New York Law School’s Dispute Resolution Team Wins Best Contract Award

By Salome Vakharia 2L and Aruna Chittiappa 2L

New York Law School’s Dispute Resolution Team competed in the 28th Regional Transactional LawMeet, held at Western New England University School of Law. Competitors Diarra Clemons 2L and Salome Vakharia 2L, coached by Aruna Chittiappa 2L, represented NYLS in a six-week long competition that was composed of every aspect of transactional law: client counseling, drafting contracts, red-lining contracts, and negotiating the final terms of the agreement. The Transactional LawMeet, which is known for engaging its participants in meaningful simulations on business law-related topics, hosted 84 teams. The judges ranged from lawyers who work at midsized corporate law firms to in-house general counsel at large corporations.

This year’s competition hypothetical dealt with a $400 million acquisition of a biotech company by a pharmaceutical behemoth. The night before the stock purchase agreement was to be signed, the seller received a letter from a third party claiming a breach of its technology license agreement, and alleging damages ranging from $50 million to $100 million. Chosen to represent the buyer, the pharmaceutical giant, the team was tasked with researching and drafting a comprehensive indemnification agreement, which would protect the seller from the third-party claims and the impending suit. The competition consisted of two rounds, with the NYLS team scoring favorably in both rounds. The team’s diligence and hard work paid off when they won the “Best Draft” award for drafting the best indemnification agreement on behalf of their client. The competitors came away elated and charged with a more nuanced understanding of researching and drafting contracts, client counseling, and negotiation strategies.

Building a Disability Rights Information Center in Asia and the Pacific Clinic

By Professor Michael Perlin

This year, the seven students in my new clinic, Building a Disability Rights Information Center in Asia and the Pacific (DRICAP), have been tasked with collecting statutes, judicial decisions, regulations, and advocacy efforts from 14 nations in that area. The clinic is an outgrowth of my ongoing pro bono work, seeking to create a Disability Rights Tribunal for Asia and the Pacific (DRTAP). See, e.g., Michael L. Perlin, Promoting Social Change in Asia and the Pacific: The Need for a Disability Rights Tribunal to Give Life
Suspension Representation Clinic Gets Student Reinstated

By Melissa Ruhry 3L and Yusra Matari 2L

Suspension Representation Clinic students Melissa Ruhry 3L and Yusra Matari 2L represented a fourth grade student, “James,” at his Superintendent’s Suspension hearing before the Department of Education, under the supervision of Adjunct Professor Samantha Pownall. James was suspended for allegedly pushing another student, “Tom,” during art class.

Ruhry and Matari met with James and his mother for an initial client interview. James, who just turned 11 years old, enjoys basketball and has learned to play several musical instruments in school. An outgoing and friendly young man, James has an Individualized Education Plan (IEP) to address his learning disability. As a result, James is in a 10:1 classroom, with 10 students and one teacher. He also receives counseling in school three times a week.

James has a long history of being bullied in school. The constant tormenting became so severe that James was hospitalized last year when he had suicidal thoughts. On the day of the incident, Tom made a mess in art class and framed James as the culprit. The art teacher chastised James for the mess he did not create. Tom then came very close to James’s face and laughed in a taunting manner. James became frustrated and pushed Tom away from his face.

At the hearing, Ruhry and Matari made the strategic decision to go forward with a no contest plea instead of a hearing because James had written a witness statement that stated that he pushed the other student. James’s guidance counselor also wrote a statement that said James had admitted to her that he pushed Tom. While the school bears the burden of proof at suspension hearings, the burden is very low. An oral or written admission is sufficient to prove the charge, even if mitigating circumstances exist. Ruhry and Matari decided that a no contest plea would still provide an opportunity to present a narrative of James’s good qualities and the school’s due process violations. The school requested that James be suspended for two weeks, which would have significantly disrupted James’ access to special education services.

While Ruhry and Matari were not able to go forward with a full hearing in order to highlight the circumstances leading up to James pushing Tom, they were still able to make a persuasive case in favor of their client. James was immediately reinstated to his regular school, and the suspension will be expunged when James graduates from elementary school. This means that James will continue to receive the resources that he needs. Both James and his mother were very happy and appreciated Ruhry and Matari’s hard work.

Civil Justice Through the Courts Clinic Tackles Cutting-Edge State Legislation Issues

By Joanne Doroshow, Adjunct Professor

This semester, students in the public policy clinic, Civil Justice Through the Courts, continued to tackle some cutting-edge civil justice issues. Last semester, most of our work focused on U.S. Supreme Court decisions, federal agencies, and Congress. This semester, we turned our focus toward state legislation—although current events eventually pulled us back into big national issues!

