The center’s goal is to improve the juvenile and criminal justice system by assuring that only reliable evidence is used in prosecuting and convoking youth. The center also litigates its own cases of wrongfully convicted youth, consults with attorneys from around the country on their cases, files amicus briefs, conducts original research and operates its own website.

According to CWCY project coordinator and staff attorney, Joshua Tepfer, there are many factors that lead to the wrongful conviction of youth.

One aspect is the intimidation and interrogation of children by police. “While the societal norm is to treat children with care and concern, this is often neglected by officers in the high pressure situation of a criminal investigation,” said Tepfer. “High-profile crimes bring a lot of pressure on police to solve cases quickly. In an effort to solve cases, law enforcement officers generally employ interrogation tactics that are so effective that they not only get the guilty to confess, but also persuade the innocent to confess, added Tepfer. “When these tactics including isolation, accusation, deception, and implied or expressed promises of leniency are applied to children, they create an unacceptable risk of false statements,” said Drizin.

CWCY attorneys Laura Nirider and Josh Tepfer have discovered at least 105 known cases of wrongfully convicted teenagers and children, and the false statements obtained from child suspects, witnesses, or victims have played a role in more than half of them. The results of their research will soon be published in a symposium issue of the Rutgers Law Review.

Center on Wrongful Conviction of Youth

Marty Tankleff was only 17 when he falsely confessed to killing his parents. He was exonerated at age 40. At age 13, Thaddeus Jimenez (T. J.) was wrongfully accused and convicted of murder. He was finally exonerated last year at the age of 30.

These are just some of the examples of children who lost their youth due to wrongful convictions. The problem of false confessions and unreliable statements of youth played a part in these and many other cases around the country.

This is such a prevalent issue that the Center of Wrongful Convictions and the Children and Family Justice Center at Northwestern Law’s Bluhm Legal Clinic collaborated to create The Center on Wrongful Conviction of Youth (CWCY). The new center is an innocence project that focuses exclusively on individuals who were convicted or accused of crimes when they were adolescents or younger, the only one of its kind in the country.

“Marty and T. J. are just two of dozens of exonerees from around the country who were teenagers or younger when they were wrongfully accused and convicted,” said Steven Drizin, legal director of the Center on Wrongful Convictions. “Youth is a powerful risk factor for wrongful convictions.”

What started as a symposium, “Out of the Mouths of Babes: False Confessions and the Wrongful Convictions of Youth,” has evolved into a grant-based project that is now entering its second year.

Staff attorneys Joshua Tepfer and Laura Nirider speaking at the “Out of the Mouths of Babes: False Confessions and the Wrongful Convictions of Youth” symposium, October 8, 2009
Wrongful Convictions of Youth: An Old Case with Modern Relevance: A Preview
Thomas F. Geraghty, Professor of Law, Associate Dean of Clinical Education, and Director, Bluhm Legal Clinic

The year was 1961. The place: Chicago’s South Side. The environment: a “changing neighborhood.” The crime: the rape and murder of a white Chicago elementary school teacher; her body found in the school’s locked book storage room. This was front page news in Chicago’s newspapers.

Desperate to solve the crime, Chicago police focused on the boys (all African American) who were enrolled in the elementary school. After a very brief investigation, they arrested a 14-year-old boy, claiming that he had blood and lipstick stains on his clothing. After he was interrogated by police, the boy, who had below normal intelligence with an IQ of 82, signed a written statement confessing to the crime. Based upon the confession and on the Chicago Police Crime Lab’s conclusion that the boy’s clothing had blood stains on it consistent with the victim’s blood type, the boy was convicted and sentenced to 55 years in prison. The boy was released from prison in the early 1970s.

The three lawyers who represented the boy in 1961 did a fantastic job. They believed that he was innocent. They were unsparring committed to their client. They conducted a thorough investigation, taking written statements from nearly all of the children in the boy’s classroom. They interviewed and took statements from the elementary school teachers and administrators. They challenged the reliability of their client’s confession based upon the boy’s mental status and police coercion. They found the country’s leading expert on blood analysis who testified that the Chicago Police Department’s Crime Laboratory improperly concluded that the blood found on the boy’s clothing was of the victim’s blood type. They identified an alternative perpetrator, but were prevented from presenting evidence pointing to him by actions of the prosecutor and rulings by the judge. After the conviction, they aggressively represented their client on appeal in the state appellate courts. The Illinois Supreme Court affirmed the boy’s conviction. They took the case to the United States Supreme Court where the case was argued before being dismissed, the justices concluding that certiorari was improvidently granted. The boy’s lawyers did all of this with only token compensation. In fact, they spent approximately $12,000 of their own money to defend the boy, a princely sum in the 1960s.

