Evidence and ethics integrated with trial advocacy sets Northwestern’s trial strategy program apart

More popular than ever, three integrated courses at Northwestern University School of Law combine real-life conflicts of the courtroom with the standard classroom dissection of dense rules and doctrines to bring home the fluidity of laws as they come into play.

The integrated courses — on evidence, ethics, and trial advocacy — bring alive competing laws and doctrines that law schools teach primarily through the scrutiny of appellate court cases. Combining issues normally covered only in separate courses, the sequence is at the heart of the Law School’s Bartlit Center for Trial Strategy’s nationally-recognized Program on Advocacy and Professionalism.

“When we started teaching the integrated courses 12 years ago, approximately 35 students were enrolled,” said Robert Burns, professor of law and co-creator of the sequence. “Today the sequence enrolls about 100 people — or almost one half of the entire law school class.”

Students, working with professional actors, “litigate” the same two cases, one on defamation and the other on murder, in all three courses, learning how different categories of abstract rules intersect during actual legal practice and affect the evolving dynamics of litigation.

The materials are structured so issues of client perjury are considered in ethics, while direct examination is a focus in trial advocacy. Confidentiality is examined in ethics, while attorney-client privilege is considered in evidence. The ethics of closing arguments are studied while students are drafting and delivering closings in trial advocacy, and so on.

A leader in trial advocacy teaching that dates back to the early 1900s, Northwestern is the first law school to employ the simulation method to integrate evidence and ethics with trial advocacy in a fully coordinated introduction to litigation program. Over the years, parts of the materials for the courses, published in three books, have been used by approximately 35 other law schools.

Burns and Steven Lubet, professor of law and director of the Bartlit Center, wrote the books, “Problems and Materials in Evidence and Trial Advocacy,” volumes I and II, and “Exercises and Problems in Professional Responsibility,” published by the National Institute of Trial Advocacy (NITA). Thomas Geraghty, associate dean of clinical education and director of the law school’s Bluhm Legal Clinic, joined them in writing the ethics materials.

“This sequence builds on a long tradition of teaching trial advocacy at Northwestern,” said Geraghty. “In 1905, John Henry Wigmore, who served as dean of the law school from 1901 to 1929, set up the Law School’s first trial advocacy course, which soon afterward evolved into the simulation of trials. Wigmore was very strong on theory, history, and classroom teaching, but he was equally adamant that students ought to be taught the practical aspects of lawyering.”

When NITA was founded in the early 1970s, Northwestern Law professors enrolled in the first course in Boulder, Colorado, and brought back a new approach to teaching trial advocacy that is still used today.

The contributions of the co-creators of the integrated courses, Lubet and Burns, are at the center of the trial advocacy program’s national reputation. Lubet, director of the program on advocacy and professionalism, has written one of the country’s leading textbooks, “Modern Trial Advocacy,” which has been used at more than 90 American law schools and which has been published in Hebrew.

Continued on page 3
Bluhm Legal Clinic Welcomes New Faculty

Thomas F. Geraghty, Professor of Law, Associate Dean of Clinical Education, and Director, Bluhm Legal Clinic

The cornerstone of any great clinical program is its faculty, and Northwestern Law continues in its tradition of hiring talented lawyers and scholars to share their experiences and expertise with our students.

We would like to welcome the following new faculty to the Bluhm Legal Clinic for the upcoming academic year:

**Simmie Baer** joins the Children and Family Justice Center (CFJC) as a clinical assistant professor. Simmie is a nationally-renowned juvenile defender and served as attorney-supervisor of the Juvenile Division of The Defender Association in Seattle for 16 years. Her work has garnered her several awards, including the American Bar Association’s Livingston Hall Award and the William O. Douglas Award of the Washington Association of Criminal Defense Lawyers.

**Sheila Maloney** joins us as the Assistant Director for the Program on Negotiation and Mediation and a clinical assistant professor. Sheila is already a familiar face at the Law School as she has coached our nationally-ranked negotiations team since 2003. Prior to joining Northwestern Law, she was an attorney at Lord, Bissell & Brook, LLP.

