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Spring 2012

## The Pillar: Newsletter of the St. Mary's University School of Law Center for Legal and Social Justice

St. Mary's University School of Law

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# THE PILLAR

Clinic Year 2012  
Spring 2012 Newsletter



## The Center for Legal and Social Justice

### THE CLINIC EXPERIENCE

Currently recruiting for Summer 2012 and Fall 2012/Spring 2013. See page 14 for more details.

#### Board of Editors

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### SWEARING IN CEREMONY



The Honorable Judge Irene Rios from Bexar County Court #10 swearing in the new clinic students.



The 2011-2012 Civil Justice Clinic Students.



The new clinic students taking the oath in the CLSJ Courtroom.



The 2011-2012 Immigration and Human Rights Clinic Students.

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Every start of the new academic year commences with the new clinic students taking their student attorney oath. This year's students were sworn in by the Honorable Judge Irene Rios from the Bexar County Court #10. Judge Rios graduated with a Bachelor's degree from Texas Tech University and a law degree from St. Mary's University School of Law in 1990. She is a member and the Secretary of the STMU School of Law Alumni Board, member of the San Antonio Bar Association's County Courts Committee, and co-founder of the Hispanic Law Alumni Association, STMU School of Law Chapter.



The 2011-2012 Criminal Justice Clinic Students.

◆ Statements and opinions expressed in The Pillar are those of the authors and are not necessarily those of the St. Mary's University School of Law or the Center for Legal and Social Justice ◆

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## INNER CITY DEVELOPMENT RECEIVES THE SANTA MARIA AWARD

On Monday December 12, 2011 the Center for Legal and Social Justice celebrated the Feast of Our Lady of Guadalupe where Dean Charles Cantu and Associate Dean Ana Novoa presented The Inner City Development (ICD) with the Santa Maria Award. Accepting the award on behalf of ICD was Patti Radle, Co-Executive Director of ICD. This award is presented to an individual, group, or organization that makes outstanding contributions to the advancement of legal and social justice.

Inner City Development is a nonprofit, community based organization that responds to the emergency, educational, and recreational needs of the Alazan-Apache Public Housing Project and the vicinity. It has been operating in this area, the economically poorest area of Bexar County, since 1968. The mission of the organization is to lift the dignity of the individual. This is done by providing critical, supportive, basic life services and inspiring persons to participate in the betterment of their neighborhood through volunteerism. With the exception of one part-time administrative assistant, the organization is run by an all-volunteer staff and administration.

ICD was founded on November 18, 1968 by several community members who had become very involved in neighborhood organizing in association with Father Ralph Ruiz, a priest with the Archdiocese of San Antonio. Father Ralph gave the group direction and started the incorporation paperwork.

Father Ralph eventually accepted other duties with a separate organization. He wanted to insure that the work of Inner City Apostolate, the precursor to ICD,



Our Lady of Guadalupe is the Patroness of the Center for Legal and Social Justice. The "Santa Maria Award" is given annually in her honor to an individual, group, or organization who furthers the cause of social justice in the community.

could continue independently, so he asked the board to accept Rod Radle as the director. They did, and within a very short period of time, they accepted both Rod and Patti Radle as co-directors.

While the board had approved a salary for the new directors, Rod and Patti opted to work on a voluntary basis and Inner City developed the tradition of being an all-volunteer agency.

Emergency food and clothing assistance and the formation of a softball league for elementary school children were the first programs of ICD. The food and clothing service continues today. The sports programs for children have varied over the years, including baseball, softball, soccer, flag football, and volleyball at different times. However, a basketball league for third through sixth graders has been a regular program every year since 1971. ICD also puts on a summer program every year.

Inner City's effectiveness within the community is underscored by the fact that the programs are, for the most part, now run by former participants. Even

people who help run the emergency food pantry and clothing service are often people who at one time needed those services.

ICD is a family based organization with the younger volunteers often being the children and grandchildren of adult volunteers.

As ICD's facility has expanded over the years, they host many community activities and meetings.

In the future, ICD hopes to expand its facility to provide more opportunities for the community that will build on its goal: lifting the dignity within the individual. ■



Back: Associate Dean Ana Novoa  
Front from left: Dean Charles Cantu, Patti Radle Co-Executive Director of ICD and Fr. Terry Weik S.M.

## JUDGE JOHN BULL RECIPIENT OF THE ST. MARY'S CLINICAL PROGRAMS' AMICUS AWARD

The Amicus award is one given by the clinics to a deserving person who has demonstrated service to our community. We only give this award occasionally and only to those truly deserving. The last time the award was given was in 2007.

In 2011 the clinics decided to award the Honorable Judge John Bull with this award. Judge Bull graduated from St. Mary's Law School in 1990. He practiced law in Pearsall, Texas for a number of years before becoming a municipal court judge. Later he became and still is today, the Chief Presiding Municipal Court Judge in the City of San Antonio.

Judge Bull has been innovative in his tenure by working to solve the problems that lead to the criminal charges, rather than waiting for charges to be filed and simply presiding over those charges. He has worked with young people in a specially designed teen court in hopes of making a difference in the youth of our community. He has set up a program designed to deal with truancy issues as well.

But we awarded him with the Amicus award to celebrate his work with the population of people that come to Haven for Hope looking for help.

