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## NORTHWESTERN UNIVERSITY SCHOOL OF LAW

# LEGAL CLINIC

## *News and Notes*

Spring 1997

### INSIDE...

What Students Say  
About the Legal Clinic

pp. 6-9

Larry Marshall Asks,  
"What Do We Owe People  
Who Have Been Wrongly  
Convicted?"

p. 16

The Children and Family  
Justice Center:  
Fourth Year Report

p. 21

The  
Community Law Clinic

p. 27

Thank You  
*Pro Bono* Volunteers,  
Adjuncts,  
and Donors

pp. 9, 36, 44

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### Clinical Legal Education: More Important Than Ever

by Thomas F. Geraghty, Associate Dean of Clinical Legal Education

One of the most devastating problems facing our society and our system of justice today is the burgeoning incarceration of young people who are overwhelmingly poor and disproportionately non-white. Members of the legal profession, judges, prosecutors, and public defenders see the tragic parade of young people through our courts and into our detention centers and jails—the result of lack of opportunity, poor educational systems, drugs, and lack of support for families in crisis. Our judges and lawyers see the economic and social costs of our failures to intervene earlier. The tragedies of victims and offenders are played out in courtrooms.

Why lead with this? Because the clinical program is designed to provide a well-rounded education for future leaders—for those who will solve the problems that the legal profession, as the guardian of justice, must grapple with.

If it were not for our clinical program, our law students would be unlikely to experience the juvenile and criminal justice systems first-hand. They would study basic principles of criminal law and of criminal procedure; they would read about statistics and trends, but they would never meet a young person who faces a life of incarceration or a victim who has suffered a loss. They would never experience the ways in which our justice system decides innocence or guilt; they would never see the impact of a sentence on someone they know.

First-hand experience in addressing the problems of disadvantaged clients in our justice system develops skills as well as sensitivity to systemic problems. Although the development of skills is important, the creation of a corps of practitioners who care about the quality of the administration of

(please turn to p.2)

News and Notes 

justice is even more important. The clinical program provides skills training, training for the zealous and ethical practice of law, training for professional responsibility, and training to recognize and address systemic failures in agencies and courts. The clinical program supports the education of practitioners who will make positive contributions to society.

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### *the challenges*

**T**he wonderful thing about a law school clinical program is that it is always faced with challenges that keep it relevant and vital.

There is the challenge of developing a program in which the work that students do builds skills and devotion to professionalism. There is the challenge of maintaining the educational quality of the program and ensuring that it is staffed with faculty who enjoy the combination of teaching and practice. There is the challenge of practice, shared jointly by students and faculty, that contributes to a unique educational experience and provides the raw material for rich learning.

Another challenge involves repeatedly explaining and re-defining the goals of a clinical program. This challenge arises because of the desire of clinicians to perfect models of clinical education and because of the critical eye cast on clinical programs by non-clinical faculty regarding the value of clinical pedagogy and the resources devoted to it. As such, clinical programs are usually the most often evaluated and, therefore, the

most self-reflective programs within law schools.

Another challenge facing clinical programs is that of funding. The larger the program, the more significant the challenge. With the demise of the Federal Title IX Higher Education Act, which funded substantial portions of clinical programs around the country, many law schools have struggled to maintain their in-house clinics. Clinicians have, in addition to their roles as teachers, assumed the roles of fundraisers, grant writers, and negotiators with law school and university administrators. Few clinical programs have shut down as the result of the cut-back in federal funding. Help has come in the form of creative alliances with other legal services providers, increased support from universities, and generous alumni giving in response to more aggressive fundraising efforts.

For example, the University of Chicago has just received a large gift to build a new clinic; Harvard has a free-standing legal services center; Yale renovated its clinic; American University has just dedicated a new clinic. These schools have also established defined term employment relationships with their clinical faculty. Leading law schools have recognized the importance of clinical education to legal education and to the profession, and they are stabilizing and integrating clinical programs into their curricula.

Northwestern has been a leader in this effort: it was one of the first law schools to place five of its clinicians on the tenure track back in 1976. Now, three tenure-track clinicians teach simulation-based

courses and supervise externships. The bulk of case supervision of students has been taken over by younger faculty supported for the most part by grants and by attorney's fees. The remaining challenge is to provide permanent support for our eight non-tenure track clinicians, who have the major responsibility for supervising students on cases.

We are employing a number of strategies to meet this challenge. First, the clinical program continues to seek more support from the University, keeping in mind that the University has many competing requests for resources. The University recently did agree to support one long-term and one short-term position in our clinical program.

Second, the Clinic continues its efforts to secure grant funds to continue its work. During the last five years the clinical program has obtained grants totaling \$5,502,749 to support its case-work, supervision, and research.

Third, the Clinic plans to continue to earn attorneys' fees. During the last five years, Clinic attorneys have earned \$473,462 in statutory fees, all of which have been spent by the Law School to support its clinical program. During the next year, we plan to explore whether projects within the Clinic might become self-supporting through fees consistent with the Clinic's emphasis on student participation in the representation of clients. Projects in which clients pay fees might constructively expand the Clinic's work into the commercial area.

Fourth, the Clinic will continue its efforts to seek annual gifts from

alumni and friends. During the last five years, the clinical program has gratefully received a total of \$173,692 in alumni contributions. The clinical faculty will also continue to seek larger gifts from alumni and friends. To date, the clinical program has received five endowments which generate an annual income of \$61,455.

Our fundraising goal is to secure several more endowments to support the work of our young clinicians. The clinical faculty hopes to identify donors who might consider providing the kind of support necessary to ensure the ongoing presence of a strong "real client" legal services/public interest-based clinical program within the Law School. Of course, an endowment to support any aspect of the clinical program would be most welcome, as our other needs include improved office space, better computer equipment, expert witness fees, and general litigation costs.

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### *the clinical program*

**T**he clinical program continues to prosper, thanks to the wonderful work of faculty, staff, and students. Steve Lubet's Program on Advocacy and Professionalism is rated as one of the best in the country and provides students with effective training in ethics, professional responsibility, and trial advocacy. Bob Burns continues to develop creative approaches to immersing students in evidence and ethics. The students who complete the Lubet/Burns sequence of courses are engaged in their education and are well-prepared for effective,

thoughtful, and reflective professional lives. These courses also owe their success to the many adjunct professors whose names are listed on pages 36-37 of this newsletter, and who give their time so generously.

The "live client" portion of the clinical program also continues to thrive, thanks to the dedication and enthusiasm of our faculty: Cynthia Bowman, Bruce Boyer, Steven Drizin, Laura Miller Eligator, John Elson, Derrick Ford, Cheryl Graves, Zelda Harris, Bill Kell, Larry Marshall, and Angela Coin, the director of our West Town Community Law Clinic. The devotion of Bruce Boyer, Steven Drizin, Laura Eligator, Derrick Ford, Cheryl Graves, Zelda Harris, and Angela Coin is made all the more remarkable by the fact that they labor long hours without any form of job security.

Our young clinical teachers are the most able and talented faculty that any law school clinic could hope to have. In addition to their skills as teachers and lawyers, they are leaders in their fields. Bruce Boyer is an expert in legal issues on family preservation; Steven Drizin has become a local and national leader in the formation of juvenile justice policy; Derrick Ford and Laura Eligator are working to develop a practice which will focus on the relationship between special education needs and juvenile delinquency; Cheryl Graves's program involves students going into the community to reach young people at risk of delinquency; Zelda Harris has become an expert in the representation of victims of domestic violence; Bill Kell has taken a leadership role in helping the Clinic develop a comprehensive

program in community-based interviewing and counseling training; Angela Coin has provided creative and energetic leadership for our Community Law Clinic by recruiting and coordinating *pro bono* representation of children in delinquency proceedings and providing a community setting in West Town where our law students can practice. New projects now under consideration involve disability rights, community development, and more work on behalf of condemned prisoners.

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### *enthusiasm for practice*

**O**ur clinical faculty believe that the communication of enthusiasm for practice is an important component of our educational message. Enthusiasm for practice means generating excitement about lawyering on behalf of individual clients and engendering the belief that a practice which includes consideration of the policy issues affecting the public interest will ultimately be the most satisfying. We want our graduates to become "good citizens" of the legal profession—lawyers who, during their professional lives, will work for their clients and for justice.

This enthusiasm for practice, and for the "good citizen" potential for practice, is sustained by encouraging our faculty to practice in the areas that fascinate them and by selecting faculty who are involved in reform through practice. In addition, the faculty who teach enthusiasm for lawyering practice, practice what they preach. They are "good citizens" in the sense

*(concluded on p.4)*

that they are leaders within the profession who work to improve the laws and the institutions which affect the lives of their clients. Several projects within the clinical program are designed to help our students recognize the "good citizen" potential of good lawyering. The Children and Family Justice Center, directed by Bernardine Dohrn, is perhaps the most well-developed. Under Bernardine's leadership, the Children and Family Justice Center has become a local and national leader in juvenile court reform and in issues and initiatives affecting children and families in crisis.

The Center's role as a resource to the Juvenile Court of Cook County is now well-established. The Center is helping the juvenile court create an integrated case management computer system to provide complete information about families and children to judges, public defenders, state's attorneys, and detention intake workers. Center staff also work on permanency planning in neglect and abuse cases. Their most recent initiative is a joint project with the University of Chicago's Department of Psychiatry, to help the juvenile court's Department of Clinical Services to perform its job better.

The Clinic's Disability Rights Project, headed by Laura Eligator and Derrick Ford, has also taken a leadership role in ensuring that children with disabilities, who need special education programs, have access to them. The Clinic has taken the lead in a major lawsuit against the Chicago Board of Education, the result of which

should be better special education programs for the school children of Chicago.

John Elson's role in raising the level of awareness about abuses in domestic relations practice in Chicago is well known. John's work in advising the state legislature regarding laws prohibiting sexual relations between divorce lawyers and clients, and defending divorce clients against excessive fee claims, has brought attention to the need to raise the level of ethics and professionalism in the domestic relations bar.

Larry Marshall continues his work to free innocent clients; to make our justice system more conscious of the need to take claims of innocence seriously; to create awareness of systemic problems within the criminal justice system that result in the conviction of the innocent; and to challenge the system to confront such injustices. The most remarkable of these cases was the *Cruz* case, discussed in last year's newsletter. As recently as December 1996, several of the police officers and prosecutors in that case were indicted for obstruction of justice, based on an investigation led by Special Prosecutor William Kunkle ('69). This case has continued to be the object of national attention. Larry's project has also included several other cases in which defendants have been freed after conviction and imprisonment. His important work ensures that we are appropriately skeptical of our system's ability to do justice. Without that skepticism, our system would not have the incentive to do better.

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## *in conclusion*

**W**e have been very fortunate during the last five years to attract significant foundation support for our law and institutional reform efforts. While we hope that this support will continue for the short term, and although we will continue to solicit foundation support for new and innovative programs, dependable financial resources are necessary to ensure continuity, high morale, and creativity. Our clinical program plans to spend considerable time and energy on securing a solid endowment for the program. This effort will be made in conjunction with the Law School's newly announced capital campaign with the enthusiastic support of Dean David Van Zandt. I look forward to working with David to meet the challenge of building a firm foundation for the clinical program's future.



**Thomas F. Geraghty**

## Message from the Dean

by David E. Van Zandt

We—the faculty, students, and staff at Northwestern—are engaged in a major strategic planning effort that will set the course for the Law School for years to come. Our overall goal is to raise our already excellent school into the ranks of the three or four very best law schools in this country. To achieve this goal, we will be entering a substantial capital campaign. The Legal Clinic has been one of the jewels of the Law School and will continue to shine as we move forward.

I believe that our Legal Clinic is one of the very best in the nation. Its strength is not only in its excellent and expanding live client program, but also in its innovations in its simulation teaching, its outreach to communities, and its law reform efforts. I am immensely proud of all aspects of our program—the Children and Family Justice Center, the Disability Rights Project, the Community Law Clinic, the integrated simulation program, and the externship program. Associate Dean Tom Geraghty along with the clinical faculty and staff have put together a strong program that provides Northwestern students with a broad range of opportunities to expand their learning experience. And they have done this in the face of a

rapidly changing legal profession and social environment that poses innumerable challenges to our educational mission.

I view these challenges as opportunities for us to revisit what we do and how we can improve. While our planning is still in the early stages, I am sure that the Legal Clinic will emerge as a key element in our plan to make the Law School a leader in legal research and education. The Legal Clinic will do this by remaining an innovator in the areas in which it is already a national force and by expanding into new and promising areas of pedagogical activity. I hope that this innovation will increase the integration between the teaching in the Clinic and the rest of the law school experience.

Another important goal in our planning for the Legal Clinic will be to provide a firmer financial foundation for its activities. This will come from expanding and diversifying the base of its financial support through increased endowments from the capital campaign and the identification of other revenue sources. As we move forward, I hope that you will continue to support the Legal Clinic in every way that you can.

## Representing Derrick Hardaway, A Juvenile in Criminal Court

by Angela Daker ('98)

**The three articles that follow were written by a current law student and two former law students, respectively.**

**They express the influence that clinical education has had in their lives and on their professional careers.**

**"I don't know if I will ever have another trial experience like that in my life."**

I spent my first summer of law school clerking in the Legal Clinic. Since I had been interested in working with juveniles for quite some time, I thought working in the Clinic would give me the chance to finally do something meaningful and rewarding, as opposed to most of the other summer jobs I have had in my life. I would have never guessed that my experience that summer would not only shape my understanding of how an attorney should represent a client, but also impact my entire perception of the criminal justice system.

Early last summer, I was assigned to work on Derrick Hardaway's case with Tom Geraghty and Steve Drizin, who represented Derrick. I knew something about the case because of all the media attention it had received in 1994. Derrick was 14-years-old and indicted on first degree murder. The person charged with him was his older brother; Derrick was charged under an accountability theory. In 1994, Northwestern Legal Clinic represented Derrick at a transfer hearing. Unfortunately, the judge decided to transfer Derrick to criminal court, where he would be tried as an adult.

When I started at the Clinic, we were preparing for trial. I began to develop a close relationship with Derrick, and I came to feel a sense of responsibility for him. Derrick was no longer just Steve's and Tom's client, he was my client as well. For the first time in my life, I knew what it was like to feel the professional obligation a lawyer has to her client. I developed my own opinions about strategy and tactics, and I always voiced those opinions at the numerous strategy sessions we had in

preparation for trial. Not only did Tom and Steve listen to my opinions, they encouraged students working on the case to give their opinions. Even though I was inexperienced, Tom and Steve always treated me as a peer. This actually shocked me because I don't know how many lawyers actually listen to and consider the opinions of their student clerks.

I watched Tom, Steve, and Angela Coin spend their evenings and weekends preparing arguments and witness examinations. I saw them fight for Derrick's life. In many ways, I felt as if I weren't doing enough for Derrick, because I really wished I could stand up in court and advocate for him. But I came to recognize that there are ways to advocate for a client besides standing up in court. I had the opportunity to do all I could to help prepare for trial and I truly am grateful for that. I know that the time and energy students spent working in preparation for trial had a positive effect on the representation he received.

To my surprise, Tom asked me to sit at counsel table during trial. I was excited because I felt it would give me the opportunity to do something more for Derrick. Throughout his trial I sat next to him and I explained everything to him, answered his questions, and I hoped that my presence made him more comfortable than he might have been otherwise. Sitting at counsel table also allowed me the opportunity to voice my opinions about issues as they came up during the proceedings and to participate in side bars and conferences in chambers with the judge. I also was able to observe *voir dire* and see what jury selection in a high profile trial with complicated issues such as class, race, and gangs was like. I don't know if I will ever have another trial experience like that in my life.

Representing Derrick Hardaway has given me some of the most difficult professional experiences I will probably ever have. I became very close to Derrick and, of course, one of the golden rules is not to become "emotionally attached" to your clients. I have clearly broken that rule, and I don't think I believe in that rule. I believe that if I weren't close to Derrick, I wouldn't have voiced my opinions so passionately or worked as diligently on his case. We were not fighting for some neutral-faced "client", we were fighting for Derrick, a spectacular individual I believe in and care a great deal about. Caring for Derrick enhanced my commitment to him and to his case.

This is not to say that being close to him did not make losing his trial one of the hardest things I have ever had to deal with, because it did. All of the students who worked on Derrick's case were extremely upset when we received the verdict. Although we knew there was a great likelihood of losing at trial and I tried to prepare myself, I guess you can never prepare yourself for something like that.

