

# C L I N I C

## SUPREME COURT LITIGATION CLINIC ARGUES PAY DISCRIMINATION CASE

**T**he students knew it was going to be a close call. “I thought we had four justices but wasn’t sure we could get a fifth,” says David Moskowitz ’07, describing how he felt after sitting through oral arguments in *Ledbetter v. Goodyear*, an employment discrimination case taken up by Stanford Law’s Supreme Court Litigation Clinic and heard by the Supreme Court. While the Court’s May, 2007 decision was a blow to the clinic team, the case put a spotlight on pay discrimination and brought the issue to the attention of Congress. • It all began with an anonymous note addressed to the clinic’s client, Lilly Ledbetter. The letter revealed that Ledbetter had been making nearly 20 percent less than her male counterparts throughout her 19-year career at a Goodyear tire factory in Alabama. After a jury trial found that Goodyear had violated Title VII, which prohibits pay discrimination, the 11th Circuit Court of Appeals reversed the decision, stating that Title VII requires employees to sue within 180 days after the discrimination begins. In other words, Ledbetter was too late. • The question before the Supreme Court, then, rested on when the clock starts. Does the 180-day time limit kick in when the employer initiates the discrimination (sets a salary), as the 11th Circuit Court ruled, or after the last act of discrimination (the employee’s most recent paycheck)? • Moskowitz and his fellow clinic students argued that both were true. Working under the watchful eye of clinic co-instructor and Howe & Russell partner Kevin Russell, lead counsel in the case, students helped draft the petition for certiorari to the Supreme Court. • “I felt like a private investigator,” says Scott Reents ’07, who wrote the petition’s factual statement after sifting through hundreds of pages of trial transcripts. “In doing my research I got the sense that the working environment at Goodyear was from another era. It’s remarkable Lilly stuck it out given the discrimination she was facing.” • The petition was granted and students set to work on two documents: the merits brief and later a reply brief. Moskowitz worked on a section of the reply brief arguing that the court should defer to the Equal Employment Opportunity Commission, which filed an amicus brief in favor of Ledbetter in a lower court. Jennifer Liu, JD/MBA ’07, who also worked on the brief, researched similar cases that were decided in the plaintiff’s favor. • On November 27, 2006, the students were in Washington, D.C., awaiting Kevin Russell’s oral argument before the Court when they met Lilly Ledbetter for the very first time. “She’s a real fighter,” says Liu. • In the end, the court decided 5-4 in favor of Goodyear, holding that employees must file a claim within 180 days of a “discriminatory decision” even “if the effects of the initial discriminatory act were not immediately apparent to the worker and even if they continue to the present day.” In a rare move, Justice Ruth Bader Ginsburg read the dissent from the bench. • “It was frustrating,” says Moskowitz. “It seemed like such a big change from how the law had been interpreted for the past 30 or so years.” • “Even though the result was disappointing, it was a great opportunity to participate in an important case,” says Liu, who is quick to point out that the Lilly Ledbetter Fair Pay Act of 2007 was passed by the House of Representatives in late July and is awaiting a vote in the Senate. The act would overturn the Supreme Court’s much-criticized decision. • “I hope the bill in Congress is some consolation to her that her case has prevailed in the court of public opinion,” says Reents.



# N E W S

## Case Roundup

**The Environmental Law Clinic** won a case against the California Department of Fish and Game, whose practice of putting hatchery-raised, non-native trout into water bodies throughout California put native frog and fish species at risk. In an order issued July 18, 2007, the court found that the agency's failure to prepare an environmental review for its trout stocking program violated the California Environmental Quality Act. Paul Spittler '07, Sierra Martinez '08 (BA '03), and Justin Barnard '08 litigated the case from <None>start to finish.

**The Immigrants' Rights Clinic** filed an amicus brief on behalf of the organization Human Rights Watch (HRW) arguing that the U.S. immigration policy mandating the deportation of Wayne Smith and Hugo Armendáriz, legal immigrants who committed drug crimes in their youth, violates international human rights standards. The case was heard by the Inter-American Commission on Human Rights July 20 in Washington, D.C. Lin Chan '07 and Gloria Borges '07 wrote the brief in support of petitioners Smith and Armendáriz.

