

NORTHWESTERN UNIVERSITY SCHOOL OF LAW

LEGAL CLINIC



News & Notes

Spring 1993

INTRODUCTION

The Clinic has long been involved in the representation of children and families in the Juvenile Court of Cook County. Members of our Clinic staff who have practiced there over the years have always been dissatisfied with the administration of the Court and the quality of many of the judges assigned to the Court. It has been apparent for years that the Juvenile Court was the lowest priority for the Circuit Court of Cook County. As the result of the Circuit Court's neglect of the Juvenile Court, Juvenile Court judges have case loads ranging from 400 on the delinquency side to 3,000 on the abuse and neglect side. The combination of overwhelming caseloads and lack of commitment on the part of the Circuit Court and the County made the Juvenile Court an almost impossible place in which to effectively represent clients.

In a presentation I made to the Law School's Visiting Committee two years ago, I proposed that the Law School "adopt" the Juvenile Court in order to improve its performance. Based upon the Circuit Court's performance with respect to the Juvenile Court during the last 30 years, I thought that the Circuit Court might well be willing to make an admission to the charge of neglect of the Juvenile Court and to submit to an agreed order terminating its "parental" rights over the Juvenile Court. In this presentation, I argued that if, as expected, the Circuit Court was not willing to surrender parental authority, a law school could and should play a role in helping to save and to improve such a vital legal institution as the Juvenile Court of Cook County.

The Clinic has undertaken just such a project with the creation of its Children and Family Justice Center, directed by Bernardine Dohrn, who coordinates the Center's organizational, research, and fundraising activities. The Center is funded by the MacArthur Foundation, by the lawyers Trust Fund of Illinois, and by the Chicago Community Trust. The Center is a division of the Legal Clinic, whose lawyers supervise students on Juvenile Court cases. The Center's staff includes three attorneys working with parents to assist in family reunification in abuse and neglect cases and will soon include two attorneys representing children in delinquency cases. (This will bring the size of the Clinic to thirteen supervising and teaching attorneys.) The premise underlying the creation of the Center and its involvement, through representation of parties, in the day-to-day operation of the Juvenile Court, is that meaningful solutions to the problems of the Juvenile Court can only be the result of a research and policy project's hands-on experience within the Court.

Recent activities of Clinic lawyers in support of Juvenile Court reform described above have included participation in the drafting of court rules to govern abuse and neglect proceedings, chairing the Chicago Bar Association's Juvenile Law Committee, organizing a successful effort to keep the Juvenile Detention Center's School functioning during the summer, testifying before a state legislative sub-committee on the desirability of giving the Juvenile Court more power to decide which juveniles should be tried as adults, and participating in panels assigned to assist the Department of Children and Family Services in complying with court ordered reorganization.

The involvement of the Clinic in this reform effort provides wonderful opportunities for law students to be involved both in the representation of individual clients and to see the fruit of their labor embodied in systemic reform. We hope to mobilize our very talented and dedicated law students to assist us in this reform effort and to interest them in staying involved in the representation of children and families in Juvenile Court.

We also hope to demonstrate that a law school clinical program can play an effective role in helping to improve the legal institutions with which Clinic students and faculty interact. This is the kind of research activity for which law school clinical programs are particularly suited.

Of course, the Clinic remains involved on a number of other fronts. As we describe to you in this newsletter, we now have attorneys practicing in a range of other areas including special education, landlord/tenant, asylum, unemployment insurance, death penalty, divorce reform and criminal work. We have had around sixty students involved in the Clinic each term and hope to enroll even more next semester. We hope you will share our excitement about the Clinic's development this past year and our many plans for the future.

Tom Geraghty

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CLINIC'S PROJECT TO DETER DIVORCE ATTORNEYS' FINANCIAL AND SEXUAL EXPLOITATION OF THEIR CLIENTS

In 1988 the Clinic filed an action for breach of fiduciary duty on behalf of a woman who submitted to her attorney's sexual advances for fear that her resistance would doom her case. The legal system was less than sympathetic to her plight. The courts upheld the prominent attorney's motion for a secrecy order and dismissed the case on the basis of a legal standard that gives far greater protection to attorneys who exploit their clients sexually than it gives to attorneys who exploit their clients financially. The attorney disciplinary agency was no more responsive, dismissing the client's complaint because she could not corroborate the disputed sexual relationship and, therefore, lacked the clear and convincing evidence needed to vote a complaint. The Clinic also had to defend itself against a lawsuit, now dismissed, alleging our intentional interference with the divorce attorney's client relations as well as fend off the attorney's unsuccessful attempts to have prominent alumni and others pressure the Law School to take us off the case.

Although it was not our original intent to take more cases involving divorce attorneys, the press coverage of our sexual coercion suit resulted in calls from many other women reporting mistreatment by their divorce attorneys. Although some have complained of sexual harassment, the greater number have been victims of fraudulent or oppressive fee practices. These practices include threats to withdraw just before trial in order force clients' consent to unjustified fee judgments, failure to disclose the basis for fees, failure to seek fees from the wealthier spouse, and, most common, fee demands that are grossly excessive. In light of the private bar's disinclination to take on cases of this nature, we have thus far taken on the representation of nine women who have been exploited by their divorce attorneys.

To date, our litigation has had mixed success. Judges on both trial and appellate levels have been reluctant to reduce fees as a result of attorneys' ethical breaches. As a result, we are now exploring legislative strategies for attacking the systemic ways in which the law in Illinois enables divorce lawyers to take unfair advantage of their clients. In light of two bar associations' intervention against us in an Illinois Supreme Court case in which we tried unsuccessfully to extend clients' protection against attorney overreaching, the development of the support necessary for effecting the needed statutory reforms will be a challenging task.

Our cases in this area have been effective for clinical instruction because they involve legal ethics, the dynamics of attorney-client relations, the development of law reform strategies and the litigation of bitterly contested issues. Unfortunately, they have also been extremely time-consuming as well as quite frustrating because of both the general indifference of the courts and disciplinary authorities and the resistance of the organized bar. How far we shall press our efforts in this field in the future will depend largely on how successful we are in creating more support for our goals in both the bar and the community.