One of the lawyers who represented the boy is still in practice. He kept most of his file, including pleadings, notes taken during the trial and motion stages, witness statements, and many newspaper articles that were written about the case. He has maintained contact with his client all of these years, and client and lawyer have a very profound emotional attachment to each other.

What led to our involvement in this case? Why is our involvement a worthwhile undertaking? The Illinois Supreme Court’s 1968 decision in this case always bothered me. How could courts rule that this 14-year-old boy of limited intelligence made a reliable confession, given the implausibility of his statement? How could the Illinois Supreme Court affirm when the reliability of the prosecution’s blood evidence was so effectively challenged? Were there factors other than purely legal that led to the conviction and to failure to obtain relief on appeal?

We are now re-investigating the case, reviewing old documents and transcripts and speaking to witnesses. This is a joint project of our faculty and of our students. It is a fascinating undertaking and one that will tell an important story about the quality of justice in our society generally and about justice for poor African American children in particular.

We will keep you posted. There will be more in our “Bluhm Blog” found at www.law.northwestern.edu/legalclinic/ and in the Bluhm Legal Clinic’s next newsletter.

Faculty Publications

Steven Drizin


David Scheffer


“BP Shows the Need for a Rethink of Regulation,” Financial Times (May 27, 2010).

Amicus brief filed in support of the issuance of a writ of certiorari, Presbyterian Church of Sudan, et al., Petitioners, v. Talisman Energy, Inc., Respondent, United States Supreme Court (May 19, 2010).

Caroline Kaeh and David Scheffer


Faculty Presentations


David Scheffer participated in the Review Conference of the Rome Statute of the International Criminal Court, in Kampala, Uganda from May 31 to June 11. Upon his return he briefed Congressional staff on the Kampala Conference in the U.S. Capitol on June 28. He also participated in the U.N. Global Compact Leaders Summit in New York City on June 24 and 25 and served as a Table Leader.

Center on Wrongful Conviction of Youth  Continued from page 1

Since its launch, attorneys, advocates and students have worked tirelessly on behalf of wrongfully convicted youth. The CWCY receives its cases through letters from around the country and other referrals. Due to the overwhelming response, it is impossible to take on all cases, but the CWCY is moving forward in its commitment to the exoneration of youth and the shaping of public policy.

Efforts of the center also extend to shaping public policy. The CWCY promotes:

- A Minor’s Non-waivable rights to counsel for minors during custodial interrogation;
- Electronic recording of all questioning of minors by law enforcement;
- Limiting the use of certain police interrogation tactics toward youth, such as implied promises of leniency and threats of harm in exchange for a statement.

For more information about the CWCY, visit its web site at www.law.northwestern.edu/cwcy.

Students Travel to Malawi During Spring Break to Aid Prisoners

The group individually interviewed 170 prisoners in Malawi’s Zomba prison, all of which were originally sentenced to death under Malawi’s mandatory death penalty sentencing scheme, which the Malawi High Court declared unconstitutional in 2007.

None of the prisoners had ever had individualized sentencing hearings at which the court could consider the facts of the crime and the individual characteristics of the offender to determine appropriate sentencing. They were automatically given death sentences.

“The students’ work was impressive on so many levels. They each interviewed at least 30 prisoners and displayed empathy, grace and professionalism as they spoke to men and women who have endured unbearable hardships,” said Babcock.

Based on the group’s meticulous research and legal arguments, Malawi’s Director of Public Prosecutions and the Chief Legal Aid Advocate both agreed that all prisoners interviewed are entitled to be resentenced. The group was asked to prepare a plan for the resentencing hearings and to prioritize the cases that are most compelling. Although the entire process could take years, if they are successful at least 50 of these prisoners could be released immediately.

“All of the students showed great cultural sensitivity and put up with stuffy, insect-infested rooms, water shortages and virtually no internet access,” said Babcock. “I am extremely proud of their work.”

This was the sixth time that students from the CIHR clinic have gone to Malawi. The group was also joined by Carolien Pentinga, a Dutch criminal defense lawyer, and Chesa Boudin, a second-year Yale law student.
Student Reflection

By Adair Crossley JD ’10

One goes to law school not only to learn the law, but to learn how to be a good lawyer. The clinic experience is, for many students, one of the most meaningful ways to learn what being a good lawyer is all about. My experience with the Center on Wrongful Convictions of Youth was no exception. In January, 2010, I attended a week-long hearing where one of the center’s clients was represented by four lawyers from the Bluhm Legal Clinic — Steven Drizin, Tom Geraghty, Laura Nirider, and Joshua Tepfer — as well as a local attorney also assigned to the case.