**Sam Tenenbaum,** a Northwestern Law alum (JD ’73), returns to the Law School as director of the Investor Protection Center and a clinical assistant professor. He is an expert in the field of litigation and has practiced in courts throughout the United States as well as in foreign jurisdictions. He teaches Complex Civil Litigation and also serves as a faculty advisor to the International Team Projects.

**Jeffrey Urdangen,** clinical assistant professor, first joined the clinic as a visiting professor in 2003. Jeff led his own criminal defense firm for more than two decades before joining the Law School. His pro bono work on behalf of numerous notable and unjustly accused defendants has been a recognized contribution to the Chicago legal community. Jeff’s teaching focuses on representation during trial and post-conviction of persons accused of various criminal conduct.

In addition, two new clinical assistant professors will join the Small Business Opportunity Center (SBOC):

**Esther Barron,** an entrepreneur who co-founded start-up handbag company Elezar, LLC, is also a Northwestern Law alum (JD ’95). She formerly worked as an associate at Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz and at Peterson & Ross.

Stephen Reed was most recently an attorney at Proskauer Rose LLP in Los Angeles where he worked with public, private, and non-profit companies of varying sizes on a variety of legal issues, including contracts, mergers and acquisitions, venture capital transactions, and licensing.

Although we will miss the founder of our Center for International Human Rights (CIHR), Douglass Cassel, who has left Northwestern Law to direct the Center for Civil and Human Rights at Notre Dame Law School, we are pleased that Bridget Arimond, assistant director of the center, and Steve Sawyer, the center’s general counsel, will continue the work of the CIHR. In addition, we will welcome three visiting professors to the center:

**Sandra Babcock,** director of the Mexican Capital Legal Assistance Program, which assists Mexican nationals facing capital punishment in the United States, will join the CIHR in spring 2006. In 2003, she was awarded the Aguila Azteca, the highest honor bestowed by the government of Mexico upon citizens of foreign countries for her work.

**Michael Davis,** a professor of law and director of the Graduate Program in Law and Public Affairs at the Chinese University of Hong Kong, will be a visitor here for 2005–06. Michael is a frequent media commentator on human rights and has written widely on international law, human rights, and international affairs in leading media and academic journals.

**David J. Scheffer,** who served as the senior vice president of the United Nations Association of the United States of America (UNA-USA) and as the ambassador for war crimes and U.S. negotiator on the International Criminal Court, also joins the center for 2005–06.

We look forward to working with these new faculty members. Their diverse talents are sure to enrich the quality of our clinical programs and the Law School as a whole.
Evidence and ethics integrated with trial advocacy sets Northwestern's trial strategy program apart

Continued from page 1


Taught by Bluhm clinical faculty and staff, the courses also are led by a number of prominent lawyers from public and private practices.

The idea for the sequence grew out of Burns' and Lubet's continuing legal education of young lawyers through NITA. "It became clear during the simulated litigation exercises that young lawyers who most likely had gotten A's in evidence could not recognize evidentiary issues as they arise in the context of actual practice."

In other words, they had learned the grammar rules, but not how to speak the language, according to a metaphor that Burns cites frequently. "The central idea is that law is primarily a practice, and the rules are abridgements of good practice," he said. "Evidence, for example, is sort of the grammar book of trial law, of the language that goes on in the courtroom. Just studying the grammar rules in abstraction from the reality of practice is like studying all the grammar rules of a language you neither speak nor write."

By just reading cases, you can't get close to understanding the complexity of issues that arise during litigation, according to Burns and Lubet.

"The ethics course, for example, illustrates how the rules of legal ethics leave many open spaces," said Lubet.

The "plaintiff," Jesse MacIntyre, a 25-year-old housekeeper, is suing her former boss, the wealthy Ross Easterfield. She quit her job when Easterfield insinuated that she had stolen his wife's diamond brooch. MacIntyre said that later during her job search, Easterfield made false and defamatory remarks about her.

A strongly religious person, the plaintiff wants reconciliation with Easterfield and a return to the household. But her lawyers strongly disagree. They believe the former boss is untrustworthy and should be sued for a significant amount of money. A tug-of-war ensues over what is in the best interest of the client, and after a couple of weeks of negotiations, "attorneys" working on the case need to participate in disciplinary hearings.

