



NYLS STUDENTS TAKE ACTION

Office of Clinical and Experiential Learning

FEBRUARY 2014

VOL 7 | ISSUE 3

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OPEN HOUSE

March 5, 2014

4:00 p.m.–6:30 p.m.

Events Center (W202)

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Post-Conviction Innocence Clinic Victory

By Professor Frank Bress, Director of Clinical Programs

Distinguished Adjunct Professor Adele Bernhard and the Post-Conviction Innocence Clinic scored an important victory in their “shaken baby syndrome” case: The Supreme Court judge in Rochester, New York, ordered a hearing on the CPL 440 motion to vacate the defendant’s conviction based upon newly discovered evidence (a change in “shaken baby syndrome” science). The hearing will be held in Rochester in April on whether the new science warrants vacatur of the conviction and a new trial.

Two of the PCIC students (Ashley Cohen 2L and John Franco 2L) helped Professor Bernhard prepare for the hearing by organizing the scientific material, researching analogous cases, and mooted her argument. They traveled to Rochester for the oral argument on the motion in fall 2013, and debriefed our client after the argument. Spring 2014 students will prepare the expert witnesses for the hearing, assist in managing the complex logistics, and participate in the actual hearing.

Read the story in the [local news](#). Read the clinic student perspective in the [December 2014 issue](#). ■

Domestic Violence Clinic Successfully Advocates for Client's Safety

By Adjunct Professor Kim Susser



Domestic Violence Clinic students Hallie Schiffman-Shilo (middle) and Melissa Martin, a Brooklyn Law 3L (right), with their client

The Domestic Violence Clinical Center, housed at the New York Legal Assistance Group, represented “Daria” in a family offense case against her husband after he threatened her with a knife during an overnight visit while he was in prison. Hallie Schiffman-Shilo '13 and her partner, Melissa Martin, a Brooklyn Law School 3L, readied the case for trial, which included preparing their client for a difficult direct examination, with live video to her abuser in prison, and conducting extensive discovery. The respondent was released midway through the trial, which terrified their client.

The respondent’s defense was that knives in the trailers used for overnight visits were attached or tethered to the kitchen counters, and thus it would’ve been impossible for him to have threatened her with a knife to her throat. The students subpoenaed officials throughout the prison system to find evidence to support their client’s version of events. Through their investigation, they learned that only some trailers contained these tethered knives. In other trailers, kitchen knives were not attached. After numerous phone calls and e-mails, the students obtained a letter from the Department of Corrections stating that only some knives were tethered. Although not admissible in evidence, the letter seemed to be a powerful factor in the respondent not appearing for the rest of the trial. In the end, the judge made findings that the respondent had indeed threatened Daria with a knife, and entered an order of protection on her behalf for five years, the longest order permissible in family offense proceedings. ■

Students: Apply for 2014–15 clinics and experiential learning courses starting on March 5. For more information, visit www.nyls.edu/ocelapplication and attend our Open House.

EXPERIENCE EDUCATION
LAW CLIENT INTERACTION
 ACTION PRACTICAL SKILLS
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 COUNSELING INTERVIEWING
 MOCK TRIALS DRAFTING
 NEGOTIATING CASES
 EXPERIENTIAL LEARNING APPLYING LAW
 COMPETITIONS PROJECTS

Avoiding a Criminal Record: CDC Student Wins Dismissal of Charges

By *Raymond Queliz 3L*



Criminal Defense Clinic student Raymond Queliz

The Criminal Defense Clinic (CDC) allows law students to gain litigation experience before graduation. Under the supervision of Professors Anna Cominsky and Frank Bress, third-year students pick up cases at arraignment and develop defense strategies.

I received “Mr. Smith’s” case in September and immediately met with my supervisors to create motion strategies and strategies for the hearings. Mr. Smith was 24 years old and charged with criminal possession of a weapon in the fourth degree, a Class A misdemeanor. The prosecution alleged that the police asked him why he was in his building and saw a kitchen knife in his front pocket. The prosecutor wanted him to plead guilty to disorderly conduct, a violation. This was his first arrest.

