

## ULC Honored by National Center for Missing & Exploited Children

### New Book Recounts Clinics' Work

Professor Frank Askin, editor of the law school's newly released book on clinical lawyering, *You Can Tell It to the Judge and Other True Tales of Law School Lawyering*, writes as follows in the book's Preface:

*When I am asked what is special about Rutgers School of Law-Newark, I reply, 'At other law schools students learn the law; at Rutgers, they help make the law.' There is only a slight amount of hyperbole there. The fact is that for the past 40 years, Rutgers students enrolled in clinical programs have helped shape public law in many new areas.*

*Energized by the law reform/social justice jurisprudence of the Earl Warren Supreme Court and propelled by the idealism of students who had emerged from the 1960s civil rights and antiwar movements, a forward-looking faculty and administration at the law school dedicated themselves at the end of that turbulent decade to escaping the proverbial and stodgy ivory tower and becoming immersed in the real world of legal struggle. Ever since, it has been a part of the Rutgers mission to train future lawyers not just to make money but also to make social change -- to such an extent that students referred to Rutgers in the early seventies as the People's Electric Law School. Many of us still have the tee-shirts to remind us.*

*Continued - see 'Tell It to the Judge' on page 5*

Clinical Law Student Mitch Brown '09 and Urban Legal Clinic (ULC) Professor Jack Feinstein recently were recognized by the NJ Chapter of the National Center for Missing and Exploited Children (NCMEC) for their exceptional work reuniting a mother and her young son. During the summer of 2007, T.B., the mother of a seven-year-old boy, allowed her son to visit his father in Colorado based upon the father's promise to return the child at the end of the summer. When the end of summer arrived, the father refused to return the child, but said he would do so at the end of the following summer, in August 2008. The child never was returned to T.B.'s care.

For the year the child resided in Colorado, the mother spoke to him daily. However, after the summer of 2008, the father changed his telephone numbers and T.B. lost all contact with her son. She then traveled to the Colorado address she had for the father to find her son, but the father had vacated the residence and she had no idea where to find them.

Appearing pro se, T.B. obtained a court order in New Jersey mandating the father to return her son. Eventually she obtained a

warrant in New Jersey for the father's arrest. Since the orders could not be enforced without knowing the father's whereabouts, T.B. found herself at a dead end. She then came to the ULC for help.

Mitch traced the whereabouts of the father through a detective agency and found an address for him in Elizabeth, NJ, where he was listed as living with his sister. Mitch persuaded the Elizabeth police to go to the sister's house to enforce the warrant and court order. Unfortunately, the police did not

find the father, and the sister claimed she did not know where he was. After the police left the sister's house, T.B. received a telephone call from the father stating that she would never find him.

Mitch called the detective agency again

and had them perform motor vehicle and mail forwarding searches, which resulted in the location of a new Denver, CO address for the father. He then contacted the local Colorado school district and succeeded in confirming the boy's attendance at a particular school there. Working with the NCMEC, Mitch contacted a leading

*Continued - see 'Missing' on page 10*



*The NJ chapter of the NCMEC presented Clinical Law Student Mitch Brown and Clinical Professor Jack Feinstein with Awards of Merit in December 2008.*

# Rutgers-Newark Celebrates 40 Years of Clinical Legal Education

**R**utgers School of Law-Newark held a regional conference on "The Legacy of Arthur Kinoy and the Inspirational and Collaborative Dimensions of Clinical Legal Education: Honoring 40 Years of Clinics at Rutgers-Newark" on April 3, 2009. The conference was part of a series of events commemorating the law school's centennial. After a stirring and personal keynote presentation by Professor Barry Scheck, Co-Founder and Co-Director of the Innocence Project and self-described Clinical Director Emeritus of Cardozo School of Law, the conference explored the service-learning/service-inspiring goals of clinical education as advocated in 1969 by Rutgers professor and legendary civil rights advocate Arthur Kinoy. This included discussion of a survey conducted by Professor Frank Askin on the role and value of clinical education to the participation of clinical alumni in public service and pro bono activity as well as to career satisfaction. The survey revealed a significant perceived correlation between clinical participation and pro bono involvement.

The conference luncheon posthumously honored Kinoy for his vision and leadership in inspiring Rutgers' adoption of clinical programs. It also honored Professor Askin, the most senior member of the current Rutgers faculty, for creating and implementing clinics during his 43-year tenure at the law school. The conference concluded with an examination of the role of clinical programs in promoting educational and social justice collaborations with law firm pro bono departments, public interest organizations and other partners.