There is a portion of our community that does not have jobs or homes but want to transition into a better lifestyle. Unfortunately, some of these people have warrants for their arrest for Class C misdemeanors. This presents a serious obstacle on the road to furthering these objectives. It is almost impossible to gain employment or housing with an outstanding warrant. This population is caught in the proverbial "catch 22" in that



In background: Associate Dean Ana Novoa  
From left: The Honorable Judge John Bull and Dean Charles Cantu.



From left to right: Criminal Justice Clinic Students Kyle Harter, Erica Ramirez, Jose Galvan, Dean Charles Cantu, the Honorable Judge John Bull, Associate Dean Ana Novoa, and Provost and Vice President for Academic Affairs André Hampton.

they can't pay the fines without a job, but can't get a job with warrants.

A few years ago several bright and compassionate minds wanted to set up a program to provide legal assistance to this particular group. Judge Bull was at the center of this, along with the Community Justice Program, Justice Speedlin, Justice Marion, and Associate Dean Novoa with the St. Mary's Law School clinics to effectuate these aims. No such program had existed before and this group struggled to find the best way possible to help. It has been a work in progress and to Judge Bull's credit he has been with us every step of the way.

Judge Bull was an obvious choice to help design a legal assistance program because he had invested his time and energy in providing a quality of life docket for the homeless that predated the institution of Haven. Since the inception of Haven for Hope, Judge Bull crafted a new and better solution. While fostering accountability of the accused, Judge Bull works with the real life hurdles of the Haven population. Judge Bull looks at these cases individually and requires the accused to appear before him in unjudicated cases. He then looks to sentencing alternatives. His creative and tenacious solutions have allowed many people who have entered the doors of Haven to achieve success.

Every time a warrant is removed the city of San Antonio benefits by being able to resolve the outstanding legal matter in a more timely and efficient way. Every time a warrant is removed, an identity can be restored, a job can be obtained, and housing becomes a real possibility. ■

## STUDENTS REFLECT ON CLINICAL EXPERIENCES

### Civil Justice Clinic Student Reflections

#### A Dignified Farewell

*By Meghan Kempf, 3L, Teaching Assistant, Civil Justice Clinic and Jennifer Fields, 2L, Civil Justice Clinic*

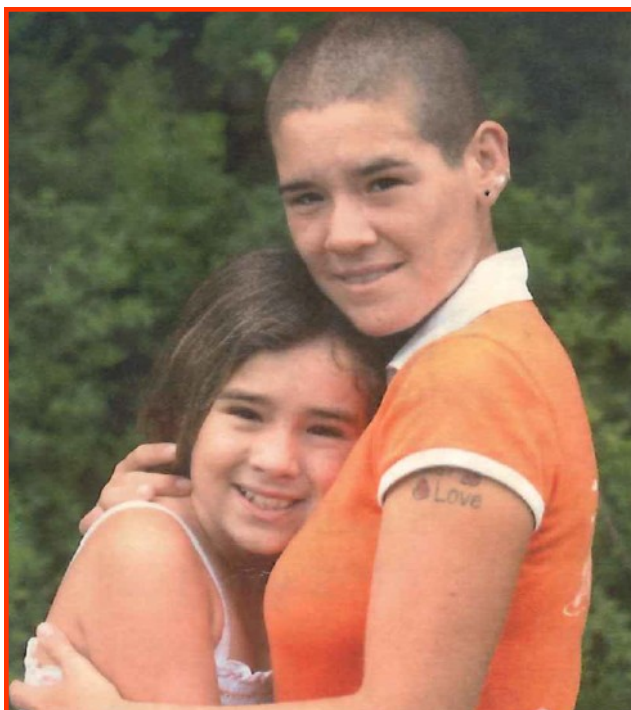
Samvastion “Sammy” Ochoa was a vibrant and adored young girl, who loved theater, butterflies, and wanted to be a teacher. At ten years old, she experienced more heartbreak and mistreatment than most people will know in a lifetime. We were never able to meet Sammy. On September 14, 2011, Sammy was murdered, along with her mother and a family friend, in their home. All three were stabbed to death and then set on fire to cover their murder.

The legal battle began when the Medical Examiner’s Office contacted Suzy Bianchi-Peters, Sammy’s maternal grandmother, and informed her that Sammy’s father (hereinafter “Respondent”) had tried to obtain Sammy’s remains. As her father, he was legally entitled to her remains. On a Friday, Suzy met with clinical professor and supervising attorney Dayla Pepi of the Center for Legal and Social Justice (CLSJ) seeking legal assistance in obtaining the right to obtain and dispose of her granddaughter’s remains. The following Monday, the probate court granted Professor Pepi’s motion for a temporary injunction, barring the Respondent from receiving his daughter’s remains.

We were then offered the opportunity to conduct the upcoming probate hearing for a permanent injunction, which was less than two weeks away. From the start, nothing about the case was typical. We faced an ongoing triple-murder-investigation, allegations of heinous sexual abuse, and a contest over a ten-year-old girl’s remains.