Everyone at the Clinic was conscious of the feelings of all of the students who worked on this case. Tom and Steve talked to the students about how hard it was going to be if we lost and told us we should all feel very good about the work we had done on behalf of Derrick and the quality of the representation we gave him. This demonstrated to me how even at the height of preparing for a very serious and intense trial, the attorneys at the Clinic are always conscious of their roles as teachers and educators. In addition to teaching students how to write motions and briefs and prepare examinations, they are also concerned with teaching students how to deal with very practical issues, such as how to handle losing a trial when there is a great deal at stake for your client. I can personally say that I think that going through this experience, under the supervision of the attorneys at Northwestern Legal Clinic, has helped me deal with it better than I would have thought.

Seeing any 16-year-old client convicted under these circumstances would have been difficult. But in my eyes, Derrick is much more than some 16-year-old—he is a person I respect, admire, and care a great deal about. In the Juvenile Temporary Detention Center, where he is currently being detained, Derrick has a wonderful reputation. Teachers, counselors, and staff love him and always talk about what a good student he is and what a pleasure he is to work with. Derrick tutors in the art program at the detention center; he has been in plays that have been held there and is a mentor to younger kids who are being detained. Everyone at that facility, from teachers to security, has expressed shock and dismay at seeing Derrick convicted. Derrick is somebody whom people in the detention center think could be a very productive member of society if only given the chance.

Instead of looking forward to a bright future, Derrick now looks forward to serving from 20 to 100 years in a penitentiary. Derrick's birthday is coming up in March, and that is not something for him to look forward to. On his seventeenth birthday, Derrick will be considered an adult by our criminal justice system and the Department of Corrections can, and probably will, send him to an adult penitentiary where he will serve his time.

We are currently preparing for Derrick's sentencing hearing. We are calling many people in the Juvenile Temporary Detention Center as character witnesses for Derrick. We hope to keep his sentence as far away from 100 years as possible. We are also trying to figure out how to keep him in the Juvenile Division of the Department of Corrections until his twenty-first birthday.

The entire fall semester of my second year was consumed by this trial. But I learned more about being a lawyer and an advocate by working on this one case than I probably have from most of my other courses combined. Seeing someone as special as Derrick convicted of murder has only made me more certain that I have made the right career choice. Today, more than ever, I want to use my legal education and skills to fight for kids who are in Derrick's position.

Ultimately, I am very grateful to Tom and Steve for giving me the opportunity to play a role in the representation of a client I believe in and care a great deal about. I do not think justice was served in that courtroom when Derrick was convicted of first-degree murder. I believe that we fought very hard for Derrick and we gave him quality representation. I guess that is the most important lesson I can take from this experience. Obviously, it is difficult to deal with losing a case where your client's life is literally at stake. But I hope, and I think, that I was able to contribute something positive to our representation of Derrick. And because of that, I feel good about my involvement in this case.

**“I learned more about being a lawyer ... on this one case than I probably have from most of my other courses combined.”**

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## Lynn Weisberg ('93 JD)

Gardiner Koch & Hines

*practicing in the areas of civil and criminal litigation, domestic relations, and juvenile matters*

My last year of law school proved to be my most rewarding, in large part due to my work with Northwestern University's Legal Clinic. Throughout the year, I worked with Tom Geraghty, Steve Drizin, and a small group of fellow students defending juvenile matters—specifically two transfer proceedings in which two different juveniles, both charged with first-degree murder, faced hearings to determine whether they would be tried in the adult or juvenile system. In one of the few instances in my law school career I was treated as a colleague, not a student. We drafted motions, strategized, and collaborated as a team. Ultimately, we conducted both juvenile transfer hearings, with students putting on the majority of the witnesses pursuant to the terms of our Rule 711 licenses. No class or seminar in law school rivalled the experience I received in the Legal Clinic.

The Clinic's role in my life continued after law school. As mentioned above, I worked primarily on two juvenile transfer hearings during my last year in the law school. One of the juveniles was, in fact, transferred to adult court to face murder charges. Based on my relationship with the juvenile, Tom and Steve asked if my firm, Gardiner Koch & Hines, would like to represent this juvenile at trial. Although Gardiner Koch & Hines was a newly formed firm without large financial reserves, it recognized the importance of this case and the Legal Clinic to me and accepted the case on a *pro bono* basis. Jim Koch and I tried the case before a jury; the client was ultimately sentenced to 25 years in prison.

Based on errors made in the juvenile transfer hearing, the Legal Clinic and I collaborated on the appeal to the Illinois Supreme Court. Under the guidance of Tom and Steve, the Clinic students drafted a superb brief, dealing with important, but seldomly addressed, juvenile issues, challenging the validity of the client's transfer to adult court. With the help and preparation of the Legal Clinic, I argued my first appeal before the Illinois Appellate Court this fall. To prepare me, Steve Drizin arranged two moot court arguments, with Legal Clinic staff, including himself, Bruce Boyer, Tom Geraghty, Larry Marshall, and Bob Burns serving as the judicial panel. As a result of their comments and suggestions, I argued our client's appeal for almost an hour with knowledge, preparedness, and confidence. Our client was so appreciative of the work done on his behalf by the Clinic, he recently called and thanked Steve for his help.

As a result of the Clinic's impact on my legal education and

career, I have made a commitment to do at least two *pro bono* juvenile cases each year, some of which have been referred to me by the Legal Clinic. Further, my work with the Legal Clinic in the juvenile courts has caused me to volunteer my time at the Cook County Juvenile Temporary Detention Center, where last year, together with other young lawyers, I tutored residents on a one-to-one basis every Thursday night in reading and math. I now serve as an advisor to this Chicago Bar Association program.

I cannot adequately express the important impact and influence that the Legal Clinic and its staff have had on me. Although I have been out of law school for nearly four years, I still look to Tom and Steve for mentoring and legal advice when handling juvenile matters. Their commitment and dedication to helping law students develop both legal skills and commitment to public service has left an indelible mark on me, which I hope to pass on to others.

**T**he Children's Law *Pro Bono* Program at the Community Law Clinic is thriving in West Town. In 1996, over 30 volunteer attorneys from many of Chicago's most prominent law firms represented children in the Juvenile Court of Cook County. Working with boys and girls aged 10 to 17, our volunteers have helped neighborhood families find their way through the juvenile court system and have crafted creative solutions to their legal problems. The program has also reduced the isolation of law practice in juvenile court by encouraging these highly motivated and talented young lawyers to become part of a new corps of children's attorneys. Our thanks to the following volunteers and supervisors who made the Children's Law *Pro Bono* Program a great success in its first year.



(please see list on facing page)

## Timothy J. Ewald ('93 JD)

Doherty Rumble & Butler, P.A.

*practicing in the areas of labor/employment law and bankruptcy litigation*

My best memories from Northwestern (or at least those memories suitable for print!) relate almost exclusively to my experience as a student in the Legal Clinic from 1991 to 1993. The outstanding mentoring I received from the staff attorneys, the fantastic opportunities for hands-on experience, and the sense of compassion and responsibility instilled through the representation of those less fortunate have proven invaluable to me in my continuing development both as an attorney, and as a human being.

With many law schools these days obsessed over rankings, size of libraries, and the production of law review articles, Northwestern, although strong in these areas,

demonstrates its commitment to attorney development and social justice through the Legal Clinic. The opportunity to deal with real clients, file real motions, and appear before real judges is an invaluable and unparalleled teaching tool for prospective attorneys. The learning experience is enhanced by the incredible dedication and skill of the staff attorneys who supervise the students. Of equal importance to the educational component are the humane considerations involved in this type of service, especially in light of the recent dismantling of the social safety net and growing hostility around the nation towards impoverished and powerless people.

My Legal Clinic experience greatly aided my professional development and has proven to be critical to my success as a practicing attorney. The fact that I prepared witnesses, tried cases, and crafted appeals long before my admission to the Bar enabled me to better represent the clients I serve in private practice. In addition, because of my commitment to civic responsibility, a number of co-workers and I recently established a formal *pro bono* program at our law firm. These professional achievements are in large part directly attributable to my experience at the Legal Clinic, and Northwestern has every right to be very proud of this vitally important institution.

### PRO BONO SUPERVISORS

**Cotsirilos Stephensen Tighe & Streicker**  
Matthew Kennelly

**Jenner & Block**  
Craig Martin  
Tom McQueen  
Gabrielle Sigel  
Monique Washington

**Mayer, Brown & Platt**  
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Ken Fuchs  
Patrick Hughes  
Rachel Janutis  
Eleni Kouimelis  
Brian Neuffer  
William Weber

## FACULTY & STAFF NOTES

Students working with **Bruce Boyer** in the Family Advocacy Project continue to represent clients within the child welfare system, including parents, children, and foster parents. Through their representation of clients, they seek to address systemic issues in the juvenile court, such as the way in which visitation between foster children and their parents is structured, the extent of the court's responsibility to monitor children living with their families, and the process by which the court seeks to achieve permanent resolutions for children and families whose lives are disrupted by abuse and neglect. Child clients have given students the opportunity not only to serve young clients in great need, but also to understand from a new perspective the ways in which the systemic failures of the child welfare system deprive children and parents alike of the opportunity to achieve stability and permanence.

Bruce has also devoted considerable attention to other types of litigation, including class actions, appeals, and amicus briefs. With the imposition of crippling federal restrictions limiting the reform work of offices supported by the Legal Services Corporation, Bruce has sought to help fill this gap by assuming a greater role in class action litigation in the child welfare arena. In one case, the Clinic has assumed responsibility from the Legal Assistance Foundation for monitoring the Department of Children and Family Service's compliance with a consent decree involving visitation between children in foster care and their parents. Bruce is also responsible for another lawsuit filed this past fall on behalf of some 2500 disabled foster children, seeking to protect their federal disability benefits from misuse by DCFS. This suit arose from work with significant numbers of foster children who found that disability benefits paid on their behalf to DCFS were being misappropriated in violation of state and federal law. Through his appellate and amicus work, Bruce has also sought to address systemic problems in and out of the juvenile court, affecting the rights of children and the scope of the state's involvement in the relationships between children and their families. He has also continued to be involved in the work of various committees working on issues around juvenile reform.

This past fall, Bruce taught a seminar on juvenile law. This seminar, taught for the first time last year by Tom



**Bruce Boyer**

Geraghty, reflects the Legal Clinic's increasing store of knowledge and expertise in the area of juvenile law.

Bruce has also worked to expand the visibility of the Children and Family Justice Center outside of Illinois. Earlier this year his article on ethical issues in representing parents in child welfare cases was published in 1996 in the *Fordham Law Review*. With Bernardine Dohrn, Bruce was recently appointed by the State of Michigan to conduct a program evaluation of pilot projects modeling multidisciplinary representation of children in abuse and neglected cases. These projects, initiated in 1995, are seeking to demonstrate the effectiveness of using teams of legal and non-legal professionals to provide comprehensive advocacy for children who are victims of neglect or abuse. In April, Bruce will speak on the representation of children at trial at the annual meeting of the ABA's litigation section.

**Angela Coin** has been invited to speak at two upcoming conferences. Her first talk will be in St. Louis in March at the ABA's Pro Bono Conference, where she will describe the Children's Law Pro Bono Program at the CLC. She has also been asked by the U.S. Information Agency of the University of Alaska to speak in Sakhalin Island, Siberia, where she will address community and business leaders on juvenile law, delinquency, and public interest community law clinics. Several problems have arisen in Siberia as a result of urban development around oil exploration.

Northwestern students voted **Bob Burns** the winner of the Robert Childres Memorial Award for Teaching Excellence for the 1995-96 academic year. The award was presented to him last May at graduation. The ABA Section on Legal Education invited him to participate in a panel at the group's annual meeting on integrating practicing lawyers into professional responsibility programs. In September he conducted a workshop on the law of evidence for the Illinois Attorney General's Continuing Legal Education program. In January he was a panelist on legal ethics for the Chicago Inns of Court workshop. In March he will give an invited paper at a conference to be held at William and Mary Law School on the purposes of legal ethics teaching in the Law School. He has remained President of the Board of Directors of Chicago Legal Aid to Incarcerated Mothers. Later this year he will publish "Teaching the Basic Ethics Course Through Simulation" in *Law and Contemporary Problems*, "Some Realism (and Idealism) About the Trial" in the *Georgia Law Review*, "The Purposes of Legal Ethics in the Law School" in the *William & Mary Law Review*, and "Legal Ethics in Preparation for Law Practice" in a symposium published by the *Nebraska Law Review*. A condensed version of this article is included in this issue on page 18.

**Steven Drizin** is in his sixth year at the Clinic and is the supervising attorney of the Juvenile Advocacy Project. At the Clinic he supervises students who represent children and adolescents in delinquency proceedings and criminal cases. He also represents minors in appeals of juvenile and criminal court matters, related special education proceedings, and is serving as co-counsel in a federal class action against several state agencies concerning their failure to provide services for disabled delinquent children.

Steven has also participated in recruiting and training private attorneys in how to effectively represent juveniles in delinquency proceedings. In 1994, Steven served as an assistant team leader in the "Training the Child Advocate Program," a trial advocacy program developed and sponsored by the CFJC, the American Bar Association, and the National Institute for Trial Advocacy. Together with Angela Coin, Steven has also trained many volunteer attorneys from some of Chicago's largest law firms in the CFJC's multidisciplinary model of representation. These attorneys have then been recruited to represent juveniles charged with crimes who live in the neighborhood of the Community Law Clinic, a satellite legal clinic serving Chicago's West Town community.

Steven also remains involved in a number of professional organizations and committees dedicated to improving the lot of Illinois' children. He continues to serve on the Juvenile Detention Alternatives Initiative of Cook County, an initiative funded by the Annie E. Casey Foundation to reduce the population of the detention center.

Steven completed 18 months of work on the State's Legislative Committee on Juvenile Justice in May 1996. His lengthy dissent to the Committee's Report and Recommendations, which provides a blue print for an effective juvenile justice system for the twenty-first century, has been widely circulated and discussed. In 1996, Steve was also named to the Policy Board of the Illinois Council on the Prevention of Violence and to the Executive Committee on the Cook County Juvenile Drug Court Program.

In October 1996, the CFJC, together with the ABA's Juvenile Justice Center, was awarded a grant from the Illinois Juvenile Justice Commission to study the issues of access to counsel and quality of counsel for juveniles in Cook County, Illinois. Steven and Patti Puritz of the ABA are co-principal investigators of this study which will aim to replicate the groundbreaking December 1995 study of the ABA, the Juvenile Law Center, and the Youth Law Center: *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*.

**Laura Miller Eligator** works in the Clinic's Disability Rights Project (formerly called the "Special Education Project"). As in previous years, students participating in the project represent children with disabilities to obtain appropriate educational services and relief for disability-based discrimination. This year for the first time, students are also representing adults who seek redress for discrimination on the basis of disability. The project handles both individual cases and impact litigation. In the past year, two of the project's students argued cases in



**Steven Drizin**



**Laura Eligator**

the United States Court of Appeals for the Seventh Circuit.

Laura is in her second term on the board of governors of the Chicago Council of Lawyers and continues her first term on the board of the Cook County Legal Assistance Foundation. She is also an active member of the Special Education Subcommittee of the Attorney General's Disability Rights Advisory Council. She and Steve Drizin recently wrote an article to help parents of children with disabilities understand the juvenile justice system, which was published in the Winter 1997 edition of *Attention* magazine.

**John Elson** has continued his project to protect clients from overreaching by divorce attorneys. These efforts have recently culminated in the passage by the Illinois legislature in its fall veto session of a package of reforms that will significantly limit abusive fee practices by divorce attorneys as well as reduce some of the inequities suffered by low or non-earning spouses. John worked closely with Senator Kathy Parker's committee on divorce law reform and a committee of the Chicago Bar Association to draft and lobby for the passage of this legislation. In its litigation, this project has won substantial reductions in fees being sought by divorce attorneys, has been awarded precedent-setting sanctions against a prominent divorce attorney for uncivil conduct at a deposition, and is now awaiting an Illinois appellate court decision that will clarify the legal standard governing when it is a breach of fiduciary duty for an attorney to pressure a client into unwanted sexual relations.

John is currently seeking funding for an expanded divorce clients rights project that will employ an attorney who will work with students to develop a multi-faceted approach to protecting this often exploited class of clients. He also began a new project last semester in which he and his students represent clients of the Legal Assistance Foundation in cases that require substantial discovery or motion practice. Through this project, students have gained a great deal of experience in interviewing clients, developing litigation strategies, conducting discovery, and presenting motions.

**Derrick Ford** has continued his work on the board of directors of the Lawyers' Committee for Better Housing and the Ounce of Prevention Foundation, as well as serving as a volunteer attorney for the Lawyers' Committee for Better Housing. He continues his involvement with the Cook County Bar Association's Law Day program and with coaching the Northwestern University Undergraduate Mock Trial Team. This year Derrick will continue to coach a mock trial team at Wells High School with Angela Coin that will compete in the spring in both Chicagoland and statewide high school competitions.



