



CLINICAL PERSPECTIVES 2021

USC Gould
School of Law



FROM HOPELESS TO FREE

Post-Conviction Justice Project wins release for two clients sentenced to juvenile life without parole

By Lauren Rogers and Heidi Rummel

Students in the Post-Conviction Justice Project, headed by Professors Michael Brennan and Heidi Rummel, recently won life-changing victories for two clients.

William and Jerome were both teenagers tried as adults and sentenced to juvenile life without parole or JLWOP. Both were convicted of special circumstance murder, under California's then-felony murder law, for minor roles in robberies where others committed murder. In the face of a hopeless sentence, both chose to commit to changing their lives and rehabilitate. Today, William and Jerome are living free after more than two decades in prison, and the courts have vacated their murder convictions.

Both William, 16 when he acted as a lookout for a friend who robbed and spontaneously shot the robbery victim, and Jerome, 17 when he agreed to be a driver in an attempted robbery-turned murder, never expected anyone to be hurt or killed. At the time they were given adult sentences, society viewed many youth, especially youth of color, as "super predators."

In recent years, the United States Supreme Court has recognized that children who commit crimes are constitutionally less culpable than adults, because their brains are not fully developed and for their potential for growth and maturity. The Court also outlawed certain extreme sentences for children, including the death penalty and life without parole, as violations of the Eighth Amendment's prohibition against cruel and unusual punishment. The California Supreme Court agreed in *People v. Franklin*, citing extensively to an amicus brief filed by PCJP.

PCJP SPONSORS LEGISLATION CHANGING MURDER CONVICTIONS

In the wake of these holdings, PCJP co-sponsored groundbreaking California legislation to provide second

chances for youth serving adult sentences, including Senate Bill 1437, which in 2018 effectively eliminated the felony murder rule in California. Now, a murder conviction in California requires that the accused to have killed or intended to kill or demonstrated reckless indifference to life.

PCJP filed habeas petitions challenging both William and Jerome's JLWOP sentences and their special circumstance murder convictions. The clinic pursued multiple legal



Above: PCJP client William with members of his family after his release.

Page 41: PCJP client Jerome with his father on the day of his release.

remedies for William in the Los Angeles County Superior Court and First District Court of Appeal. After his murder conviction was vacated, William was immediately released on a time-served sentence in November 2020.

Jerome's JLWOP sentence was reduced to a parole-eligible sentence in Riverside County under Senate Bill 9, legislation co-sponsored by PCJP, which made Jerome immediately parole eligible with a new sentence of 26 years to life. He was released from prison in 2018. Nearly three years later, PCJP again represented Jerome under the new felony-murder law. He was discharged from parole in March 2021.

Today, Jerome works as a certified drug and alcohol counselor, has a successful business, and is a proud new father. William is currently working for Mass Liberation, a transitional home and re-entry program for recently released lifers and is enjoying spending time with his family.



A HEALTHY HACK FOR DATA

Intellectual Property and Technology Law Clinic represents clients seeking access to their medical device data

By Greg Hardesty

When he was 37, ad executive Hugo Campos suffered an unexplained syncope — a temporary loss of consciousness caused by a drop in blood pressure. Three years later, in 2007, he was diagnosed with hypertrophic cardiomyopathy, a heart muscle disease that required him to wear an implantable defibrillator.

It was the same year Apple's iPhone came out. Interested in the latest gadgets, Campos asked his doctor how he could track his heart health by accessing the data collected by his implanted device.

His doctor told him he couldn't — that the data was being wirelessly transmitted to the manufacturer, and monitored by the clinic, but not available to the patient.

"That made no sense to me," Campos says. "I was irked and irritated, and thought it was ethically not right."



Campos became an advocate for access to health data and patient autonomy, and today he and two other people who make up the Coalition of Medical Device Patients and Researchers (CMDPT) are being represented by USC Gould's Intellectual Property and Technology Law Clinic (IPTLC) in a triennial process that culminated in April at a virtual hearing before the U.S. Copyright Office.