UPDATE FROM THE CHILDREN AND FAMILY JUSTICE CENTER

The Children & Family Justice Center's Advisory Board invited the Honorable Sophia Hall, presiding judge of the Juvenile Division of the Circuit Court of Cook County, to speak with it about Juvenile Court issues at its autumn meeting. Judge Hall is a Northwestern Law School alumna and member of the Visiting Committee, and the first woman presiding judge in Cook County. This winter the Center co-sponsored a reception for Judge Hall on the first anniversary of her appointment to Juvenile Court, held at the Hull House Museum. In addition, the Children's Advocacy Council, composed of forty professionals and practitioners in health care, education, mental health, drug treatment and community organizations who are involved with children and family issues in Cook County, over the past eighteen months, has been developed to address issues of common concern.

Three recent projects exemplify the Center's strategy to combine direct service, research, policy and advocacy. First, with Center involvement, the Juvenile Law Committee of the Chicago Bar Association obtained the CBA Governing Board's approval of a resolution requesting that the Cook County Board fully fund staffing for the new \$160 million dollar addition to the Juvenile Court building, scheduled to be completed on Labor Day, 1993. Currently, there is no budget allocation for staffing the expanded building or to relieve judges' neglect caseloads of 2,000 - 3,000 cases.

Second, research on the outcomes for juveniles arrested under two Illinois automatic transfer statutes, carried out in 1992 by Rosemary Gullikson, a first year law student, was presented as evidence in a court case which resulted in a ruling that the Illinois statute was unconstitutional (*People v. Lawrence*). That same research was presented this spring to a subcommittee of the Illinois House Judiciary Committee considering new legislation.

Third, teachers in the Juvenile Temporary Detention Center school received notice that their school was being cutback from a full school year to a 39-week year. In response the Center, the Citizen's Committee of the Juvenile Court, the Lawyers Committee for Civil Rights and the Legal

Assistance Foundation, drafted a position statement which obtained the support of 60 organizations and 120 individuals within ten days. A 47-week school year was subsequently restored.

CLINIC UPGRADES REFERRAL SERVICES...BUT MORE HELP IS NEEDED

Responding to the perception that the Clinic staff, particularly the receptionist, were spending a disproportionate amount of their time fielding calls seeking legal help, the Clinic has implemented an experimental law student-run referral program. This semester the Clinic has hired three third year students -- Karen Davis, Laura Lane and Devan Padmanabhan -- who work up to seven hours each week in the Clinic handling referral calls. These students are assisted by a fourth first year student -- Devri Glick -- who handles the inquiries we receive from Spanish-speaking callers.

In order to develop a reliable picture of the volume and type of inquiries we receive, our receptionist now takes messages from callers seeking legal help, and the students attempt to return those calls. The students identify the nature of the problem and determine whether the case is one that might be handled by the Clinic. When a case might be appropriate for the Clinic, the referral students conduct a short intake interview and refer the matter to the appropriate Clinic attorney who will either pursue the case further or return the case to the students with instructions to refer the caller elsewhere. In the vast majority of cases, however, the callers' cases are not appropriate for the Clinic. Then the students work from their updated referral information list to refer the caller to an agency that might realistically be expected to take their case.

The students are handling upwards of twenty to thirty calls each day. They have spent a great deal of time working with the Clinic's attorneys and calling agencies around the city trying to develop referrals that will actually be able to help the callers. The goal, of course, is to provide callers with meaningful referrals rather than sending them from agency to agency with little hope of success.

However, the students have found that the single largest group of callers to the Clinic is the same group they are least able to assist: people seeking assistance with divorce and child-custody matters. While the very poorest of this group is eligible for assistance from the Legal Assistance Foundation and the Legal Aid Bureau (although the wait-list at those places can run close to one year) as well as from Chicago Volunteer Legal Services, the vast majority of the callers are low-income people just above the Legal Services Corporation income eligibility requirements. These people must turn to the private legal market, but find that the cost of the available services is prohibitive and that identifying quality private attorneys is a major obstacle. In fact, many callers have reported very bad experiences with private attorneys who took their money and then failed to assist with their cases in spite of regular calls and requests from their clients. Many of the callers are willing and able to pay a small fee, but cannot pay the large up-front costs required by so many attorneys. The students have been trying to identify reputable attorneys who are willing to handle some of these family law matters. ***If you are interested in having your name added to the divorce, separation and custody referral list, please get in touch with us at the Clinic through Ruth Alderman, Clinic Manager, 357 East Chicago Avenue, Chicago, IL 60611, phone: 312-503-0220.***

NORTHWESTERN SUCCEEDS AT NATIONAL TRIAL COMPETITION

For the second year in a row, the Northwestern School of Law trial team has earned praise for its performance at the National Trial Competition. Last year the trial team, made up of students Judy Craig, Mark Niemeyer, and Katie Kennelly, and supervised by Jim Epstein, Jon King, Jim Perkins, Jon Quinn, and Sheldon Zenner, won the entire National Championship competition after conducting six trials in three days. This year the trial team, composed of students Stephanie Shulak, Tony White and Dan Brake and supervised by Messrs. King, Quinn and Perkins joined by Susan Feibus and John Hines, made it into the quarter-final rounds, making it one of the top eight teams in the country. Both teams won the regional championships in Chicago, beating over twenty other midwestern teams -- which have produced three of the last six national champions -- to qualify for the national finals. In the finals, both teams earned rave reviews from their evaluators, all members of the American College of Trial Lawyers. According to one of the judges of this year's team, which lost by only a narrow margin in the quarter-final round, the team participated in the "finest round" they had yet seen.

LAW SCHOOL WINS TRIAL ADVOCACY AWARD

The School of Law has been awarded the 1992 Emil Gumpert Award for Excellence in the Teaching of Trial Advocacy. The award is given by the American College of Trial Lawyers ("ACTL"), and included a \$25,000 grant to Northwestern's Program on Advocacy and Professionalism. This prize money has been used to fund the travel expenses to the National Trial Competition for our Trial Team competitors and coaches. The process for evaluating Northwestern's application for the award included on-site visits by two evaluators from the ACTL who submitted reports to the Gumpert Award Committee. According to the committee chair, the evaluators "found that the program is superior and that the administration has a real dedication to the teaching of...trial advocacy." The Program on Advocacy and Professionalism is directed by Professor Steve Lubet who has structured the program to concentrate on the intellectual considerations of trial advocacy. Rather than only teaching the students how to stand or how to ask questions, the program seeks to teach the students to think about underlying issues, the theories on which a case can be tried, and the ethical limitations on the manner in which a case can be presented.