We wanted the prosecutor to dismiss the case or to give Mr. Smith an adjournment in contemplation of dismissal, also known as an ACD (which would ultimately result in a dismissal). I wrote numerous motions on his behalf in an effort to convince both the prosecutor and the court that Mr. Smith was not deserving of a criminal record. After a lot of work and two court appearances, the prosecutor agreed to offer Mr. Smith an ACD. ■

Commercial Arbitration by Sitting Judges, For a Fee

By *Professor F. Peter Phillips, Director, Alternative Dispute Resolutions Skills Program*

The Delaware Court of Chancery’s arbitration program was established in 2009 as a way of “preserv[ing] Delaware’s preeminence in offering cost-effective options for resolving [commercial] disputes.” Qualified parties may consent to arbitration before the same Chancery Court judges who would otherwise try the case. The initial fee is \$12,000, plus an additional \$6,000 per day thereafter. The proceeding is conducted in a Delaware courthouse during normal business hours. Pleadings are confidential and not publicly docketed, and public access to hearings and filings is denied.

This procedure was challenged in federal District Court on First Amendment grounds. The District Court found, and the U.S. Court of Appeals for the Third Circuit affirmed, that a publicly-funded court may not conduct civil proceedings barring public access. The right of public access is not absolute; but when a proceeding taking place in a public courtroom is of the type to which there is a “tradition of accessibility,” such as a private commercial dispute, “a presumption of public access is established [that] may only be overridden by a compelling government interest.”

The Third Circuit used an approach of “experience and logic.” The “experience” is that the place and nature of the adjudication have historically been open to the press and general public. The “logic” is that “access plays a significant positive role in the functioning of the particular process in question.” All of the benefits that accrue from public access to civil trials of business disputes would accrue with public access to the arbitration of those disputes when that proceeding takes place in public Delaware courtrooms. If certain attributes of public trials are unsuitable to a private commercial dispute, then the parties may arrange to resolve their disputes privately—but not in a public courtroom with public servants adjudicating.

Unaddressed in this challenge is a feature of the arbitration program that some may find more troubling: that two tracks of justice are provided to similarly situated disputants, distinguished by payment to the court of a substantial fee. Payment of \$12,000 yields a 90-day schedule, waiver of procedural requirements, streamlined discovery, and immediate docketing of a confidential outcome. Nonpayment yields motion practice, extensive discovery, public scrutiny, procedural guidelines, and very substantial delays.

The question whether private adjudication of disputes is a social benefit or a threat to the development of the common law is a perennial one. The question whether public courtrooms can be hired out by private disputants, and sitting judges be deflected from their public dockets in order to adjudicate nonpublic disputes, is more recent. ■

Real Clients, Real Consequences: CDC Student Wins Dismissal of Charges

By *Alisha Bacchus 3L*

Students in the Criminal Defense Clinic (CDC) represent real clients accused of committing real crimes, facing real jail time. There is nothing fake or simulated about the CDC. Every client has a lot at stake and relies heavily on counsel’s knowledge. When students from the Suspension Representation Clinic reached out to CDC for help on a case, I was instantly worried because the case involved a high school student. “Laura” had been suspended from school for fighting with another girl and arrested and charged with assault in the third degree. The Suspension Representation Clinic was representing her on the suspension and asked me to represent her on the assault case. I was surprised that Laura had been arrested, because when I was in high school, students were never arrested for fighting: They were just



Criminal Defense student Alisha Bacchus

disciplined by the school, and that was the end of it. I guess things have changed since then.

Laura was a good student and good daughter. At the ripe young age of 16, Laura had never been in trouble before, let alone arrested. She was definitely worried, and so was her mother. This was the nightmare her family dreaded. At our first meeting, I explained the criminal process and how Laura's case would evolve. The dreadful part was explaining all the possible outcomes of Laura's case. The best would be an ACD (adjournment in contemplation of dismissal), a holding in which the court would essentially dismiss Laura's case after a period of time if she performed a few days of community service. The worst would be a trial, a conviction, and the possibility of jail. Assault in the third degree carries a maximum sentence of one year in jail. Although jail time was unlikely in this case, I could not rule it out. Laura might find herself at the mercy of the Court when it came to sentencing.