Background

Our client was arrested for the murder and sexual assault of a twenty-five-year-old woman after he made several incriminating statements to police. At his trial, our client’s statements to police were the only pieces of evidence directly linking him to the victim’s death. This fact made the case ideal for the center due to its longstanding interest in false confessions — and in particular, false confessions made by youths. In this case, the confession was the product of an hours-long interrogation by two police investigators who relied heavily on interrogation techniques that are common throughout the country. Scholars and practitioners have long lamented (and documented) the extent to which many of these common practices may be inappropriate (in that they can lead to false confessions) when used with juveniles or people with diminished cognitive abilities. In this case, our client was sixteen years old and suffered from various learning disabilities.

In preparation for the hearing, I watched the portions of our client’s interrogation that were videotaped. Like many interrogations, this one was both fascinating and heart-wrenching. In watching it, one could almost sense an inevitability in the outcome as the police repeatedly led our client into “giving up” certain details. Our client’s discomfort was apparent, and he obviously wanted to be free from the confines of an interrogation room. There was a sense that our client failed to understand the gravity of the statements he was making to police—it seemed as though, as critics of contemporary police interrogation methods have suggested can happen, he was merely telling the police what he thought they wanted to hear, hoping that they would simply let him go home if he did.

The lawyers and students who worked on this case were convinced that the statements our client made to police were unreliable. This gave way to serious doubts about his involvement in the crime of which he was convicted, but finding legal means by which to have his case (or, the reliability of his statements to police) reconsidered by a court was far from easy or obvious. Much of the work of combing through our client’s files and finding worthy legal arguments took place before I became involved. However, between the filing of the 188-page post-conviction motion in August of 2009 and the hearing pursuant to that motion in January, 2010, I was very much involved.

Those months leading up to the hearing involved countless hours of preparation. At the hearing, five attorneys and two law students appeared on our client’s behalf. Going into the hearing, we were prepared to enter nearly 100 exhibits — and of course, in the weeks leading up to the hearing, we had to gather, prepare, and organize multiple copies of those exhibits. We planned to call about a dozen witnesses and were aware that the state itself had up to a dozen or more witnesses it could reasonably call. The organizational tasks alone were daunting; the strategic planning was intense but proved to be among the most valuable experiences I had in all of law school.

There is nothing quite like spending hours in a room with several accomplished and experienced attorneys sifting through a complex case file, in preparation for a hearing in which the goal is to lay sufficient factual foundation for several legal arguments. The opportunity to watch how the various lawyers on the team processed information and organized their thoughts brought the law to life in such a way that typical classroom settings never can. Moreover, I was able to see this planning through to an actual hearing — a week filled with testimony, discussed at the end of each day after court let out. The experience was both uplifting and humbling and one that will hopefully make me a better lawyer.

FACULTY SPECIAL ACTIVITIES AND RECOGNITION

Esther Barron and the SBOC partnered with the Chicago Urban League to provide legal support to the Urban League's nextONE program, which is designed to accelerate the growth of African American-owned firms.

Julie Biel was appointed to the Illinois Juvenile Justice Commission.

Tom Geraghty served on a UNODC Expert Panel on Improving Access to Legal Aid in Criminal Justice Systems. He also served as an expert on a UNODC panel that reviewed UNODC’s Handbook of Promising Practice in Legal Aid in Criminal Justice Systems in Post-Conflict Countries in Africa. In May he and his wife, Diane Geraghty, presented their paper, “Child-Friendly Legal Aid in Africa” to a joint UNICEF/UNDP Conference on Legal Aid in Africa, held in Dakar, Senegal. Tom also currently serves as acting Executive Director of the John Howard Association (JHA), Illinois’ distinguished prison monitoring organization, along with Rob Warden. JHA recently moved its office to the Northwestern Law campus.

Steven Sawyer served as a judge in the Midwest regional semi-final round of the Jessup moot court competition.

David Scheffer’s article, “Closing the Impunity Gap in U.S. Law,” published in the Northwestern Journal of International Human Rights (Fall 2009), received an Honorable Mention for the National Institute of Military Justice’s 2009 Kevin J. Barry Award for Excellence in Military Legal Studies.