Every three years since 2000, parties have been allowed to petition for exemptions to the Digital Millennium Copyright Act. Established in 1998, the DMCA made it unlawful to circumvent technological measures used to prevent unauthorized access to copyrighted works including books, movies, video games and computer software.

Built into the law is the ability for a party to seek permission to, in essence, hack into certain encrypted data without liability under copyright law. In 2018, the IPTLC represented farmers to help them avoid violating copyright law when they broke encryption on equipment they owned in order to repair it.

The clinic, led by Jef Pearlman, a clinical assistant professor of law, will seek a renewal of an exemption first granted in 2015 concerning medical devices, but with language that broadens the exemption to include non-implanted devices and to allow third parties to assist patients with accessing their data.

2L Kate McClellan and 3L Keon Zemoudeh testified on behalf of the CMDPT at the April 8 hearing.

"I appreciate the real-world experience of working through this project," McClellan says. "We had to do a ton of research. I was overwhelmed at first, but I got up to speed really fast. It's been a very valuable experience."

Says Zemoudeh: "I also enjoyed learning about the science behind some of these devices and how researchers and patients could benefit from accessing this data."

Campos says despite the already successful exemptions, patients aren't at the point yet where they can access raw, real-time data on their devices.

"But having access to this information is a matter of our rights as citizens of a free nation," he says.

Says Pearlman of the triennial DMCA exemption effort: "It's a weird world where patients need to ask permission from a copyright agency to access their own medical data, but we hope our efforts will help the public be able to exercise their rights to their own health information."



SHINING A LIGHT ON RACIAL JUSTICE IN THE US

IHRC works through United Nations systems to fight systemic racism

By Carren Jao

The International Human Rights Clinic at the USC Gould School of Law joined an effort in fall 2020 by about 600 civil society groups to ask the United Nations to condemn the killing of George Floyd and investigate systemic racism in the United States.

2Ls Laura Penaranda and Ava Habibian are pursuing racial justice in the U.S., something new in the clinic's 10 years working to seek justice under international law for global human rights concerns. The students are drafting research memoranda, filing communiqués and working with groups such as the American Civil Liberties Union, Access Now and the law firm Foley Hoag LLP.

"When you think of international human rights, you usually think of what's going on in other countries," says Penaranda, who says her work with Habibian helped clarify how international standards and domestic matters intertwine. The two are working through various U.N. processes in an effort to put pressure on the United States as it reckons with its racist systems.

"The U.N. system is not perfect, but it is a tool. There are many different strategies to think about in using it. It takes persistence, vigilance and creative thinking," says Professor Hannah Garry, IHRC's founding director.

The U.N. Human Rights Council eventually issued a resolution condemning racism against individuals of African descent globally, but many think it didn't go far enough. Civil society groups came together as the U.S. Human Rights Network, and the ACLU, invited the IHRC to join the effort as the U.S. was assessed through the U.N.'s Universal Periodic Review (UPR) process, an accountability effort for U.N. Member States to explain their human rights record every five years and report on their progress before the Human Rights Council and other U.N. Member States.



Since August, Penaranda and Habibian worked with the network on a letter to the Biden administration, urging the administration to participate meaningfully in the U.S.'s third UPR cycle in November and renew its commitment to human rights and adopt more than 300 recommendations by U.N. Member States.

Penaranda and Habibian also worked on an urgent appeal to the U.N. Special Rapporteur Clement Nyaletossi Voule asking him to investigate police brutality against peaceful demonstrators protesting racial injustice. Some of their recommendations were included in a joint statement by U.N. experts in 2021 calling for the U.S. government to act.

Additionally, the students submitted information to U.N. High Commissioner for Human Rights Michelle Bachelet Jeria detailing the disproportionate use of force by law enforcement against peaceful protestors, the militarization of law enforcement in the U.S. and the marked difference in U.S. law enforcement response to anti-racism protests versus the response to the Jan. 6 Capitol insurrection.

Penaranda and Habibian's work led to an intensive open dialogue between Bachelet and U.S. civil society groups during an in-person consultation held in February. The session included powerful statements from Black Lives Matter groups as well as testimony from victims and their families. Garry presented an expert statement on systemic racism in U.S. law enforcement; the students assisted with drafting her remarks.