"As students go back and forth with the client in the process, there are several decision points at which they could settle in a way that reflects her preferences or theirs," said Lubet.

"The negotiations highlight how many of the most important moral decisions that lawyers make are effectively insulated from the disciplinary process. Students get a clear grasp of how lawyers control the agenda and a sense of the potential for manipulation."

An informal poll that Burns takes of students in the evidence course illustrates how students' attitudes about the usefulness of the laws they are learning change over time.
Investor Protection Center Assists Small Investors

Throughout the dramatic highs and lows of the 1990s and the uncertainties of a post-9/11 world, the stock market continues to attract an unprecedented and previously unimagined array of investors. A number of them are small investors who happen to have big problems with their securities transactions.

The new Investor Protection Center at the Bluhm Legal Clinic addresses the legal needs of such investors in the Chicago area. The center offers private representation to people with insufficient income or small claims, typically under $100,000, in resolving securities claims through arbitration.

At the same time, the Investor Protection Center gives Northwestern law and business students opportunities to work with clients on sophisticated legal problems. In the process, the center also is documenting its operations to provide a model for other schools on how to start similar clinics.

"It's a win-win situation for all involved," says Sam Tenenbaum, an experienced litigator and director of the Investor Protection Center. "Small investors will get services that are not readily available, if available at all, in the Midwest. Students will get invaluable experience interviewing and counseling clients, explaining the arbitration and mediation process, investigating and selecting potential arbitrators, conducting discovery, negotiating settlements, and participating in arbitrations. Regulators, including NASD and the SEC, as well as brokerage houses will get a screening mechanism to determine legitimate claims."

The opening of the center, funded by the NASD Investor Education Foundation, follows an initiative by New York Attorney General Eliot Spitzer that resulted in the creation of nine investor protection clinics at law schools on the east coast. Before Northwestern's Investor Protection Center opened, no such law school clinics existed from Pittsburgh to San Francisco, where there is one clinic.

"The need for an investor protection clinic in the Chicago area — a major financial center, with large exchanges and numerous brokerage houses — could not be more apparent," says Tenenbaum.

In its startup operations, the center has reached out to a number of organizations, including the American Bar Association, to make its existence known to the public and created a Web site that allows potential clients to fill out a questionnaire that will begin the screening process for legitimate claims. All the documentation of the startup operations will result in a detailed manual for law schools interested in creating an investor protection clinic.

"By providing a roadmap for other law schools to follow, we hope to help increase the number of clinics handling these types of cases and give more investors with limited resources access to legal assistance in resolving their securities disputes," says Robert R. Glauber, chairman and CEO of NASD and chairman of the NASD Investor Education Foundation.

The NASD Investor Education Foundation, established in 2003, supports education programs and research with the goal of providing investors with high-quality, easily accessible information and tools to better understand investing and the markets.

The relationship with NASD is a plus, according to Northwestern Law professor David S. Ruder, former chairman of the SEC. Ruder was chairman of the NASD's Securities Arbitration Task Force that made recommendations to the NASD on Securities Arbitration Reform.

"The NASD's investor arbitration program is a fair and efficient method for resolving disputes between investors and their brokers," he said. "The Bluhm Legal Clinic's Investor Protection Center will help to assure that increasing numbers of investors will have access to that fine program."
Featured Program

Students Receive Theoretical and Practical Training in Negotiation and Mediation

On one side was a plumber suing a homeowner over an unpaid $1,000 bill. On the other was the homeowner, upset that a problem for which she received a $275 repair estimate ended up being a different problem that cost thousands of dollars to fix. She was countersuing to get back the $2,000 she’d already paid.

In the middle — by choice — was Luiz Vitor Coimbra (LLM/Kellogg ’03, JD ’05), a student participating in the Law School’s Program on Negotiation and Mediation. Coimbra was mediating in the Cook County Circuit Courts to attempt to resolve the issue before it went to trial that same day.

