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Spring 2016

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

St. Mary's University School of Law Center for Legal and Social Justice

Clinic Year 2015-2016 • Spring 2016

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LAW CLINIC APPLICATIONS AND INFORMATION SESSIONS

St. Mary's Law Clinics are now accepting applications for Summer 2016 and Fall/Spring 2016-2017. To apply visit <https://law.stmarytx.edu/academics/center-legal-social-justice/clinical-program/>. Apply early, spaces are limited. For more information about the clinical programs, visit our website or come talk to students and faculty at one of these information sessions:

Tuesday, February 23
12:00 – 2:00 p.m.
Raba Foyer

Wednesday, February 24
12:00 – 2:00 p.m. and
5:00 – 7:00 p.m.
Raba Foyer



Center for Legal and Social Justice



On January 14, 2016, Bexar County District Attorney Nico LaHood (front row, third from right), a former Criminal Justice Clinic student, came back to talk with criminal clinic students about the ethical practice of law from the perspective of the defense lawyer and the prosecutor.

Swearing-in Ceremony

The clinic student attorneys' Swearing-In Ceremony and Reception for the 2015-16 academic year was held on September 3, 2015 at the Center for Legal and Social Justice. This annual event is an opportunity for clinical faculty and staff to welcome the new student attorneys, and for students' family members to witness the student attorneys being sworn in and to celebrate with them as they embark of this practice-based leg of their legal education. This year, the oath was administered by the Honorable Judge John A. Longoria, Bexar County Court at Law No. 5. The students raised their right hand as they swore to advocate zealously on behalf of their clients. Judge Longoria shared inspirational words with the students about the importance of ethics in the practice of law.

Judge Longoria, a St. Mary's University Law School alumnus (J.D., 1973) himself, has enjoyed a lengthy career as both a public official and a practitioner. He served on the Board of Trustees of Via Metropolitan Transit Authority and has held several public offices including that of Bexar County Commissioner, Bexar County Judge, Texas State Representative, and his current position, Judge of County Court at Law No. 5. In addition to these other positions, Judge Longoria is a United States Army veteran. He has practiced both criminal and civil law and is regarded as an excellent and ethical attorney. He serves on many civil and community Boards and Committees, and is very active in his church community at St. Leonard Catholic Church.

New students take the Student Attorney Oath administered by the Honorable Judge John A. Longoria, Bexar County Court of Law No.5



Civil Justice Clinic Students Class 2015-2016 (from left to right, Samuel Morales, Molly Hunt, and Autumn Puckett).



Honorable Judge John A. Longoria



Immigration & Human Rights Clinic Students Class 2015-2016 (from left to right, Martin Garza, John (J.D) Vela, and Trevor Gallaway).

IMMIGRATION AND HUMAN RIGHTS CLINIC

WELCOMING A NEW PROFESSOR



My name is Erica Schommer. In August of 2015 I joined the Center for Legal and Social Justice as a Clinical Assistant Professor of Law for the Immigration and Human Rights Clinic (IHRC). I am thrilled to be part of the Center's incredible staff and to work with students to further St. Mary's commitment to social justice. I grew up in Wisconsin and graduated from the University of Wisconsin with a Bachelor of Arts in Political Science and International Relations. After college I wanted to get some hands on experience in Latin America and I moved to Mexico City where I spent two years working at the Miguel August Pro Juarez Human Rights Center. From there, I relocated to Austin to attend the University of Texas where I received my J.D. and a Master of Arts in Latin American Studies.

I am passionate about clinical legal education because it changed my own career path. My goal when I went to law school was to work in policy. I never intended to practice law, but after taking the immigration clinic at UT, I was hooked. I began practicing immigration law after graduation, spending seven years at Texas Rio Grande Legal Aid in Weslaco, Texas. I later transitioned to private practice in Tacoma, Washington where I handled a large volume of detained removal defense cases.

