't contract with his corporation because he's black—touches the very heart of what Section 1981 was intended to accomplish."

"If we ask, 'What was the Reconstruction Congress concerned with?,' the answer

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News Briefs

Alumni, students accept Skadden Fellowships, US DOJ Honors

Lauren Brady '06 and Dave Sapp '05 have accepted Skadden Fellowships.

Lauren will work at Legal Services for Children in San Francisco. She will represent foster children with special education needs, engage in training of service providers, and build a pro bono network of attorneys.

Dave will be working at Legal Aid of North Carolina, Advocates for Children's Service Program. He will engage in litigation, advocacy and community education to advance novel state rights for all students to be provided a sound basic education.

Michael Abate '05, John Elias '06, Eric Feigin '05, Elliot Fladen '05, Davis Forsythe '06, and Peter Koski '05 accepted offers from the U.S. Department of Justice's Honors Program.

Immigrants' Rights Clinic Names Alumna as New Fellow

Kathleen Kim '02 has been named the new Immigrants' Rights Clinic Fellow. She works closely with associate professor Jayashri Srikantiah, the director of the clinic. Kim was featured in a profile in the Winter 2004 issue of *Create Change*. Previously, she was the Human Trafficking Project attorney at the Lawyers' Committee for Civil Rights of the San Francisco Bay Area. Kim started the Human Trafficking Project with the support of a Skadden Fellowship.

Fall Events Promote Public Interest Practice, Raise Awareness of Fields

The Public Interest Program organized over 25 events this past semester to introduce students to different practice areas, provide a snapshot of what it's like working with specific employers, and promote public interest practice. Among the many speakers, we invited 12 alumni back to campus. ■

DIRECTOR'S NOTE

Be the change you wish to see in the world . . .

—Gandhi



PHOTO: ANNA WANG

Yael Zakai '05 (left), Monica Ramirez '04, Shirin Sinnar '03, PIP Director Diane Chin, Michael Lopez '06, and Elena Sax-onhouse '04 were among those who represented SLS at the 2005 Equal Justice Works conference in Washington, D.C.

As we prepare for the end of the year, I would like us each to pause a moment and think about our good fortune in being part of a law school community that can create positive change for so many others who are in need. The power that we can wield to produce good in this society and the world is beyond measure. Within the pages of this quarterly newsletter are abundant tales of battles fought and won by our students, faculty, and alumni on behalf of under-represented communities and interests. Each time we take on the challenge of making law relevant for these communities, of making the law a force for good, we confound the view that the legal profession is made up of individuals who are only interested in making a fast dollar and representing interests invested in maintaining the status quo.

Some of our students will be heading to the Gulf Coast in January to help address some of the multitude of legal needs that resulted from the devastation wrought by natural disasters and the delay in the government's response. These students represent a spectrum of career goals, political perspectives, and experiences, but are each motivated to bring the skills and knowledge they have gained at the law school to benefit individuals whose lives have been permanently changed and temporarily (we hope) made worse by events completely out of their control.

I am grateful to be part of a community that recognizes each of our member's ability to bring about meaningful change through the use of a legal system that many find suspect. Public service is as much a privilege and a gift as a responsibility we each hold. As you raise your glasses or light your candles or say your prayers at the end of this year, I hope that you will also spend a brief moment thinking about what in 2006 you will do to bring about change that will matter—in your life, the life of your family or friends, for a client, for a colleague, the law school or the world.

And for each of us in 2006, I wish for peace.

Best,
Diane T. Chin

ABOUT CREATE CHANGE

This newsletter is designed and produced by Public Interest Program staff. Unless specifically noted, all articles are written by staff.

The Public Interest Program staff consists of two full-time and two part-time staff. **Diane T. Chin** directs the program, **Anna Wang** serves as the associate director, **Judy Gielniak** is the legal assistant, and **Dawn Butler** (BA '06) is the program assistant.

To receive the newsletter by e-mail, please write to majordomo@lists.stanford.edu with

the command "subscribe create_change" in the body. If you have any problems subscribing to the list, please write to publicinterest@law.stanford.edu.

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Alumna Named Public Interest Lawyer of the Year



PHOTO: MISHA BRUK

Faculty, including Robert Weisberg, the Edwin E. Huddleson, Jr. Professor of Law (far left, foreground); William Gould IV, the Charles A. Beardsley Professor of Law, Emeritus; and Barbara Babcock, the Judge John Crown Professor of Law, Emerita, in attendance were transfixed during Olshansky's remarks.