Coimbra began with negotiation, or face-to-face problem solving with the clients. He listened for the underlying concerns that caused the dispute. “I was able to find that the plumber was offended about being thought incompetent and dishonest,” he says. “The homeowner was offended about being taken advantage of, not trusting the process, and hostile about having to go through it.”

The mediation stage put Coimbra in the role of impartial facilitator. He used the “flip side” technique: “By asking questions, you help the parties see where the opposing side is coming from. At this point, both sides understood the reason for the other’s being offended, even if they didn’t agree with each other.”

Next he “reality tested” the alternatives if the case didn’t settle: “Would what they’re asking for in court fulfill their needs? If not, what would?” It turned out that they would settle for the homeowner paying the $60 the plumber owed to a subcontractor.

“They realized that if the matter went to court, it would be a win-lose situation,” Coimbra says. “They went from yelling at each other in the beginning to apologizing in the end. They were very thankful to have the case mediated.”

Solving the problem is of course the bottom line for the Program on Negotiation and Mediation, which, says director Lynn Cohn, has become a model for other schools across the country. Rather than prescribing a sequence of courses, the program allows law students to choose to take one, two, three, or all four courses in negotiation, mediation, and dispute resolution. Those interested can pursue certification from the Center for Conflict Resolution in order to mediate court cases.

Negotiation is by far the most popular course, with 90 percent of all law students taking it even though it’s not required. “These skills apply to everything that anyone will do in any type of law, business, or relationship,” Cohn says. “Negotiation is such a universal skill.”

Course instructors come not just from the Law School faculty but also from the world of practicing lawyers. They represent perspectives from corporate practice to public-interest law to the judiciary to Cohn’s own field of dispute resolution. Students sign up for any of 11 sections of Negotiation, depending on their preferred focus.

Management students from the Kellogg School of Management and international LLM students also take the class, bringing even more diversity to the discussions. Besides the class work, students go to law firms to negotiate alongside practicing lawyers.

The other three courses are Mediation Process and Advocacy, Dispute Resolution, and the Mediation Practicum. All combine theory, simulations, and opportunities to interact with the real world.

In the practicum, students like Coimbra who become certified by the CCR receive credit for doing pro bono mediation outside class. Sixteen people are currently taking the practicum. “I don’t expect that they’ll all become professional mediators, but many will represent clients in mediation, and all are developing more judgment and creativity than a law curriculum typically allows,” Cohn says.

Melissa Erber (JD ’05), who plans to be a real estate attorney, says that the mediation experience will make her a better lawyer and person. “It has allowed me to look at conflict in a different way — namely, by recognizing that even in business-related conflicts, the underlying needs and interests typically run much deeper than the parties’ stated positions, and the best resolution is one that takes these needs and interests into account. This understanding is useful in any career and in life.”

Cohn notes that the program also has an impact beyond U.S. borders: “The LLMs taking these courses often return to their countries of origin with the desire to incorporate the mediation process and attendant skills into their practice.”

Besides the Negotiation course, the Law School collaborates with the Kellogg School of Management in other ways that have helped make Northwestern a leader in the field of dispute resolution. A number of law professors participate in Kellogg’s Dispute Resolution Research Center on research, a speakers series, and the development of teaching materials that are used at schools around the world. In addition, the two schools jointly sponsor a biennial conference for professors on teaching negotiation that draws participants from around the world.
Merkys I. Gomez (JD '05)

A third-year law student giving the opening statement at a trial? Which litigation-loving law student wouldn't want that opportunity? We were representing the plaintiffs. The scary part? When the judge uttered the words “Are you ready to proceed?,” I would be the very first person the jury would see and hear.

The case was a prisoner civil rights case. Our clients brought the lawsuit after a group of officers beat them while they were handcuffed and shackled at Cook County Jail. Although the beating happened in 2001, we took on the case in October 2004, just months before it went to trial and with nearly four years worth of discovery already completed. In concrete terms, this meant a room full of boxes with depositions, inmate grievances, medical records, pictures, witness statements, and more.