Sammy’s outcries indicated that for several years she had been verbally, emotionally, and physically abused by the Respondent and his brother. The idea that anybody, nonetheless a parent, would want to harm a child was completely foreign to us. The severity of the abuse was extensive and resulted in two investigations by Child Protective Services (CPS), and the eventual issuance of a Temporary Protective Order against the Respondent. Sammy’s mother, Rebecca “Veggie” Gonzales, attempted multiple times to obtain protection

and legal safeguards against the destructive actions of the Respondent. But ultimately, this family was failed by every agency whose very purpose was to prevent such a situation. Sammy and her mother had fallen through the cracks. At one point, CPS closed its ongoing investigation of the Respondent’s brother after Sammy recanted the sexual abuse allegations even though there was medical evidence to substantiate her claim. Furthermore, after Sammy’s initial outcry against Respondent’s brother her living arrangement was not changed by the court. The Respondent’s brother, who was



From left: Samvastion “Sammy” Lilith Ochoa and Rebecca Elizabeth “Veggie” Gonzales

living in the same home as Sammy and the Respondent, was merely prohibited from being alone with Sammy, but not ordered to leave the home. Tragically, Rebecca contacted CPS less than two days before she was murdered to state that she feared for her and her daughter’s life.

In the ten days leading up to the hearing, we worked long hours drafting motions, serving subpoenas,

*(Continued on page 5 “Farewell”)*

*(“Farewell” Continued from page 4)*

practicing direct examinations, and constructing case arguments. We continually slammed against dead-ends while seeking informal discovery. Because of the high profile of the associated murder investigation, no one would willingly speak with us; both CPS and the San Antonio Police Department (SAPD) referred us to their attorneys. Our strategy was to prove that the Respondent remained a person of interest in the murder investigations and to analogize to Texas Probate Code section 115, which provides for limitation on the right to control disposition of a spouse’s remains if “the surviving spouse is alleged to be a principal or accomplice in a willful act which resulted in the death of the deceased.” No such provision relating to a parent-child relationship exists. The SAPD had not named the Respondent as a suspect, but had merely indicated that he was a “person of interest” in the investigation. During our trial preparation, the SAPD arrested the Respondent and his brother. His brother was charged with two counts of continuous sexual abuse of a child, and the Respondent was charged with possession and promotion of child pornography. At one point before the Respondent’s arrest affidavit was unsealed, it appeared we would have to rely solely on newspaper articles as evidence of the police’s interest in the Respondent as a “person of interest” in the murders.

We attempted to contact the Respondent in jail to see if he would consider waiving his rights to control the disposition of Sammy’s remains. After waiting a while at the jail, the officer on duty told us that we would not be allowed to see him unless the visit was approved by his criminal defense attorney. We then met with his criminal defense attorney who stated he would deliver the Agreed Order to his client. When we called to check on the status of the agreed order, the day before the second hearing, we were told that the Respondent’s family law attorney was handling the matter. Up until that point, we had no indication that he had retained counsel. We had, however, prepared for both a default and a contested trial.

Opposing counsel did not appear for the second hearing, and we were later informed via voicemail that he was not providing representation in this matter. At trial we gave opening and closing statements, and called and questioned witnesses to provide a full record for the

probate judge. In the end, the court appointed our client, Suzy, as the person with the right to obtain and dispose of Sammy’s remains. Our client, who had remained stoic throughout the court proceedings, met the news with tears of both relief and grief. ■



Tattoo design that Rebecca Gonzales had on her left upper arm.

*Jennifer Fields: Recently, we attended the memorial service held by Suzy in memory of Sammy and Rebecca. For me, it provided a needed sense of closure for my first hearing experience. I had never questioned the ability to provide services for deceased loved ones. Watching and participating in the service, a celebration of Sammy’s life, allowed me to experience in a deeply personal manner, the impact that an attorney can have in the life of a client. I never expected my first hearing to be equal parts hope and disillusionment. Throughout the case, I continually hoped that we could provide our client with some comfort by gaining the right to allow her control of the disposition of her granddaughter’s remains. However, I remain disillusioned at the thought that this ten-year-old girl was failed in life by the system at every level, contributing to her death.*

*Meghan Kempf: In this case I was watching my client living through a situation that defined the very essence of struggle. For the first time I realized that I possessed the ability and skills necessary to provide her with some amount of resolution to help ease her pain. The CLSJ had prepared me amazingly for such an opportunity, and allowed me to gain experience. Ultimately, our client was granted the relief she sought, and was able to give Sammy the dignity and respect she so deserved. From this case I acquired the invaluable ability to identify my client’s needs and effectively obtain what she sought, in the midst of a horrible tragedy. Sammy’s legacy touched me as she allowed me to grow as an advocate. As Suzy told me at the memorial service, “her dream of being a teacher came true.”*

*Professor Pepi: I am grateful that the Clinic provides our students--like Meghan and Jennifer-- who never cease to amaze me with their hard work, dedication and superb advocacy-- the opportunity to provide an invaluable service to the community while allowing them to develop and perfect their legal skills. Our work at the Clinic, while sometimes emotional, makes me proud to be a lawyer.*

*(Continued on page 6 “Farewell”)*

*("Farewell" Continued from page 5)*

**Our Client wrote the following note in her journal during the final hearing.**

*"Oct 14, 2011 9:32am; Courtroom of Judge Polly Jackson—Spencer Bexar County Court-house.*

*Happy Birthday, Sam. I love you and miss you so terribly much.*

*Eleven years ago today you changed my life. And you continue, even after death, or maybe because of it, to change it in even more profound and meaningful ways. Sam, I won't let you down. My gift to you is to show the world what a brave and beautiful girl you were. And how, had you lived, would have changed the world anyway. All by yourself.*