It feels wonderful to be back in the public interest world and in South Texas. I am grateful for the warm welcome I have received from the St. Mary's community. Last semester I had the tremendous pleasure of teaching with Professor Lee Teran, who started the IHRC at St. Mary's in 1990. This semester I am on my own and looking forward to continuing to work with an enthusiastic and talented group of students. It is very exciting to be teaching the next generation of immigration lawyers and to do so while making a real difference in our clients' lives.

I look forward to meeting more members of the St. Mary's community and to hearing your ideas for how the IHRC clinic can best serve the Law School and the community.

Children in Prison

by Luis Medina (Class 2014-2015)

On a Friday morning, I and other students from the Immigration & Human Rights Clinic traveled to the Karnes City Civil Detention Center to interview detainees mostly women and children. Karnes City, Texas is about 50 miles southeast of San Antonio.

After driving for about an hour, the GPS told us to take a right and that the destination was to the left. We weren't sure if we were at the right place—it was the middle of nowhere, and there was a nondescript building that looked like it was still under construction. We were at the right place. A small white sign at the entrance read Department of Homeland Security, with the DHS emblem and a logo that read GEO Group.

Continue on the next page —>

Their website describes the GEO Group as the world's leading provider of correctional and detention management services to federal, state, and local government agencies. According to their annual report, they had revenues last year of over \$1.5 billion dollars. The Karnes City Civil Detention Center, categorized on the GEO website as a correctional facility, has a capacity of 600 "residents."

The facility was clean, to my surprise. An American and Texas flag stood in a corner, seemingly legitimizing the operation. On the wall were two rows of portraits. The older white men in suits on the portraits smiled. I think they were the directors of the facility or leaders of the GEO group.



Several members of the Immigration & Human Rights Clinic Class 2015-2016 attend training in Dilley, Texas (from left to right, Oscar Salinas, Martin Garza, JonCarlo Serna, GianCarlo Franco, Professor Lee Teran, Bessie Muñoz, Paolo Nancgas, and Luis Medina).

After passing through a series of controlled access entryways, we reached a room of tables and chairs, with interview rooms on two sides. We picked an interview room and called our first potential client. My supervising attorney and I met with two women, one with a young daughter and the other with an older son. The son was held separately, because children 12 and older are kept separate from their mothers. They told us about their experiences—how they got to the U.S., how they ended up in detention, why they left their country. The stories were different, but the same.

They rode up through Central America in the back of commercial trucks like cargo. Then, with the help of a guide, they crossed

through Mexico and across the U.S./Mexico border. After walking through the desert, they reached the road where they walked for several more miles before being caught by Border Patrol. They told us about how the Border Patrol took their belongings and transported them to what they call "la hielera," which means "the cooler." La hielera is a small, cramped room that is kept at temperatures as low as 55 degrees. They are kept there for up to three days, sometimes more, with nothing but a small aluminum blanket. There is no mattress or bed, and they are stripped of their sweaters and socks. No distinction or special treatment is given to children, they are all put in the same room. After la hielera, they are taken to another holding area where they are kept overnight. Both women recounted how they were awoken with their children at 2 or 3 in the morning to begin their transfer to the Karnes City Detention Center.

The first woman told us about her small home in El Salvador, and how a group of boys and men, all members of a gang, liked to hang out across the street. She recounted how they would come to her door at night and ask to borrow her son to help them buy drugs—she bravely refused. Her son later told her that he was repeatedly targeted and harassed on the way to school by the same gang members. "Either you join the gang, or we will kill you and your mom," they'd tell him. Out of fear for her son's life, and her own, she decided to leave her home and country for the U.S. hoping to get asylum.

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The second woman and her young daughter were next. The girl was shy but lively. I tore a paper from my notepad and gave her a pen. "¿Quieres dibujar?" I asked her. "Do you want to draw?" She eagerly took the pen from my hand and said yes. As we began to interview the mom, I hoped the girl was sufficiently distracted as to not pay attention to the conversation. Her mom told us a harrowing story about a gang execution she witnessed while working at her food stand. The victim and the perpetrators were members of the same gang, and the killing was not authorized by the boss.