PHOTO: MISHA BRUK

Nancy and Miles Rubin '52 (BA '50) generously led the effort to establish Stanford Law School's Loan Repayment Assistance Program (LRAP) 18 years ago, which is named in their honor. The Rubins arranged to bring alumni participating in LRAP back to campus so they could attend the dinner and a reception beforehand. Here, they pose with Dean Larry Kramer, Olshansky, and PIP Director Diane Chin.

After twenty years away, Barbara Olshansky '85 returned to campus on Wednesday, November 9 to accept the Public Interest Lawyer of the Year Award.

Olshansky is Director Council of the Global Justice Initiative and Deputy Legal Director of the Center for Constitutional Rights. She recently served as lead counsel in the Supreme Court Guantanamo Bay detainee case, *Rasul v. Bush*.

Nearly two hundred faculty, alumni, students, staff, and community supporters attended the celebratory dinner commending Olshansky as this year's Public Interest Lawyer of the Year. The award is presented by the Stanford Public Interest Law Foundation.

In addition, she met with over a dozen law students in individual counseling sessions. ■



PHOTO: MISHA BRUK

Colin Sampson '06 (left), Brian Blalock '07, and Lisa Hayden '94 speak with Olshansky at the reception for the Rubins.



PHOTOS: JAMES CHAN, STANFORD DAILY

Olshansky also gave a lecture to the larger Stanford University campus community, entitled "Secret Practices of the 'War on Terror.'" The Freeman Spogli Institute for International Studies co-sponsored the talk and the reception that followed.

ALUMNI SPOTLIGHT:

SLS offered Kirby Heller '85 New Path to Pursue

After nearly twenty years practicing criminal law, first at the U.S. Attorney's office (USAO) in the Eastern District of New York and then at the U.S. Department of Justice in Washington, D.C., Kirby Heller '85 is firmly rooted in this practice area.

So it comes somewhat as a surprise to learn that Heller has her Ph.D. in Psychology and had originally planned to go to law school to continue her work in child advocacy.

After earning her Ph.D. from the University of Michigan and then doing a post-doctoral fellowship at Yale University's Bush Center in Child Development & Social Policy, Heller spent three years working for the National Academy of Sciences' Committee on Child Development and Public Policy, where she co-edited the book, *Placing Children in Special Education: A Strategy for Equity*.

It was there that she worked with committees of interdisciplinary experts, including Stanford law professors Robert Mnookin (now at Harvard Law School) and Michael Wald, the Jackson Eli Reynolds Professor of Law.

Heller explains, "The main reason I left [to go to law school] is because the kind of work I was doing in the early 80s was dependent on grant money and those funds were drying up. I didn't want to spend my life scrounging for grants and I knew as a lawyer, I could still do child advocacy [without those constraints.]"

Yet when Heller arrived at Stanford Law School, she found her path veered toward litigation. "I got hooked by the clinical courses I took. The first one was the evidence class with Miguel [Mendez, the Adelbert H. Sweet Professor of Law] in which we did mock trials to learn evidentiary rules. I loved that class and Miguel was a great teacher. I was surprised to learn that I was actually good in the (mock) courtroom."

Heller's interest in doing litigation as opposed to policy-related work continued to grow as she represented a tenant at trial as part of the landlord-tenant clinic, assisted in Professor Sam Gross' Expert Witness course (he is now at the University of Michigan Law School), and was on the winning team in the Marion Rice Kirkwood Moot Court Competition.

Knowing that she really wanted to be a litigator, Heller clerked for Judge Eugene H. Nickerson of the U.S. District Court, Eastern District of New York, upon graduation. Over the course of that year, Heller had a first-hand opportunity to observe the Assistant U.S. Attorneys in action and knew she wanted to work in criminal law as a federal prosecutor.

Heller spent the next eight years at the USAO in the Eastern District of New York, a time of which she still speaks very fondly. She investigated and prosecuted cases involving attempted murder,

corruption, fraud, narcotics and money laundering. During her time there, Heller served as Lead Counsel in 12 jury trials, argued over 10 appeals in the Second Circuit, and rose up the ranks to become Chief of the General Crimes Section and also served as Acting Deputy Chief of the Criminal Division before she reluctantly left in 1994 to move to Washington, D.C. for personal reasons.

One of her most memorable cases was the last big case she prosecuted before leaving the U.S. Attorney's Office. The defendant had been charged with the attempted murder of a fellow Assistant U.S. Attorney. "It was a very complex set of facts, something that could have been on [the television show] Law and Order. There wasn't an obvious suspect and the evidence was very circumstantial. And while it was a very important case, it was also fun to try because it was so difficult to prove." The defendant was ultimately convicted.