Sam Tenenbaum is a member of the Uniform Law Commission and has served on the drafting committees of the Uniform Electronic Recording of Custodial Interrogations Act, which addresses the use of audio and/or videotaping to record law enforcement officers’ interviews of criminal suspects who are in custody.
Children and Family Justice Center Obtains Parole for Client

On April 19, 2010, the Prison Review Board (PRB) granted parole to a 16-year-old client in the Children and Family Justice Center. The client, who has an intellectual disability was incarcerated for nearly two years and was facing increased time due to misconduct.

Under the supervision of Clinical Professors Simmie Baer, Julie Biehl and Alison Flaum, third year students, Elizabeth Mooney, Kathy Stofan, and Meghan Carter argued to both the Department of Juvenile Justice (DJJ) and the PRB on behalf of the child. They argued that his conduct was a result of his intellectual disability, which prevented him from understanding DJJ's rules and regulations. As a result, they surmised that DJJ was ill-equipped to rehabilitate and build the client's capacities as is required by the statute.

CWCY Secures Post-Conviction DNA Testing for Client

The Center on Wrongful Convictions of Youth (CWCY) recently secured post-conviction DNA testing on behalf of Corey Batchelor on March 18, 2010. Corey and his friend Kevin Bailey were convicted of a murder that occurred in 1989. After being interrogated for more than 24 hours and allegedly beaten and choked by Area 2 police officers within the Chicago Police Department, the two boys separately admitted their involvement in the crime. The State tested hairs found inside a hat left at the scene of the crime, which found that the hair was dissimilar to both Corey and Kevin. Despite the fact that there was no other evidence presented against the boys other than the confessions, they were each convicted of murder, armed robbery and burglary.

Over the next 20 years, Corey and Kevin continued to claim their innocence to anyone who would listen and requested DNA testing of the cap, which were all denied. The CWCY learned of the case in 2008 and filed a petition to request DNA testing in front of the same Judge Clayton Crane who had previously denied testing for Kevin. On March 18, 2010, Judge Crane reversed course from his previous ruling and ordered the cap tested for DNA.

In addition to the work of now Northwestern alumni Greg Bassi JD ’08 and Brooke Krekow JD ’09, Malorie Medellin JD ’11 was instrumental in investigating and drafting our motion, and SaMee Burrage JD ’10 investigated this case and presented a powerful oral argument on the motion to Judge Crane. The students worked under the supervision of Clinical Professors Joshua Tepfer, Steven Drizin, and Alison Flaum.
U.S. Supreme Court’s Decision Supports CFJC’s JLWOP Work

On May 17, 2010, the United States Supreme Court held that the Eighth Amendment forbids a life sentence without possibility of parole for a youth who does not commit a homicide, citing it as cruel and unusual punishment. The Illinois Coalition for the Fair Sentencing of Children was instrumental in the nationwide litigation and advocacy campaign surrounding the cases. Shobha Mahadev and Patricia Soung of the Children and Family Justice Center, along with attorneys for the Juvenile Law Center and the National Juvenile Defender Center, submitted one of the amicus briefs to the Court.

The Court’s decision builds upon the reasoning in its previous decision in Roper v. Simmons, which abolished the death penalty for juveniles, finding again that developmental and scientific research support the idea that children differ in fundamental ways from adults. Per Graham v. Florida, it therefore held that youth who do not commit a homicide cannot simply be sentenced to die in prison, but must be given an opportunity to “demonstrate maturity and reform.” The United States is the only country in the world that still sentences juveniles to life without parole.

According to a report published by the Illinois Coalition in 2008 titled “Categorically Less Culpable: Children Sentenced to Life without Possibility of Parole in Illinois,” in Illinois, all of the 103 juvenile life without the possibility of parole (JLWOP) cases involved a death or homicide. Eighty percent of individuals in Illinois who received this sentence as youths, received it as a result of mandatory sentencing laws. Judges in these cases were not allowed to consider the individual’s age, maturity, background, family circumstances, education or even their particular role in the crime. Moreover, the statistics in Illinois for youth who were sentenced to life without parole are of particular concern, with 82 percent of young offenders serving JLWOP sentences are prisoners of color. In fact, 64 of the 73 youth sentenced to JLWOP in Cook County were African American and Latino. Particularly because these young people face a “significant disadvantage” in criminal proceedings, due in part to their immaturity, “mistrust” of adults and “limited understanding” of the criminal justice system, as the Court noted (Graham at 27), the work of the Coalition and the CFJC continues to be vital to ensuring fairness for youth.

Ms. V’s Eviction Jury Trial

By John Elson, Professor of Law and Director, Program on Civil Litigation

When we were asked by Legal Assistance Foundation attorneys last September to take on Ms. V’s eviction case, we agreed, despite my apprehension that this case would likely end our Clinic’s unbroken streak of eviction case victories over the last 15 years. The facts did not look promising.