For Penaranda and Habibian, the experience is invaluable. "I'm a lot more comfortable being able to take on cases tackling systemic and structural racism," says Habibian.



A FAMILY REUNITED

USC Immigration Clinic represents mother separated from seven-month-old baby as part of poultry plant arrests



By Leslie Ridgeway

Ana Gomez Gomez, an immigrant from Guatemala, was working in a poultry plant in Morton, Miss., in 2019 when she was detained in one of the largest workplace sweeps conducted by Immigration and Customs Enforcement. She was moved 300 miles away to a detention center in Basile, La. Her seven-month-old baby became malnourished when she couldn't breastfeed him, developing a rash and fever. Ana was frantic at the separation.

"We all suffered," she said through an interpreter. "I cried day and night. I wanted to be with my baby. My husband [Juan] didn't know what to do."

That's when the USC Immigration Clinic got involved. Since 2013, the clinic had been representing Juan and two other clients in Morton after joining with pro bono clinics, other law school immigration clinics and organizations in 2012 to represent more than 100 abused poultry plant workers. 3L Cameron MacGregor was assigned to free Ana from detention; 3L Marisa DiGiuseppe represents both Ana and Juan. With the clinic's help, Juan obtained a U visa, which enables immigrants to apply for a green card after a three-year wait. DiGiuseppe is now working to obtain lawful permanent resident status for the couple.

"It's a constant reminder of how easy my life is, as someone lucky enough to be born in the U.S.," says DiGiuseppe, who worked in the clinic for more than two years. "For [Ana and Juan's] case in particular, it's a reminder of how these laws govern an immigrant's life, and how living in the U.S. without lawful immigration status carries harsh consequences. Most of our clients are affected by violence, poverty and language barriers, compounded by not having immigration status."

MacGregor signed up for the clinic for a year and found the practical experience invaluable.

"[Professors Niels Frenzen, director, and Jean Reisz, co-director] expect you to be the lead attorney on every case," he says. "You don't feel like a student; you feel like an attorney. You are in charge of the facts and they expect you to fill them in. Obviously they're there to help guide you, but I felt like I was in the driver's seat, not just taking orders and carrying out actions."

Among MacGregor's tasks were petitioning for Gomez Gomez' release on bond, persuading the judge that she was not a flight risk nor a danger to the community and determining which immigration court had jurisdiction over her case, which turned out to be the San Juan (Puerto Rico) Immigration Court.

"It sounds bizarre and it is bizarre," says Frenzen. "We were finally able to get an immigration judge in San Juan to set a bond and Ana was released and is currently waiting for an immigration court hearing in the New Orleans Immigration Court, which has been delayed due to COVID."

DiGiuseppe's work includes helping her clients answer a dizzying array of questions about hometown, employment experience, criminal history and more to become eligible for permanent resident status.

"We try to teach students to look at the bigger picture of the fairness or justness of legal systems they will work in and how that critical thinking can help them be a zealous advocate for their client," Reisz says.



NO DISPUTE: MEDIATION CLINIC SUCCEEDS ONLINE DURING COVID

Students hone problem-solving skills during challenging year

By Greg Hardesty

The mother had visitation rights 60% of the time, but the father wanted equal time with their 3-year-old daughter.

During an all-day mediation session, 3L Gabriela Rodriguez eventually got both parties in the emotionally charged case to reach an agreement: two days with mom, two days with dad, and alternating each week for the other three days.

Because of COVID-19 restrictions, the successful mediation — an increasingly popular tool to avoid the expense, unpredictability and emotional drama of a courtroom trial — played out entirely on Zoom.

As mediation clinics at some other universities shuttered because of courtroom closures caused by the pandemic, USC Gould's Mediation Clinic continued to thrive, says Director Lisa Klerman, a clinical professor of law who designed and launched the mediation program in 2007.

That's because pre-pandemic, Klerman says, the 30-some students who participated in the two-semester clinic already had experience mediating over email, the telephone and other avenues not requiring in-person meetings at the local courthouses.

"Having a program that offers a diversity of experiences for our student mediators has been crucial for them to be able to continue their work during the [pandemic]," Klerman says.