Conference participants included: Jonathan Askin '90, *Clinical Professor of Law, Brooklyn Law School*; Flor Bermudez '00,

*Staff Attorney, Lambda Legal Defense Fund*; Ronald Chen '83, *New Jersey Public Advocate*; Randy Hertz, *Professor and Director of Clinical Programs, N.Y.U. Law School*; Mary Beth Hogan '90, *Partner, Debevoise & Plimpton, LLP*; Donita Judge '03, *Staff Attorney, The Advancement Project*; Marc Kadish '68, *Director of Pro Bono Activities and Litigation Training, Mayer, Brown and Platt, LLP*; Marcia Levy, *Special Counsel for Pro Bono Initiatives, Sullivan & Cromwell LLP*; Donna Lieberman '73,

**The conference explored the service-learning/service-inspiring goals of clinical education as advocated in 1969 by Rutgers professor and legendary civil rights advocate Arthur Kinoy. . . [and explored] a significant perceived correlation between clinical participation and pro bono involvement.**

*Executive Director, New York Civil Liberties Union*; Lawrence S. Lustberg, *Pro Bono Director, Gibbons, PC.*; Carlin Meyer '74, *Professor, New York Law School*; Rosie Mendez '95, *Member, New*

*York City Council*; Michael Pinard, *Immediate Past President, Clinical Legal Education Association, and Professor, University of Maryland Law School*; Alexander Saingchin '06, *New Jersey Director, Asian American Legal Defense and Education Fund*; Joan Vermeulen '75, *Executive Director, Cyrus Vance Center for International Justice Initiatives*; Vincent Warren '93, *Executive Director, Center for Constitutional Rights*; Erika Wood '99, *Staff Counsel, Brennan Center for Justice at New York University School of Law*; and Kenneth Zimmerman, *Partner and Director of Pro Bono and Public Advocacy Initiatives, Lowenstein Sandler, PC.* □



*In attendance at the recent Rutgers regional conference on clinical legal education: Michael Pinard, CLEA Immediate Past President and Professor, University of Maryland Law School; Jon C. Dubin, Director of Clinical Programs and Professor, Rutgers School of Law - Newark; and Marcia Levy, Esq., Special Counsel for Pro Bono Initiatives, Sullivan & Cromwell, LLP, and former Clinical Director of University of Denver and Hofstra Law Schools.*

# Dean Farmer and the Clinical Mission



Dean John Farmer, Rutgers School of Law-Newark

**J**ohn Farmer, former New Jersey Attorney General and Counsel to the 9/11 Commission, became Dean of the Rutgers School of Law-Newark on July 1, 2009. Welcoming Dean Farmer, clinic newsletter staff provided him the opportunity to express his thoughts and hopes for the future of the

Rutgers-Newark Clinical Program. Below are Dean Farmer's comments:

Rutgers School of Law-Newark has been renowned for decades as a pioneer in clinical legal education. Long before it became the fashion, this law school demonstrated, with its commitment to clinical teaching and scholarship, that clinics can provide an essential bridge between legal theory and practice, while simultaneously advancing the law school's obligation to serve the cause of justice on behalf of the larger community.

Under the current leadership of Professor Jon Dubin, Director of the Clinical Program, Rutgers clinics remain at the cutting edge of clinical legal education. They have an impact locally, by assisting indigent children and adults in public benefits, child welfare and education matters; nationally, by seeking to protect the vote and keeping clients' records safe from public view; and globally, by working with the United Nations Human Rights Committee to ensure U.S. compliance with international human rights treaties. Rutgers Clinical Program continues to demonstrate that in a post-9/11 world, it is necessary to think and to act both globally and locally.

I look forward to building on the tradition of teaching, scholarship, and advocacy that has made Rutgers School of Law-Newark a model for legal educators across the nation. While the challenges to justice are unceasing, they are more than matched by the energy, resolve, and integrity of Rutgers' students and clinical professors. They have my unqualified support, and I look forward to working with the clinics to ensure that their outstanding work remains the standard against which others schools' commitments to their students' development and to justice are measured. □

# Iraq War Suit On Appeal

**T**he Constitutional Litigation Clinic is taking its case on the constitutionality of the Iraq War to the Third Circuit Court of Appeals in Philadelphia. This follows Federal District Court Judge Jose Linares' May 2009 dismissal of the Complaint, now titled *New Jersey Peace Action v. Barack Obama*, for lack of standing and on political question grounds.

The Complaint's allegations are based on Article I, Section 8 of the U.S. Constitution, which provides that only Congress can declare war. The Clinic's brief argued that the nation's Founders adamantly opposed a president's launching of a preemptive war against a sovereign nation absent a Congressional Declaration. The Complaint relies on the debates of the Constitutional Convention of June 1, 1787, which no federal court ever has reviewed.

The Clinic relies on two Supreme Court cases from the 19th century, which say that while Congress may authorize limited military action by the President without a formal Declaration and that the President may act unilaterally in case of sudden attack, an actual invasion of another nation requires a Declaration. The Clinic further argues that the October 2002 Congressional Authorization for Use of Military Force Against Iraq (AUMF), which said the President could attack Iraq at his discretion without any time limit, was not such a Declaration. The President relied on the AUMF when he launched the

invasion nearly six months later.