To begin, each of the clinic’s six students was assigned a state bill representing an important civil justice problem. Jessica Braunstein 2L’s topic was a new development in workers’ compensation law allowing employers to opt out of state workers’ compensation systems. Bryan Assael 3L examined model legislation being shipped...
around by ALEC (the American Legislative Exchange Council), which limits the liability of landowners. Hayley Pine 2L’s topic was a new area of medical malpractice legislation: raising standards of proof required of patients injured by emergency room negligence. On a similar topic, Parul Nanavati 2L examined laws that cap damages for victims of nursing home abuse and neglect. Zakary Woodruff 2L took on the issue of asbestos trust funds. And Zachary Perecman 3L examined New York State’s “scaffold law,” which protects workers by imposing a strict liability standard on owners and contractors at elevated construction sites.

Each student prepared six different draft policy pieces: a legislative memo, a proposed letter to lawmakers, a two-page fact sheet, a five-page FAQ, a blog post, and victim research. The victim research, which “put a face” on these issues, was a challenging but critical aspect of this work, involving both legal research and outreach to attorneys, depending on the bill.

Some variation of these educational materials will be distributed around the country to those working on specific issues and will become part of our permanent archive so people will continue having access to this great research and information even when the semester ends.

In addition, when the General Motors “faulty ignition switch” issue erupted in the news, each student led the class in a discussion of different aspects of this issue, including GM’s role, the government’s role, the products liability immunity given to GM during its 2009 bankruptcy proceeding, what could have been done for victims at that time and for new victims, and litigation to date. Our final project is a class letter to NYLS’s own local Congressman, Representative Jerrold Nadler, supporting his leadership on legislation that would ban confidential settlements and protective orders that put the public health and safety at risk. Had this bill been law years ago, the recent GM debacle might never have happened.

So all in all, a terrific clinic year tackling some great issues with some wonderfully committed students!

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**PCIC Students Attend Post-Conviction Hearing in Rochester, NY**

*By Alisha Bacchus 3L and Molly Rogowski 2L.*

On April 17, 2014, after much preparation and anticipation, the C.P.L. §440.10 post-conviction hearing for René Bailey began in Rochester, New York. Ms. Bailey was convicted in 2002 of killing a toddler, Brittney Sheets, by shaking her to death. (This case was described in the December 2013 newsletter; for more information, read [here.](#))

Representing Ms. Bailey were New York Law School Distinguished Adjunct Professor Adele Bernhard, along with Keith Findley, an Associate Professor at the University of Wisconsin Law School, and Katherine Judson, a Litigation Fellow with the Innocence Network. The Defense team argued that the science concerning Shaken Baby Syndrome (SBS) has changed since Ms. Bailey’s trial so substantially that the change should be considered “newly discovered evidence” as required by the statute, especially since all the evidence at trial was medical. The defense also noted that at the original trial in 2001, the prosecution told the jury that a short-distance fall could never cause serious injury to a child. The defense argues that if a jury heard today that a short-distance fall could cause a fatal injury, it would likely reach a different conclusion—acquittal. The prosecutor maintains that falls do not cause fatal injuries and that the general consensus of the scientific and medical community has not changed in 13 years—despite all the apparent controversy in developing case law across the country.

Post-Conviction Innocence Clinic students Alisha Bacchus 3L and Molly Rogowski 2L accompanied Professor Bernhard and helped prepare witnesses and research evidence for the hearing. Upon arrival at the courthouse, news reporters approached Professor Bernhard eager for a statement of what they could expect at the hearing. The *Democrat & Chronicle* news article can be found [here.](#) A reporter from Time Warner Cable News was also awaiting a statement. The Time Warner story and video can be found [here.](#)

The hearing began in front of Judge James J. Piampiano with opening statements by both the defense and prosecution. The hearing lasted two full weeks, and many of the most respected medical experts knowledgeable on the subject on both sides of the issue testified. Alisha and Molly saw the testimony of Dr. Peter Stephens, a pathologist; Dr. Patrick Lantz, a forensic pathologist; and Dr. Kenneth Monson, a biomechanical engineer.
Dr. Stephens testified about short-distance falls and the fact that they can cause the types of injuries sustained by Brittny Sheets, the two-and-a-half-year-old victim in this case. He also testified that it is likely that Brittny died of massive brain swelling due to a fall (blunt force trauma). Dr. Lantz testified that retinal hemorrhaging can be seen in cases other than SBS, which was not believed at the time of Ms. Bailey’s trial. Dr. Lantz described two cases in which he conducted autopsies and saw retinal hemorrhaging where there was not abuse. In one, a child fell onto the child causing fatal injuries, and in the other, the child fell down carpeted stairs and sustained fatal injuries. In both of these cases, if the accidents had not been witnessed, the mere existence of severe retinal hemorrhage might have sent the parents to jail. Dr. Monson contrasted the biomechanics of shaking with short-distance falls. He said that Brittny died from falling because the injuries she sustained could not be caused by shaking. He explained that a person cannot generate as much acceleration from shaking as falling a short-distance generates. He also testified that any acceleration on the head has to be transmitted to the neck, so if Brittny was shaken and sustained fatal injuries, there would be some evidence of neck injury. The medical reports recorded no injuries to Brittny’s neck. Dr. Monson said much research has been conducted on this topic since the original trial—mostly because of interest from the auto industry—and that the testimony of the expert witnesses called at the 2001 trial would not be the same today because of what we know from biomechanics.