*I have been blessed, no doubt by you, your mom, and all the beautiful souls who are with you, to have a legal team from St. Mary's to help me fight to keep your mortal remains away from your father and stay near your mother's remains. Big words. Laws. Simple message, I will fight to keep you and your mom together. Promise. Cross my heart.*

**DONE" ■**

To learn more about this case:

[http://www.mysanantonio.com/news/local\\_news/article/Those-who-know-mother-girl-more-certain-they-2172429.php](http://www.mysanantonio.com/news/local_news/article/Those-who-know-mother-girl-more-certain-they-2172429.php)

[http://www.mysanantonio.com/news/local\\_news/article/Graphic-allegationsmade-against-brothers-2204685.php](http://www.mysanantonio.com/news/local_news/article/Graphic-allegationsmade-against-brothers-2204685.php)

[http://www.mysanantonio.com/news/local\\_news/article/Slain-girl-s-grandma-wins-round-in-court-2206683.php](http://www.mysanantonio.com/news/local_news/article/Slain-girl-s-grandma-wins-round-in-court-2206683.php)

**HELPING STOP UNJUST IRS PENALTIES**

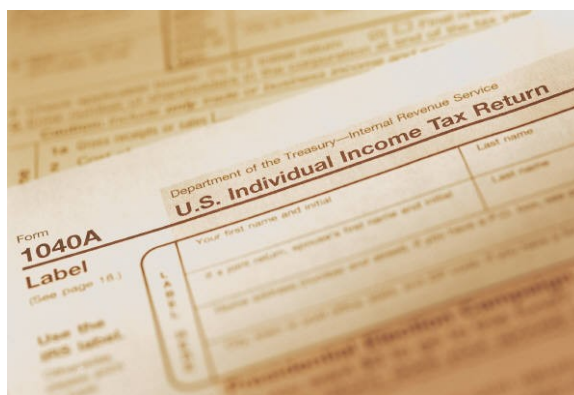
*By Patrick Garcia, Student Attorney & Rachael Rubenstein, Clinical Fellow*

This semester the Civil Justice Clinic (CJC) won a federal tax case for a local construction contractor. The issue arose after an unqualified preparer mistakenly filed the client's return requesting \$1 billion in rebate credits. Interestingly, the return also appeared to reflect a tax due to the IRS. The IRS began to send notices to the client. Due to the client's inability to read English accurately, he thought the notices stated that the return was never filed. Consequently, the client repeatedly re-submitted the erroneous return. Eventually the IRS assessed a Frivolous Filing Penalty for each of the submissions, totaling approximately \$15,000.00. At this point the client came to the CJC seeking assistance.

When our letters and calls to the IRS did not result in a resolution, we wrote a formal protest asking for an appeals hearing and briefing the law as it applied to our client. We dove into the legislative history of the

penalty statute pointing out that it was intended to combat tax protestors — persons who do not believe the government has the authority to collect taxes — not unsophisticated taxpayers who make mistakes on their tax returns. However, the brief appeared to have no positive outcome. We then asserted the client's statutory rights and had the case transferred to San Antonio for a live Appeals Conference. A week before the hearing, the appeals officer contacted us and stated that a hearing was unnecessary. He had carefully read through the file and our written submissions and was convinced that we were correct and that the penalties should not stand. He further commented that our written advocacy was among the best he had ever seen, and encouraged the CJC to keep up the good work.

It took almost a year to reach a resolution in this case. But, we pushed on, navigating our way through the bureaucracy armed with a thorough understanding of the law and facts. Eventually, the client's story was heard and all penalties were dismissed. ■



## Criminal Clinic Student Reflections

### CRIMINAL JUSTICE CLINIC: STUDENT-ATTORNEYS REFLECT ON THEIR WORK ON A POST-CONVICTION WRIT OF HABEAS CORPUS

*By Jose E. Galvan (with collaboration from co-counsel Ashley Marz, Samuel Ronquillo and Zachary Gibson)*

Prior to starting the Criminal Justice Clinic this Fall, my expectations as a criminal defense student-attorney were to represent my community in common criminal charges. However, early in the semester, I was presented a case surpassing my expectations: I, along with three other student-attorneys, Ashley Marz, Samuel Ronquillo, and Zachary Gibson, were to join Professors Stephanie Stevens and Anne Burnham in representing a client who was convicted of murder and sentenced to sixty years in prison on a post-conviction writ of habeas corpus.

Our first task seemed simple—to get acquainted with the facts. However, when we realized the underlying trial facts were embedded in 16 volumes of trial records, the client had filed a 250-plus page *pro se* writ application, and that a three day writ hearing had already taken place in May 2011, we knew this would be no small feat. As Ashley Marz best described it, “taking copious notes of the trial record was difficult because there were just so many characters to keep track of.” After our first review of the trial records, and a debriefing regarding the first part of the hearing, it was evident to us that there were alarming issues that occurred at trial, which supported our client’s claim of an unfair trial: the ineffective assistance of the defense counsel and the withholding of exculpatory evidence by the prosecutor (*Brady* evidence). These issues were supported by the fact that critical evidence had gone missing during the trial, something that was originally, although erroneously, blamed on defense counsel. At the May, 2011 hearing the clinic defense team, through rigorous examination of all involved, established that in fact, the State lost the evidence, not the defense. After the May, 2011 hearing, the local police department “found” the missing evidence. Thus, the parties were to reassemble for a continuation of the writ hearing, and a chain of custody hearing regarding the previously lost evidence.