**John Elson**



**Derrick Ford**

**Arthur Freeman**, senior counsel at Schwartz & Freeman, is now in his fourth year of association with the Clinic. He participates in weekly seminars with Tom Geraghty and the Clinic students and this past year has also participated in factual and legal research and brief writing on behalf of Clinic clients, primarily in death sentence and post-conviction appeals.

He has also spent a substantial amount of time in the preparation of a brief filed in the Illinois Appellate Court contesting the circuit court's denial of a *pro se* post-conviction petition case, in which the Clinic's client was sentenced as a Class X offender to 30 years of imprisonment for an armed robbery which netted the defendant fifty cents, plus a book store token.

Art made the oral argument in the Illinois Appellate Court on the defendant's behalf last December. During the Clinic's investigation, prior to filing its brief, it was discovered that the defendant had a long history of chronic schizophrenia and had been so diagnosed repeatedly by the Department of Corrections psychiatrist during a prior incarceration, as well as by a Social Security Administration psychiatrist. None of this information was presented to the court during the defendant's trial.

**Tom Geraghty** was appointed this year by Judge Donald O'Connell to the Public Guardian Oversight Committee. His speaking engagements have included a presentation to the National Association of Counsel for Children on the representation of children whom the state seeks to try as adults; a presentation to the American Academy of Psychiatry and the Law on the interdisciplinary aspects of representing children whom the state seeks to try as adults; and opening remarks and a presentation on teaching trial advocacy at the

Conference on Clinical Legal Education in East Africa, held in Addis Ababa, Ethiopia. Tom will also be a teaching team leader at the National Institute for Trial Advocacy's national session in Boulder, Colorado, in July 1997. Tom serves on the Law School's strategic planning committee. He is a member of the working group on Clinical Legal Education in Africa, the American Bar Association African Law Initiative, and of the Advisory Committee of the MacArthur Justice Center.

**Cheryl Graves** continues to expand her advocacy efforts on behalf of youth and youth organizations throughout the city in addition to her casework and supervision of students in juvenile delinquency and domestic violence cases.

Cheryl has joined the board of directors of the Girls Best Friend Foundation, which is dedicated to funding innovative community-based programming for girls. She continues to coordinate a weekly program, "Girl Talk," for girls incarcerated at the Cook County Juvenile Temporary Detention Center (JTDC), providing gender specific programming on a wide range of issues. Cheryl began the project in 1993 in collaboration with several organizations including Youth Visions, Chicago Women's Health Center and Women in the Director's Chair. Cheryl will also be working with David Reed and Monica Mahan on a research grant to examine issues of gender bias in the juvenile justice system in Illinois.

Cheryl has expanded the law-related education program known as "Street Law", developed a high school "Street Law" curriculum, and teaches a weekly seminar at Latino Youth High School. She involved attorneys and law students in the first city-wide Street Law Teach-in, which included students, youth advocates, educators, and lawyers in legal education sessions conducted in both English

and Spanish. The Street Law project involves law students, attorneys, and youth trained as peer educators who teach about juvenile law, rights, and responsibilities. The project reaches young people and adults in a wide variety of settings including elementary and high schools, libraries, public housing developments, and community centers throughout the city.

She also facilitates the participation of Northwestern law students in a joint "Street Law" program with Loyola Law School conducted at the JTDC. Since its inception in 1994, law students have provided information on basic legal issues and the juvenile justice system to approximately 300 detained youth each semester.

**Zelda Harris** continues to work as a staff attorney in the Clinic's Children and Family Justice Center. Students working with Zelda assist in the provision of legal representation through the Family Violence Relief Project. Zelda's students represent parents involved in child protection proceedings before the Juvenile Court of Cook County and victims of domestic violence in a variety of family court settings including civil domestic violence order of protection cases, dissolution of marriage, child custody, and child protection proceedings.

Zelda participates as a member of the DCFS Advisory Council on Domestic Violence, the Domestic Violence Task Force of the Office of the Cook County State's Attorney, and the Illinois Family Violence Coordination Council. Zelda has also worked as an instructor and team leader for the National Institute for Trial Advocacy and as an adjunct faculty member for NU's clinical trial advocacy course.

**Bill Kell** has practiced law on behalf of troubled families since 1987 in government, legal service, private practice, and law school clinical settings. He joined the Legal Clinic last fall after founding the Child Advocacy Clinic at Indiana University School of Law in Bloomington, where he also taught a course on children and the law. Bill's areas of specialization include custody, adoption, mental health, and welfare-to-work related benefits.

This year Bill is supervising students in the new CFJC initiative, The Upstream Project. The Upstream Project seeks to advocate for families struggling to attain or maintain self-sufficiency before family economic crises can lead to child abuse or delinquency and ensure that welfare reform efforts are continually guided by both the short-and long-term needs of children. For more information about Upstream, contact Bill at (773) 342-5211.



**Cheryl Graves**



**Zelda Harris**



**Bill Kell**

**Steven Lubet** claims that he has spent an uneventful year quietly attempting to avoid attention. Despite his efforts, however, news of Steve's escapades nonetheless manages to slip out now and then. For example, we have it on good authority that the Northwestern University Law Review will soon publish a symposium devoted to Steve's (allegedly humorous) article "Into Evidence." Readers with too much time on their hands may have perused Steve's original article, which argues that exhibits are properly admitted "into" evidence, rather than "in" evidence. In the symposium, four authors (reputedly all law professors) examine Steve's thesis from the perspectives of Feminism, Law & Economics, Classics, and Wigmorean Theory. Steve's reply is that "the critiques are all incomprehensible — but of course I mean that in the good sense." Steve has also written another book and published a handful of law review articles.

Steve's humorous commentaries continue to run on National Public Radio, as well as in *The Chicago Tribune*, *The National Law Journal*, *The San Francisco Chronicle*, and the *Philadelphia Inquirer*. The targets of his satire have included Southern manners, Chicago politics, and Wisconsin deer hunting. Appropriately indignant hate mail may be seen on the door to his office.

**Monica Mahan** continues to be active on the Steering Committee for Female Juvenile Offenders which looks at the special problems facing girls in the juvenile justice system. Funded by the Office of Juvenile Justice and Delinquency Prevention, this project has brought together the court, DCFS, the detention center, probation, county officials, and community based agencies who are concerned about gender specific programs for girls.

Monica also completed four Child Watch programs, which brought over 80 clergy, corporate leaders, elected officials, foundation staff, and the media into the Juvenile Court. Participants were shown the workings of the Court and the conditions facing young girls in the detention center.

During the summer, Monica hosted five social workers from Korea who were visiting as part of an international exchange program with Loyola University School of Social Work; the social workers toured juvenile court and visited Mercy Home for Boys and Girls to gain information about the differences in the court systems and the child welfare systems. In Korea, juveniles are tried in adult courts, and child welfare issues are handled by social services agencies or the family. Seventeen professors of social work from the University of Seoul plan to visit this winter.

Monica is currently supervising seven M.S.W. students from Loyola School of Social Work, two of whom are in the combined J.D./M.S.W. program. These M.S.W. students work on behalf of the Clinic's clients with Clinic faculty and law students.

**Larry Marshall** and his students are continuing their work in the area of criminal defense. This past summer all charges were dropped against Gary Gauger, a McHenry County farmer who had once been sentenced to death for a murder he did not commit. All charges were also dropped against another client, Willie Rainge, a member of the group now known as the Ford Heights Four. Willie had been twice convicted of murder and sentenced to life imprisonment, but massive new evidence of his innocence led to the State's dropping charges and to a formal apology from the Cook County State's Attorney.

During 1996, Larry received a series of awards in recognition of the work he has done in the Legal Clinic. In August, Larry and the three other members of the Rolando Cruz Defense Team received the American Bar Association's Pro Bono Award in Orlando, Florida. In November, Larry was given the Edwin A. Rothschild award by the Illinois Chapter of the American Civil Liberties Union. Additional recognition came through awards from the Mexican-American Legal Defense Fund and the Public Interest Law Internship program. Larry's work was also profiled in a *Chicago Tribune* feature story titled "Practicing What He Teaches."

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Monica Mahan

**Peggy Slater** has completed the first year of her appointment as director of the Permanency Project, Child Protection Division of the Circuit Court. The goal of the project is to identify and aid the court in implementing effective and efficient procedures to assure that each child before the court achieves his or her appropriate permanent placement in the shortest time possible.

The project has introduced an expedited adoption procedure for uncontested cases and has been active in the design and promotion of new legislation which provides for the right of parents of wards of the court to consent to their adoption by specific individuals rather than surrender them to the state. The project brought the Federal Locator Service for missing parents to juvenile court and supports a simultaneous procedure of freeing a child for adoption and identifying the adoptive placement.

The project has piloted an early mediation process and is designing a consensual planning process as an alternative to termination of parental rights.

The project has taken on a comprehensive education program on court procedure geared to a variety of audiences. It produced and piloted a parent education program which will be continued on a permanent basis by the Office of the Public Defender. A manual for children is ready for publication, and manuals for caseworkers and foster parents are underway. A resource manual on termination of parental rights for judges has been completed, and a similar manual is ready for distribution to the legal community.

The project has been the organizational arm of the Child Protection Advisory Work Group created by presiding Judge Nancy Sidote Salyers and of the group's many subcommittees which advise the court of problem areas and recommended solutions. The project promoted the designation of the Child Protection Division of the Juvenile Court of Cook County as a model court in the National Council of Juvenile and Family Court Judges Model Court Program and is working with both that organization and the State Court Improvement Project toward improvement.

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#### **UPDATE: ADDIS ABABA UNIVERSITY SCHOOL OF LAW**

As reported in the last edition of this newsletter, Cynthia Bowman and Tom Geraghty traveled to Ethiopia in the fall of 1995 to assist the Addis Ababa University School of Law and the Ethiopian Civil Service College to create a clinical curriculum and clinical programs. Last summer, Tom Geraghty returned to Ethiopia to further develop the schools' clinical curriculum. Tom, accompanied by his wife, Diane Geraghty ('72) (and by daughter Annie), and by Professor Louise Mckinney of the Case Western Reserve School of Law, created a clinical course for the faculty of the Addis Ababa University School of Law, so that Ethiopian law teachers could experience first hand what it was like to be a student in a simulation-based lawyering process course.

Tom and Professor Mckinney also participated in a conference on clinical education in East Africa, held in Addis Ababa, attended by law teachers from Kenya, Tanzania,

Uganda, and by American law teachers who had been working over the summer in those countries.

These visits to Ethiopia will hopefully bear fruit. The first priority is the creation of clinical teaching methodologies which are appropriate for the Ethiopian experience. We also hope to raise funds which would support exchanges between our faculty and students and those of the Addis Ababa University School of Law. These exchanges would provide faculty and students of both countries with opportunities to broaden their educational, legal, and social experiences and to conduct research projects of use to the development of Ethiopian laws and legal institutions.

Word has just reached us, that the United States Information Service will likely fund a new phase of cooperation between African and American Law Schools. This program will support the two month visits of six African law professors to the United States in the spring of 1997. The African law teachers will

spend their time at their host schools in the United States developing new courses for their schools with the support of American law faculty. In June the African and American law professors, who have worked on this project, will meet for a final conference at Northwestern. In the Fall of 1997, six American law professors will spend two months in Africa developing clinical components for doctrinal courses. Hopefully, a Northwestern faculty member will be included in this group.

Finally, Northwestern's Law Library Director, Chris Simoni, will visit the Addis Ababa University School of Law in June. Chris will spend three weeks in Ethiopia helping the law school to modernize its law library. Chris will also help the Ethiopian law librarians effectively to utilize a new computer system provided by the United States Information Service.



## WHAT DO WE OWE PEOPLE WHO HAVE BEEN WRONGLY CONVICTED?

By Lawrence C. Marshall

*Lawrence C. Marshall is a professor of law at Northwestern University School of Law. He has represented a number of wrongly convicted individuals, including Willie Rainge and Rolando Cruz.*

**O**n May 13, 1978, before Ronald Reagan had even announced his candidacy for the White House and before Michael Jordan had ever played a college basketball game, a 20-year-old man named Willie Rainge left his East Chicago Heights home to go to work. He would not return home for more than 18 years. During that period, he would be tried and convicted twice, and sentenced to spend his life in prison, for a crime which he always knew, and we all now know, he did not commit.

What do we owe people like Willie Rainge and other members of the Ford Heights Four whom we wrongly convict? How can we begin to redress the grievous wrongs that have been done to these individuals, whose lives have been ravaged by the fallibilities of our criminal justice system.

We can begin, of course, by apologizing. In the case of the Ford Heights Four, Cook County State's Atty. Jack O'Malley has done just that. By calling the imprisonment of these four men (two of whom were sentenced to die) a "glaring example" of the legal system's fallibility, O'Malley has distinguished himself from some other local prosecutors who have stubbornly refused to acknowledge other defendants' claims of innocence, no matter how compelling the proof.

Words of apology are not enough, though, as O'Malley recognized. These men need education, job training and help with the formidable transition that lies ahead. Whatever compensation these men ultimately may receive from the government will not take the place of real jobs that will allow them to establish real lives in the free world. Quite apart from the government's obligations to these men, we as a community (in whose name these men were incarcerated) have an obligation to do everything in our power to welcome them back, to employ them and to make them part of our community.

Although these steps are all necessary, they are not sufficient to pay our debt to these men and to the other wrongly convicted people whose lives we have shattered. Rather, our most important obligation is to learn from our mistakes and to take action to prevent these miscarriages of justice from occurring in the first place. Apologies are empty words when they are not accompanied by a resolve to avoid committing the same errors over and over again.

If we are seriously remorseful about what we have done to the Ford Heights Four, then let us reflect on how and why these men were charged and convicted. Perhaps, as a result of this horror, we can minimize the risk of having to wring our hands in the year 2014 about some awful injustice that we committed when we convicted an innocent defendant in 1996.

It may take years to fully discern the lessons that can be gleaned from these wrongful convictions, but certain lessons are already clear. One such lesson—which every prosecutor and every potential juror must take to heart—is that we must stop prosecuting and convicting defendants based on uncorroborated testimony from informants who have clear incentives to lie.

The star prosecution witness in Willie Rainge's first trial in 1978 was a jailhouse informant who testified that he overheard a jailhouse conversation between Willie and a co-defendant, in which they admitted to having committed these crimes. Predictably, the witness denied that he was testifying in return for any sort of deal. Years later, though, the witness admitted that he never heard Willie or anyone else confess to these crimes, but that he had testified because the prosecutors were willing to spare him and his brother a lengthy prison sentence in return for his testimony.

By the time of Rainge's 1987 trial, the jailhouse snitch was long gone (he had cashed in on his deal already), but another individual, Paula Gray, was now willing to testify that she witnessed the crimes and saw each of the Ford Heights Four participate in the rapes and murders. Gray had flip-flopped several times on her story and was testifying in return for a deal that would allow her to walk away from the murder charges that were pending against

(concluded on p. 17)

her. But she denied this deal in front of the jury, and the jurors apparently abandoned their common sense and believed her denial because they convicted the Ford Heights Four based on her testimony.

It is time to stop using jailhouse snitches and others who are trying to secure favor with the prosecutors through their testimony. How can we ask a jury to convict a defendant based on the words of a person so untrustworthy that none of us would trust them with a dollar, much less a loved one's life. One famous jailhouse snitch, Leslie White, who snitched in scores of California cases, described how he would read newspapers and court records to find out information about the case, and would then tell prosecutors that the defendant had confessed to him. As Judge Stephen Trott has written, "criminals are likely to say and do almost anything to get what they want especially when what they want is to get out of trouble with the law."

Notwithstanding these revelations about snitches, they continue to be presented in courts, and are a recurring element in wrongful conviction cases throughout the country. In Rolando Cruz's 1990 trial, the prosecutors went so far as to rely upon a death row inmate who testified that he had once heard Cruz admit to killing Jeanine Nicarico. Although the State of Illinois had taken the position that this snitch had lied about his own case and was deserving of execution, the state was willing to ask a jury to execute Cruz based on this man's say so.

If a prosecutor cannot prove guilt beyond a reasonable doubt without the use of dubious jailhouse snitch testimony, then the prosecutor should not be prosecuting the case. And jurors should recognize that if a prosecutor's case is so weak that the prosecutor is forced to rely upon this sort of junk evidence, then the prosecutor has not carried his burden of proof. If prosecutors are unwilling to stop presenting these kinds of witnesses, then jurors must send a message that they will not credit this sort of "proof."