The subsidized housing project management accused Ms. V of four separate lease violations, including assaulting two of the managers during an inspection, leaving her four year old unattended when he started a fire and allowing an unauthorized tenant to live in her apartment. Undaunted by the charges and motivated by the fact that a loss could well mean homelessness for our client and her four children, the two 3Ls assigned to the case, Gautam Huded and Ron Sklar, developed a comprehensive discovery strategy that began with comprehensive interrogatories and document requests followed by depositions of each of the management’s seven potential witnesses. Ron and Gautam spent many hours preparing Ms. V for her deposition and trial testimony. This work proved well worth the effort since virtually every question opposing counsel asked at deposition and at trial had been anticipated in our preparation sessions.

The first afternoon of trial was devoted to questioning of prospective jurors by Ron, Gautam and opposing counsel. Of the approximately 45 jurors questioned, very few were persons of color and many were excused because of either pro-landlord or pro-tenant preconceptions. The final all-Caucasian jury of 6 was composed of five women, one man.

Because we had transcripts of the depositions of all of Plaintiff’s witnesses, Ron and Gautam were able to impeach these witnesses whenever their testimony strayed from what they had said at their depositions. Although Plaintiffs’ witnesses did establish that Ms. V had made some rude and intemperate remarks to management as a result of what she considered their unfair and provoking treatment of her, Plaintiffs were not able to establish that anything she did was physically threatening to the extent of being criminal assault. Therefore, after Plaintiff rested its case, the judge agreed with our motion for a directed verdict and threw out the several alleged lease violations based on criminal assault.

During our case in chief, Ms. V testified in a dignified and confident manner while admitting and apologizing for the fact she had lost her temper when she had yelled and cursed at a project manager. Because the testimony of all of the witnesses stayed close to what we expected as a result of the depositions, Ron’s closing argument followed closely the approach we had developed in our
many preparation sessions. His argument emphasized both Plaintiff’s failure to meet the burden of proof required by the specific terms of the lease and its failure to give Ms. V the required prompt written notice of all of her alleged lease violations. Ron’s argument was aided by a poster board he and Gautam created setting forth the specific lease provisions that he asserted Plaintiff had failed to satisfy.

The most complicated part of the case was drafting the jury instructions regarding the factual and legal issues to be decided and the burden of proof Plaintiff had to meet in order to prove the facts needed to establish each alleged lease violation. The jury, however, after about an hour of deliberation came back with a unanimous verdict for Ms. V. Discussing the case with the jurors after the trial, they expressed great admiration for the advocacy of Gautam and Ron and stressed the importance of our argument that project management had failed in its obligation to make a contemporaneous written record of Ms. V’s alleged lease violations.

Two important lessons we drew from this trial experience were, first, that the jury plays an essential role in safeguarding the rights of those citizens who are the most vulnerable to bureaucratic unfairness and, second, the jury trial process itself is empowering to citizens who do not occupy positions of social authority. It was highly gratifying after the trial to hear our client explain how over the nine-month course of the litigation she felt she had grown in maturity, self-confidence and her ability in the future to deal with the many stresses in her life.

Upcoming Events

Bluhm Legal Clinic Reunion Open House, October 1
Join Director Tom Geraghty JD ’69, clinic faculty, and clinic students for this special event honoring the Clinic’s strong commitment to public interest work and the Northwestern Law community. This event is part of Alumni Community Day at Northwestern Law and will be held in the Bluhm Legal Clinic (Rubloff 800) on October 1, from 4:30 to 6:30 p.m.

20th Anniversary of the Children and Family Justice Center Benefit Dinner and Symposium, October 7–8
In celebration of its 20th anniversary, the Children and Family Justice Center will host a benefit dinner and a symposium titled, “Seize the Moment: Justice for the Child.” The benefit dinner will be held Thursday, October 7, and the symposium, which is free and open to the public will be held Friday, October 8. Both events are presented with the Northwestern Journal of Law and Social Policy. For more information, please contact Toni Curtis at (312) 503-0396 or e-curtis@law.northwestern.edu.

25th Midwest Clinical Law Teachers Conference, November 5–7
The Bluhm Legal Clinic at Northwestern University School of Law will host the 25th Midwest Clinical Law Teachers Conference on November 5–7, 2010. The theme of the conference is “Looking to the Future Informed by the Past: Defining Clinical Education for the Next Twenty-Five Years.” Visit www.law.northwestern.edu/legalclinic/mclc.htm for more information.