Usually, as writ lawyers we do our investigation of the facts before filing the writ itself. However, in our case,

our job was not so easy, because our client had already filed a *pro se* writ of habeas corpus prior to the clinic’s undertaking of the case. The Criminal Justice Clinic was appointed on our client’s writ after the Texas Court of Criminal Appeals had initially considered our client’s *pro se* writ, and remanded it for hearing in the trial court. Consequently, one of our assignments as student attorneys was to read our client’s *pro se* writ of habeas corpus, and determine if we could still raise any issues we discovered that were not explicitly raised in the *pro se* writ, in a subsequent hearing. Fortunately, our client had included language in her



*pro se* writ which supported the issues we wanted to present to the court. We then focused our post-conviction investigation in order to further substantiate facts in support of these issues.

Our post-conviction investigation varied from one student attorney to another. Samuel Ronquillo and Zachary Gibson, for instance,

spent days conducting research on the case-specific issue of whether a *pro se* writ could be amended after it was filed and initially considered by the Texas Court of Criminal Appeals. Samuel Ronquillo recalled, “my research evolved into finding case law that held that a *pro se* writ of habeas corpus should be construed liberally.” Ashley Marz, carefully studied the *pro se* writ to locate instances in which our client expressly and implicitly alleged *Brady* violations, so that we could further investigate the substance of the allegations. In Ashley Marz’s words, “going through the writ with a fine-toothed comb was difficult because the writ was not written by an attorney; however, there were instances in which she alleged possible *Brady* violations that we could use in her subsequent hearing.”

My primary focus during this stage of our investigation was to compare the voluminous phone records of a trial witness with those of our client. This witness had testified that our client had called him on numerous occasions, but after careful review of the phone records, this turned out not to be true. Finally, our last task was to visit the jurors to determine whether there was any juror misconduct during the deliberation and whether, in light media attention during the trial, any of the jurors blamed the defense counsel when critical evidence went missing during the trial.

*(Continued on page 8 “Post-Conviction”)*



*("Post-Conviction" Continued from page 7)*

Our investigation for this case was different than that of our other open cases at the clinic. As Zachary Gibson noted, "doing post-conviction investigation is more difficult than your usual case because we have to rely on a room full of folders and pictures, the findings during the investigation, and what witnesses had to say to determine what happened the day of the murder." In sum, as the legal representatives of our client, we did as much as possible to determine the facts of this case in order to help her in her writ of habeas corpus.

Our experience with this case did not end with the investigation, however. Ashley Marz, Samuel Ronquillo, and I had the opportunity to attend our client's November 10, 2011 hearing with Professors Stevens and Burnham in Waco, Texas. We were able to observe our professors conduct direct and cross-examinations of witnesses and experts. Their presentation was seasoned and professional. This was enlightening to us as student-attorneys as we will soon be undertaking these responsibilities in our other clinic cases. Although our November 10, 2011 hearing was the final hearing on our client's writ of habeas cor-



pus, in many ways the most arduous work for us as student attorneys lies ahead; as soon as the court reporter is finished transcribing the record of the May, 2011 and November, 2011 hearings, we will begin preparing written proposed findings of fact and conclusions of law for the trial court which, if accepted, will be submitted to the Texas Court of Criminal Appeals.

What I thought would be a semester spent representing my community in more common criminal charges has turned into an eye-opening experience investigating a high-profile murder and researching complex legal issues pertaining to post-conviction writs of habeas corpus. After experiencing it first hand, "no mock trial, law school book, or law school lecture could have taught

us what we have learned about representing a client in a post-conviction writ of habeas corpus," said student attorney Samuel Ronquillo. Indeed, "it is an overwhelming amount of work." Even though our experience thus far working on a writ of habeas corpus has been difficult, all of us have learned profound life lessons from this experience that we will certainly carry with us throughout our careers as attorneys. ■

**Capital Murder Reflection**

*By Leonard G. Belmares II*

I remember during my first year of law school, talking to a criminal defense attorney and asking, "How do you do it, how do you defend people accused of capital murder?" He kindly replied, if you decide to do criminal defense you will be asked that question throughout your entire career, and you will develop your own answer to that question. Today, after working in the Criminal Justice Clinic, I can say I have developed my own philosophy regarding that question. According to the Gospel of Luke, to whomever much is given, much will be required. As law students and future attorneys, we are being given the knowledge to determine when someone is in need of legal representation and what can be done to assist



them. Therefore, it is our responsibility to assist those in need, and to ensure the rights of the accused are protected.

During the fall semester, I have had the privilege of working on a capital murder case with Mark Stevens. When I learned of the assignment, I was first excited and then became intimidated about the case, and what it might entail. My first task was to meet another attorney, also working on the case, at the Bexar County Detention Center and be introduced to our client. The morning of the meeting, I was immediately overwhelmed with the parking situation at the detention center, but soon found a space and made my way inside. I was greeted by the attorney and taken into an attorney visitation booth, and after waiting about an hour, met the client. A few days later,

*(Continued on page 9 "Capital Murder")*

(“Capital Murder” Continued from page 8)

I met the client’s family and learned how they were being affected by the case. I then started visiting the client on a regular basis and talking with him about the evidence that the State had provided during discovery, about the motions we had filed, and about anything else he wanted to discuss. The more I talked with him, and thought about the impact of the case on his life and his family’s life, the more I knew I had to do everything I could to help him. During the semester I was given additional tasks, such as conducting legal research, and with time the case became less intimidating, and even more important. I began to think about the fact that the client had no one else to turn to and it was up to us, the

trial team, to ensure he was properly represented and his rights were protected.