At our first court appearance, the prosecution made no offer of a disposition, which in assault cases is common. This made Laura and her mother demoralized about the possibility of a positive outcome, but I tried my best to keep them hopeful. At our second court appearance, the prosecutors did make an offer. They offered Laura an ACD with two days of community service. Laura and her mother were overjoyed. Laura accepted the offer and scheduled her community service. What started out as a nightmare turned out well. Laura learned a valuable lesson: Decisions and actions—no matter how old or young you are—have consequences. ■

Administrative Enforcement Clinic Rotation at Taxi & Limousine Commission, Long Island City

By Noelle Robinson 3L

This semester, students working at the NYC Taxi & Limousine Commission (TLC) as part of the Administrative Enforcement Clinic are each taking a break from prosecuting consumer-related cases at the Beaver Street office, and are rotating through the TLC's Long Island City (LIC) location. Mohammed Akinlolu is the Managing Attorney there. He describes the LIC location as "the main office, all inclusive; we do everything." The LIC location contains 16 courtrooms, where hearings on enforcement summonses take place. TLC officers on the

street who uncover violations of TLC rules issue summonses for the violations, which are prosecuted at LIC. For example, if an officer finds someone operating a vehicle for hire without the appropriate licenses, the vehicle is seized, and the hearings to recover the vehicle happen at LIC. If the summons is dismissed, the driver can have his vehicle back. If the summons is sustained, the driver must pay for the storage of the vehicle in addition to any penalties associated with the violations before recovering the vehicle. While at LIC, I argued a couple of "seizure" cases.

Appeals are a primary function that Mr. Akinlolu oversees at Long Island City. At one time, the Deputy Commissioner handled about three to four appeals a week with one attorney. Now, the location handles an average of 100 appeals a week and has about a 70 percent success rate. The Appeals Unit, part of the Office of Administrative Trials and Hearings (OATH), has about 10 judges that determine the appeals. One of the main tasks of clinic students during their LIC rotation is to review dismissals for appealable issues and then draft those appeals. Only mistakes in law or interpretation of rules will be reviewed by the Appeals Unit. Issues of credibility are left to the hearing judge and cannot be appealed.

For the student prosecutors, working with appeals provides valuable insight into the end product of hearings they conduct. Working closely with the opinions of the administrative law judges is an effective way to understand the reasoning behind rulings, as well as providing a better understanding of the issues and ways to argue debatable points in a hearing.

For the TLC, clinic students aid with the backlog of cases. Without their contributions, TLC attorneys would have to leave other work to provide the needed coverage. For example, during my first week at the LIC office, there were three attorneys to cover five active courtrooms. It can be helpful to have other prosecutors on hand when several hearing rooms need representation at the same time.

As of this writing, Christine Carballo 3L, had just begun her rotation at the LIC location. Said Carballo, "Today was my first day at the Long Island City TLC location. I observed the different kinds of hearings that occur there and not at Beaver Street. Also, I had an opportunity to meet other TLC staff, such as investigators that enforce the TLC rules." ■



Administrative Enforcement Clinic: New York City Tax & Limousine Commission offices

Safe Passage Volunteer Advocates for Young Immigrant's Access to Education

By *Christine Maggiore 1L*



Safe Passage Project student Christine Maggiore

Working with pro bono counsel Dinneen Cato '11 and our client at the Safe Passage Project has been educational, emotional, and incredibly rewarding. When I first met Dinneen, I was nervous about meeting the client because I'd never really done anything like this before. I'd read the Safe Passage case memo and knew a bit about our client's background, but it's totally different once the representation begins and the client is sitting in front of you.

When our client, a Guatemalan boy who came to this country with hopes of making a better life for himself here in New York City, arrived at our office for the first time, my nerves quickly turned to excitement. I knew had the opportunity to really help this child. I remember the client and his father also looked nervous—for different reasons.

Since that initial meeting at the law school, I have met with the client on many occasions. We've spoken on the phone and gone to court together. I have worked closely with Dinneen and the Safe Passage team to help him achieve his dream of becoming a legal permanent resident. It has been so rewarding to see the anxiety dissipate from both the client's and his father's face with each step in his case. I've not only worked on his immigration case and helped him win his family's court case, but I personally advocated for him to be accepted into the public high school in his neighborhood.