**The Community Law Clinic's** Margaret Cohen '08 filed and argued several criminal record expungement motions in the superior courts of Santa Clara and San Mateo counties. In one notable case, the client's minor convictions barred her from job promotions and other professional opportunities. Cohen persuaded the judge of her client's entitlement to expungement, despite the opposition of the probation department.

**The Youth and Education Law Project** (YELP) celebrated a win for its client—a deaf child with autism who was excluded from the California School for the Deaf (CSD) because of her additional disabilities—when the case against the school was settled out of court in August. As part of the settlement, CSD will

create an environment for developmentally delayed students at the school. This settlement comes after a U.S. District Court judge denied CSD's motion to dismiss, clearing the way for YELP to pursue claims under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. Over the course of the last

year, clinic students Ruth Barnes '07, Hope Bennett '08, Brian Bilford '08, Erica Blachman '07, Laura Johnson '07, Peter Khalil '07, Esther Kim, '07, Jonathan Olinger '08, Will Rawson '08, Rebecca Thalberg '07, Julie Wahlstrand '08, Caitlin Weisberg '08, and Ashley Yeargan '08 have done everything from motion practice to discovery to expert witness work in the case.

## NEW ORGANIZATIONS AND TRANSACTIONS CLINIC OFFERED AT MILLS LEGAL CLINIC

THE LAW SCHOOL'S newest clinic will open for business in spring 2008. Serving nonprofits and small enterprises in the Bay Area, the Organizations and Transactions Clinic will provide students with opportunities to work on contracts and collaborations, assist with funding and financing projects, advise on governance, compliance, commercial, and reporting matters, and provide general corporate support to its clients. • "Nonprofits have governance, finance, and commercial needs just as large corporations do," says Jay A. Mitchell (BA '80), who directs the clinic. "The work we do in the clinic will provide practical help to our clients, give the students opportunities to build knowledge and experience in these core areas, and demonstrate how corporate lawyers can use their skills to serve the community." • Mitchell, a former partner at Heller Ehrman White & McAuliffe in San Francisco, comes to Stanford Law after 15 years as chief corporate counsel at Levi Strauss & Co., where his work focused primarily on governance, finance, stockholder, and disclosure matters and on a wide range of commercial transactions. Mitchell will be joined for the 2008–2009 academic year by the Orrick, Herrington & Sutcliffe Teaching Fellow. • Mitchell expects the clinic to draw students interested in careers in corporate law, business, and finance—a subset of students not currently being targeted by the law school's other litigation-focused clinics. He also hopes to attract students planning careers in litigation or public policy who want experience in organizational work. • Alumni who are board members, officers, volunteers, or otherwise affiliated with organizations that might be appropriate clients for the clinic as well as alumni who are interested in learning more about the teaching fellowship are encouraged to contact Mitchell (650-724-0014; [jmitchell@law.stanford.edu](mailto:jmitchell@law.stanford.edu)).

## Two New Teaching Fellowships Established

TWO LAW FIRMS KNOWN for their commitment to pro bono work are supporting two new teaching fellowships at the Mills Legal Clinic of Stanford Law School. Orrick, Herrington & Sutcliffe has pledged \$250,000 over five years to support a fellowship for the newly established Organizations and Transactions Clinic and Cooley Godward Kronish has committed \$250,000 over five years to support a fellowship for the Immigrants' Rights Clinic. The Organizations and Transactions Clinic provides legal assistance to nonprofits and small businesses. The Orrick, Herrington & Sutcliffe Fellow will join the clinic for the 2008-2009 academic year. The Immigrants' Rights Clinic represents immigrants on matters ranging from humanitarian relief from deportation to asylum protection. Attorney Jennifer H. Lee, who has extensive experience working with immigrant domestic violence issues, is the inaugural Cooley Godward Kronish Fellow. "These fellowships allow us to offer more students closely supervised clinical training and the opportunity to enable students to reflect deeply on the work they do," says Lawrence C. Marshall, David and Stephanie Mills Director of Clinical Education and associate dean for public interest and clinical education.