The experience has allowed me to grow and develop into a more effective advocate and counselor. I still cannot believe one of the first cases I was involved in, has been a capital murder case. What was first intimidating has become empowering. I can now draw on my experiences working on a capital murder case, as I continue my career as an attorney. When I compare future cases to this case, I believe that I will be less intimidated because I have dealt with a case with such high stakes. ■

By Jeff Weatherford

As a student with the criminal justice clinic, I had the opportunity to observe and research a fascinating case which was in the midst of a heated motion for new trial hearing. This case illustrates the phrase “reality is stranger than fiction.” The facts, which were the subject of the motion for new trial, are both unique and troubling.

In the middle of a felony jury trial in Bexar County, prosecutors from the white collar crime division seized documents from San Antonio criminal defense attorney Tony Reyes. Mr. Reyes’s client was charged with breach of fiduciary duty over \$200,000. During cross examination of the complainant, Mr. Reyes introduced documents which had been provided to him by his client. The complainant was upset by the

use of these documents, or more specifically how they were being used to impeach her testimony. The complainant told the prosecutor that the documents were stolen and that she (the complainant) had personally created them. The prosecutor then approached the bench and requested the judge to order an *in camera* inspection of the allegedly stolen documents. Mr. Reyes responded that all the documents were going to be introduced during trial, so they were not being concealed. The judge ruled that Mr. Reyes had an ethical duty to disclose and to not use any documents which he believed to be stolen, and thus found an *in camera* inspection unnecessary. In response, the prosecutor decided to take matters into her own hands and sought a search warrant for Mr. Reyes’s file that same afternoon.

Since the presiding judge had already told the state he would not compel production of the documents, the District Attorney’s investigator and two prosecutors

went to a different district judge to get the warrant signed. The new judge issued a warrant. There are conflicting accounts as to whether the judge was made aware of the fact that the presiding judge had already made a ruling concerning those documents.

The investigator and prosecutors from the white collar crime division seized from defense counsel two bins of files and two binders, which were on top of defense counsel’s table in the courtroom. They went

through each document and made copies for their office. Reyes was forced to continue the trial without his documents and his client was found guilty. The state later held a hearing where they returned some of the documents, which according to the prosecutors themselves, “obviously belonged to the defendant and her attorney.” However, the white collar crime division still retained copies of the returned documents. There-

fore, the state not only viewed documents which were privileged work product materials, but they also retained copies of them.

Furthermore, the search warrant listed Tony Reyes as a suspect in the same crime he was representing his client in. This created an inherent conflict between Mr. Reyes and his client. The defense has argued that the prosecutors then had the duty to notify the court of this conflict, so that the court could initiate a conflicts hearing, which they did not do.

The case resulted in a heated motion for new trial hearing. The legal issues involved were whether it was appropriate for a prosecutor to thwart a presiding judge’s ruling by procuring a search warrant from another judge. Also, whether a fair new trial is even possible in that the entire prosecutor’s office has been privy

(Continued on page 10 “Weatherford”)



(“Weatherford” Continued from page 9)

to material which was unquestionably privileged under the work product doctrine. Thus, it seemed unlikely that the prosecutors could “un-see” and forget what they

read. Thus, the defense requested dismissal with prejudice as the appropriate remedy. The court granted the defense motion for a new trial, but not with prejudice. Thus, the state may retry the defendant. ■

### Warrants Clinic Reflection

By Kyle Harter

As a Criminal Justice Clinic student attorney, I participated in the Warrants Advice Clinic at Haven for Hope. It was a wonderful opportunity to help individuals with legal issues. It felt great knowing that we were making such a big impact in the lives of these individuals by giving them a chance to get their lives on the right track. The people who needed advice were dealing with problems associated with homelessness. The majority of issues we were asked to help with involved searching for outstanding warrants in other jurisdictions. Because they were in other jurisdictions, we could not offer representation on them. When we ascertained where the various warrants were from, we were able to counsel the individual on how to best deal with them. We helped the individuals draft *pro se* letters to the various courts of jurisdiction to notify the court of the person’s status at Haven for Hope, and where applicable, to request community service from the court in lieu of fines. The session would end by recapping what the individual needed to do in order to resolve any outstanding issues.



My favorite part of the experience was seeing how grateful the individual was; they could not believe that someone had taken the time to help a stranger. It was shocking for me to see how some people live, and the perils that they face when living on the street. Many of the problems seemed to be caused by the residual effects of homelessness, which perpetuate the cycle of homelessness. Haven for Hope helps provide an end to the cycle many of the homeless deal with. Many of these people have no other options and cannot afford legal counsel to help them deal with these problems. It felt good helping these individuals help themselves. I know we played a small role in helping end the cycle of homelessness for some of these individuals.