The following week, the defense called experts in radiology, pediatrics, and child psychology. A lay witness, Sandra Hennessy, testified that she cared for a child under Ms. Bailey’s care who actually witnessed Brittny’s fall. She explained to the judge that she saw the child reenact the incident with his toys and that he explained to her what happened to Brittny. After the defense attorneys wrapped up their case, the prosecution called expert witnesses who included a pathologist, a pediatrician, and an ophthalmologist. After the hearing, both the prosecution and defense will submit memoranda of law to the judge, and the judge is expected to render a decision at the end of July.

Transactional Law Clinic Completes Inaugural Year

*By Julian Cordero 3L*

The work done in the Transactional Law Clinic (TLC) is a lot more than simply drafting a few contracts from forms. Helping entrepreneurs and nonprofit organizations that are going to create new jobs and have a positive impact on the community is a big part of what the clinic does. Additionally, students in the TLC have made dreams come true. In conjunction with a Bronx-based nonprofit organization, Start Small Think Big, the clinic has taken on several clients who aspire to take their small or start-up business to the next level. Whether it is starting a limited liability company, protecting intellectual property rights, or structuring a nonprofit corporation, the clinic has helped these micro-entrepreneurs, who would normally not be able to afford legal services. With the added resource of assistance with legal services, these entrepreneurs have been given the ability to conduct their businesses without the pressure of worrying about the legalities involved.

Additionally, students in the TLC have worked with several local not-for-profit organizations, helping them directly serve their communities by providing them with legal services such as filing tax-exempt applications and advising on employment and other contract matters.

Every business has legal needs, but not all of them have the ability to pay for it. Access to legal services is an issue for many of the types of clients served by the TLC, because their legal needs often fall outside the norms of traditional pro bono legal matters.

While the work may not seem substantial, the gratitude our clients convey really allows us to see its importance. Many students in the clinic have expressed how rewarding it is to have a client tell them that he or she is going to be “bigger than Google,” and that our legal assistance is making it possible.

I can speak for my colleagues when I say that we have all enjoyed our experiences in the clinic. We loved doing the work that we did, and we loved working under the guidance of Professor Lynnise Pantin and Professor Howard Meyers. We all hope that the clinic continues to be successful in the years to come, knowing very well that we have all left pretty big shoes to fill.

The First Year of the “Clinical Year”

*By Professor Stephen Ellmann*

New York Law School’s new clinical course, the Clinical Year, has just completed its first run. The Clinical Year consists of 3 nine-week, full-time “rotations,” each meant to start with a pre-placement seminar at NYLS and each accompanied by an in-placement seminar. Two students, Erin Phillips 3L and Samantha Schonfeld 3L, took the course this year—and so they earned 24 of their third-year credits in this single course.

I initiated the course and taught in each of its three New York Law School seminar portions. Five adjunct faculty members, lawyers at the three rotation sites, supervised the rotations and created the in-placement seminars: Katherine Greenberg, Carol Santangelo, and Liliana Vaamonde at the Legal Aid Society; Stephen Louis at the NYC Law Department’s Division of Legal Counsel; and Corinne Schiff at the NYC Department of Health and Mental Hygiene.

This course was an experiment, and I want to thank everyone—the students, the placement faculty, and the other lawyers and staff members at each of the rotations who worked with the students—who took part in it. Our hope was that the course would give the students the rich, varied, and immersive educational opportunity that medical school clinical rotations do, and I think we succeeded. The two students practiced a wide range of skills (each rotation’s work called for its own distinct kinds of lawyering), dealt with clients in great need and with colleagues who were shaping briefs and legislation, staffed a hot line and represented individual clients and New York City in hearings, and wrote about their experiences in regular journal entries. They experienced many of the pleasures and challenges of legal practice, and handled all of them well. Bravo!