SCHOOL OF LAW WINS GRANT TO DEVELOP COURSE IN TRIAL ADVOCACY AND LEGAL ETHICS

The Northwestern University School of Law has been awarded a grant of \$100,000 from the W.M. Keck Foundation to develop a new course in Trial Advocacy and Legal Ethics. Steve Lubet took the lead in developing this proposal along with Bob Burns and Tom Geraghty. The goal of the new course is to improve the understanding of professional ethics and to explore goals for improved standards. The program plans to engage students in the practical resolution of ethical dilemmas through the development of new material that can be effectively utilized in simulation based ethics classes.

STUDENT REPORTS: 1992-1993

GABE FUENTES, '93: The Clinic's defense of a teen-ager charged with murder is an example of how the Juvenile Court Project has exposed Clinic students to a broad spectrum of legal issues. But the case also has keenly impressed all of us with the human aspects of a criminal case.

The state has asked the Juvenile Court to transfer our client to the adult system, where he would face the full force of criminal sentencing for adults. Accordingly, the transfer hearing probably will be the defining event in his future.

Clinic Director Tom Geraghty and Clinic Fellow Steve Drizin have supervised a group that includes myself, Mark Bradley, Andrew Mottaz, Peter Warman, Lynn Weisberg and David Fisher in an effort to explore every possible manner of defending against the state's transfer motion. We have discovered that properly preparing a client for a transfer hearing entails spending many hours talking to the client about what he wants to make of his life. To better persuade a judge that the client can stay on the straight and narrow, we are trying to persuade the client himself.

Third-year student Lynn Weisberg especially has worked at building a relationship of trust and encouragement with the client. Mark Bradley and Peter Warman have worked to locate and interview witnesses and argue some important procedural issues in the case. Andrew Mottaz is exploring possible treatment programs and other alternatives to adult incarceration. And David Fisher and myself have concentrated on some unusual medical issues, including a challenge to an Illinois evidentiary privilege that appears to bar criminal defendants from discovering records of a hospital's internal review of its care of a patient, even when that patient is the victim in a murder case in which cause of death is at issue.

In general, the gravity of our client's interest has driven virtually every move we have made. Some of us have privately admitted to aspiring to become prosecutors at some point in our careers. I am convinced that anyone who considers working on the prosecution ought to do some defense work first. Perhaps the Clinic will help shape not only zealous advocates for the defense, but some fairer prosecutors as well.

DAVID FISHER, '94: If anyone was of the opinion that working in a legal clinic was only for those who were confident that they were going to devote their lives to public interest, they only need to look to me to dispel those beliefs. When I entered law school, and even after my first year here, my focus in school and in anticipation of my career was clearly on corporate law. I doubt I ever envisioned myself doing anything besides working on "deals" at a large law firm in the Loop. Certainly, the possibility of working in a legal clinic seemed so remote as to be absurd. However, when I was signing up for classes for the fall semester of my second year, it dawned on me that this may be my only chance to be exposed to this type of work. Not being afraid to expand my horizons somewhat (and realizing there was no final exam for Clinic), I registered for the class. In my opinion, that decision was one of the wisest ones I have ever made. I am not saying that I have been "born-again" in a way that will lead me to devote the remainder of my life solely to public interest law. However, since working in the Northwestern Legal Clinic, I have developed a devotion to public interest work and I am now certain that pro bono activities will be an important and significant part of the rest of my law career.

One of the key reasons why I have developed such an inclination for clinical work is because I found an area in which I was interested. There is surely something to be said for being diverse in one's experiences. However, with the demands, both time and emotional, that this kind of work can impose on one, it is all the more important to be interested in and devoted to the work you are doing. For me, that area was criminal law. I am not sure why criminal law, but I gather that a large part of the reason stems from its vast differences from "corporate law."

My first exposure to criminal law outside of the class room was when I worked on the appeal of a death penalty conviction. I was overwhelmed by the dedication and conviction of those who were working to free this man, who not only did they believe was wrongly convicted but truly believed was innocent. Surrounded by this commitment, it was not long before I, too, became engulfed in the case.

During my past two semesters at the Northwestern Legal Clinic, I have worked in a number of areas ranging from mortgage foreclosures to post-conviction hearings in death penalty cases. However, the bulk of my time has been spent representing two fourteen year olds charged with murder. The main focus has been on their transfer hearings. The issue in these hearings is whether the juveniles should be tried in juvenile court, or should be transferred to adult court and tried as adults. This hearing is often the most critical step for these individuals because, if transferred to adult court, these minors could face sentences of 20 - 60 years, if convicted.

Working on these two cases has taught me more than I could have ever imagined. My work has spanned the entire range, including subpoenaing reports from the police department and medical examiner, working with medical experts on cause-of-death issues, preparing a deposition of a doctor, investigation of witnesses and the crime scene, and researching possible constitutional issues.

Unquestionably, the biggest thrill which has come from this work occurred this March when I was able to go to Washington, D.C. to attend an oral argument in the United States Supreme Court. The case that was being argued was one that I had been working on for one of the professors at Northwestern. It was an incredible learning experience to watch a case develop from the cert petition to the briefs, and finally the oral argument. Hearing such a case argued in front of the highest court of the land by one of your professors was certainly a once-in-a-lifetime experience. Moreover, the ability to understand the arguments the parties were making and the questions the Court was asking likely taught me more about Constitutional law than I could ever hope to learn in a classroom.

Overall, I believe that Clinic is an invaluable experience. Yes, it can be a lot of work at times, but it is easy to become dedicated to this work when you enjoy it and see the good that you can achieve by serving the needy and attempting to make a positive impact on the legal system.