I would definitely recommend to anyone participating in the Criminal Justice Clinic to get involved with the Haven for Hope Warrants Advice Clinic. I enjoyed my time there and thought it was both a great experience to help the less fortunate and to develop my lawyering skills a practical capacity. ■

## Immigration Clinic Student Reflections

### Children in Foster Care

By Kate Meals

**“The rights to conceive and to raise one’s children have been deemed ‘essential,’ ‘basic civil rights of man,’ and ‘rights far more precious than property rights.’”**

— U.S. Supreme Court, *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977).

What happens to U.S. citizen children when their parents are detained or deported by immigration officials?



There are approximately 5 million children of undocumented immigrants in the United States, and over 3 million are U.S. citizens. Born in the United States, these children derive their citizenship from the Fourteenth Amendment. Current immigration law and enforcement policies often marginalize these children’s U.S. citizenship.

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According to the Applied Research Center, there are currently at least 5,100 U.S. citizen children in the U.S. foster care system because their parents have been detained or deported. Information gathered through surveys and national trends indicates that this number represents only a conservative estimate of the actual total. Federal data demonstrates that almost one in four people deported within the past year was the parent of a U.S. citizen. Rather than attempt to unify the family, juvenile courts and child welfare departments frequently move to terminate parental rights and put the children up for adoption. The state often terminates parental rights when undocumented immigrants are detained or deported after being charged with a crime that, for a U.S. citizen parent, would likely only result in a short custody interruption.



A brutal “choice” is involved for many children: either be torn from their parents and enter the foster care system, or be effectively deported to an unfamiliar location by their own country. Current immigration laws and their impact on U.S. citizen children are incongruent with the “best interest of the child” measure used in child welfare and family law.

Veronica, a client of the immigration clinic, has lived in the United States since she crossed the river with her family as a child. She grew up in Texas with her siblings, attended school and established strong community connections. Now in her mid-twenties, Veronica has four U.S. citizen children. One day while driving her children to school, she was stopped for a minor traffic violation. Suspecting that she was in the country illegally, the police contacted immigration officials. Veronica was immediately placed in removal proceedings.

Veronica will soon have a hearing before an immigration judge who will determine whether or not to approve her petition for cancellation of removal. Although the judge has some authority to exercise discretion, the children’s effective deportation and loss of the opportunity to live in the United States is not generally considered a persuasive argument against the parent’s removal, espe-

cially if the children are young. If Veronica is removed from the United States, she will have to face the decision whether her children should remain in the country without her, or accompany her to Mexico, where the children will be unable to exercise their rights as U.S. citizens.

Undocumented immigrant parents of U.S. citizen children have asserted that their deportation by the United States Department of Homeland Security (DHS) violates their children’s constitutional rights. Specifically, they argue that by deporting a U.S. citizen child’s parent and legal guardian, they “substantially interfere” with the child’s right to be raised by a parent and to live within the United States. However, the circuit courts have consistently held there is no violation of a U.S. citizen child’s constitutional right when her parents are deported.

According to a recent report by Colorlines magazine, if these cases continue piling up at their current pace, the next five years will likely see 15,000 children of detained and deported parents separated from their parents and put into the U.S. foster care system. If the trend continues, about as many parents will be removed in a two-year period as were removed in the previous ten years.

The increase in parental deportations corresponds with an overall increase of deportations under the Obama administration. In FY 2011, 397,000 people—a record number—were deported. Sadly, parental deportation is also increasing as a *proportion* of all removals. In comparison to the total number of expulsions, the percentage of removals of parents of U.S. citizen children has increased from 8 percent (between 1998 and 2007) to near 22 percent (in the first half of 2011).

With more and more deportations each year, this situation is on course to become an international crisis. For these children, cultural loss, family destruction, and stifled dreams stand out as just some of the fallout from our current removal and deportation policies. ■

**Fall Reflections from the Immigration and Human Rights Clinic**

During the fall semester students enrolled in the Immigration & Human Rights Clinic become acclimated to the hearing process by observing various judges in action. They then begin their representation of clients, conducting interviews and preparing for hearings. The following are excerpts from student reflections on their new experiences.

“I went to a hearing in one courtroom. Watching the hearing was hard for me to stomach. It appeared to be a very dehumanizing experience. People



were called by the last three digits of their alien number. They were not referred to by names, but by numbers. While I am aware that the judge has many cases and cannot possibly learn the names of each individual, I cannot imagine what it must be like to be in the respondent’s position, knowing that he or she is only known by a number. It was so fast-paced and each person was brought in and out like in a cattle auction.

There was one client who could not show up in time for the hearing. The judge allowed the case to be heard at a later time. Although the hearing seemed to be void of humanity up to this point, I saw that it still existed.

Watching the hearings quickly exposed me to the reality of legal proceedings. The attorneys and judges have done them so many times that there seemed to be a mechanical indifference. However, I saw that there were moments of understanding from the judges and attorneys.”

**-Jessica R. Castilleja**

“I watched an asylum case for a hearing on the merits adjudicated by an immigration judge. I was impressed (and also surprised) by the fact that the respondent was being questioned through a screen monitor rather than in person. The trial attorney and the attorney represent-



ing the government were present, sitting at either side of the courtroom. I was just a bit alarmed to walk in and see the attorneys asking questions to a screen! It just shows how much our system has developed so that now cases can be adjudicated via technology.

I also watched another hearing by a different judge. The environment in the next courtroom was *completely* different than the first. Unlike the hearing on the merits case, this judge’s courtroom was completely full. I actually had to stand the whole time because there wasn’t anywhere to sit! The judge went through a series of questions rather quickly with each client.”