A society that is committed to the ideal of preventing wrongful convictions must insist on real proof—at least as reliable as the kind of information that we would rely upon in making serious decisions that affect our own lives. We owe this to our Constitution, and we owe this to the Ford Heights Four.



Larry Marshall

### *1997 Clinical Program and Children and Family Justice Center Faculty and Staff*

<b>Julie Biehl</b>	<i>Researcher</i>	<b>Derrick Ford</b>	<i>Faculty</i>	<b>Monica Mahan</b>	<i>Social Worker</i>
<b>Cynthia Bowman</b>	<i>Faculty</i>	<b>Anne Fogarty</b>	<i>Secretary</i>	<b>Eric Malone</b>	<i>Public Ally</i>
<b>Bruce Boyer</b>	<i>Faculty</i>	<b>Arthur Freeman</b>	<i>Attorney</i>	<b>Larry Marshall</b>	<i>Faculty</i>
<b>Robert Burns</b>	<i>Faculty</i>	<b>Thomas Geraghty</b>	<i>Faculty</i>	<b>Laura Miller</b>	<i>Faculty</i>
<b>Marion Cagney</b>	<i>Secretary</i>	<b>Cheryl Graves</b>	<i>Faculty</i>	<b>David Reed</b>	<i>Researcher</i>
<b>Angela Coin</b>	<i>Faculty</i>	<b>Belinda Harris</b>	<i>Secretary</i>	<b>Barbara Reinish</b>	<i>Clinic Manager</i>
<b>Sara Cortez</b>	<i>Secretary</i>	<b>Zelda Harris</b>	<i>Faculty</i>	<b>Angie Solorio</b>	<i>Receptionist</i>
<b>Toni Curtis</b>	<i>CFJC Admin.</i>	<b>Eric Holmberg</b>	<i>Docket Clerk</i>	<b>Peggy Slater</b>	<i>Perm.Planning</i>
<b>Bernardine Dohrn</b>	<i>CFJC Director</i>	<b>Bill Kell</b>	<i>Faculty</i>	<b>Paulette Van Zant</b>	<i>Secretary</i>
<b>Steven Drizin</b>	<i>Faculty</i>	<b>Barbara Kahn</b>	<i>Researcher</i>	<b>Jacinta Wong</b>	<i>CLC Admin.</i>
<b>John Elson</b>	<i>Faculty</i>	<b>Steven Lubet</b>	<i>Faculty</i>		



Robert Burns

## Legal Ethics in Preparation for Law Practice

by Robert P. Burns

In 1992, the American Bar Association Section of Legal Education and Admission to the Bar issued what has come to be known as the "McCrate Report," or, more formally, "Legal Education and Professional Development—An Educational Continuum." The Report is at the center of an important discussion of the role of the Law School in preparing students for the practice of law. It attempts to specify the "Skills and Values" that every law student should attempt to master as a condition of becoming a competent lawyer. In my article, I argued that a close reading of the Report underscores the many ways in which lawyering skills and legal ethics are intimately intertwined.

For example, the Report's "skill" of developing an appropriate plan of action is structured by the ethical rules on the distribution of authority between lawyer and client. The skills surrounding delegation are controlled by rules ensuring adequate safeguards against unethical behavior by subordinates. Many of the advocacy skills at the trial and appellate levels are surrounded by different sorts of duties of candor and fairness. Negotiation by lawyers is limited by sometimes conflicting duties of truthfulness and zealotry, whose sources spring not only from the Law of Professional Responsibility, but also from the law of contract and fraud. Discovery skills are limited by rules controlling communications with represented and unrepresented persons, some of which, especially in the corporate context, can be far from obvious.

Tactically attractive delay raises serious ethical problems.

Competent client counselling raises explicit rule-centered issues surrounding control over the representation, as well as much deeper questions concerning paternalism and what the Report called "the extent to which it is proper for a lawyer, in counseling a client to take account of considerations of justice, fairness or morality by ... attempting to persuade the client to modify his or her decisions or actions to accommodate the interests of justice, fairness, or morality[.]"

Furthermore, a reading of the Report shows that many of the "skills" require of the lawyer what can only be called moral dispositions. To choose only a few examples, clarity about the limits of the lawyer's own competence and the need to enlist help requires humility. Challenging a client's version of events or stated goals requires courtesy and tact. Generating a broad range of solutions, including those that may require a lower level employment of the lawyer's services, requires integrity and imagination. Trying cases requires patience, diligence, and sometimes courage.

So even before a reader reaches the "Values" section of the Report, he or she cannot help but notice the ways in which lawyering skills are shot through with ethical elements and limits. In fact, I argue in the article that only a lawyer who practices ethically, whose "skills" are more than value-free technical proficiencies, is likely to appreciate the "Values" of law practice. From the skills side, it is hard to argue that a lawyer may competently practice unless he or she does so in light of the ethical obligations that both

*(concluded at the top of p. 19)*

The following is a summary of "Legal Ethics in Preparation for Law Practice" contributed by Professor Burns to a recent symposium on the MacCrate Report for the *Nebraska Law Review*.

constitute the skills themselves and, to the extent that the skills are purely technical, control or limit the exercise of those skills. From the narrowest perspective, unethical practice continually places the lawyer's reputation, livelihood, and sometimes freedom in jeopardy. More broadly, unethical practice is usually, though not always, ineffectual practice. It is the nature of a decent culture and society to create the background practices and institutions which, as far as humanly possible, make unethical behavior self-defeating even without resort to disciplinary mechanisms. Thus, one cannot be really "skilled" unless one is also ethical.

Usually then, practice cannot be effective unless it is at least in some senses ethical. I argue in the article that effective skills teaching must pay very careful attention to the ethical dimensions of lawyering, or risk creating "unskilled" lawyers. But the reverse is true as well, and I devote some pages arguing that

ethical requirements simply will not be understood unless they are "dyed in the wool" of the young lawyer's actual lawyering practices. I argue that an effective way of teaching legal ethics is through a program that closely integrates the learning of ethics with the learning of the basic lawyering skills identified in the MacCrate Report and that such an integration is the *best* way of learning certain fundamental aspects of legal ethics. My argument relies on philosophical and educational principles and from our experience of teaching such a program at Northwestern, an experience that has proven successful from many points of view. The integration of teaching lawyering skills and professional responsibility makes such patent good sense that law teachers will in twenty years shake their heads and wonder how the subjects could ever have been taught in isolation from one another.

I devoted the better part of the rest of the article to a description of our Program. The heart of the program consists in a series of exercises in which students must perform basic lawyering tasks that raise important ethical issues. The exercises require the kind of *synthetic* grasp of doctrine, tactics, and theory that is distinctive to a "reflective practitioner." They put students in *competitive* situations so that they may experience the pressure to gain an unjustified advantage that the adversary context can make attractive. The participation of clinical teachers and respected practitioners assures that students can see *how* to practice ethically. And the dramatic framework within which the issues arise assures that issues concerning "the ethics of legal ethics" are always apparent. Perhaps paradoxically, it is the contextual grasp of legal ethics as closely intertwined with lawyering "skills" that makes serious criticism of prevailing norms possible.



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**Professor Jon Waltz has long been a friend of the clinical program. He was active in developing the Law School's moot court and trial advocacy courses. Professor Waltz retired this year. The following are remarks that Bob Burns gave at Professor Waltz's retirement dinner in January 1997.**

I've been assigned the ridiculous job of trying to say something fair in a few minutes about Jon Waltz's writing and doing so in the after-dinner mode.

The most obvious thing is to note the sheer vastness of his output:

My best count is twelve books; 30 or so scholarly articles; an uncountable number of book reviews and articles in periodicals of general circulation, including *The Nation*, *The Saturday Review*, *The Washington Post*, and *The New York Times*.

But in light of his continuing productivity, I have no confidence that I have it close to right. (It's really more adventurousness than productivity: His most recent publication is a comparative study of the criminal justice systems in the United States and the People's Republic of China, co-authored with a Chinese law professor.)

Further, that count greatly understates his output since several of his books have gone through multiple editions. His evidence casebook has gone through 8 editions and has been for many years the most widely used evidence text in the United States. (It is such an institution that changes in his *Teacher's Manual* have been dissected in scholarly discussions of evidence law in major law reviews.)

Several of his articles can only be called classics and are still the starting-points for scholarly treatments of the subjects: his articles in evidence law on hearsay and the forms of discretion under the Federal Rules of Evidence and his works in health care law on informed consent and genetic counselling.

But the sheer number and even the importance of his writing doesn't really do justice to Jon Waltz as

*(please turn the page)*

author. (Jon has always been ironically modest on the subject of his own works: to the end of a command performance summary of recent scholarly achievements Jon added that one of his eggplants had won first prize at the Ottawa, Michigan County Fair.)

Waltz as author has been a kind of figure, the disappearance of which on the American scene has been much lamented. He has been public intellectual in a public profession. That kind of figure is animated by a faith that deep learning and flexible intelligence, when joined with the ability to write "short declarative sentences, in plain English, with a period at the end" (as he once put it), really can illuminate, and sometimes influence, important issues of the day.

He has always addressed multiple audiences. His evidence scholarship has actually influenced the direction of court opinions. (Indeed the Supreme Judicial Court of Massachusetts once relied on remarks that John made at an alumni-faculty luncheon, reprinted the *Northwestern Record*!)

He has been a strong public advocate of merit selection of judges and has written of the importance of civil liberties.

The real-world sense of context which he gained as a trial lawyer and while serving on the Illinois Judicial Inquiry Board suffuse even his technical scholarly work. He once explained that the *Northwestern* faculty was often involved in the legal world "partly of the desire to be of public service, partly because many of us believe that to teach it, you ought to be able to do it."

He insisted that the following be included in the preface to the Chinese edition of his *Criminal Evidence* text:

"It is my hope that the human rights protections described in this book will commend themselves to the authorities administering the criminal justice system in the People's Republic of China."

And I can't help wondering whether his often cited description of Justice Blackmun in *The New York Times Magazine* as a "white Anglo-Saxon Republican Rotarian Harvard man from the suburbs" may have provided the Justice with some of his motive to embark on an evolution that would prove that even that kind of background can be transcended.

He never viewed the law school as a kind of salon where only academics would talk to each others in smaller and smaller circles of interest.

He knew that writing for law students or the practicing bar or a general audience could be of the highest quality. After all, he may have just *barely* remembered that Fred Astaire was the best dancer and

Bing Crosby the best base-baritone of their era in any genre, popular or classical.

He could be wonderfully playful in his writing. There was the ongoing argument between him and John Kaplan on the right advice to be given to trial lawyers on what to say when you couldn't remember the doctrinally correct objection. Kaplan favored: "Object Your Honor, that's not fair!" Waltz preferred: "Objection Your Honor....he can't do that....And he knows it!" Jon had the better part of the argument I think.

He wrote the following words in a searching review essay on reforming the Supreme Court appointments process after the Clarence Thomas hearings:

"The Thomas hearings constituted high drama. It is no exaggeration to say that it reached an almost Shakespearean level. (And Republican Senator Alan Simpson of Wyoming got the choice role as Shakespeare's fool.)"

Whatever else you think of Alan Dershowitz, you can't say that he is inclined to give away flowers. This is what he says about Waltz and Kaplan's *The Trial of Jack Ruby*:

"This book by legal scholars John Kaplan and Jon Waltz is one of the best accounts of an American trial ever written. It is virtually a full-semester course in substantive criminal law, the insanity defense, criminal procedure, and evidence. Every tactic by the prosecution or defense is placed in the broader context of our legal system and its underlying values." That is something that only Jon Waltz could have done.

I read the book while Jon was recovering a couple summers ago and wrote to him that it was the best book about any trial that I had ever read. Jon typed a short reply. He apologized in his courtly way for his imperfect typing, but wrote that he was forced to agree with my assessment. I could see the smile and the wink over the cigar.

As was so often the case, in so many different forums, Jon put it best himself. When the *Minnesota Law Review* asked Jon for a tribute to his good friend, the great teacher Irving Younger, Jon wrote:

"Younger was interesting. There are lots of lawyers and many law teachers about whom the same cannot be said."

Jon Waltz has always been and is interesting. He has always practiced, taught and written in the grand manner.

# JUSTICE FOR CHILDREN: The "LEASTWISE OF THE LAND" CHILDREN AND FAMILY JUSTICE CENTER FOURTH YEAR REPORT

by Bernardine Dohrn, Director



**Bernardine Dohrn**

*As the Children and Family Justice Center enters its fifth year, it continues to strive for a multi-disciplinary approach to justice for children, for excellence in legal representation, and for a persistent and strategic approach toward change and improvement in children's law. The Center has become a catalyst for helping to develop consensus among professional and community organizations that the Juvenile Court of Cook County must be transformed from a crisis-ridden, mediocre court to a state-of-the-art children's justice system.*

*The Children and Family Justice Center occupies a unique place among clinical law programs and child advocacy projects.*

**T**he Center is a holistic children's law center. We provide legal representation for a whole spectrum of children's needs—health and disability, safety (domestic violence, child neglect, abuse), education and schooling, adoption, custody, delinquency, mental health, criminal trials, and constitutional rights. The Center bridges legal systems, agencies, and categories which classify and label children into what one commentator called "bad" (delinquency), "sad" (child welfare), "mad" (mentally ill), or "can't add" (special education) boxes. We approach children in crisis and attempt to meet their needs.

**T**he Center is deeply engaged with a major urban court in its efforts to transform itself into an outstanding and vital community resource. Our active involvement with the Juvenile Court of Cook County, the first juvenile court in the world, includes two major research projects located at the court and a myriad of policy, practice guidelines, court rules, legal and judicial training, and legislative initiatives. The Child Protection Advisory Committee, organized by Presiding Judge Nancy Sidote Salyers, has pro-

duced a series of court improvement recommendations in areas including diversion, fact pleading, temporary custody hearings, and best interest guidelines, all involving Center staff. Similar projects involving juvenile justice practice and the juvenile detention initiative, funded by the Annie E. Casey Foundation, are producing policy, research, and follow-up mechanisms. This practice by a university-based legal clinic with an urban court system draws on the resources of a metropolitan university in matters ranging from the developments of an integrated management information system for the court, to community-based pilot projects for first-time, non-violent, juvenile offenders, from the redesign of the court clinical assessments and mental health services to the evaluation of legal representation for children, youth, and families. A remarkable congruence of leadership at the Juvenile Court of Cook County is now committed to far-reaching court improvement and a broad working consensus among the many entities of the court about what is necessary to transform practice. The Center's collaborative work with the juvenile court leadership presents the challenge of working in a new spirit of cooperation and shared projects while remaining constructively critical and independent.

*(please turn to p.22)*

**E**ight clinical attorneys directly supervise law students and social work students in legal representation of poor children, youth, and families. This pedagogy—the daily litigation of real cases involving children and families in a variety of legal settings—results in both excellent representation for clients and careful litigation supervision for students. It further provides us with on-the-ground knowledge of juvenile court practice, which leads to meaningful recommendations for improvement in policy and practice and enhanced credibility in extending the dialogue for reform.

Cases include appeals, *amicus* briefs, and class action litigation. Last summer, for example, Center attorney Bruce Boyer filed a class action suit challenging DCFS management of the finances of disabled children in foster care. The cumulative effect of a range of practices, the suit alleges, is that many of the disability benefits intended by the Social Security Administration to be used specifically for the benefit of the recipient children are diverted by DCFS to support its administration. The named plaintiff in this class action is now a 20-year-old, disabled, young man, who received nearly \$40,000 from SSA, all of which has been spent by DCFS, much of it for reasons unrelated to the client's needs. The young man has also had his benefits terminated due to financial mismanagement by DCFS. Lacking assets, job skills, and an alternative source of income, he now faces an uncertain future when he is discharged from the child welfare system on his twenty-first birthday.

In another case with far-reaching implications regarding the relationship between the judicial and executive branches (*In re Lawrence M.*), Bruce Boyer authored a brief *amicus curiae* filed in the Illinois Supreme Court, successfully urging the court to guard the authority of the judicial branch to take steps to protect abused and neglected children against the malfeasance of the state agency. We also joined with a consortium of advocacy groups raising questions about proposed substantial revisions to the consent decree resolving the comprehensive lawsuit against DCFS brought by the ACLU in 1988 (*B.H. v. McDonald*). The federal judge agreed with most challenges, refusing to approve the revisions which challengers argued would substantially increase the obstacles faced by lawyers seeking to press for systemic reform in the courts.