THE CLINIC WELCOMES TWO NEW ATTORNEYS

ANNETTE APPELL: I jumped at the chance to join the staff of the Children and Family Justice Center, but as a NULS and Legal Clinic alumna, it was a bit odd to be back. The night before I was to start, I had one of those student dreams but instead of being unprepared to take the exam, I was unprepared to give the exam. I seem to have come full circle.

My practice has also come full circle. Beside two stints in private practice (one representing corporations at Sonnenschein, Nath and Rosenthal and the other representing civil rights plaintiffs suing corporations at Meites, Frackman, Mulder and Burger), I spent my most rewarding and gut-wrenching time as a lawyer at the Office of the Cook County Public Guardian representing neglected, abused and dependent children in Juvenile Court. Now I am representing the parents in those same types of cases. In both capacities, I have tried to keep the state from tearing apart poor families.

When I worked with the kids, I discovered that nearly every one of them who could express it, loved their parents, brothers, sisters and wanted to be with their families. I also suspected that many of them would be better off with their families given the horrors and dead ends that awaited them in foster care. But I often wondered how the parents felt and what they thought because they were surprisingly silenced by the proceedings. They were rushed into the court room when their cases were called and stood next to their attorneys, rarely uttering a word or betraying a facial expression. No one addressed these parents or sought their input. Even their own attorneys, with staggering caseloads of their own, appeared to have little to say about or for their clients.

The parents' silence made it seem (although intellectually I knew better) as though the kids wanted something they did not have, caring and concerned parents. But what I have discovered in my short time at the Center is that these kids really do have parents who are concerned and are desperate to get their kids back. Their parents are moved to tears when discussing their children. Their faces soften when telling about their children's latest deed and sharpen when criticizing a new haircut. They might spend hours on buses to trains to buses just to visit with their children for one hour, supervised in a small windowless room in some child welfare agency. And they have stories and struggles which go unreported. Their words are thought to be tainted by self-interest, as if the love and concern of parents for their children is less weighty than those of government paid caseworkers and lawyers who barely know the family.

I am delighted to be back advocating for families. I know that strong representation of parents will reveal the voice and humanity of both the parents and their children that is too often left out of Juvenile Court proceedings and the best interest equation.

ZELDA HARRIS: Zelda Harris joined the Clinic last August as a Clinical Fellow working with the Family Advocacy Project of the Clinic's Children and Family Justice Center. Zelda is a 1991 graduate of Washington University School of Law in St. Louis. Prior to joining the Clinic, Zelda worked as a staff attorney at Land of Lincoln Legal Assistance Foundation in Alton, Illinois where she specialized in child custody, divorce, domestic violence and civil litigation. Zelda serves on the Juvenile Committee of the Chicago Bar Association and sits on the Advisory Council and the Board of the Children and Family Justice Center. She served as an adjunct faculty member for the School of Law's fall semester Clinical Trial Advocacy course. Zelda recently attended the Annual Conference of the Children's Defense Fund in Washington, D.C.

CLINIC FACULTY NEWS

*In addition to supervising students in the representation of clients in unemployment insurance, landlord/tenant, and political asylum cases, **Alberto Benitez** was an assistant team leader in this year's midwest regional session of the National Institute for Trial Advocacy. He also was a brief grader and judge in the law school's moot court competition in the spring 1993 semester. Alberto was instrumental in obtaining a Legal Services Corporation grant which supports the delivery of legal services to Chicago's Spanish speaking community. On October 22, 1992, Alberto spoke on "Critical Legal Studies in Practice", a discussion presented by the law school's Critical Legal Studies Group. Also, in the fall of 1992 Alberto testified at a public hearing, held at Northwestern, against the proposed closing of the 18th Street Office of the Legal Assistance Foundation of Chicago. He was formerly a staff attorney at that office.

***Cynthia Grant Bowman** has been on leave during part of the school year as the Stanford Clinton Sr. Research Professor. During this period, she published an article on the street harassment of women in the *Harvard Law Review* and has spoken widely on the sexual harassment of women to schools, community groups, and in the media. She is using her time on leave to prepare, with co-authors Mary Becker of the University of Chicago Law School and Morrison Torrey of DePaul Law School, a book on feminist jurisprudence for West Publishing Company, which is now slated to be published at the end of 1993. Cynthia also has published an article entitled "The Arrest Experiments: A Feminist Critique," in the *Journal of Criminal Law and Criminology* symposium

volume on the response of police to domestic violence cases. In December 1992, she appeared on a panel concerning pornography and women's rights at a benefit for the arts organization "N.A.M.E." in Chicago. Also in December, Cynthia was interviewed on radio concerning legal remedies for street harassment of women; articles about her research on this subject also appeared in the *Chicago Tribune* and the *Chicago Daily Law Bulletin*. On February 16, 1993, she gave a lecture for the Department of Psychiatry at Evanston Hospital on the law of sexual harassment. For her contributions to both academic and civil life, Cynthia was selected by *Today's Chicago Woman* magazine as one of "100 Women To Watch in 1993" in its 1992 end-of-the-year issue.

*In addition to his work as a Clinic attorney, **Bruce Boyer** has assumed responsibility as the Supervising Attorney of the Children and Family Justice Center's Family Advocacy Project. The Project's three attorneys now represent approximately thirty families with children involved in Juvenile Court proceedings arising from charges of neglect or abuse. Bruce has continued his work with a Court-sponsored effort to reform the rules of practice governing abuse and neglect cases in Cook County. Through his work as a member of the Court's Rules and Forms Committee, he has participated in a nine-month effort to write and revise rules and form orders defining practice in the Juvenile Court. Bruce also helped to prepare and present to a group of some 250 attorneys a day-long training seminar on the new rules of practice, which were implemented on January 1, 1993. He also

remains active with the Chicago Council of Lawyers as a member of its Board of Directors and its Juvenile Law Committee, which has recently undertaken an evaluation of Juvenile Court judges in conjunction with the Children and Family Justice Center, to be completed in the fall of 1993. Bruce published an article in the May-June 1992 issue of *Youth Law News* on kinship care and on the successful resolution of a class action lawsuit against DCFS, based on its treatment of extended family members of children in foster care.