The killers approached her and threatened to kill her and her daughter if she spoke of the killing to anyone. She told her story holding back tears, all while the girl sat silently next to her. It was hard not to cry with her. I looked at her and her baby girl and was overcome with sadness. I realized how fortunate I've been growing up with a relatively easy life compared to the kind of trauma they had been through. Her husband had fled the country five years earlier when the gang began executing her husband's uncles. One by one they were being murdered for what Immigration Officials consider "general gang violence" and not sufficient to establish an asylum case.

We regrouped with the other students and attorneys and the sentiments were the same all around. Although we found some good cases, we couldn't help but feel regretful at the thought of not being able to help them all. There was a knot in my throat at the thought of what would happen to that woman and her little girl if they were deported back to El Salvador.

So what did I take away from this experience? There is a lot of work to be done on immigration reform. The for-profit system of detaining immigrants should be eliminated. Labeling these places as detention centers doesn't make them any less of a prison, and labeling these children as residents don't make them any less prisoners. The stories of these women and children need to be told, and we need to be more educated about the issues so that we can bring about effective change in the laws. This is a land of immigrants after all.



Rep. Luis Gutierrez (IL) and others in the U.S. Congressional delegation including Rep. Joaquin Castro (TX), Rep. Lucille Roybal-Allard (CA), Rep. Zoe Lofgren (CA), and Rep. Raul M. Grijalva (AR) provide a legislative update, hosted at St. Mary's University, June 22, 2015, on immigration issues including the detention of women and children in Karnes City and Dilley, Texas.

THE CRIMINAL JUSTICE CLINIC

Inside the Court of Criminal Appeals

by P. Mae Garza (Class of 2015)

On November 4, 2015, professors and students from the Criminal Justice Clinic took a tour of the Court of Criminal Appeals in Austin, Texas. The tour was hosted by Judge Bert Richardson, St. Mary's School of Law (StMu) Alumnus, and his Court Clerk Naomi Howard, former StMU Criminal Justice Clinic student.



Photo (l-r): A. Burnham, M. Stevens, A. Macias, P.M. Garza, K. Payne, Judge Richardson, D. Bock-Barnes, S. Stevens

The day began with students hearing oral arguments. "Witnessing the oral arguments really brought home the importance of familiarizing yourself with every aspect of your case before going into trial, and especially before presenting to the Judges of the Court of Criminal Appeals," said Dannet Bock-Barnes, StMU third-year law student. Students were then escorted into judges' chambers, the robing area, and conference chambers, where the judges deliberate on whether to grant discretionary review as well as the outcome of the appeal.

Judge Richardson then explained the process of granting review. Richardson said that if the Judges are in agreement not to take a case, the Court declines. If they are in agreement to take a case, then it is reviewed. However, when the Judges are not in agreement as to whether a case should be granted review, one Judge takes the majority position and another takes the dissenting side. The dissenting Judge then has the opportunity to present the case, again to the entire panel, in a light favorable to his position. After having heard the dissent's argument, the Judges vote again. In some instances, the dissent can become the majority, triggering the whole process over. Judge Richardson said that if the dissent is persuasive and the Judges vote to take the case at this point, the approach is called "picking up a case by the dissent."

Criminal Justice Clinic student, Kateland Payne, said, "I was fascinated by how Judge Richardson explained the process. It was interesting to learn that the Judges, too, have to argue their positions much like the parties in the case."

After the tour, students were invited to lunch with Judge Richardson and several briefing attorneys who further explained Court dynamics. Amber Macias, clinic student and aspiring defense attorney, said, "As a student attorney, I have had the honor of working on a complex writ of *habeus corpus* and getting a taste of what criminal appellate work entails. A couple of the attorneys were very impressive in presenting their arguments. This experience provided me a way to see how all of the hard work in law school can be put to use in the real world. I was most surprised by how approachable the Judges came across. I am inspired by the experience."