Working with the Public Defender of Cook County and a Legal Clinic alumnus, Gabriel Fuentes, who now works at the law firm of Jenner & Block, Steven Drizin and several students successfully challenged the State's interpretation of a new transfer law. In two separate opinions, the Illinois Appellate Court rejected the State's position, holding that the State must make an independent showing of probable cause into evidence at the transfer hearing. *In re R. L.*, 668 N.E.2d 70 (1st Dist. 1996). The second opinion focused on the importance of providing juveniles with effective assistance of counsel and noted that allowing the State to use the earlier transcript would deny juveniles this fundamental right. *In re J.E.*, 668 N.E.2d 1052 (1st Dist. 1996).

The original complaint in *David B. v. Pavkovic* (No. 79-C-1662) was filed by Patrick T. Murphy in federal district court in 1979 to address the failure of DCFS, DMHDD, and ISBE to provide essential services to "actual or potential wards of the wards of the Juvenile Court of Cook County" who had physical, emotional, or mental disabilities. None of the appropriate state agencies assumed responsibility for these children with multiple needs. Rather, DCFS argued that they were DMHDD's problem, DMHDD argued that they were ISBE's problem, and ISBE argued that DCFS should service these youth. Despite the consensus that these children desperately needed services, the agencies bickered over whose responsibility it was to pay for the necessary services. As a result of this finger pointing and turf battling, the children "fell through the cracks" and often remained unserved by any of the three agencies.

In 1981, a consent decree was entered which required DCFS, DMHDD, and ISBE to provide necessary services to the children in the plaintiff class. The Governor's Youth Service Initiative ("GYSI"), a program administered by DCFS, was the mechanism by which services were provided to these children. The "no decline" policy also ensured that the best interests of the children would not be subjugated to the squabbling among individual agencies about funding.

Between 1981 and July 1995, hundreds of plaintiffs were provided specialized services by the GYSI. In July 1995, at DCFS's behest, the Illinois General Assembly passed P.A. 89-21 which prevented Cook

County Juvenile Court judges from committing delinquent youth over the age of 12 to the custody of DCFS. Relying on this legislation, in July 1996, DCFS began to ignore the consent decree and refused to provide specialized services—including, but not limited to child welfare, mental health, and educational services—to children in the plaintiff class. In the winter of 1995, DCFS moved to vacate the consent decree in federal court.

At the request of Patrick T. Murphy, the Children and Family Justice Center joined the Office of the Public Guardian to fight the DCFS motion to vacate the consent decree. Center attorneys have represented individual youth in their GYSI staffings to ensure that they receive the services that they need. Center attorneys coauthored the briefs with the OPG's office in the federal case. This September, United States Federal District Court Judge Marvin E. Aspen issued an opinion in which he denied DCFS's motion to vacate the GYSI decree. Judge Aspen rejected DCFS's argument, holding that "it is [not] apparent that the federal claims raised by the plaintiffs in their complaint are insubstantial." Accordingly, he held that there are "no grounds for relieving DCFS from the obligations it voluntarily undertook in 1981." DCFS is expected to appeal this decision to the Seventh Circuit Court of Appeals.

**T**he Center is developing a national reputation for critical analysis and knowledge about children's law and policy, issues associated with the administration of juvenile courts, and the training of lawyers who provide legal representation for children, youth, and families. The national work of Center attorneys, social workers, researchers, and staff has been crucial to dissolving the isolation of the Cook County Juvenile Court and drawing in national leaders, experience, and initiatives. Center activity with the ABA Standing Committee on the Unmet Legal Needs of Children, the ABA Task Force on Children, the ABA Center for Children and the Law, and the ABA Juvenile Justice Committee has contributed to the development of a national network of child advocates, lawyers, judges, and legal scholars who analyze policy, compare practice, and share technical resources. Other national organizations include the National Association of Counsel for Children and the National Council of Juvenile and Family Court Judges.

**U**nder the leadership of Director Angela Coin and William Kell, the Center has firmly established its Community Law Clinic ("CLC") at the Northwestern University Settlement in Chicago's West Town neighborhood to provide a neighborhood base and local remedies for children's law. In its first year, the CLC has far exceeded the Center's expectations by creating a *Pro Bono* Children's Law Program which has trained over 80 volunteer attorneys from more than 15 major law firms in delinquency litigation. Fifty volunteers have already taken their first case in juvenile court, supported by the CLC director, community liaison Jacinta Wong, and social work interns supervised by Monica Mahan. Much of the success of the program is due to the cooperation and assistance of the Honorable William Hibbler, Presiding Judge of the Juvenile Justice Division of the Juvenile Court, the public defender, the juvenile probation department, and the court staff. This involvement of the private bar with juvenile justice clients is anticipated to have significant consequences for clients, for upgrading juvenile court practice, and for the broader policy concerns involving children in trouble with the law. The CLC is also providing legal assistance to over 200 families on such issues as uncontested guardianships, name changes, divorce modifications, and civil orders of protection.

**I**n 1994 the Center, in conjunction with Loyola University School of Law, initiated a law-related education program for young people incarcerated at the Cook County Juvenile Temporary Detention Center. This program, called "Street Law," brought together volunteer attorneys and law students to teach young people at the detention center about their rights and responsibilities within the juvenile and criminal justice systems. The goal of this program is to reduce recidivism rates by providing youth with information that will allow them to make informed decisions about their actions in the future.

The Street Law program at the detention center is so successful that we were encouraged to extend the program into the community and develop a peer education component. The goal of the community-based program is to reach young people before they get into trouble. The idea is to involve young people as teachers, knowing that youth are more receptive to information from peers.

(please turn to p.24)

During the summer of 1995, the CFJC piloted the first Street Law Peer Education Project. The project provided legal education on criminal and juvenile justice topics; developed curricula for specific populations of youth; provided training for youth, law students, and attorneys so the information could be effectively communicated; and also provided a forum for youth from various communities to work on juvenile justice issues.

From October 1995 through 1996, the peer educators were paired with Northwestern law students and volunteer attorneys, and together they conducted Street Law workshops in elementary and high schools, community colleges, youth centers, and even on basketball courts—reaching more than 500 youth. In addition, the peer educators helped to refine the curriculum to ensure that the information would be articulated in an interesting and effective manner. They also produced a flyer, “Know Your Rights,” that is being widely distributed to youth throughout the city. The Street Law Peer Education project is now focused on recruiting and training young people—including bilingual youth from other Chicago communities—to be peer educators.

**T**he Center’s research capacity has dramatically increased, permitting us to analyze current practice with children in the courts, implement the redesign of improved systems, and evaluate the outcomes. The Center has undertaken six major research projects in substantive areas:

#### *The Clinical Evaluation and Services Initiative.*

The Center and the University of Chicago Department of Psychiatry received a grant of \$1.1 million over three years from the John D. and Catherine T. MacArthur Foundation to lead a redesign of the clinical assessment and mental health services at juvenile court, including the juvenile court’s Department of Clinical Services. Dr. Bennett Leventhal of the University of Chicago and Bernardine Dohrn were asked by Chief Judge Donald P. O’Connell to undertake this work, and the Clinical Evaluation and Services Initiative (“CESI”) was begun as a pilot project in January 1996, housed at juvenile court, with attorney Julie Biehl as director. Now the project will be fully staffed, advisory work groups representing all parties will be formed, and the research design is being finalized. The research, involving both child protection and juvenile justice divisions of the juvenile

court, has far-reaching implications for presenting clear, specific information to court decision makers and draws upon the skills and resources of psychologists, psychiatrists, social workers, and community strengths in appropriate ways.

#### *Access and Quality of Counsel for Juveniles in Cook County.*

The Center, in collaboration with the ABA Juvenile Justice Center, received funding from the Illinois Juvenile Justice Commission to study access to and the quality of representation for juveniles in Cook County. This research applies the national data revealed in *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Juvenile Proceedings*, released by the ABA Juvenile Justice Center and the Youth Law Center in December 1995. The research will explore the timeliness of representation, the quality of representation, and the barriers presented by caseload size. Steven Drizin and David Reed are the Center’s team in this project.

*Gender Differentials in Illinois Juvenile Justice.* In collaboration with the University of Illinois, Jane Addams School of Social Work, the Center received a one-year grant from the Illinois Juvenile Justice Commission to identify differences in treatment between boys and girls within the Illinois juvenile justice system. This is part of a national group of priorities of the National Institute of Justice. No comparable study has been conducted before in Illinois. We will collect and review information from three counties: a Chicago collar county; a partially rural but substantially urban county; and a rural county from Southern Illinois. David Reed, Monica Mahan, and Cheryl Graves are carrying out the work for the Center.

*The Permanency Planning Project.* The circuit court recognized the knowledge and talents of Center researcher Peggy Slater when Presiding Judge Nancy Sidote Salyers asked Ms. Slater to become head of the Juvenile Court’s Permanency Planning Project, with offices at the juvenile court. Ms. Slater works closely with all court personnel to monitor and strengthen the permanency planning process at the court, helping to develop better ways of ensuring that children are placed quickly in suitable and long-lasting placements. Ms. Slater is exploring the uses of mediation at juvenile court, establishing family case-conferencing at the beginning of child welfare cases,

creating a parent center and brochure for each parent petitioned into juvenile court, overseeing the operations of the expedited adoption program and protocol which she pioneered, and adapting the National Council of Juvenile and Family Court Judges Model Court Guidelines to our juvenile court.

#### ***Analysis of Juvenile Court Caseload Screening.***

With funding from the Wood Fund of Chicago, the Lloyd A. Frye Foundation, and the Field Foundation, the Center has embarked on an ambitious effort to understand and address the confounding problem of juvenile court caseload. This two-year research project has begun with the collection of the data necessary to describe the characteristics of the caseload and its changes over the last twenty years. The research will highlight the changes that contribute most to the caseload increases, and identify procedural and programmatic options that could reduce the inflow and retention of these cases in the court system. In addition, the project will identify models for caseload reduction and diversion from around the country and evaluate their utility for the Juvenile Court of Cook County. David Reed is research director.

#### ***Assisting the Development and Implementation of an Integrated Management System.***

The Center's 1995 report on the limitations and inadequacies of the information system at juvenile court was adopted by Chief Judge Donald P. O'Connell, who has pursued expertise and funding to develop an integrated, useful and reliable system of information and management at juvenile court and with its related entities. The Center has continued to help parts of the court system assess their needs and prepare designs for a management system, and to offer technical assistance to the court as requested. The chief judge obtained county board funding to move forward this essential component of juvenile court improvement in late 1996.

**T**he Center is collaborating with all offices and parties at the Juvenile Court of Cook County to support the creation of the broadest possible consensus for the content and method of improving justice for children. This includes increased consultation with the juvenile court and circuit court and participation in statewide commissions:

#### ***The Citizens Committee on the Juvenile Court.***

Bernardine Dohrn and David Reed, as well as several Center advisory board members have been appointed members of the Citizens Committee of the Juvenile Court. This committee has a long history of providing citizen input into the administration of the Cook County Juvenile Court. The Citizens Committee has recently been revitalized under Judge O'Connell's leadership, expanding its role in overseeing the activity of the juvenile court. The committee is now chaired by a Northwestern alumna, Diane Geraghty ('72), succeeding Catherine Ryan ('72) who was recently appointed as chief state's attorney at juvenile court.

#### ***The Juvenile Law Committee of the Chicago Bar Association.***

Children and Family Justice Center attorneys have chaired the Chicago Bar Association's Juvenile Law Committee since 1992. During 1995-96, under the chairmanship of Peggy Slater, the committee became an important contributor to juvenile court reform through the organization of meetings on a variety of administrative, legislative, and practice issues. Through the increased participation of juvenile court lawyers and judges, the committee has become an important forum for discussion of the significant organizational changes being made at the juvenile court.

***Child Protection Advisory Committee.*** Bernardine Dohrn, Annette Appell, and Bruce Boyer have participated in the work of the Child Protection Advisory Committee, organized by Presiding Judge Nancy Salyers to address a range of issues relating to court management and practice. Bruce Boyer participated in the work of a committee focused on revising the pleading practices of attorneys in abuse and neglect cases, with the dual objects of increasing the specificity and detail of charges heard by juvenile judges and improving the overall quality of lawyering practice in the court. Bernardine Dohrn, Monica Mahan, and David Reed have worked on the Diversion Subcommittee, which has presented a body of recommendations to the presiding judge.

***The Illinois Legislative Committee on Juvenile Justice.*** Center attorney Steven Drizin was appointed by Governor Edgar to this important body. The committee issued its report in May 1996. Steven

(conclusion on p.26)

Drizin wrote an eloquent dissent to the commission's report. This dissent was widely circulated and could become a blueprint for constructive reform of Illinois juvenile delinquency law.

**The Illinois Justice Commission.** Thomas Geraghty was appointed in 1995 to the Illinois Justice Commission, whose charge was to make recommendations concerning the administration of justice in Illinois. The commission issued its report in July 1996; many of the recommendations addressed problems in Illinois' juvenile justice system. The report recommended improvement in training programs for Illinois judges and lawyers who work in juvenile courts, reductions in caseloads for juvenile judges, and the creation of more alternatives for juveniles adjudicated and sentenced by juvenile court.

**Evaluation of the Office of the Cook County Public Guardian.** Center attorneys were appointed to participate in a court-ordered evaluation of the Office of the Public Guardian. The committee is co-chaired by Professor Jack Heinz of Northwestern University School of Law and by Dean Nina Appell of the Loyola University School of Law. Members of the committee will include Tom Geraghty, of Northwestern University School of Law, and several Center board members. The purpose of this evaluation will be to assess the role of the public guardian in neglect and abuse cases and to evaluate the functioning of the office of the public guardian.

**In 1999, the Center will present a series of forums, conferences, colloquiums, and projects in conjunction with the centennial anniversary of the Juvenile Court of Cook County, the first juvenile court in the world.**

Presiding Judges Nancy Sidote Salyers, William Hibbler, and Sophia Hall have convened a Children's Court Centennial Committee with the theme of justice for children—past, present, and future. Plans include lecture series, exhibitions, and videos describing the rich Chicago history which led to the establishment of a special court to remove children from the adult jails and poorhouses in 1899; targeted programs for the children brought into juvenile court today; and the convening of forums to explore the future of children and the law into the next century.

The ABA Juvenile Justice Center, in cooperation with the Children and Family Justice Center, will hold a training conference for juvenile justice advocates on the occasion of the 30th anniversary of *In re Gault*, the 1967 case which first established constitutional rights for children in the United States. The conference will be held in October 1997 at Northwestern University.

In the Spring of 1998, the Center, in collaboration with the court and other groups, plans to convene a national conference, "*Who are the Children of the State,*" patterned on a conference of that name held in Chicago in 1898. The focus on describing the children, their conditions and their needs, will lay the basis for the series of conferences, law journals, national conventions, and activities of the centennial year.



*A final note:* Children and Family Justice Center attorney Annette Appell accepted a tenure-track position at the University of South Carolina Law School in 1996, and we reluctantly celebrated her good fortune and move. Happily, Derrick Ford has joined the Center team, bringing with him his experience in special education law.

In addition, the Center expanded its advisory board, welcoming new board members Leigh Bienen, Jeffrey D. Coleman, Alex Correa, Nathan P. Eimer, Arthur Hill (who subsequently resigned to accept the position of chief deputy state's attorney under the new state's attorney), Sheila Kennedy, Professor Dawn Clark Netsch, Michelle Obama, Professor Margaret Rosenheim, Howard Saffold, and Dr. Barbara Williams.

## Serving a Neighborhood Takes Ties within Community

by Mike Austin  
Law Bulletin staff writer

**A** little more than a year into her job as director of the Community Law Clinic in West Town, Angela M. Coin says she finally feels she has the support of the people she and her colleagues are trying to help.

"You have to earn your respect in the neighborhood," Coin says. "You have to do some good things before the residents say, 'She's OK.'"

Coin, along with fellow staff attorney William Kell and community liaison/administrator Jacinta Wong, operates the clinic five days a week, generally from 10 a.m. to 5 p.m.

Opened in September 1995, the CLC is an outgrowth of the Children and Family Justice Center of the Northwestern University Legal Clinic.

The Community Law Clinic's office is in the Northwestern Settlement Association building at Noble Street and Augusta Boulevard on the Near West Side.

The Clinic serves mainly West Town residents but makes exceptions for "compelling cases outside the area," Coin says. All of the clients are low-income.

About 40 percent of the clinic's resources are devoted to dealing with "general service to the neighborhood," which includes providing legal advice and referrals on matters like Social Security benefits, guardianships, welfare, immigration and divorce, Coin says. In those matter, which are handled by Kell, the goal is to teach people to represent themselves or to direct them to another agency that can help them.

The remaining 60 percent of the clinic's resources go to the children in the form of free legal representation in juvenile delinquency matters—the clinic's main goal, according to Coin and Kell.