***Bob Burns** argued and won an appeal in the United States Court of Appeals for the Seventh Circuit in a race discrimination case against the Chief of Police of the City of Wheeling. Last year a federal jury had awarded the plaintiff, a black police officer, \$40,000 for on-the-job harassment. The defendant then appealed that award, which the Appeals Court affirmed. Shortly after remand the defendants paid out the plaintiff's award and a substantial attorney's fee award under the Civil Rights Attorney's Fee Act. The defendants also agreed to a permanent injunction in a second Civil Rights action forbidding them from infringing on the plaintiff's First Amendment Rights to discuss racism in the Wheeling Police Department with the press.

***During** the past year, Children and Family Justice Center Director **Bernardine Dohrn** gave a keynote address at a UNICEF-Norwegian Child Study Center international conference on the rights of children in Bergen, Norway. That address will appear as an article in the ABA *Criminal Justice* journal in Summer, 1993. In addition, "The Plaintive, Plaintiff Children: The Meaning of *Suter v. Artist M.* appearing in the *Civil Rights Litigation*

Handbook, Vol. 8, by Bernardine, assesses the impact of a major Supreme Court decision involving child welfare, which originated as a class action case on behalf of neglected and abused children.

***Steven Drizin** is completing his second year as a Clinical Fellow at the Northwestern University Legal Clinic. While at the Clinic, he has specialized in representing clients in the Juvenile Division of the Circuit Court of Cook County. He has represented juveniles in delinquency cases as well as parents and relatives in abuse and neglect cases. He has also worked on immigration matters, representing clients seeking political asylum in deportation proceedings in the Immigration Court and in interviews with asylum officers of the Immigration and Naturalization Service. He and his students have also represented clients in proceedings in the Domestic Relations and Probate Divisions of the Circuit Court. Beginning in May 1993, he will concentrate on juvenile delinquency matters as a Supervising Attorney of the Juvenile Advocacy Division of the Children and Family Justice Center.

***John Elson** planned and moderated the program of the Teaching Methods Section of the American Association of Law Schools at its annual meeting in January in San Francisco. The program featured innovative methods for using classroom courses to teach law students approaches lawyers use in practice to solve problems. At the meeting John was elected chair of the Teaching Methods Section. John was a member of ABA site inspection teams for the University of Wisconsin School of Law in Spring, 1992 and Temple University School of Law in Winter, 1993. As Chair of the Skills

Training Committee and a member of the Bar Admissions Committee of the ABA's Section of Legal Education and Admissions to the Bar, John has been working with lawyers, judges and academics in developing ways to implement the findings of the ABA's McCrate Commission Report regarding the need to improve the preparation of lawyers for the practice of law. As part of his work in the Legal Clinic this Fall, John argued a case in the Illinois Supreme Court seeking greater protection of divorce clients who are being sued for fees by the attorneys representing them. John and his Clinic students also recently filed a federal court suit seeking appropriate educational services for youthful pre-trial detainees at the Cook County Jail.

***Tom Geraghty** recently retired as chair of the Chicago Bar Association's Juvenile Law Committee. He continues to supervise students on juvenile and death penalty cases. He is a member of the Accreditation Committee of the Association of American Law Schools. He directs the NITA trial advocacy and negotiation courses held at Northwestern each year. His most pressing assignment is to find space for all of the lawyers and students now involved in the clinical program.

***Nancy Gibson** is on maternity leave this semester after giving birth to almost ten pounds of Peter MacKenzie Bailinson on December 25, 1992. Nancy will return to the Clinic in May. In 1992 Nancy served as a Litigation Trainer for the Office of the Public Guardian and as a NITA Faculty Assistant Team Leader.

***Laura Miller** taught at the Chicago Bar Association's Starter Course on

Special Education Law to Parents' Attorneys in the spring. In the fall, she gave the opening remarks and was a panelist in the First Annual Conference on Legal Problems of Educating Children with Attention Deficit Disorder, co-sponsored by the Law School and CHADD, a national organization which addresses the problems of children with attention deficit disorder. She is an active member of the Attorney General's Disabled Persons' Advisory Committee, and recently became a member of the Advocates' Advisory Council to the Children and Family Justice Center and the Advisory Board to the National-Louis University Department of Special Education.

SELECTED CLINIC CASES

Abuse and Neglect

Three Clinic attorneys working with the Children and Family Justice Center now represent approximately thirty parents involved in Juvenile Court proceedings charging them with neglect or abuse. This project seeks to afford quality representation to parents in a setting that often overlooks the importance of family ties in seeking solutions to the complicated problems faced by poor families in crisis. From a philosophy centered on family preservation, the project seeks to advocate for solutions that address problems from within rather than outside of the family context, but that at the same time protect the needs and interests of the children involved. The project also seeks to apply the benefit of its experiences in Juvenile Court to fashion strategies to improve the quality of justice administered by the Court.

*Aleia B. is a two year-old African-American girl who has been placed in foster care since the age of three months as, at the time of her birth, both of her parents were incarcerated. Aleia has always resided with the same foster parents who are white. Aleia currently recognizes her foster parents as her natural parents. The Children and Family Justice Center provides representation to Aleia's natural father, Mr. B. who is committed to obtaining reunification with Aleia. Mr. B. is following all recommendations from the Illinois Department of Children and Family Services (IDCFS) and visits with Aleia on a weekly basis. Mr. B. must complete therapy before the IDCFS can recommend that Aleia be returned to her father. However, the IDCFS has stated that the return home of Aleia to Mr. B. is the long term goal. Until she can be returned to him permanently, Mr. B. would like Aleia to be taken out of foster care and placed with his mother in Charlotte, North Carolina. The IDCFS supports placement of Aleia with her grandmother who has complied with all of their requests and all court orders.

