Criminal Law Clinic Student Participates in Trial Acquittal

Criminal Law Clinic student Darlene DeJesus (3L) participated with her Legal Aid Society mentor attorney, Andrea Wagner, in a felony trial that resulted in an acquittal on all charges. The defendant was charged, along with his wife and 16-year-old son, with attempted murder (Penal Law §110/125.25), attempted assault in the first degree (Penal Law §110/120.10), criminal possession of a weapon (Penal Law §265.01(2)), and lesser assault charges.

It was alleged that while the defendant engaged in an argument with the complaining witness, an acquaintance, his wife grabbed a knife from her purse and passed it to the defendant, who then passed it to his son, who then stabbed the complaining witness in the abdomen. The complaining witness received a superficial flesh wound that required three stitches, and he was promptly released from the hospital.

Immediately before trial, the son (who was separately represented) pled guilty to the charge, leaving the defendant and his wife to stand trial. The morning of trial the Assistant District Attorney dropped the attempted murder charge, leaving attempted assault in the first degree as the top charge. The defense theory was that the complaining witness’ testimony about the knife being handed by the wife to the defendant and then to the son was fabricated in order to charge the defendant and his wife with the acts of their son on an “acting in concert” theory. The jury apparently credited the defense and acquitted both the defendant and his wife on all counts.

The trial took ten days over a three-week period in Supreme Court, New York County, before Justice Roger Hayes.
Urban Law Clinic Students Successfully Negotiate Settlements for Impaired Students

Urban Law Clinic students Charlene Barker (2L) and Stephanie Torre (3L) represented Wilfred, a 16-year-old boy who has cerebral palsy and a seizure disorder, and is cortically blind, nonverbal, nonambulatory, and not toilet trained. Despite being at a school for a number of years, Wilfred has not made any educational improvements and has regressed in both his educational and physical gains. Specifically, Wilfred has lost his ability to say the few words that he previously could and is no longer able to feed himself or sit up without the help of a paraprofessional.

Wilfred was placed in a District 75 school that was ill-equipped to meet his complicated educational needs. The school relied heavily on visual aids to teach him, despite knowing that he was blind and thus unable to attain any benefit from these activities. The school also neglected to provide him with a majority of the therapeutic and related services mandated by his Individualized Education Program (IEP), which was formulated by the Department of Education (DOE). Wilfred typically spent the entire day in his wheelchair losing what little muscle strength he had. Furthermore, by the second month of school, he had missed 18 occupational therapy sessions. After visiting the school and observing the practices there, the Clinic students convened a Committee on Special Education Review Team to assess his current program and advocate for a new placement. During the conference, the students negotiated a settlement agreement that requires the DOE to place Wilfred in a residential educational program that will be able to address all his needs and provide him with the education he deserves. The residential program will provide Wilfred with a curriculum tailored to his needs; however, in the interim his IEP has been augmented to better address his disabilities.

The Clinic students also represented Brittney, a 13-year-old child with severe speech and language impairments and an IQ level significantly below her age and grade level. Prior to the completion of Brittney’s last year in junior high school, her mother contacted the DOE and requested that it provide a placement for Brittney for the upcoming academic year. In response, the DOE provided Brittney with a placement in a school that was not qualified to teach children with speech and language impairments. Despite being notified of this fact, the DOE failed to provide Brittney with another placement for the school year. Left with no other recourse, her mother enrolled Brittney in a private school equipped to address her disabilities. The DOE also refused to provide Brittney with transportation to and from school despite acknowledging that she has an IQ level comparable to a second grade child. The students filed an Impartial Hearing request to address these issues but were able to negotiate a $42,500 settlement agreement with the DOE, requiring it to cover the costs of tuition prior to the date of the hearing. The students were also able to amend Brittney’s IEP to include transportation services to and from school. The settlement agreement ensures that Brittney will be able to remain at the school while the DOE covers the cost.

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