No one appreciates that more than Rodriguez, one of 12 USC Gould students who participated in the mediation clinic this academic year (reduced from the usual 20 because of COVID-19). Seven additional students participated in the advanced medication clinic, reserved for students with a year's experience as mediators who take on more complex cases.

Cases are referred through partnerships with the state Department of Fair Employment and Housing, a federal EEOC program; the Los Angeles County Department of Consumer and Business Affairs (DCBA), and directly.



3L Skyler Hicks has spent several hours a week in his final year of law school handling phone- and email-based mediations through the DCBA program.

Building rapport with parties remotely is harder, Hicks says, but it starts with building trust with active listening. Hicks says about two-thirds of the mediations he's handled have ended successfully.

"I enjoy explaining what the litigation process would look like if the parties were to decide to go to court instead of mediating," Hicks says. "I enjoy helping them understand how reaching a mediated resolution is a fantastic way to eliminate the risks of litigation while also preserving the opportunity to repair a pre-existing relationship with the party on the other side."

One benefit of online mediations is there typically is more time to prepare, Rodriguez and Hicks say.

Whether the case is a landlord-tenant or consumer-merchant dispute or child visitation negotiation, emotions can run high. As a mediator, "you want to try to bring down the heat a little bit," Hicks says.

Adds Rodriguez: "For some parents, online mediation is more convenient because they don't have to take an entire day off from work."

"At the end of the day," she says, "we're helping people solve their problems."



PLANTING THE SEEDS OF FUTURE GROWTH

Small Business Clinic helps organic farm build a strong foundation for the future

By Carren Jao

About five years ago, construction and restaurant entrepreneur Guido Gil decided to start a garden on his 40-acre property in the community of Val Verde, near Castaic in Southern California, to sell organic produce. Backyard Organic Farms has gradually matured as a business, offering high-quality, fresh, organic produce and eggs direct to consumers through farmer's markets, deliveries, restaurant orders and even a farm stand.

But as the business expanded, Gil's four sons — the second generation of management — wanted the farm to have a solid foundation to grow on. This led them to USC Gould School of Law's Small Business Clinic, founded by Professor Michael Chasalow. Since 2007, the clinic has helped more than 2,500 business owners, about half of which are operated by women or minorities, ensure the legal foundation of their enterprises. With the help of 2L Zachary Goldman, Gil and his sons are working out the details of an operating agreement.

"Zack has been awesome because he's helping us set ground rules in place, explicit roles and responsibilities," says Claudio Gil, a co-owner. "He's helping us draft a very good operating agreement, which deals with the intricacies like what happens when decisions have to be made and what votes need to happen — what it would look like when either everyone is on board or only one person is." The agreement also covers ownership stakes in the businesses, which affect decision-making within farm operations.

Claudio credits the SBC with helping his family with an important task.

"If it weren't for the program, it would be next to impossible for us as a small business to find someone to help with this at the level that the USC Small Business Clinic and Zack are," he says. "We are truly grateful."

GAINING PRACTICAL EXPERIENCE TO MEET CAREER GOALS

Goldman joined the clinic for exactly this type of experience. With a background in finance that included working at JP Morgan and a start-up company, his interests turned toward working more directly with new and emerging tech companies. The SBC allowed him to gain practical experience as a transactional corporate lawyer. Meeting online during the pandemic posed some challenges, but he found the work rewarding.

"This is an incredible opportunity to get hands-on experience drafting agreements, understanding how agreements work and what challenges might come up along the way," says Goldman, who began working at the start of spring semester. "The best way to understand how an agreement works is to explain it to them. Going through the agreement clause by clause trying to get an understanding of how everything works together and being able to pass that knowledge to the clients and talk them through different options and ways we may be able to change things has been an invaluable experience for me."

"Zack's experience working with Backyard Organic Farms is a perfect example of the value provided by the SBC," says Chasalow. "The SBC was established to provide USC law students with hands-on experiences in a transactional law practice while delivering high caliber, no cost legal services to community businesses that would otherwise not be able to afford such work. It's a win-win."