At the most recent court hearing the judge denied the state's request for a directed verdict and in so ruling stated that Mr. B. had met his burden of proof in showing that it is in the best interest of Aleia to have an extended visit her natural grandmother prior to placement. The *Guardian Ad Litem* and the foster parents object to Aleia's visit or placement with her grandmother claiming that Aleia *may* suffer irreparable emotional harm if she is separated from the foster parents to whom she has bonded. The issue put squarely before the court is whether the bond developed between Aleia and her foster parents outweighs Aleia's, Mr. B.'s and

the grandmother's right to associate with one another absent evidence of harm. The judge is required to make a decision that is in the "best interest" of Aleia. (Students: Jennifer Cohn (3L), Betsy Katten (2L), and Todd Schiltz (3L).)

*We are representing Josephine H. in her attempt to regain custody of her daughter. Ms. H. was incarcerated in Alabama for forgery. Her daughter was placed with Josephine's brother and sister-in-law in the Chicago area until Josephine was released from prison. Nevertheless, when she was released, her brother and sister-in-law were able to maneuver the Alabama court to give them custody. In order to be close to her daughter, Ms. H. moved up to Chicago with her other children where she is attending college and has entered a housing program so that she will eventually be able to buy her own home. Unfortunately, her brother and sister-in-law are making it very difficult for Josephine to visit her daughter. Although her case was transferred from Alabama to the Cook County Juvenile Court, the court never opened a case and Ms. H. has been trying for over two years to find someone to help her get her case heard. Through diligent and creative student efforts, we were able to track down her case and plan to draft a complaint so that we can institute proceedings for the return of Josephine's daughter. (Student: Bryan Segal.)

*After regaining custody of her son Joey from DCFS, Angela S. voluntarily gave him to her godmother for the specific purpose of adoption as Ms. S.'s other children were living with her, and Ms. S. believed it was in his best interest to be with his siblings. Subsequently, her godmother gave Joey to DCFS and he has

since been placed in at least three separate foster homes. Ms. S. is very concerned about the harm to Joey caused by his multiple placements and is seeking permanency for him. We are representing Ms. S. in her attempt to revoke her consent to the adoption of Joey because it was conditioned on her godmother adopting him. Ms. S. never consented to DCFS placing him with strangers and certainly would rather have him home or with other relatives. We are briefing the issue of consent and will argue before the court shortly. (Students: Joshua Avigad and Tom Miles.)

*Zoraida M. is the Puerto Rican mother of five children living in foster care with their maternal grandmother in Puerto Rico. The Juvenile Court awarded temporary custody of the children to DCFS in January 1991, soon after Ms. M. and her children moved to Chicago. She returned to Puerto Rico in April 1992, and DCFS moved the children to their grandmother's home in Puerto Rico shortly thereafter. Despite the fact that the case was filed over two years ago, the court has not yet held a trial on the charges.

Our principal involvement in this case has been in an effort to allow the children to remain in Puerto Rico, where they were born and raised and where all of their family members live. The dispute over the children's placement arose after the Office of the Public Guardian, in an effort to punish DCFS for claimed irregularities in the placement process, sought and won an order directing that the children be returned to Chicago. After multiple hearings conducted over many months, we persuaded the judge to reverse her earlier position and allow the children to remain

with their grandmother and family members.

We are now preparing to defend Ms. M. at trial. In addition, we have been involved in several vigorously contested and ongoing issues, both in the trial court and on appeal, relating to the extent of the Court's supervisory power over DCFS and the appropriateness of remarks by the trial judge critical of Hispanic caseworkers.

Civil Rights

*Sandra P. is the mother of Jimmie P., a nine year old boy. She and Jimmie's father are divorced. By all accounts, Sandra is a concerned and caring mother who interacts well with her child. However, because Sandra is a lesbian, she not only lost custody of Jimmie, but also lost the right to visit him, unless supervised by a Department of Children and Family Services caseworker. The trial court judge found that the mere fact of her being a lesbian "seriously endangered" the child, thereby entitling the court to restrict visitation. The trial record is filled with hostile remarks and stereotypes about homosexuals. We are representing Sandra in the appeal. The case is fully briefed, and we are awaiting oral argument in the Illinois Appellate Court. Third year student Dave Nordwall is working on this case with attorneys Steve Drizin and Laura Miller.

Criminal Defense

*We are representing Eric O., a 21 year old man, who is charged with the attempted robbery and aggravated battery of a woman on a Chicago "L" platform. Although an attack clearly took place, Eric was not one of the perpetrators. Two

juveniles have already pled guilty to the attack; their versions of the incident support Eric's innocence. Eric was himself the victim of a gang shooting three years ago. He suffered a gun shot wound to the neck, which left him permanently disabled. He lost use of his right arm. The gun shot wound also caused severe Aphasia, a condition which makes it difficult for him to understand or use language. Despite his injuries, Eric graduated from high school and completed a vocational program. He continues to receive outpatient rehabilitation services. Third year law students Andrew Cores and Steve Berry, along with attorneys Laura Miller and Steve Drizin, are representing Eric in the criminal case and are also assisting him in further pursuing his educational goals. They are in the process of investigating the incident and preparing for a suppression hearing.

Death Penalty

*The Clinic represents a condemned prisoner who claims that he was tortured into confessing by Area 2 police officers who used electro-shock and suffocation. Arguments on the State's motion to dismiss will be heard in April.

*In another death penalty case, the Clinic succeeded in vacating a death sentence. A new sentencing hearing will be held in May. In his post-conviction petition, our client claimed that the sentencing judge extorted money from the defendant's family in order not to impose the death penalty, but later returned the money when he learned of the Operation Greyhound investigation. The judge then found the defendant guilty and imposed the sentence of death in order to cover-up his attempted extortion.

Delinquency

The Clinic's representation of juveniles in delinquency cases is part of its overall project to reform the Juvenile Court. In selecting cases, the Clinic is seeking to reintroduce into the Juvenile Court the rehabilitative model which was the original mission of the Court. We represent juveniles charged with both the less serious offenses and the more serious offenses. With respect to the less serious offenses, we seek to demonstrate that many of these cases can be or should have been diverted from the Juvenile Court in the first place. With respect to the more serious offenses, we aim to ensure that these juveniles receive and benefit from the rehabilitative services provided by the Juvenile Court, and we seek to aid the probation department in finding suitable alternatives to the placement in the Department of Corrections for those adjudicated delinquent. Finally, by representing juveniles with educational disabilities, we seek to provide services which will address many of our clients' educational deficits which often are closely related to the behavior that originally brought them into the court system.