When Heller landed in D.C., she joined the U.S. Department of Justice's Criminal Appellate section, where she has been for the last 6 years. While she had handled some appellate work at the USAO, she found it was a new experience doing only appellate work.

"Although I miss the excitement of trials and doing trial work, this job has been great. It's very substantive and the appellate section is insulated from the politics that sometimes affects other components in the Department of Justice."

Heller also points out, "the lifestyle is very different. Appellate work has fewer emergencies, so you know exactly what your schedule is and you can plan better. In addition, over the years I sometimes worked

part-time. You can control your schedule in a way you can't at the district court level."

Given her experience as a hiring attorney at both offices, Heller has valuable advice for law students who want to pursue a career in criminal prosecution at the federal level.

She explains, "You need to make it clear to the employer that this is what you want to do. Show a passion for whatever job you want. I've interviewed candidates at both places and in the USAO, many people want the job because they want trial experience. The employer really wants to see more than that. We want to know that the applicants want to be prosecutors and have worked summer jobs in criminal law and have taken the relevant courses."

Heller adds, "You need to go out of your way to get that experience, since in general most US Attorneys' offices do not hire people right out of law school. It's perfectly fine to go to a firm for a few years, pay off your debts, and get the kind of training that firms offer. But if you have the opportunity, you should try to work on matters that show that you really want a career in criminal law." ■



PHOTO: STEVE DENNETT

When Heller arrived at Stanford Law School, she found her path veered [from child advocacy policy work toward] litigation. "I got hooked by the clinical courses I took."

Civil Rights Law Faces New Challenge

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is that it was concerned with newly freed slaves being able to be full players in the economy, be able to be entrepreneurs, as well as employees. If we allow this kind of race discrimination against black entrepreneurs like Mr. McDonald, we would be undercutting the core interest that the statute was intended to protect.”

She adds, “The text of the statute protects the right to ‘make and enforce contracts,’ which applies squarely to what happened in this case. Mr. McDonald tried to make a contract on behalf of his corporation and tried to enforce it, but *Domino’s* interfered. Racial discrimination against a black entrepreneur trenches on the heart of the text and history of Section 1981.”

Yet what will the other side argue? Karlan responds, “One thing that will likely concern the Court is the outer limits of the position we’re taking. If we decide for you, Mr. McDonald, what other sorts of people can also bring suit?”

“The Supreme Court is always interested in the broader implications of its holding in a particular case. So we need to reassure the Justices that we’re offering a clear, easily administrable principle.”

Oral argument for this case was on December 6, the day after another clinic case, *Whitman v. US Department of Transportation*, which concerns the right of federal employees to seek judicial review of allegedly unconstitutional government actions.

While clinic cases sometimes involve esoteric areas of law—for example, *Tum* involved the Fair Labor Standards and Portal Acts—Karlan had a longstanding interest and expertise in section 1981, since she has taught the statute in her constitutional litigation course for nearly a decade. She also thought the case provided an excellent opportunity for students to learn about how to use nineteenth century legislative history.

So when the Supreme Court agreed to take McDonald’s case, Karlan called Allen Lichtenstein, the attorney who had represented McDonald in the Ninth Circuit,

and volunteered the Clinic as pro bono co-counsel.

In addition to the Clinic team, there are several other co-counsel, including Eric Schnapper and David Goldberg, who were Karlan’s colleagues at the NAACP Legal Defense Fund.

Karlan explained, “In some cases, like *Whitman*, we’re the only lawyers involved. In the *Georgia v. Randolph* case—a clinic case involving whether the police can search an individual’s home over his objection if another occupant consents—we work collaboratively with counsel who represented our client in the lower courts, but take the laboring oar. In this case, we were working with several great lawyers in a really collaborative way. In most of our cases, one of the clinic

instructors present oral argument, but in *Domino’s*, Allen Lichtenstein will be arguing the case before the Court.”

Because of the timing of the case, much of the work in putting together the draft brief had to be done over the summer, when the Clinic

is not in session. Thus, Karlan had to draft her sections of the brief with a rising 2L who served as the clinic’s summer student, Katie Tafolla Young ’07.

When school resumed, Lauren Kofke ’06 (a returning clinical student), James Darrow ’06, and Eric Tuttle ’06 came on board to work on the final rounds. The student team took on the bulk of editing the brief and reorganized the structure of the brief dramatically.

Karlan says, “The students were fabulous. They really did incredible work that involved intensive editing and negotiation among co-counsel.”

At a civil rights conference outside Washington, D.C., Karlan recently ran into one of the country’s most experienced civil rights litigators who told her, “I saw your brief in *Domino’s*—what a terrific piece of work.”