A Wrongful Conviction

by Larry Tschirhart (Class of 2015-2016)

News of wrongful convictions are common topics of discussion lately. Anthony Graves, Michael Morton, Hannah Overton, “the San Antonio Four”... just to name a few. How are these wrongly convicted people finally being freed? Post conviction writs of habeas corpus.

For several years, the St. Mary’s Criminal Justice Clinic has been involved in a writ of habeas corpus challenging the wrongful conviction of Rogelio Gutierrez. In 1992, at the age of sixteen, Rogelio was accused of participating in a “gang” sexual assault. He was convicted and sentenced to thirty years in prison, even though co-defendants were found “not guilty,” and several admitted participants were sentenced to only five years under plea deals. Rogelio has consistently maintained his innocence. Over the years, dozens of St. Mary’s Criminal Justice Clinic student attorneys worked on the case under the supervision of Professor Anne Burnham. A significant break came when Gutierrez’s writ counsel were reviewing information in the State’s case file, and came upon information undermining the credibility of the complainant that had not been previously disclosed to Rogelio’s trial attorney. The State’s failure to disclose exculpatory evidence in its possession, such as that in Rogelio’s case, is commonly known as a *Brady* violation. *See Brady v. Maryland*, 373 U.S. 83 (1963).

In 2013, student attorneys filed a post conviction writ of habeas corpus based, in part, on the newly discovered *Brady* violation. In preparation for the filing of the writ, the student attorneys reviewed reams of evidence. They obtained affidavits from attorneys, Rogelio’s friends and relatives, and even the original trial judge to support the writ application. Under the supervision of the supervising attorney, these student attorneys drafted the writ application which set forth multiple grounds for review, including actual innocence, *Brady* violations, and ineffective assistance of counsel. The trial court agreed that sufficient factual and legal issues were raised by the writ application and it issued an Order Designating Issues.

In early 2015, when Nicholas LaHood took office as the new Bexar County District Attorney, he set up a Conviction Integrity Unit to examine cases of possible wrongful conviction. While this unit remains a strong advocate for the State’s position, the unit attorneys appear focused on reaching the truth. Jay Brandon, Chief of the Conviction Integrity Unit, chose Rogelio’s case as one of the first that his newly formed unit would work on.



Criminal Justice Students with Chief of the Conviction Integrity Unit, Jay Brandon (from left to right Michael Acevedo, Jay Brandon, Zacil Andrade, Larry Tschirhart).

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Inside the 186th District Court where Rogelio was convicted, and where he now seeks to have his conviction overturned on his writ of habeas corpus.

St. Mary's Criminal Justice Clinic had several writ hearings where evidence was admitted in support of the writ application. The parties prepared agreed "Partial Findings of Fact and Conclusions of Law" stipulating that Rogelio received ineffective assistance of counsel at the punishment phase of his trial. These findings were adopted by the trial court. If the Texas Court of Criminal Appeals agrees, Rogelio will be entitled to a new trial on punishment. Rogelio spent twenty-two years in prison, and although his writ case is still pending, he is one of few Texas inmates to be granted bond under Article 11.65 of the Texas Code of Criminal Procedure. The clinic filed a Motion

for Bond pursuant to Art. 11.65 which provides for bond in the limited situation where there are agreed findings of fact and conclusions of law granting relief on a writ application. The court granted the motion to release Rogelio on a personal recognizance bond on March 31, 2015.