*Prior to our involvement, Kyreece S., a ten year old child, entered an admission to one charge of reckless conduct and one charge of unlawful possession of a hypodermic syringe in exchange for an agreement that he would serve one year of probation and 30 days in the Juvenile Detention Center. Steve Drizin and his students substituted for the Public Defender, filed a motion to vacate the admissions and a motion for non-adjudication of wardship. After the Judge denied our motions, we represented Kyreece at his dispositional hearing and

were able to convince the judge not to sentence Kyreece to any time in the Detention Center.

Kyreece has been enrolled in the Early Offenders Program of the Juvenile Probation Department and is doing well with the individualized attention that he receives there. Utilizing the expertise of Clinic Staff Attorney Laura Miller, who works in the Clinic's Special Education Project, we have also represented Kyreece, who has received failing grades in school and whose test results indicate reading, verbal and math skills 2.5-4.5 years below grade level, in his efforts to obtain special education services.

After we obtained a wide variety of intensive special education services to deal with Kyreece's learning disabilities, we returned to the Juvenile Court to terminate Kyreece's probation and to vacate his finding of delinquency. Two students, one of Laura's and one of Steve's, conducted the hearing, which included both direct and redirect examinations of several witnesses and closing arguments. The judge terminated Kyreece's probation but refused to vacate the finding.

*Ryan H. is a fourteen year old who was charged in two separate delinquency petitions, one alleging that he had unlawfully possessed crack cocaine, and the other alleging that he had stolen a motor vehicle. On the date that Ryan's case was to be screened in court, we met with the Assistant State's Attorney and the Probation Officer. Because these were Ryan's first two offenses, we were able to convince the Assistant State's Attorney to divert his case from the Juvenile Court. The Assistant State's Attorney and the Probation Department agreed not to screen

Ryan's cases into court on the condition that Ryan attend and complete the State's Attorney's Program for the Prevention of Drug Abuse and regularly attend counseling to address some of his behavioral problems. Ryan successfully completed the drug school, and we were able to find therapy for him.

*Charles C. is a sixteen year old who was adjudicated delinquent for sexually assaulting another minor. After the adjudication, Charles was placed at the Illinois State Psychiatric Institute ("ISPI") for an evaluation. We were called by Charles' mother to represent Charles at a post-disposition hearing. At the hearing, ISPI petitioned the Court to discharge Charles from their care and place him in the Juvenile Detention Center until a suitable placement in a Sexual Offender Program could be located. We substituted for the Public Defender and a student argued that Charles should remain at ISPI until he was placed in an offender program because he would receive no therapy or other services if he was placed in the Detention Center. The trial court ordered that Charles remain at ISPI pending placement in an offender program. We are also representing Charles in administrative proceedings concerning the funding of his placement, and we are working with the Probation Department to find a suitable placement for him.

Immigration and Asylum

Working on cases referred by the Midwest Immigrants Rights Center ("MIRC"), several of Steve Drizin's and Alberto Benitez's students have represented Haitian, Guatemalan, Nicaraguan and Romanian refugees in political asylum cases before Asylum Officers and

Immigration Judges. Brief descriptions of a few of these cases are contained below.

Hector F.: Hector F. is a Guatemalan man who fled Guatemala after receiving several anonymous threats to his life and after several armed men, dressed in civilian clothes, attempted to abduct him. Hector had been active in party politics and ran for Mayor of his town on a campaign that exposed the corruption of the former mayor. In addition, Hector had refused the military's request to serve as the Military Commissioner of his town. Two students met with Hector for numerous hours and filed a supplementary asylum application prior to his deportation hearing along with a memorandum of law documenting current conditions in Guatemala and corroborating many of the details in Hector's application. At the hearing, the students presented an expert witness who testified why someone like Hector might be at risk if he returned to Guatemala. After the hearing, the students filed a written closing argument addressing several issues raised by the judge including what effect, if any, did Hector's return to Guatemala to visit his ailing mother, have on his claim for asylum. In January 1993, the immigration judge issued a written opinion granting Hector asylum. The INS has not appealed the decision.

Vasile G.: Vasile is a Romanian man in his mid-twenties who fled Romania shortly after the coup d'etat in which the Romanian leader Ceausescu was deposed. Vasile was persecuted in Romania by members of the Securitate, the Romanian secret police, for his refusal to join the Communist Party and for his insistence that the Communist Party officers in his town return his family's land which they had seized as part of Ceausescu's

"collectivization" programs. The case is currently in deportation proceedings. One student has examined Vasile and the other student will deliver the closing argument when the case resumes in April. Students have drafted and filed a supplementary affidavit and a lengthy memorandum of law detailing how country conditions have not improved substantially since the so-called "Revolution" of 1989.

Marie L.: Marie L. is a young Haitian woman who was beaten and raped by members of the Haitian military forces who were looking for her brother, a known supporter of deposed President Aristide. A Clinic student met with Marie several times to prepare her for her interview with the asylum officer. The student represented Marie during the interview and argued to the officer why Marie should be granted political asylum. The interview took place in October 1992, and we are still awaiting notification from the INS.

Landlord/Tenant

*Catriona H., a tenant in a building in the Rogers Park neighborhood in Chicago, was involved in a tenants' union trying to force the landlord to make needed repairs to the building. She always paid her rent, however, and had receipts to prove it. The landlord served her with an eviction notice, and subsequently filed an eviction lawsuit against her in circuit court. The client felt that the suit was filed in retaliation for her organizing activities, although the landlord maintained that he merely needed the apartment because he wanted to rehab it. Ms. H. is represented by Amalia Rioja (3L) and Teme Feldman (3L) who prepared written interrogatories and requests for the production of

documents, which were served on the landlord's attorney. This discovery was designed to establish the retaliatory nature of the eviction, which would in turn lay the groundwork for a counterclaim to that effect. However, in the course of the litigation they discovered that the landlord had accepted rent from Ms. H. after service of the eviction notice, thus waiving the legal effect of the notice. This was brought to the attention of the landlord's attorney, who voluntarily dismissed the lawsuit.