As a parent, I was able to empathize with our client's father, who is undocumented, speaks no English, and only wanted a better future for his son. He wanted so badly to help his son enroll in public high school, but he simply could not figure it out. His appreciation for my assistance with helping enroll his son in school is hard to put into words.

As a student, I could also empathize with the client's frustration in not being able to enroll in school. He came to this country—in part—to get an education, but he kept running into bureaucratic roadblocks and could not figure it out. It is hard to express in words, but the feeling of advocating for someone who feels hopeless and lost in both our education and judicial system is priceless.

Working on this case has introduced me not only to immigration law, but also to education and family law. I've had to examine state school registration regulations, immigration statutes, and family law cases. It has afforded me the opportunity to file documents in court and work closely with a great attorney and advocate. Working with Dinneen, the client, and Safe Passage will definitely make me a better lawyer in the future, but it has also helped me become an advocate in everyday life, and a better person overall. ■

Innocent Until Proven Guilty: A Criminal Defense Clinic Retrospective

By *Edward Barrett 3L*



Criminal Defense Clinic student Edward Barrett

They say that there is no difference in emotion between the coward and the hero; the only difference is how they act in the moment. I will never forget sitting on that hard wooden bench in AR2 (one of New York City Criminal Court's arraignment courtrooms), with the pounding of my heart ringing in my ears, waiting. The pressure mounts. My client has entrusted me with his fate after having only met me for a few moments behind a rusty iron cage. I am wondering, "What am I going to say to this judge?" My client is wondering, "Am I going home today?" The stakes are high.

In the front row, I am shuffling papers and scribbling down notes about "strong community ties" and arguments that my client "is not a flight risk." It gives off the appearance of experience and preparedness. In reality it is to disguise my shaking hands and hide that I can't keep still.

The moment of truth comes when I hear those four numbers and my client's name. "1234, Smith." The officer's voice echoes in the cavernous hall they call arraignment court. What are you going to do? This is it!

In those short moments it takes to reach the rope, however, I realize this is not about me. I realize that in that moment I am a defender. I am the shield standing in between the sword of the People and the heart of the accused. There is no place for fear because I am the only protector of my client's liberty.

I grab the rope, clear my throat, and hold my head high. I know what my job is, and I am going to do the best I can. I cannot change the

serious nature of the accusations nor the fact that my client has a prior warrant history. All I know is that my words will be the only thing standing between the outside world and the deplorable jail pens where the State wants him to remain.

There is an indescribable honor in defending the rights of the accused, and it is not realized until you are up there with the judge, the prosecutor, and the client. Innocent until proven guilty is the bedrock upon which our criminal justice system stands. Having the opportunity to advocate on behalf of the accused is a powerful and humbling endeavor. You do not always win. In fact it can be a little bit like a baseball player's batting average at times. However, every time I appear, every argument I make, and each case I resolve, my confidence grows. Every victory feels like crushing a home run over center field in the bottom of the ninth.

Along with my colleagues, I am the first line of defense for the accused. The *New York Criminal Statutes and Rules*, commonly known as the *Graybook*, has become my Bible, and my words have become my sword. With each passing day I become more able and more determined. Criminal defense can be an arduous task, but knowing that my hard work gives my client an opportunity to change his life, see his loved ones again, or clear his name is the silver lining that reminds me why I do it.

The Criminal Defense Clinic is the best course I have taken in law school. It far exceeded any expectations I had. I wish I had been able to do this since day one. I have learned so much and have developed dramatically as a student, a lawyer, and a person. The Criminal Defense Clinic gave me the chance to find my calling and the knowledge to be able join the fight. How far I run with it and how I act with those skills will now be up to me. ■

Clinician Elected as Fellow of American College of Trust and Estate Counsel

By Michelle T. Weller, Administrative Director of Clinical Program



Professor Peter J. Strauss

Distinguished Adjunct Professor Peter J. Strauss was recently elected as a fellow of the American College of Trust and Estate Counsel (ACTEC). Professor Strauss is the co-director of the Elder Law Clinic and the Wills Clinic. According to the [organization's website](#), "The American College of Trust and Estate Counsel is a national organization of approximately 2,600 lawyers elected to membership by demonstrating the highest level of integrity, commitment to the

profession, competence and experience as trust and estate counselors." We congratulate Professor Strauss on this accomplishment.