Michael Acevedo, Zacil Andrade, and I are currently serving as student attorneys on this most interesting case. Our work started with reviewing the twenty-four hundred page court record. This was a massive undertaking but very useful to get us up to speed on the facts and issues. It was also informative for those of us wanting to be trial lawyers. It included almost anything that could go wrong in a trial. Everything from voir dire issues, good [and bad] opening statements, evidence suppression hearings, a multiple defendant trial, good [and bad] direct and cross-examination, plea deals with witnesses, good [and bad] closing arguments, a complainant who recanted immediately after the guilty verdict, a botched punishment phase, a denied motion for new trial, and an unsuccessful appeal. And we read it all as it actually happened, not a summary recited in a court ruling. Following evidentiary hearings in the case, the parties are preparing proposed findings of fact and conclusions of law on the grounds for review in Rogelio's writ. The Texas Court of Criminal Appeals has not yet taken up the case for a final determination, so it is far from over.

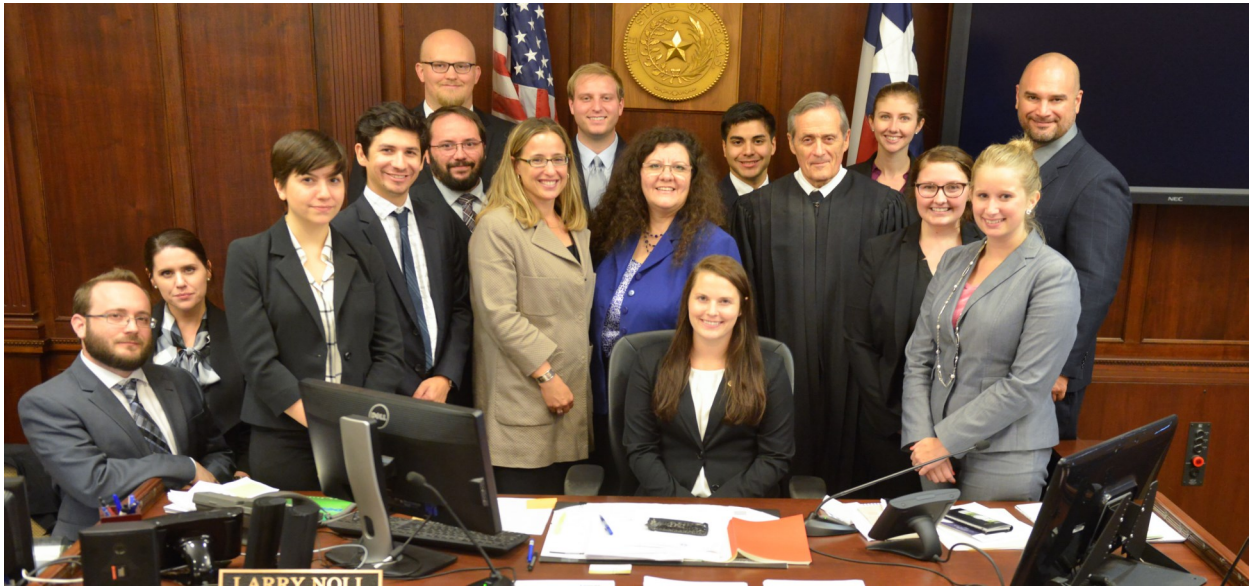
In the end, I view this as a wonderful learning experience and an opportunity to help right a wrong. When I first met Rogelio, I didn't know what to expect. Even after twenty two years in prison, he is a very respectful, clean cut young man, very soft-spoken, with an immense faith. He finished high school, and most of a bachelor's degree while in prison. He says he never gave up hope that his innocence would be recognized. I am proud to be a part of the effort to bring this about as a student attorney in the St. Mary's Criminal Justice Clinic.



Nueva Street entrance to the Cadena-Reeves Justice Center, where Rogelio was convicted in 1994, and where his post-conviction writ was filed.