Karlan gives the students a lot of the credit. “Much of the reason the brief reads so well is because of the work that Lauren, James, and Eric did.” ■

Clinic Students Partner with Community Agency to Expunge Criminal Records

Lawyers who work in low-income communities know that criminal records can pose enormous barriers to people with respect to housing, employment, student loans, and other social supports. Often, simply checking “Yes” on an employment application in response to a question about a past criminal record is enough to get that application tossed in the trash.

Lawyers and activists across the nation are trying to develop creative ways to address these barriers, and to enable formerly incarcerated people and people with criminal records to return to the community with a shot at success, and the Stanford Community Law Clinic (SCLC) is doing its part in our local area.

In California, there are procedures available to expunge certain types of convictions, but they can be complex and difficult for lay people to pursue without advice and assistance. SCLC has partnered with the community group All of Us or None (AOUON), which assists eligible, formerly incarcerated people in clearing their records.

This past August, SCLC and AOUON, along with pro bono attorneys and other legal services organizations, hosted an “Expungement Summit” at the East Palo Alto City Hall. Over 25 lawyers and paralegals worked with approximately 200 people that day, giving advice, explaining the expungement process, and assisting with the necessary paperwork.

The work has continued this semester. SCLC students are now developing county-specific written materials to guide people through the expungement process. These materials will be made available through AOUON, as well as through local churches and other community groups. On December 7, SCLC will host another pro bono clinic to help people clear their criminal records. With the help of the Legal Aid Society of San Mateo County, ten pro bono attorneys agreed to counsel clients in individual interviews regarding clients’ eligibility and how to proceed. In addition to the clinic students, several 1L students will also participate, giving them an opportunity to engage in community lawyering activities for the low-income people who live in the SLS environs. ■

Spring 2006 Public Interest Events

Unless otherwise indicated, all events will be held at Stanford Law School, 559 Nathan Abbott Way, Stanford, California. Room locations will be announced in January. Additional events that have not yet been finalized, such as brown bag lunches with public interest faculty and the Spring Skills Workshop Series will be announced soon. All events are posted on the Law School main event calendar on JURIS. For more information, write to public.interest@law.stanford.edu or call 650/723-2519.

FEBRUARY

Wednesday, Feb. 1, 12:30 p.m.
Public Service Awards Application Workshop

Wednesday, Feb. 8, 12:30 p.m.
LRAP Workshop for 3L students

Saturday, Feb. 11, 8 a.m. - 5 p.m.
University of San Francisco
Northern California Public Interest/Public Sector Career Fair

MARCH

Saturday, March 4, 9 a.m. - 5 p.m.
Room 280A
Public Interest Symposium on
Labor & Employment Law

Saturday, March 4, 6 p.m.
Kresge Auditorium
SPILF Auction

Wednesday, March 9, 12:30 p.m.
Post-graduate Fellowships Panel

Monday, March 13, 12:30 p.m.
Externship Informational Workshop

Monday, March 13, 1 p.m.
Summer Public Interest Funding Workshop

APRIL

Wednesday, April 19, 5:30 p.m.
Crocker Garden
Public Service Awards Celebration

Annual Shaking the Foundations Conference Draws Record Numbers

The student-organized Shaking the Foundations conference held November 4-5 was an overwhelming success. Three hundred and fifty people attended the conference. Anthony Romero '90, Executive Director of the ACLU, gave the keynote speech. In addition to undergraduate, graduate and law students from Stanford, there were law students from eight states and 15 schools as well as public interest practitioners. New components included an organization fair that enabled attendees to meet local public interest employers and an afternoon session where attendees chose one of a dozen workshops that focused on diverse topics including the evolving role of prosecutors, the impact of electoral reform on voting rights, how to start a nonprofit, and fundraising tips. ■

Anthony Romero '90, Executive Director of the ACLU and keynote speaker for the conference (far right), sat next to his former civil procedure professor, Barbara Babcock, the Judge John Crown Professor of Law, Emerita. Daniel Blank '97, an Assistant Federal Public Defender, sits to her right.



Left: Celina Ramirez '04, Public Policy Advocate at Books not Bars, a Project of the Ella Baker Center for Human Rights, and Jordan McEntyre '07 listen intently to Romero's keynote address.

Above: Conference co-chairs Marc Tafolla Young '07 and Salena Copeland '07.

Right: Craig Segall '07 makes a point while in discussion with Romero.



Legal Aid Society of San Mateo County attorneys Ivan Trujillo '01 (left) and Karie Lew '04 returned to campus to participate in the organization fair. Here, they speak with Jessa Barnard '08 (far right) about their work.

ALL PHOTOS BY NOAH BERGER