Parole and Pardon

*On behalf of Homer H., who is in prison, Cynthia Bowman's students first performed a parole hearing before the Illinois Prisoner Review Board and then filed suit to challenge the procedures used by the Board in this type of hearing, as well as the practice of hearing all such challenges only by way of the extraordinary writ of mandamus, instead of by means of an administrative review which would reach the underlying record upon which the Board based its decision.

Special Education

The Special Education Project provides legal services to children with disabilities who are not receiving adequate educational services. Through the use of negotiation, administrative hearings, and state and federal court actions, Project students assist individual clients in obtaining services guaranteed by federal and state law to children with disabilities. Through our representation of individual children, we have discovered system-wide problems, which we address through class action litigation and throughout the class

complaint procedures provided by state and federal agencies.

*Michael H. is a 14 year old boy with emotional problems. In 1990, after years of being moved between foster homes, relatives' homes, and group homes, Michael found a permanent home with his aunt and uncle. In the fall of 1992, he began high school in a rural school district. Michael immediately began to have academic and behavioral problems. Notwithstanding these problems and Michael's long history of emotional problems and special education placements, the district did not provide Michael with any special education testing or services. Michael was expelled in October for a disciplinary infraction. Under the special education laws, children cannot be expelled for behavior caused by their disabilities. Michael's misbehavior was clearly related to his emotional problems. But because the school district had not recognized Michael's disability, it did not feel itself bound by the special education laws. Students Tom Gilson (3L) and Angela Ilusorio (2L), working with Laura Miller, filed an action in federal court seeking Michael's immediate reinstatement in school. Before the case went to a hearing on our motion for a preliminary injunction, the school district readmitted Michael into the district and agreed to provide him with the specialized emotional services which he requires.

*In May 1992, the Special Education Project and Designs For Change, a Chicago-based school reform group, filed a class action lawsuit in federal court on behalf of the 40,000 children with disabilities enrolled in the Chicago Public Schools. That suit, *Corey H. v. Chicago Board of Education*, alleges that the

Chicago Board of Education and the Illinois State Board of Education have violated the federal mandate that children with disabilities be educated in the least restrictive environment appropriate for their needs. Despite the passage in the mid-1970s of the Education of the Handicapped Act and the Rehabilitation Act, both of which require that children with disabilities be educated in the least restrictive environment, thousands of Chicago children with disabilities are unnecessarily placed in highly segregated environments. These environments provide little or no opportunity for contact with non-disabled children, set unnecessarily low expectations, and fail to prepare children for an integrated adult life. Other children are integrated into regular education environments, but are not provided with the aids and services which they need to succeed in those environments. The court recently granted plaintiffs' motion for class certification and denied the defendants' motion to dismiss. We are currently conducting discovery. If we prevail at trial, the lawsuit could result in dramatic improvements in the delivery of special education services in one of the nation's largest school systems. Third year students Tom Gilson, Dave Nordwall, and Roy Mosley are working on this case with Nancy Gibson and Laura Miller.

*In December, 1992, John Elson and his Clinic students, in cooperation with the Legal Assistance Foundation of Chicago, filed a class action lawsuit against the Chicago and Illinois Boards of Education to try to improve the quality and availability of special and regular education services for Cook County Jail pre-trial detainees who are under age 21. According to the Complaint, approximately 1,500 of the 2,274 detainees

eligible for regular education services are not receiving any education at the Jail. Of the approximately 890 detainees in need of special education services, approximately 350 are receiving no such services and with regard to the detainees who do receive special education services, those services fail to meet the great majority of the minimum requirements set by federal and state law. At this time, the defendants have not yet filed their formal responses to the complaint.

Unemployment Insurance

*On August 14, 1991, Rodolfo D. requested a two week leave of absence from his job because he needed to go to Mexico and visit his sick mother. Mr. D., who speaks limited English, understood his supervisor, who spoke to him in English, to say that he could take the leave of absence if he returned to work in two weeks. He left that day for Mexico, and returned to work exactly two weeks later, but upon arrival was told that he no longer had a job because he allegedly failed to return to work on time. Mr. D. filed an application for unemployment insurance, which was denied initially. At his administrative hearing, he appeared *pro se* and without an interpreter, and was unable to coherently tell his story. The hearings referee affirmed the denial of benefits, and this decision was likewise affirmed by the Board of Review.

At administrative review, in the circuit court, Mr. D. was represented by third year student Ricardo Ugarte who submitted a legal memorandum urging the court to remand the case for a hearing *de novo*, based upon the procedural errors committed by the hearings referee in allowing the case to proceed when it was

obvious that Mr. D. could not adequately present his evidence. At oral argument, Ricardo impressed upon the trial judge the inherent unfairness of the administrative hearing, while the attorney general, representing the Board of Review, requested that the judge affirm the denial of benefits. At the conclusion of oral argument, the judge entered an order remanding the case to the hearings referee for a hearing *de novo*. Shaun Downey (3L) represented Mr. D. at the remanded administrative hearing. There, with the benefit of proper preparation and an interpreter, Mr. D. was able to clearly tell his story. Subsequently, the hearings referee issued a decision setting aside the initial denial, and awarding Mr. D. benefits.

*James H. was discharged by his employer because he allegedly failed to call in during a three day illness that kept him home. He applied for unemployment insurance benefits, which were denied initially. He appealed, but appeared at his administrative hearing *pro se*. The hearings referee affirmed the denial of benefits, as did the Board of Review. At the circuit court, Mr. H. was represented by Tobe Johnson who graduated in 1992. Tobe filed a legal memorandum on Mr. H.'s behalf, and at oral argument contended that his client was entitled to a hearing *de novo* because of the unfair manner in which the referee took his testimony. The judge agreed, and ordered a new hearing. Maria Stewart (2L) represented Mr. H. at his remanded hearing. There, she examined her client in explicit detail about his three day absence, how he called his employer, who he spoke to, etc. The employer presented as its witness the secretary purportedly responsible for handling all incoming calls,

and she testified that Mr. H. failed to call in. Subsequently, the referee issued a decision reversing the initial denial, and awarded Mr. H. benefits.