**-Anietie Akpan**

“In general, the experience of observing the hearings was unsettling. The courtroom seemed to lack any element of humanity. The clients were treated like numbers, rather than as individuals. It struck me that it is a significant burden for clients to make the trip all the way to court for a two-minute (or less!) hearing in which the case is merely reset to a later date. In order to attend



their hearings, individuals and families have to rearrange their schedules, find childcare or take their children out of school for the day, deal with transportation challenges, and miss work. In addition, I noticed that the court security guards spoke harshly to several families, commanding them to keep their children quiet and seated. Children squirmed and cried, and parents attempted to hold them in their seats as the security guard continued to admonish the adults that the children were not to run around or make noise. Many families spent several hours waiting for their hearings. There was no play area for the children even though there were far more children than adults in the waiting area.”

**-Kate Meals**

“I stepped into the courtroom for a master calendar hearing. Most detainees appeared without counsel. All were male, and asked for volun-



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tary departure even if the judge mentioned to them that they could possibly have a form of relief available to them. One particular detainee caught my attention. He qualified, from the judge's perspective, for relief from removal, and the judge explained the necessary information. At first, the detainee was elated to hear of the relief available to him, but as the judge continued to explain, it seemed as if he became frustrated. While the judge was explaining once again, the detainee said he would rather just take the voluntary departure. As he asked, I wondered whether he, as well as others, who seemed at the moment to qualify for a form of relief, knew how helpful an attorney could be to their case and how much easier it would be on them to seek counsel. I thought more about the people I saw appear and realized that it was more likely the unwillingness to stay in a prison-like facility than their unwillingness to find representation. If I were in the same situation, I would rather leave the facility as quickly as I could than stay. As I left court that day, a feeling of sadness overcame me as I continued to reflect on those detainees in Pearsall who asked for voluntary departure, and their families, many who had U.S. citizen children they would be leaving behind for an unknown period of time."

**-Yvette S. Trevino**

"My initial meeting with my client was on September 13. I read through the client's file pretty well before meeting with her. I can see it might be discouraging for one of our clients to meet a stranger who tells her she is familiar with her life. The client was pretty quiet during our meeting. Towards the end of our meeting, when I told her that we would have to write a personal statement and probably also obtain affidavits from people she knew, the client became emotional. She mentioned more than once that although she realizes it and people have told her that it's best to talk about it, it's very hard for her to talk about the things that happened to her many years ago. I did my best to make sure she understood that I'm here to help her and that I want her to feel comfortable enough to eventually be able to tell me anything."

**-Melissa Jeffries**

"Upon first meeting my client I was surprised by how little importance he seemed to place on his proceedings. I was also frustrated by the lack of detail that the client gave us upon interviewing him for the next hour or so.

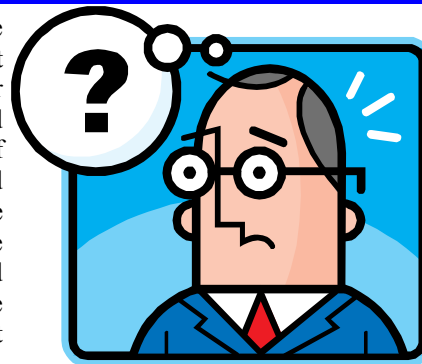


Whenever we asked about specific dates or more detailed explanations of events that had occurred, he simply became frustrated and stated that there was no way that he could remember. Then I placed myself in his shoes and realized that if someone had asked me the same questions about events that occurred twenty or more years ago I probably would have a very difficult time remembering all the details. I would need time and space to think about those events so that I could clearly relate them to a person that had very little knowledge about the event."

**-Pablo Rodriguez**

"Before arriving at the hearing, Pablo and I spent many hours developing the questions we planned to ask our client. At first it seemed our client's direct examination would be very straight-forward, but that thought went out the window once we began to practice with him. Pablo and I learned very quickly that no matter how perfect our questions seemed to be they needed to be based on how our client actually answered the question. Once we began to practice our questions with our client we learned which questions worked and which questions did not. After our first practice session with our client, we restructured the questions to better fit his answers, but after our second practice session we learned another valuable lesson: that the main focus of our direct examination questions must paint a picture in the mind of the judge. Direct examination questioning is a skill that can only be learned through practice and with attention to detail."

**-Jeff Martinez ■**



## If you are interested in joining the Clinic Program:

Visit the Clinic Information Sessions on January 24th 11a.m. –1p.m. at the Raba building and January 25th at 11a.m. –1p.m. at the Raba building and 4p.m.-6p.m. at the Law classroom building.

Applications will be available for pickup at the Information Session tables, at the CLSJ front desk, *Pro Bono* carol, and also online on TWEN under *Clinic Applicants for Summer/Fall/Spring 2012-2013 course*.

**Priority deadline to submit your complete application is January 31st by 5 p.m.**

All clinic assignments are on a first come, first served basis. The earlier you submit your completed application; the higher the chances of getting into the clinic of your choice. Don't wait; submit your application as soon as possible.

For any questions please Contact Marissa Santos at: [msantos@stmarytx.edu](mailto:msantos@stmarytx.edu).



# THE CENTER FOR LEGAL AND SOCIAL JUSTICE CLINICAL PROGRAM

Faculty, Staff, & Students  
SPRING 2012

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