Alumni Spotlight: Michael Cirigliano '11

Current Position:

Assistant District Attorney, Richmond County, New York

Featured NYLS Activities:

Advocacy of Criminal Cases; Justice Action Center; Law Review

Please share a little bit about what you do.

I am a Criminal Court Assistant handling a misdemeanor caseload of upwards of 200 cases. I have first-chaired three jury trials and secured guilty pleas in all three. I have also conducted over two dozen pretrial hearings and three bench trials. In addition, I have worked with the grand jury, where I secured indictments for violent crimes from robberies to an attempted murder.

What skills or experiences did you have in Advocacy of Criminal Cases (ACC) that help in your current position?

When I started working at the DA's Office I had a head start because of the ACC class. I was very familiar with the New York Criminal Procedure Law (CPL) and the applicable sections that I now use every day, e.g., 510.30 (applications for recognizance or bail); 710.30 (motion to suppress evidence); 240.20 (discovery; upon demand of defendant); and 170.70 (release of defendant upon failure to replace misdemeanor complaint by information).

Additionally I had conducted mock arraignments, hearings, and trials in ACC, so making the jump to the real thing was not a big deal. ACC allowed me to hit the ground running as an ADA. When interviewing complaining witnesses, I use the skills I learned through ACC to develop a relationship and conduct interviews in a way that allows me to get the most information for a witness to best analyze a case.

ACC is a simulation course. How did that experience compare to your current live client work?

ACC is not far off from real-life practice. Client interviews, mock court appearances, and trials all are on-par with my day-to-day work as an Assistant. Professor Frank Bress is still probably the toughest judge I have ever stood before, and that prepares you for the inevitable, which is getting yelled at in court. ACC also taught me to think on my feet and speak extemporaneously.

Any shout outs?

Professors Frank Bress and Faith Colangelo—the best.

Getting Ready to Register: Curriculum Information Sessions

Are you interested in a specific focus for your coursework? Join us for a series of information sessions to learn more about New York Law School's curriculum in key areas of practice, as well as how Academic Centers and the Office of Clinical and Experiential Learning (OCEL) course and clinic offerings can fit into your schedule. Learn more about how to apply to each center, clinic, or course, and if they're the right fit for you! Sessions will be recorded and posted on the Portal, but we encourage personal attendance. Note that these are brown-bag information sessions, so feel free to bring your own snacks and refreshments.

Monday	2/17	12:50 p.m.	W520	Criminal Law
		5:00 p.m.	W320	Criminal Law
		5:00 p.m.	W300	Business, Financial, and Tax Law
Tuesday	2/18	12:50 p.m.	W520	Government and Public Policy
		5:00 p.m.	W120	Government and Public Policy
Wednesday	2/19	12:50 p.m.	W520	Litigation and Dispute Resolution
		5:00 p.m.	W320	Litigation and Dispute Resolution
Thursday	2/20	12:50 p.m.	W520	Business, Financial, and Tax Law
Monday	2/24	12:50 p.m.	W520	International and Immigration Law
		5:00 p.m.	W320	International and Immigration Law
Tuesday	2/25	12:50 p.m.	W520	Civil Rights, Civil Liberties, Constitutional Rights and Individual Rights
		5:00 p.m.	W402	Civil Rights, Civil Liberties, Constitutional Rights and Individual Rights
Wednesday	2/26	12:50 p.m.	W520	Family Law
		5:00 p.m.	W320	Family Law
		5:00 p.m.	W420	Intellectual Property Law
Thursday	2/27	12:50 p.m.	W520	Real Estate Law
		12:50 p.m.	W420	Intellectual Property Law
		5:00 p.m.	W520	Real Estate Law
Monday	3/3	12:50 p.m.	W520	Journalism and Externships
		5:00 p.m.	W320	Journalism and Externships

Questions? Contact the Office of Academic Planning, Programming, and Advising at academicaffairs@nyls.edu or 212.431.2310. For more information about Office of Clinical and Experiential Learning courses, contact ocel@nyls.edu or 212.431.2179.

OPEN HOUSE

Talk with faculty and students to learn about OCEL courses and Academic Centers.

Wednesday, March 5, 2014
4:00 p.m. – 6:30 p.m.
Events Center (W202)

Refreshments will be served.