THE CIVIL JUSTICE CLINIC

From the Classroom to the Courtroom: Student Attorneys as Lawyers



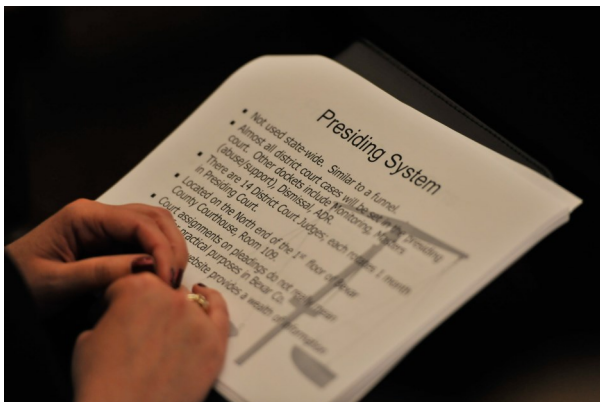
Civil Justice Clinic Students Class 2015-2016

By Alvin Martin and Maria Huynh (clinic year 2015-2016)

Prior to enrolling in St. Mary's School of Law, both of us worked as legal assistants, which sparked our passion to advocate for clients in the legal field. The classroom allowed us to learn the black letter law, but clinic gave us the opportunity to apply what we learned to real clients' cases.

Being a student attorney at St. Mary's Law Clinic is a unique opportunity because it provides the perfect learning environment for law students. Although beneficial to our careers, prior clerkships provided only basic research, minimal drafting, and assisting attorneys, limiting our practical legal experience.

Through the clinic experience, we communicated with our clients frequently, investigated clients' issues, conducted an in-depth deposition, and drafted and filed litigation documents. All of our clients were low income homebuyers, trying to protect their most valuable investment. Being a student attorney in the clinic program allowed us to be first chair attorneys with the support and guidance of the clinic professors, who were great mentors and fully explained the procedures, research methods, and daily operations of a working firm. This experience has certainly prepared us for the next chapter of our legal careers and confirmed our dedication to advocating for the voice of justice.



Civil Justice Clinic Students Class 2015-2016

A Reflection: The Tale of Two Guardian Ad Litem Cases

A reflection by: Molly Hunt (Class 2015-2016)

During my first semester as a student attorney in the Civil Justice Clinic, I was assigned to a Guardian Ad Litem case. The court will appoint a Guardian Ad Litem if it believes that there is more to the story than the testimony being presented. Judges want to get things right, especially when the emotional and physical safety of a child is involved. As a Guardian Ad Litem we were asked to make a recommendation regarding the type of conservatorship and visitation would be in the child's best interest. Another classmate was also assigned to a Guardian Ad Litem case, our cases were very different and it was interesting to compare notes as we approached our factual research and interviews.



In my case, the father was incarcerated and the mother was extremely transient. The court relies on us conducting a thorough investigation and impresses upon the parents that they must cooperate with our investigation. Therefore I was very surprised with how many issues my partner and I had obtaining the parents' cooperation with even the most basic things like communicating with them. We were only able to speak with the father once through a court order. We also had a nearly two month gap of time where we were unable to make any contact with the mother, despite our persistence and numerous attempts. She could not maintain a stable living environment staying with numerous friends' throughout the course of our investigation. There was also a long history of substance abuse and violent tendencies by and between both parents. One of the biggest surprises for me in taking this case was learning to go with my instincts. Coming from a lifetime as a student, it was an invaluable experience to learn to step into the role as an attorney and advocate for a young child.

A reflection by Autumn Puckett (Class 2015-2016)

Advocacy for a child is a great responsibility. When my partner and I were appointed to recommend custody and visitation for a child, there was pressure to assure the best possible solution for this innocent young person. It was initially intimidating and uncomfortable to perform thorough inspections of the parents' homes, family members, and personal lives. Oftentimes the parents may be uncooperative and understandably frustrated by the process. However, in my case, both parents were extremely amenable with our duties and therefore, my experience was pleasant and rewarding. The best lesson learned was that it is extremely important not to take parents' statements at face value, but to investigate them to the fullest. While we want to believe the sincerity, it is imperative to try to obtain corroborating evidence for every situation so the child is properly protected. Overall, knowing that you are a part of safeguarding a child's future and helping to ensure a positive relationship with both parents is immensely rewarding.



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