Thankfully, I wasn’t the only student working on the case. Two other third-year law students, Allie Voticky and Su Ji Lee, and I sorted through those materials to prepare for trial. We worked on the case through the Complex Litigation Clinic at Northwestern Law, led by Sam Tenenbaum, a Northwestern Law alum and clinic professor. We also had two civil rights attorneys on our team, including Bob Farley, also a Northwestern alum. Bob’s comments, insight, and willingness to teach us enhanced the learning experience. Working so closely with Sam and Bob, I now appreciate the level of my education at Northwestern Law.

When we volunteered for the case, Sam told us that he wanted us to really learn what it was like to try a case — and he stayed true to his word. We were involved every step of the way. Along with Sam, we made key decisions on strategy — like which motions in limine we would bring, which witnesses we would call, and what the order of the witnesses would be. We even prepared our own clients for their testimony. In addition to the work leading up to the trial, Sam wanted us to conduct as much of the trial as possible. For me, that consisted of the opening statement and the direct examinations of one of our plaintiffs and our medical expert.

The case was scheduled to start on May 16, 2005 — the day after graduation. In the midst of finals and graduation activities, we labored away to prepare for our very first real case. I wrote and rewrote the opening several times trying to organize everything around a theme and theory. Thinking back to everything I learned in my trial advocacy classes, I wondered how each word would affect the jury and how to best create a picture in their minds.

Then came the run-through. I e-mailed the clinic professors to ask that they be my jury on the Friday before trial. To be honest, I thought there was no way the professors would give up their Friday afternoon to listen to a law student practice her opening statement. Nonetheless, almost every single professor I e-mailed agreed to attend, and the ones who couldn’t made sure to ask how things went.

My experiences throughout the trial would take this entire newsletter to share. In the end, the jury decided the case in the defendants’ favor. Nonetheless, we are filing a post-trial motion with the intent of appealing on some of the evidentiary issues.

Although we lost at the trial level, I’m sure that losing wasn’t as hard for me as it was for our clients. I respect our clients for having the courage to bring this suit. After all, they continue to be under the control of many of the same guards who beat them. I can only hope that future juries will open their eyes to what’s happening at Cook County Jail, and that it doesn’t take the death of an inmate to fix it.

Our justice system needs more work than any single one of us can accomplish in our lifetime. Through my work in the Bluhm Legal Clinic I hope I contributed, even if just a little bit, to helping to improve our justice system.

ABA Honors Drizin for Juvenile Justice Work

The American Bar Association honored Steven Drizin, legal director of the Center on Wrongful Convictions and assistant director of the Bluhm Legal Clinic, with the 2005 Livingston Hall Award for Juvenile Justice. The award was presented to Steve at the ABA’s annual meeting in Chicago in August. Steve was recognized for his innovative and effective representation of children and for his nationally recognized scholarship on the admissibility and reliability of juvenile confessions.
Robert H. Farley (JD '79)

Twenty-six years ago, as a Northwestern student with a 711 license to appear in court, I took an active role in representing an individual who was charged by the police department with disorderly conduct, resisting arrest, and assault. I was amazed that my professor had enough confidence in me to permit me to give the opening argument and conduct the direct examination of witnesses.

Twenty-six years later, I had the opportunity and privilege to work with the Bluhm Legal Clinic as part of a legal team of three lawyers including clinical professor J. Samuel Tenenbaum (JD '73), and three third-year students with 711 licenses — Merkys Gomez, Su Ji Lee, and Allison Voticky. We represented four pre-trial Cook County Jail inmates who alleged that they were beaten by correctional officers in 2000. We assembled as their legal team during the 2004 academic year, after their previous lawyer, Jean Maclean Snyder of the MacArthur Justice Center, withdrew as their attorney as it appeared that she would be required to testify in the case as a witness for the plaintiffs.

The trial commenced the Monday following graduation in May 2005 and lasted for three weeks. The trial performance of the law students was truly impressive from Merkys Gomez's riveting opening argument to Su Ji Lee's cross examination of a correctional officer and to Allison Voticky's cross examination of a jail house snitch. All the students had the opportunity to conduct direct examination of the plaintiffs, and the students had major roles in responding to motions for summary judgment, motions in limine, and preparing jury instructions.