"We don't pretend to be the savior of the neighborhood," Kell says. "There's a lot more work that needs to be done, but the neighborhood seems to think we're a good partner. I would say we've got a great deal of good will in this neighborhood and it's been earned through hard work."

As a showing of good faith, the CLC's three staff members often

nity trust and confidence, but it also translates to clinic volunteers learning more about their clients, Coin says. Most of the 80-some volunteers who donate services to the clinic do not live in the largely Hispanic West Town and are not familiar with the area, Coin says.

"The more involvement we have in the community, the more support we can give to the volunteer attorneys in terms of [the client's environment]," Coin says. "The attorney may live up in Lincoln Park, but he'll get a kid [as a client] who lives in West Town."



Angela Coin helps Wells High student, Edward Gonzalez Jr., prepare for an upcoming mock trial competition. The CLC's lawyers, NU law students, and volunteers provide legal aid to the West Town community

participate in community events in and around West Town, which is roughly bounded by the Kennedy Expressway on the east, Hubbard Street on the south, Kedzie Avenue on the west and Bloomingdale Avenue on the north.

Coin teaches a government law class at Wells Community Academy and coaches the school's mock trial team. On a recent day Coin was helping a Wells student practice for an upcoming competition.

Coin and Kell also spend part of their time addressing community groups. The outreach is a means for CLC staff to earn commu-

Coin says she can relate to people who find West Town unfamiliar territory. Coin grew up on the East Coast and graduated from Northwestern University School of Law in 1995. She was offered the CLC directorship shortly after graduation.

"They said, 'There's two desks and two chairs out there. Do you want to go start a clinic?'" Coin says.

But while Coin is a relative newcomer to West Town the area is home to Wong, the clinic's community liaison who is fluent in English, Cantonese and Spanish, and speaks

(concluded at the top of p.28)

some Japanese, Italian and French. A receptionist in the building also speaks English and Polish.

"We make use of everyone around us," Wong says.

Kell comes to the clinic from Bloomington, Indiana, where he founded the Child Advocacy Clinic at Indiana University School of Law.

These days Kell finds himself working on all sorts of cases, often referring clients to someone with more expertise in a given area, say Kell, who was brought to Chicago as a senior lecturer at NU's law school.

"You've got to tap all the legal brain cells up there," Kell says, pointing to his head. "I think the key is to know what you *don't* know so you don't steer anybody wrong."

The CLC gets plenty of help from NU law students who pitch in on the intake process, Kell says. The

experience is good for the students, he says, first because it shows them what it is like to be poor, and second because it causes some of them to think about public policy and how someday they might work to change it.

"Some [law students working at the clinic] get turned onto it," Kell says about public interest law. "They say, 'Gee, it looks like there's nobody good in this area' or another area."

According to CLC statistics, there seems to be no shortage of public interest work that needs to be done. There also appears to be no shortage of lawyers wanting to work in the field, at least part of the time.

Last December the CLC took on only three cases, Wong says, but through the first three weeks of this December, the clinic had taken on 26. In about the last eight months, the number of volunteer attorneys at

CLC has doubled, she says.

Most of the volunteers are first- to fifth-year associates, Coin says.

"It's a chance [for volunteers] to do more court work," Coin says. "I think that's what makes it appealing, but working with the kids is appealing, too."

The CLC is funded by several foundation grants and donations from Chicago law firms.

"It's a great cooperative effort to provide legal services for the residents of that community who otherwise wouldn't get those services," says Thomas F. Geraghty, an associate dean at Northwestern's law school and director of its clinical program. "With the cutbacks in funding for legal services, initiatives like this are examples of what can be done to meet the shortfall."

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**Profile: David Reed,  
Research Coordinator  
Children and Family Justice Center**

David Reed, who has been working with the CFJC for three years as a consultant, became a full-time research coordinator in the fall of 1996. He comes to the Center with a Ph.D. in sociology from Northwestern and 20 years of community and juvenile justice work in Chicago.

It's been a busy 1996 and looks to be even busier in 1997. He has continued his two years of consulting work with the Cook County Juvenile Temporary Detention Center. The 1994 juvenile court information management study on the whole juvenile court prompted a request that he do some consulting on the problems of information management in the juvenile detention center. This was expanded when he was asked to consult with a major internal reorganization project. This work will be continuing into 1997 as the new juvenile court information system gets under way and the detention center prepares for a central and early position in its implementation.

For the last eight months of 1996, David has directed a two-year research project seeking solutions to the endemic problem of an overwhelming caseload at the Juvenile Court of Cook County.

The first stage of this research has been collecting the data which can help explain the tremendous growth in the court's caseload. Several large data sets are "in process" from the court and the police department. When they are all available, David will be able first to pinpoint the various causes of the huge growth in caseload. Second he will identify strategies which are most likely to reduce the numbers, and third he will evaluate the effectiveness of those and other strategies which are implemented at the court. This data will provide a previously unavailable resource for policy research on the Cook County juvenile justice system well into the next century.

In addition to these two continuing research projects, David is a part of two Illinois Juvenile Justice Commission studies which will be carried out during the coming year.

In the first, he is working with the juvenile justice staff of the ABA and Steve Drizin and Bernardine Dohrn of the CFJC to study the quality of counsel for juvenile defendants in Cook County. While it will focus on the public defender's office, the study will assess more broadly the perceptions and experiences of a range of actors in our system—particularly the experience of the juveniles themselves.



**Wells  
High  
School  
Mock  
Trial  
Team  
Doubles  
in Size**

Legal Clinic faculty, students, and alumni have volunteered again this year to coach the mock trial team at Wells Community Academy in Chicago's West Town neighborhood. Clinic faculty Angela Coin and Derrick Ford along with alumni Robin Crabb ('95) and Christian Kline ('95) continue to work with high school juniors and seniors. They teach trial technique, ranging from pre-trial motions to closing statements, and government and law classes.

Through this program, the Community Law Clinic hopes to strengthen ties with the West

Town community and to expose its youth to the practice of law. Northwestern law students who participate in the program become mentors and have the opportunity to serve as positive role models.

Last year's trial team made it into the final round in the Chicago city competition, and one high school senior was awarded a summer internship with Judge O'Connell, Chief Judge of the Circuit Court of Cook County. This year the trial team has doubled in size, with over 60 students at Wells High participating in the program. This spring, these students will compete both citywide and statewide.

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**David Reed** *(continued from previous page.)*

In the second study, David is co-principal investigator with Robin Bates of the Jane Addams School of Social Work in a statewide study of gender discrimination in juvenile justice. At this point, it appears that this research will also be done cooperatively with a team from the University of Illinois at Springfield, though the two teams will be employing quite different methodologies and approaches to studying the problem. Both of these IJJC studies will use interns for much of the field and the interviewing work. Interested persons should contact the Center to see about participating. Both studies will require substantial time commitments in the spring, and the gender study will offer full-time employment for much of the summer.

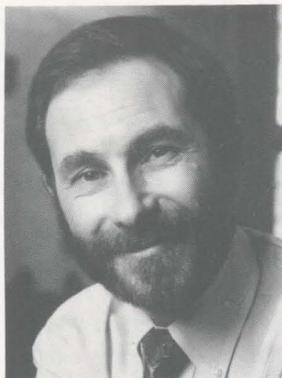
In addition to his work at the CFJC, David chairs the board of the SSI Coalition—an advocacy organization seeking to preserve the safety net for disabled and elderly

people who, while they are arguably some of the most needy, are also most at risk with changes in the national welfare programs. He continues his membership on the board of Children and Youth 2000—a public-private partnership promoting the long-term health needs of children. He also chairs the Illinois State Public Policy Committee of the YMCA. This group is a statewide effort to create a public voice for the constituency of more than 60 Y's across the state on issues affecting their historical commitment to providing resources for promoting the healthy mind, body, and spirit of the youth of our state. Finally, David continues as a member of the Citizens Committee on the Juvenile Court, where he is an active member of the detention and research subcommittees.



## LESSONS FROM PETTICOAT LANE

by Steven Lubet



Steven Lubet

Professor Lubet contributed this essay to a recent symposium for the *Nebraska Law Review*.

### I. EXPERIENTIAL LEARNING

One of the great modern clichés is the image of the self-taught genius. Consider the great blues guitarist or country fiddler who has never had a lesson, the high school drop-out who invents a revolutionary computer, or the wimpy kid who goes off into the wilderness and emerges an undefeatable master of the martial arts. Through motivation, dedication, and single-mindedness, these folkloric icons manage to hone their skills and achieve perfection.

Practice makes perfect. It's a great legend but it can't be true. No musician, hacker, or ninja ever achieved perfection, or even proficiency, merely through repetition. In every case, skill comes only by building on a foundation of others' knowledge, insight, and experience.

The true axiom ought to be that "Practice makes permanent." Whatever you practice is what you will do, whether it is on key or out of tune. To progress from permanence to competence, one requires training, reflection, observation, and, only then, practice.

This applies to the legal profession as well as to the arts and sciences. Lawyers learn through practice, but care must be taken to ensure that the lessons are the correct ones. Bad habits are as easy to reinforce as are good ones. In an unstructured and untutored world, practices are repeated when they succeed and abandoned when they do not. Thus, lawyers will tend to continue using techniques that they perceive as having worked, while they will stop doing things that seem to have failed.

To a certain extent, of course, trial and error is inevitable. But it has three distinct limits as a device for professional growth. First, trial and error is time consuming and cumbersome. It obviously makes great good sense to be shown the right way to do something, rather than blunder about until you discover it for yourself. All of law school is based on the premise that purposeful instruction is preferable to experimentation. In particular, clinical education posits that mentoring can save initiates from the pitfalls of false leads and blind alleys. As they say in medical school, "See one, do one, teach one."

Second, the process of trial and error (especially where lawyers are concerned) makes it nearly impossible to isolate the variables of successful practice. For example, assume that a lawyer made 12 equally crucial decisions in the course of a trial which she ultimately won. Which of the 12 should be repeated next time? Did every decision contribute equally to her success, or were some of them actually errors which she was able to overcome? Perhaps she only made seven correct decisions, but that was sufficient to surmount the five poor ones. In other words, trial and error tells you only that you succeeded. It does not tell you exactly why. And given the multitude of individual choices, decisions, and tasks that comprise the practice of law, it is almost inconceivable to think that a lawyer could know precisely which tactics worked and which were futile. Indeed, in the absence of feedback it is entirely possible that a lawyer might attribute victory to a decision that was actually a blunder. We all know lawyers who have won cases in spite of themselves.

Which brings us to the third reason that unmediated trial and error can never be a prescription for successful law practice. Evolution rewards survival, not optimality. The development of a lawyer's professional competence may be seen as a sort of evolution. The lawyer engages in a variety of practices, techniques, and tactics as her practice develops. Some of these will be retained and repeated, some will be adapted or refined, and some will be discarded. The objective of the practitioner, then, should be to preserve the best techniques and eliminate the worst. The study of evolution, however, teaches us that adaptive traits tend to persist so long as they do not preclude survival. In other words, all manner of awkward, nonproductive, or sub-optimal practices are likely to remain in any lawyer's repertoire, simply because they are not so counterproductive as to lead to catastrophe.

The goal of law practice, though, is to be as good as possible, not merely to survive. Unfortunately, the ordinary process of evolution cannot lead to optimum results, but only to the aversion of disaster. To use a mundane example, consider the messy desk. We all know lawyers whose desks and offices look as though a tornado has just rampaged through the building. We also know, and so do our disorderly colleagues, that a neat desk and organized filing system would make law practice easier, more efficient, and probably more successful. So why don't they straighten out their desks? Why doesn't the process of trial and error lead to improvement on what is, after all, a pretty easy problem to solve? The answer is that messy desks don't manifestly lead to lost cases, so lawyers can endure chronic disorganization. Thus, the ill-conceived conduct is never

reformed. Left to itself, evolution (read: trial and error) does not lead to optimum results, but only to survival.

## II. CLINICAL EDUCATION

**W**hat does this tell us about clinical legal education? Most obviously, the insight that "practice makes permanent" discredits the oft repeated argument that lawyering skills can be "picked up in practice." Left to her own devices, the neophyte lawyer (or even the experienced practitioner) will at best have to slog through a series of misguided choices and poor decisions before arriving at a reliable approach to law practice. Even then, many results are likely to be mediocre since, as we have seen, evolution does not tend toward optimization.

There is, of course, the possibility that the new lawyer will not be entirely on her own. She might have the benefit of mentoring, or even a law firm training program. True enough. But both mentoring and in-house training operate against the backdrop of increasingly competitive law practice. Economic reality, particularly in large firms, tends to compel increased productivity to the exclusion of training. Themselves under pressure to increase billings, partners can devote time to the education of associates only at the expense of their own billable hours. So, while there can be no doubt that training happens at law firms, it is as likely to be incidental training as it is to be purposeful.

Nor can we disregard the fact that many of the partners themselves will have learned their trade primarily through trial and error. In other words, they will have had the same difficulty isolating variables as we discussed above. In

consequence, they will be best able to teach the broad strokes of what has worked, but we should not assume that they will be capable of breaking their successes into smaller components and applying the discrete lessons to different situations.

In my experience, practitioners teach by saying "Here is what has worked for me." Academics teach by saying "Here is how to think about the problem." The challenge and unique opportunity for law school clinicians is to use the modalities of practice to teach students how to "think about the problem."

One way to think about problems is as we encounter them in the course of clinical instruction. Another way is through the use of stories, observations, and narratives. A story drawn from a case, from politics, or even from everyday life can provide the clinical teacher with a template for understanding the interaction between human beings. A story can be used to illuminate the consequences of a particular form or philosophy of law practice, or to suggest modalities for enhanced methods of representation. A more modest use of narrative is to use it as a device to generalize about certain skills inherent in the practice of law. Specifically, all lawyers negotiate, some better than others. As clinical teachers, we can learn something about negotiation by watching gifted non-lawyer bargainers in action, and then relating their stories. By learning how others "think about the problem" of commitment in negotiation, we can improve our own ability to instruct our students.

*(please turn the page)*

### III. STORY FROM PETTICOAT LANE

For well over a century, London's East End has served as a port of entry for newly arrived immigrants. The heart of the East End, for nearly all of that time, has been Petticoat Lane, a vibrant street market where vendors could set up stalls selling all manner of low-priced goods. Once predominantly Jewish, Petticoat Lane is now the domain of newer immigrant groups, chiefly from Asia. Every Sunday there is a lively competition among hundreds of sellers for the attention and, they hope, the money of the passing crowds.

Street market peddling, of course, is a form of negotiation. Actually, it is a series of negotiations. The seller must first bargain for a buyer's attention. Thus, in the first negotiation the seller offers an attractive array, a clever pitch, or some other form of motivation; the buyer responds with an expenditure of time. Only if the first negotiation is successful can the seller move on to the next stage—offering specific goods for purchase. But this too turns out to be an extended process. The seller must actually negotiate to hold the buyer's attention while displaying a variety of goods and quoting a series of prices. In other words, only by maintaining the buyer's interest may the seller obtain enough of the buyer's time to pursue the negotiation through to the desired conclusion—a sale.

To recap: First, the seller offers entertainment and the buyer responds with time. Once that relationship has been established, the seller offers wares and the buyer responds with money. The challenge for the seller, then, is to move the negotiation from the first level to the second.

No one understands this challenge better than the vendors of Petticoat Lane. Over generations of practice they have developed pitches, spiels, patter, and technique, all designed to bridge the gap between attention and purchase. Some peddlers have developed extended acts that have all but become variety shows. They joke, entreat, sing, and occasionally dance, exploiting their knowledge that the longer people watch the more likely they are to buy.

Although this sales method has diminished along following the rise of department stores and growth of print and televised advertising, I recently had the opportunity to observe a master at work. I have come to think of him as "Nick," though I never learned his proper name. He operated out of a storefront on London's Oxford Street, once one of that city's classiest shopping thoroughfares, though now in slight decline and given increasingly to discount stores and off-price imports. Oxford Street is removed from Petticoat Lane by about four stops on the underground, several levels of economic comfort, and at least a generation or two of British citizenship. Still, this particular practitioner had clearly done his training at the street market. The storefront was just a slightly fancier, waterproof stall.

Nick sold consumer electronics: Compact disk players, calculators, cameras, video games, and similar items. Nothing was on display; all the goods were kept in a back room. The storefront itself was completely empty; not a chair, not a counter, not a cabinet. The only furniture was a dais and podium at the front of the room, where the hawker stood with a clip-on microphone attached to a comfortably powerful public address system. The shop was equipped with a garage-

style overhead door so that it could be made completely open to the street. In fact, with the door rolled up, the shop became an extension of the street.

The peddler's first (and easiest) task was to draw customers in from the street. There is always plenty of pedestrian traffic on Oxford Street, and though most people seem to be rushing from one place to another, the steady patter from the store's loudspeakers was sufficient to ensure that a constant stream of passers-by would enter the shop. That was the first negotiation: "If I make my public address system loud enough to attract you but not so loud as to annoy you, will you spend some of your time in my shop?"

The second task was to keep the people in the store long enough to begin selling. That was harder. It takes only a small expenditure of time to poke your head into a shop to see what is going on. It is a greater commitment to enter the store and wait (remember, there are no goods on display) until the selling begins. One way to keep people in the store was by telling jokes. Not great jokes, not night club quality material, but enough ever-so-slightly off color humor—interspersed with promises of fantastic bargains—to keep the crowd entertained while new customers continued to arrive.

Why not sell the goods constantly? Why keep consumers waiting? Why make the sale seem more like a show? Two reasons. First, Nick needed a critical mass of customers in order to make his pitch. His sales technique was a set-piece that could not be delivered to a continuously shifting crowd. More importantly, he was looking for commitment. The longer some one stayed in the store, the more likely he

or she would be to buy something. Once customers invested ten or fifteen minutes watching the routine, the more they would want to have something to show for it.

Of course, even the best spiel won't keep shoppers attentive forever, or even for very long. Which brings us to Nick's third level of negotiation. Once he decided that he liked the size of the crowd he began offering small (but far from worthless) electronic items for unbelievably low prices. In the manner of an auctioneer, he asked "Who'll give me five pounds for a video game player?" Everyone thought it was another gag or quip, since the device was worth almost ten times that amount, so no one spoke up. Nick continued by picking somebody out of the crowd, "You sir, wouldn't you pay five pounds for a brand-new, in-the-box video game player? Well give me five quid and it's yours." The customer—perhaps a shill, perhaps not—complied, and the game player was handed over.

Now people began to see a payoff for their investment of time. Nick had raised the negotiation to a new plane. Money was on the table, in addition to time. So here came the next phase. "Who'll give me 50 pence for a Walkman?" This time hands shot up all over the room. True to his word, Nick tossed a pocket-sized tape cassette to a customer, and one of his assistants collected the nominal 50 pence. "Who'll give me half a pound for a Discman?" More hands, another putative sale — although it was really a gift or premium just for sticking around. In the next five minutes, Nick probably handed out a dozen or more tape players, CD players, and the like, all for virtually nothing. Anyone who got one wanted more; anyone who didn't was anxious for a turn. They were feeling increasingly committed to hanging around.

Nick was now offering something far more valuable than entertainment. Out came a video camera. "Who'll give me 30 pounds for a new, full-feature video camera." Well, 30 pounds is a lot of money, especially compared to 50 pence, but a hand or two went up. "Will you give me 30 pounds for this video camera? If I throw in a CD player will you still give me 30 pounds? If I add a digital assistant will you still give me 30 pounds?" Now hands were up everywhere. True to his word, Nick chose the lucky individual and handed over all of the prizes in exchange for 30 pounds.

What was going on here? Why the massive giveaway? Had Nick figured out a novel way of laundering stolen goods? Actually, Nick was investing in commitment. The early distribution of some surplus inventory sent the message that it might pay off for customers to stick around. If thirty pounds buys all that stuff, what can I get for ten pounds? Or fifty? Well, there's only one way to find out. Invest more time.

But not only time. Nick was moving toward the end game. "We have lots more to sell and give away today. I promise you'll thank me. Do you trust me, sir?" The customer agreed to trust Nick. "Give me five pounds." The customer complied. Nick handed over a full sized CD player, easily worth 50 pounds or more. "Who'll give me five pounds," called Nick, "I promise you'll thank me." Hands went up all over the room. Nick called to his assistant, "Look in the back room and see how many of these CD players we have." The answer was fifty. "Will fifty people give me five pounds," shouted Nick. The hands all stayed up.

Assistants walked around the room collecting five pound notes, passing out colored paddles in exchange. Those who didn't come up with the five quid were politely shown to the exit, leaving about 40 people to view Nick's wares. The overhead door was shut; anyone could leave, but newcomers were discouraged. Nick had his audience of committed shoppers. After a buildup of about 20 minutes, it was time for the real sale to begin.

Another video camera appeared. Hands dug into pockets, searching for the 30 pounds that the last one had sold for. "Who'll give me 150 pounds for this video camera," cried Nick, describing its features, warranties, and value. There were no immediate takers. "Cash, check, credit card; payable in any currency; only 150 pounds for this brand new video camera. What if I add a CD player? What if I add a Gameboy?" A hand went up, then two more. "Sir, will you take all these goods for 150 pounds?" The customer nodded. "Did I promise that you'd thank me?" Another nod. Then take the video camera, the CD player, the Gameboy, and I'll add a VCR, all for your 150 pounds." The deal was made. The next buyer also paid 150 pounds for a video camera, but didn't get the extra stuff. And so the sale progressed, as Nick wheedled the base prices ever higher, intermittently throwing in extraordinary bonuses. Every now and then there was another virtual giveaway, but the norm had clearly changed from astonishing freebies to standard discounts. But people kept buying at prices ranging from 50 to 250 pounds, everyone seemingly satisfied with their purchases, and the lucky few overwhelmed at their good luck.

*(please turn to p.34)*

Here's the point: Not a person in that room had left home that morning intending to spend hundreds of dollars on electronic equipment. No one had wandered into Nick's shop expecting to come away with a VCR or computer. Nick knew that. Had he begun by offering video cameras at 150 pounds, he would not have made a single sale. No one was shopping for video cameras, at that price or any other, on Oxford Street. Nick, however, had managed to turn strollers and bystanders into customers. How? What was the secret of his success?

Nick's insight was that he could prosper by obtaining the incremental commitment of his shoppers. As they became increasingly invested in his enterprise, they became increasingly likely to spend their money on his goods. There were three keys to his method:

First, he extracted commitments of time from as many potential customers as possible. Indeed, not only did Nick initially persuade people to enter his shop by entertaining and amusing them, he also used a series of surprises and deals to entice them to remain in the store, thereby recommitting their time.

Next, Nick obtained a token down payment of five pounds from as many of the crowd as possible. This willingness to commit money effectively separated the browsers from the deal-seekers, allowing Nick's assistants to escort the mere spectators from the shop. More importantly, everyone who stayed in the store had a five pound investment in making a purchase. Once Nick held their money, they had a stake in getting it back by bidding on a camera, tape deck, or VCR.

Finally, Nick obtained what we might call ego commitment. Note that he took people's money through means that were almost-but-not-quite-crooked. The first few people who gave him five pounds were rewarded with spectacular piles of prizes, the implication being that he was selling all those goodies for a mere five quid. Of course, that was not true. When fifty people handed over their five pound notes it turned out that they had bought nothing more than the right to pay 10 to 40 times more for the same stuff.

You couldn't say that Nick had been deceitful. He never said what the five pounds would or wouldn't buy. He merely allowed the covetous shoppers to assume that they were about to get something for nearly nothing. When that didn't happen, the customers were left with a choice. They could get angry with themselves for being tricked, or they could decide to hang around and buy something—thereby justifying the decision to give Nick the money in the first place. In other words, the decision to buy something became the equivalent of validating one's own cleverness.

#### IV. LESSONS FOR LAWYER-NEGOTIATORS

**T**he first lesson from Petticoat Lane is that psychology trumps economics. While to most this may seem like an unremarkable conclusion, it should be a powerful instruction to modern law students, most of whom have been taught at some point that law-and-economics modeling can predict real world activity. In brief, the standard law and economics theory posits that rational actors will pay no attention to sunk costs, but will instead base their decisions strictly on future costs

and benefits. A good explanatory paradigm is the poker game: current betting should be based on the value of your present hand, not on how much money you have already lost. In other words, sunk costs are sunk, spent, gone; they will not affect the future.

Rationally, then, Nick's device of extracting a five quid commitment should have been meaningless. A shopper's willingness to spend, say, 60 or 80 pounds on a VCR should be based on the value of the VCR and the customer's access to discretionary funds. The "sunk" five pounds should not make a difference. But, as Nick knew well, it obviously did. People wanted to "get something" for having spent the time and put up the five pounds, and that made them morereceptive to Nick's pitch.

In other words, as every lawyer should understand, people can be stimulated to act by a wide variety of factors, only some of which are "rational" in the strictly economic sense. One key to negotiation, then, is the discovery of what we might call the other party's "psychological motivators."

Nick's example further teaches us that commitment or investment can be a powerful motivating force. Recall that at every state in his negotiation set piece, Nick sought a small additional commitment—first in the form of time, eventually in the form of money. The more preliminary commitment he obtained, the more likely he was to succeed in his bargaining

How can this approach be applied to negotiation by lawyers? What sorts of commitments might one induce from a reluctant adversary

in the course of negotiating a settlement or transaction? There are several possibilities.

Most obviously, one lawyer can exact from another a commitment of time. Following Nick's example, your chances of reaching agreement should increase with the duration of the negotiation. The more time that the opposition devotes to negotiating, the more inclined they should be to want to come away with something to show for it. Thus, an offer that was not immediately attractive or sufficient, might well become acceptable at the end of a protracted discussion. Therefore, one would want to employ a variety of devices to keep the negotiation going. For example:

- ★ Make the negotiation enjoyable. Your adversary/partner will be more likely to continue negotiating if the experience is not painful. Therefore, be as pleasant as possible and avoid threats, coercion, or ultimatums.
- ★ Offer intermediate rewards. Make sure that the negotiation shows progress. Use incremental concessions to maintain momentum.
- ★ Keep the "prize" a secret. Do not reveal your ultimate offer until the other party has invested considerable time waiting for it.

Nick's second technique, the extraction of cash, is more difficult to adapt to lawyers' negotiation. Under all but the most unusual circumstances, no other lawyers is going to pay money for an opportunity to continue negotiating. On the other hand, payment can come in a variety of forms other than cash. Perhaps the other party can be persuaded to provide you with a written proposal or a list of demands. Perhaps you might be able to agree to procedures for negotiating. You might even be

able to resolve tentatively a series of sub-issues. Every partial step toward the ultimate resolution constitutes an "investment" in the outcome, at least as palpable as the five quid that Nick acquired from his customers.

Of course, there are many other ways to negotiate with lawyers. At one extreme, there is the value-creating approach, where all information is shared in the hope of achieving a win-win solution. The polar opposite is "Bulwarism," which involves making a single offer and sticking to it unyieldingly throughout the negotiation. There are many other choices along the flexibility continuum. There are also many other ways to sell electronic equipment.

The lesson from Petticoat Lane is that Nick's approach works in certain situations. It is a device, a tool, a medium, that may be successfully employed when the circumstances are right. But what are those circumstances? Again, the answer lies in close observation. Nick had plenty of goods to sell, and no use for them other than to sell them. He was, shall we say, strongly motivated. His customers, on the other hand, were hardly motivated at all. They had no idea that they wanted, much less needed, the goods that Nick had for sale. They needed to be enticed, or at least encouraged, to pursue the negotiation. But note that Nick didn't beg, wheedle or cajole. His entire schtick was designed to make his goods seem worthwhile, attractive, and valuable. Extending this scenario to legal negotiation, we would conclude that Nick's commitment-technique will be most useful when you have a good offer to make, but the other party does not yet realize it.

## V. CONCLUSION

What does all of this tell us about clinical legal education? Why not simply say that a pleasant, promising negotiation may sometimes achieve superior results? What is the value of the extended anecdote about Nick and Petticoat Lane?

The answer is that we learn through experience. Imagine that I told you that "In the right situation, you might want to encourage a negotiating partner to make increasing commitments to you, in order to enhance your chances of success." Your almost certain response would be a series of questions: What circumstances? What sort of commitments? Why? When? How? Nick's story provides a cognitive answer to these, and other questions. Equipped with a narrative, we can much more readily understand the details and elements necessary to employ this particular technique.

Narrative, however, is nothing more than experience once removed. By studying the story of Petticoat Lane, we can substitute Nick's education and past practice for our own. Clinical education, of course, goes one step further, by creating, reviewing, and refining the experiences themselves. After that, practice makes perfect.







# SELECTED CLINIC CASES: a status report

## Juvenile Delinquency

Steven Drizin  
clinical faculty

**D**avid B. is the named plaintiff in a federal class action brought by Patrick Murphy and the Office of the Public Guardian in 1979 against the State Board of Education ("SBE"), the Department of Children and Family Services ("DCFS"), and the Department of Mental Health ("DMH"), alleging that these three state agencies violated Section 504 of the Rehabilitation Act and the equal protection and due process clauses of the Constitution, by failing to provide treatment and rehabilitative services to these disabled and delinquent children.

*Clinic students are involved in an appeal of a federal class action suit on behalf of disabled and delinquent children.*

Because no single state agency would assume responsibility for these multi-problem youths, these youth "fell through the cracks" and were often forced to wait for months in the juvenile detention center until services were provided. In 1981, the DMH, DCFS, and SBE entered into a Consent Decree which required them to provide services to the class members.

Between 1981 and 1995, the Governors Youth Service Initiative ("GYSI"), under the administration of the DCFS, has provided residential treatment and other services to hundred of class members. In 1995, DCFS, citing changes in federal and state law, filed a Motion to Vacate the Consent Decree. The CFJC, together with the Public Guardian's Office opposed the DCFS's motion to vacate. In September 1996, the Honorable Marvin E. Aspen, Chief Judge of the United States District Court for the Northern District of

Illinois, denied DCFS's motion to vacate in *David B. v. Patla*. DCFS has appealed Judge Aspen's decision and the Clinic and the GAL will brief and argue the appeal in the spring of 1997. Clinic students Katie Dunn and Ronald Ing helped work on the briefs.

As a result of our involvement with *David B.*, Judge Julia Q. Dempsey of the juvenile court has appointed Clinic attorneys and law students to serve as guardian ad litem for many members of the plaintiff class. Clinic law and social work students have pooled their talent and energy together to help secure appropriate services for many children.

**A**llen M. was 11-years-old when he was found delinquent in the murder of an elderly neighbor. He was only 10-years-old at the time of the murder. The key piece of evidence against Allen was an oral statement he allegedly made to police during a police interrogation outside of the presence of his parents, an attorney, or a youth officer.

There was little corroborative evidence to suggest that Allen committed the crime and strong circumstantial evidence to suggest the crime was committed by an older, stronger individual. The case also raises important issues about effective assistance of counsel for juveniles and whether trial counsel's failure to move to suppress his client's statements was ineffective. The Clinic

did not represent Allen at trial; however, we are representing him on appeal of his finding of delinquency.

Katie Dunn and Ken Katkin helped Tom Geraghty and Steve Drizin write the appellate briefs. Katie Dunn prepared for oral argument of the case and Larry Marshall, Bob Burns, and other Clinic faculty participated in a mock oral argument of Katie. At the last minute, the appellate court denied the Clinic's motion to allow Katie to present oral argument so Steve Drizin substituted for her.

On November 18, 1996, in a 2 to 1 decision, with a dissent by Justice Warren Wolfson, the appellate court affirmed Allen's finding of delinquency. Clinic student Monica Vaca assisted Tom Geraghty and Steve Drizin in writing a Petition for Rehearing. On December 30, 1996, the appellate court ordered the State to respond to the Petition for Rehearing. A ruling on the petition is expected early this year.

**J**ose E. was 15-years-old when he was charged with aggravated battery with a firearm in a gang-related shooting.

The State moved to transfer Jose to the criminal court under the newly enacted presumptive transfer laws. Pursuant to this statute, the State is required only to establish "probable cause" that the minor committed the offenses listed in the petition to shift the burden to the defense to demonstrate that the minor can be rehabilitated within the juvenile court system.

In a series of cases including Jose's, the State attempted to establish probable cause simply by introducing into evidence the transcript of the abbreviated probable cause afforded juveniles at their detention hearings. These hearings are held within 36 hours of arrest,

prior to the time any discovery is tendered to defense counsel, and generally only minutes after counsel is appointed to represent his or her client. After introducing the prior transcript, the State rested, asserted that it had established probable cause, and argued that the burden shifted to the defense. On defense counsel's motion for a directed finding, the trial court held that the mere introduction of a prior transcript from the unrelated, probable cause hearing was insufficient to establish probable cause in the transfer context and granted the defense's motion. The State appealed the trial court's decisions in a series of cases.