In the end, although the outcome of the case was not in favor of our clients, I can proudly say that the professional performance of the 711 students was truly outstanding. The law students were treated as equal partners on the legal team because they earned that right by their commitment and their quality work.

Student-Faculty Legal Teams Win Rare Pardons for Clinic Clients

Students working under the supervision of Jane Raley, clinical assistant professor of law, recently obtained a pardon for a client based on actual innocence. Although the client's application for pardon was at first denied, Rachel Miller and Justin Ruaysamran, who graduated from Northwestern Law in 2004, reinvestigated the case and drafted a new petition. They presented the case to the Illinois Prisoner Review Board, which eventually granted their petition. Students working under the supervision of Karen Daniel, clinical assistant professor of law, also won pardons for three clients based on their actual innocence. Two of these clients served 27 years in prison while the other served 10 years before being exonerated. Each man should receive between $145,000 and $160,000 in compensation from the state.

Students and Faculty Win Asylum for Victim of Torture

Students and faculty in the Children and Family Justice Center helped gain asylum for a client fleeing her home country. Professors Uzoamaka Nzelibe, Anita Ortiz, Vanessa Melendez Lucas, Steven Drizin, and John Elson worked with recent graduates Ben Alke (JD '05) and Katie McCullough (JD '05) and current student Liz Wernick (JD '06) to represent a woman who was a victim of illegal detention, torture, and rape in Cameroon. She had previously been represented by an attorney who attempted to raise his fee during the course of the representation. Elson represented the client in her dispute with her former lawyer while Nzelibe, Ortiz, Lucas, and Drizin worked on her asylum claim. The asylum team assembled the necessary documentation and country reports and secured a leading expert to testify on the client's behalf. After hearing the case, the immigration judge granted the petition for asylum, and the government has agreed not to appeal the decision.

Clinic Helps Secure Important Victory in Wisconsin Interrogation Case

The Wisconsin Supreme Court (In re Jerrell C.J., 699 N.W. 2d 110 (Wisc. 2005)), has held that all interrogations and confessions of juveniles must be electronically recorded in order to be admissible. This groundbreaking decision is the result of collaboration between Steven Drizin and his students and the Appellate Defender of Wisconsin. Drizin and his students provided advice and support to the lawyers in Wisconsin, who so ably represented their client. Antoinette Kavanaugh, clinical assistant professor and co-director of the Cook County Juvenile Court Clinic, provided crucial expert testimony.
Center for International Human Rights

CIHR conducts academic and practical work in support of internationally recognized human rights, democracy, and the rule of law.

Contact:
Thomas F. Geraghty, Director, Bluhm Legal Clinic
312.503.8574; fax 312.503.5950; tgeraghty@law.northwestern.edu

Center on Wrongful Convictions

CWC is dedicated to identifying and rectifying wrongful convictions and other serious miscarriages of justice. The center has three components: representation, research, and public education.

Steven A. Drizin, Legal Director
Rob Warden, Executive Director
312.503.2391; fax 312.908.0529;
cwc@law.northwestern.edu

Children and Family Justice Center

CFJC is a holistic child’law center, a clinical teaching program, and a research and policy center.

Bernardine Dohrn, Director
312.503.0396; fax 312.503.0953;
TTY 312.503.4472

Fred Bartlit Center for Trial Strategy

The Bartlit Center teaches innovative and technologically advanced trial strategy.

Steven Lubet, Director
312.503.6605; fax 312.503.5950;
slubet@law.northwestern.edu

Investor Protection Center

IPC provides assistance to investors with limited income or small dollar claims who are unable to obtain legal representation.

J. Samuel Tenenbaum, Director
312.503.0210; fax 312.503.8977;
Investor-Protection@law.northwestern.edu

Small Business Opportunity Center

SBOC is a student-based clinical program providing affordable legal assistance to entrepreneurs, start-ups, and not-for-profit organizations.

Thomas H. Morsch, Hochberg Family Director
312.503.0321; fax 312.503.8977;
small-business@law.northwestern.edu

To make a gift to the clinic or one of its centers, please visit www.law.northwestern.edu/giving.