The Clinic, the Public Defender's Office, and Gabe Fuentes, a Clinic alumnus, now working at Jenner & Block, divided up the appeals and collaborated to defend the trial court's decisions. Clinic student Tom Snook worked with Steve Drizin and Tom Geraghty on Jose's appeal. In Jose's case, the appellate court affirmed the trial court's decision to reject the finding of probable cause made at the detention hearing and held that to require the trial court to be bound by the earlier finding of probable cause would violate the requirement that transfer hearings comport with "fundamental fairness." The court, however, found that the trial court erred in other rulings in the case, and remanded the case to the trial court for a new transfer hearing.

## Disability Rights

**R**aymond C. is a four-year-old boy who has a neurologically-based communication delay. At age three, he was evaluated by his local school district to determine eligibility for early childhood special education services. The school district team found him

Laura Miller  
faculty attorney

*Jose E. was 15-years-old when he was charged with aggravated battery with a firearm in a gang-related shooting.*

to be eligible for services, but, ignoring the reports of several experts who had worked with Raymond, determined that he had a "serious emotional disturbance" rather than a communication disorder. The services proposed by the school district were inappropriate, focusing on the alleged emotional disturbance rather than on his real problem.

We reached an agreement with the school district whereby Raymond would be placed in a communication disorders program and, after several months, would be reevaluated to see whether the program was appropriate. If the program was determined to be appropriate, the school district would then change his disability label to communication disordered.

Raymond flourished in the communication disorders program. At the meeting held to review his placement, the school district team agreed with Raymond's mother that Raymond was not and had never been seriously emotionally disturbed. But, without any previous notice, the team members told his mother that Raymond was doing so well that he was not entitled to any services whatsoever and would be discharged from the communication disorders program the following week. The only programming the district would provide was forty minutes of speech therapy per week.

We filed for a due process hearing to challenge the conclusion that Raymond is no longer entitled to be in the communication disorders program and to challenge the failure of the school district to notify the parent in sufficient time of the district's plan to discharge Raymond from the program. Second year students Katie O'Brien and Jennifer Sultan will be representing Raymond and his mother at the hearing. Pursuant to the "stay-put" provision of the Individuals with Disabilities Education Act, Raymond will remain

in the communication disorders program pending the outcome of the hearing process.

**C**harlie F. is a thirteen-year-old boy with multiple disabilities, including attention deficit disorder, obsessive compulsive disorder, anxiety disorder, and learning disabilities. When he was ten-years-old and in a regular fourth grade room, his teacher organized "class meetings," which were apparently designed to allow students to vent their feelings on various topics. These meetings were held without the consent or knowledge of any parents; indeed, the teacher ordered the students not to discuss the meetings with their parents and other outsiders. During these meetings, which were moderated by the teacher, Charlie was often the central topic of discussion. The teacher encouraged the students to vent their feelings regarding Charlie's disabilities and the behaviors that were symptomatic of them, allowing each child to take a "turn" ridiculing Charlie. The teacher even encouraged the students to explain and elaborate on their comments.

When Charlie's parents learned of these meetings, they confronted the principal, who admonished them not to raise the issue at any school meetings. Having no other choice, Charlie's parents asked the school district to transfer him to a different school. Based on these events, the Legal Clinic brought an action on Charlie's behalf in the United States District Court, *Charlie F. v. The Board of Education of Skokie School District 68*, alleging discrimination against Charlie based on disability, in violation of the Rehabilitation Act, the Americans with Disabilities Act, and the United States Constitution.

The district court dismissed the complaint without prejudice, citing a lack of subject matter jurisdiction due

*Charlie F. is a thirteen-year-old boy with multiple disabilities, including attention deficit disorder, obsessive compulsive disorder, anxiety disorder, and learning disabilities.*

*...the team members told his mother that Raymond was doing so well that he was not entitled to any services whatsoever and would be discharged from the communication disorders program the following week.*

*...a case about a child who was ridiculed by his teacher and fellow students for being different—a pure case of discrimination.*

to plaintiff's failure to exhaust the administrative remedies provided under the Individuals with Disabilities Education Act ("IDEA"). The court held that the essence of the allegations was not discrimination, but improper special educational programming, which is covered by the IDEA.

We appealed to the court of appeals, where Jason Yurasek, a third-year law student, argued that this is not a case about inadequate special educational programming, but rather a case about a child who was ridiculed by his teacher and fellow students for being different—a pure case of discrimination. Although the court of appeals found that the district court did have subject matter jurisdiction, it affirmed the district court's conclusion that plaintiff must exhaust administrative remedies before going to court. It held that the "genesis and manifestation of the problem is educational" and that, accordingly, the school district must be given an opportunity to argue that it can right the wrong through psychological services, which are available through the IDEA administrative procedures. We are in the process of exhausting the administrative procedures. Third year students, Jason Yurasek and Christine Kim, will be representing Charlie and his parents at the due process hearing.

## Domestic Violence

**Zelda Harris**  
faculty attorney

**L**iane D.'s case involves an upper, middle-class family living in an affluent Chicago suburb. Liane's husband of nine years began subjecting her to verbal threats of harm after losing his job last year. Liane represented herself in obtaining an emergency order of protection after her husband pushed her during an argument. Despite the order, Liane's husband continued his abusive behavior through harassment

by terminating all electricity, water, and telephone services for the home. Liane contacted the Clinic for assistance in obtaining possession of the marital home, custody of her three minor children, child support, and a divorce. Clinic students were successful in obtaining child custody, possession of the marital home, and a \$1,200.00 per month order for child support for the client. Clinic students also provided assistance to the Office of the State's Attorney in an effort to prosecute Liane's husband for violating the order of protection. Clinic student Cathy Birkeland ('97) represents the client in the divorce case which is in the pre-trial/discovery phase.

**T**heresa L. suffered years of physical abuse by her husband and decided to contact the Clinic when her estranged husband snatched their 18-month-old son from outside her home. Clinic students Elizabeth Butler ('97) and Terri Brieske ('98) successfully obtained an emergency order of protection on behalf of Theresa. The order grants Theresa custody of the child in addition to a prohibition against her husband from driving or otherwise being present on the street where she resides. The argument for emergency relief was difficult to prove because many of the most serious incidents of abuse occurred in the distant past. Students had to argue that the recent conduct of the client's husband, which included following her to public places and waiting outside her home, constituted an emergency requiring the court to act without notice to the husband. Despite the issuance of the order of protection, the danger to the client and her family escalated when Theresa's husband set a fire to the back porch of her home. The husband was arrested and is being prosecuted for a felony charge of attempted aggravated arson. Theresa's husband has been released

*Domestic violence is not limited to persons of a certain race, age, or income status. Neither is it limited to acts of sheer physical brutality, as was evidenced in the cases served through the Family Violence Relief Project this year.*

on bond, after serving approximately one month in the county jail, and is awaiting trial. In the meantime, Clinic students are representing Theresa in a divorce from her husband and are seeking an order for child support that will allow the husband's wages to be garnisheed.

**K**im B. is the mother of five children under the age of eight. Her case involved intense litigation very early, and Clinic students Michael Fatall ('97) and Andrew Kim ('97) worked tirelessly to represent Kim's interests leading to a successful outcome.

*Kim B. first contacted the Clinic when her abusive husband concealed their five children from her...*

Kim B. first contacted the Clinic when her abusive husband concealed their five children from her after she fled the marital home in Indiana due to domestic violence and came to Chicago. Kim was able to locate her husband and children at her in-laws home in Chicago. With the assistance of the Chicago Police Department, Kim regained physical custody of the children prior to the Clinic's court advocacy on her behalf.

Clinic students obtained an emergency order of protection, which granted Kim custody of the children and denied the husband visitation. Kim's husband hired an attorney and instituted a divorce action against Kim challenging her for custody of the children despite his uncontested abuse to Kim during the marriage. The Clinic has been successful in arguing that any visitation between the children and their father should be supervised. The divorce proceeding is in the pre-trial phase, and students have gathered many documents in discovery in an effort to prove Kim's case of abuse by her husband. Social work student Sarah Compton provided invaluable assistance to the client who required help enrolling her children in school, day care, and other services in Chicago.

## Child Protection

**A**my Levenson ('97) successfully argued for the closure of a juvenile court case involving three minors who had been appropriately cared for by our clients **Mattie and Herman W.** after a year of court supervision.

The family initially entered the juvenile court and child welfare system when the clients' teenage daughter contacted DCFS after a physical altercation with Mattie and allegations of sexual molestation against Herman. DCFS removed all four children from the home despite evidence that the physical altercation was isolated and arose out of a dispute concerning the teenager's ability to care for her own infant child. Further, the teenager recanted the allegations of sexual molestation against Herman W. stating that she made the charges because she wanted to live outside of her parents' strict household.

*Relief never comes as quickly as we would like for the parents we represent in the child protection cases in juvenile court, but the cases are rewarding.*

The case proved frustrating because it soon became apparent to DCFS that Mattie and Herman were appropriate parents and that assistance could have been provided to the family in their community without juvenile court intervention. However, due to court delays and sloppy casework, once they were in the system it was difficult to get the family out.

The case of the Mattie and Herman's teenage daughter remains open and she and her baby are currently living with a relative. Social work student Mary Ann Scali was instrumental in keeping in contact with DCFS and other agency caseworkers to insure that they did not let the family fall through the system "cracks" resulting in more unnecessary delay.

## Criminal Defense / Death Penalty

Tom Geraghty  
clinical faculty

**People v. Derrick Hardaway.** One of the major projects undertaken by the Clinic this year was the defense of Derrick Hardaway, a 14 year-old charged, along with his brother Cragg, with the murder of a 10 year-old boy, Robert "Yummy" Sandifer. The case was tried to a jury in November. Our client was convicted on an accountability theory and awaits sentencing. Students and faculty worked on this case from the fall of 1994, when the incident occurred, through the trial.

**People v. Leroy Orange.** The Illinois Supreme Court has reversed the dismissal of the defendant's post-conviction petition which, among other claims, alleged ineffective assistance of counsel at sentencing, and has ordered a hearing in the trial court to determine whether trial counsel was ineffective when he failed to call any mitigation witnesses at our client's death penalty sentencing. Clinic faculty and students are in the midst of a hearing which will include the testimony of mitigation witnesses who were available to testify at the original sentencing hearing but were never called to testify. The issue before the post-conviction hearing judge is whether there is a reasonable likelihood that Leroy Orange would not have been sentenced to death had mitigation witnesses been called to testify at his original sentencing hearing.

*The issue before the post-conviction hearing judge is whether there is a reasonable likelihood that Leroy Orange would not have been sentenced to death had mitigation witnesses been called to testify at his sentencing hearing.*

**People v. Dino Titone.** Oral argument will be held in late February in the Circuit Court of Cook County on the issue of whether Dino Titone is entitled to a hearing on his claim that his conviction was the result of Judge Thomas Maloney's failed attempt to extort money from Dino Titone's family in return for an acquittal. Former Judge Maloney is now serving a sentence in federal prison for engaging in extortion in other cases. At least one other Cook County Circuit Court judge has granted a hearing on a similar post-conviction claim brought by a defendant convicted by Judge Maloney. And in January, the United States Supreme Court granted certiorari in *Bracey v. Gramley*, a case in which a defendant found guilty in a trial presided over by Judge Maloney claims that he was entitled to discovery in his habeas proceeding regarding the extent of Judge Maloney's corruption.

**People v. Scott Kinkead.** This case is now before the Illinois Supreme Court on the issue of whether the post-conviction hearing judge was correct when he ruled that the fact that the defendant was taking Thorazine when he pleaded guilty and asked to be sentenced to death did not invalidate the guilty plea and sentence. The post-conviction hearing judge made this decision after listening to evidence presented by the state and by the defense regarding the times when thorazine was administered and the amounts of the drugs ingested. Expert witnesses testified concerning the effects of thorazine on cognition and decision making ability.

*Former Judge Maloney is now serving a sentence in federal prison for engaging in extortion in other cases.*

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*Special mention must be made of two recent very generous gifts to the Legal Clinic.*

**I**n June of 1996 the law firm of Schwartz and Freeman donated \$25,000 to the Clinic in honor of the 50th anniversary of Arthur Freeman's association with the firm. In January of 1997 Chris Langone and Brian Hodes of the firm of Langone and Hodes arranged for a \$20,000 donation to be made to the Legal Clinic. These gifts were placed in a Clinic endowment fund. We are profoundly grateful for these gifts.



The Legal Clinic's summer baseball tournament against friendly rival, The Mandel Clinic of the University of Chicago, was great fun. Although NU won both games, U. of C. players looked quite stylish in their new, designer, team t-shirts.

U of C Dick Badger and Randy Schmidt are flanked by NU clinical faculty, John Elson on the left and Bruce Boyer, right.



NU Legal Clinic team l. to. r.  
 row 1: A.Freeman, S.Drizin, J.Elson, S.McCambridge, M.Kravets, M.Hauser  
 row 2: R.Spiegel, M.Mahan & daughter Kate, A.Daker, A.Coin, J.Wong, A.Carretero, J.Klingensmith, S.Kapp  
 row 3: E.Holmberg, R.Conrad, D.Ford, B.Hays, A.Kim,



Roxanne Spiegel ('97) and Victoria Wei ('96) enjoy the barbeque after the game.



## a final word.....

It can hardly be a surprise that Steve Lubet's not-so-secret ambition has always been to wake up and discover that he's been transformed into a professional humorist. Some people have enjoyed Steve's humor and some have fled from it, but until a few years ago it was pretty much limited to the law school world. Recently, however, Steve managed to expand his comedy horizons. Morning Edition, an award-winning show on National Public Radio (NPR), has run a series of Steve's humorous commentaries on subjects ranging from camping (and why you shouldn't do it) to the warning labels on eye drops (which have been known to "impair the motility of equine sperm"). Newspapers including The Chicago Tribune, The San Francisco Chronicle, and The Philadelphia Inquirer have featured Steve's humor on their op-ed pages. The following piece is a "special" to *News and Notes*.



## LYRICS by Steve Lubet



Let's start a movement to establish a new exhibit in the Rock n'Roll Hall of Fame: Really stupid lyrics from really great songs. Now, we obviously won't include simply vapid or meaningless lyrics. Rock music is filled with those. Face it, with hundreds of songs recorded every year since — when? — 1954, even most of the hits are bound to be mediocre. And mediocre songs are going to have lackluster words. Consider: "Black is black/I want my baby back," or "The kids in Bristol/Are sharp as a thistle." Pedestrian, for sure; maybe even a little dopey. But not famously bad.

Nor could there be nominations for incoherent or unfathomable lyrics. Those can be classics, so they don't meet the standard of being really dumb. You can scratch *Whiter Shade of Pale*, by Procol Harum, or the archetypes, *Louie, Louie*, by the Kingsmen and *Wooley Bully*, by Sam the Sham. And we could never include any of Bob Dylan's many cryptic masterpieces; my own favorite being "it balances on your head like a mattress balances on a bottle of wine." Impenetrable? That's the point. But stupid? Never!

Finally, the Hall of Fame would have to leave out really awful lyrics from basically lousy songs. So the exhibit would have no room for anything like the Turtles' inane couplet, "Happy together/how is the weather?" The song wasn't nearly good enough for anyone to worry about the quality of the words.

No, this category calls for truly memorable songs, but with some lyrics so pointless, so forced, that they could only have been inserted in a last-ditch search for a desperate rhyme. To start the ball rolling, I have two nominations.

Amid all of Lennon and McCartney's splendid poetry, one miserable aberration stands out. *She's a*

*Woman* is a terrific tune with some choice lines, but it also gave us this ear-jarring trope: "My love don't bring me presents/I know that she's no peasant." What? There were no peasants in England in 1964. And even if there had been, why would Liverpool's working class heroes care? Somehow, I can't quite imagine the Fab Four's conversation:

"I 'ere you've got a new girl friend, Ringo."

"Righto, George. And she's not a bloomin' peasant."

You can bet they left that one on the cutting room floor when they filmed *A Hard Day's Night*.

But the ultimate entry comes from The King himself. Who hasn't been *All Shook Up*, at one time or another since Elvis Presley coined the term? Once you get past that evocative image, though, the rest is pretty near idiotic:

"I touch her hand, what a thrill I got/Her lips are like a volcano that's hot/I'm proud to say she's my buttercup."

Excuse me? Hot-lipped, volcanic buttercups? Don't try to tell me that there's romance written all over that one. And the rest of the lyrics aren't any better. "I'm itchin' like a man on a fuzzy tree." "My friends say I'm acting wild as a bug." Those metaphors just don't, well, they just don't shake me up.

Please don't get me wrong. I love the Beatles, and Elvis will always be "The King" on my CD player. But the contrast is too beguiling to ignore: It's got a great beat, you can dance to it, but don't listen too closely — especially if you sing along. Yep, the best of the best combined with the dumbest of the dumb. All nominations are welcome. 'Cause Baby, that's Rock n' Roll.