The Clinic's brief cites statements by both Hillary Clinton and Joseph Biden, then Senators, that they did not intend their votes for the AUMF to authorize an invasion. According to Professor Frank Askin, who supervises the clinic team bringing the case, this is precisely why the Founders said Congress must go on record "in the face of their constituents" if the nation's "blood and treasure" are going to be spilled in a war. "Otherwise, we have the situation we now face with the President and Congress each blaming the other for a war gone bad." □



**Congress must go on record "in the face of their constituents" if the nation's "blood and treasure" are going to be spilled in a war.**

# New Supreme Court Justice Sonia Sotomayor from a Personal Perspective:

An Interview with Clinical Professor Charles Auffant



**C**linic News staff recently sat down with Clinical Professor Charles Auffant to obtain his insight regarding his former grade school classmate, Supreme Court Justice Sonia Sotomayor.

## *How do you know Justice Sotomayor?*

I knew Sonia Sotomayor when we were both quite young. We attended grammar school together and were classmates in the 1st grade through the 8th grade, from 1960 through 1968. This was a period of great change in the world and the country. My family moved to a new neighborhood in the Bronx in 1960 because they were fortunate enough to be chosen to live in the brand new James Monroe Housing Projects.

When I entered that fancy elevator building and saw that apartment I was sure we were rich. Sonia lived in the Bronxdale Projects, which was down the street and across Bruckner Boulevard. Everyone is calling that area the South Bronx but it's really the South East Bronx.

## *What insights can you convey about Justice Sotomayor that have not been reported in the popular news media?*

Sonia was always an intelligent, serious, focused student. I am sure that her Mom stressed the importance of education; I know that our grammar school did. However, I believe there are other factors which also pushed Sonia to achieve. In those days, as a Puerto Rican, it wasn't enough to be smart; you had to be smarter to succeed. Sonia was, but she was always humble and quiet. Sonia suffered the death of her father and was diagnosed as a juvenile diabetic by age nine. I've never talked to Sonia about these occurrences in her life, but I imagine that they had a profound effect on her. Those two events, which invaded her childhood, deprived her of a portion of childhood's carefree fantasy. Being left without the protection of Papi as a little girl in the Bronx projects in the 1960s had to be tough and scary. Then, being diagnosed as a diabetic forced her to face her mortality at an early age and conform to the intense discipline required to live healthfully with juvenile diabetes.

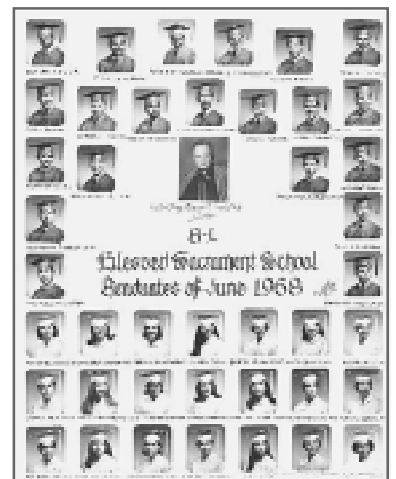
The Bronxdale Projects, where Sonia lived, and the addition of the James Monroe Projects brought more Puerto Rican and Black students into our grammar school, where the majority population was Italian and Irish. We grew up in the midst of the civil rights movement. We discussed the civil rights struggle in school. The church and therefore our school supported the ideal of equality and Dr. King's movement. We didn't know it at the time, but we were integrating the school. We knew that we didn't belong to the Anglo world; to them we were Spanish or Black. At the same time, many Puerto Ricans from the island labeled us "Nuyoricans," an insult back then. We were living between two worlds, totally accepted in neither. The bond among us was strong yet often unspoken. Racial bias would rear its head from time to time. It was clear to us, as well as all Americans, that race was a major contentious issue dividing America.

## *What has Justice Sotomayor's confirmation meant to residents of her community like yourself?*

Well, as a Puerto Rican activist, it has been gratifying to watch an African-American President of the United States nominate a Latina from the projects in the Bronx to the Supreme Court of the United States of America. When I graduated from law school in 1982, the career options available for most Latino lawyers were limited. Those options were essentially government, legal services or the public defender's office. I am grateful to be alive at a time where I've witnessed the expansion of opportunities for our community. Sonia has experienced the Puerto Rican diaspora; she understands the urban, Latino, working class experience. Through Sonia's confirmation we are witnessing one of the great promises of America come to fruition. Sonia's addition to the Court will expand its understanding of, and its representation of, the people of this country; of Latinos, of women, of disabled persons, of the working poor, and of persons who are dependent upon public housing for affordable and workable housing.

## *As a former officer and current member of the New Jersey Hispanic Bar Association (HBA), what did HBAs do to further her confirmation?*

The Hispanic Bar Associations around the country and Latino Justice PRLDF carefully monitored the nomination process and committed themselves to ensuring that she receive a fair hearing. We were confident that as the country got to know her, after our legislators examined her life and work and listened to her, they would share the Hispanic Bar Associations' pride in her and confirm her nomination to the Supreme Court. We were pleased with the result. □



*Justice Sotomayor and Clinical Professor Auffant are pictured in their 8th grade graduation photo.*

# Tell It to the Judge

*Continued from page 1*

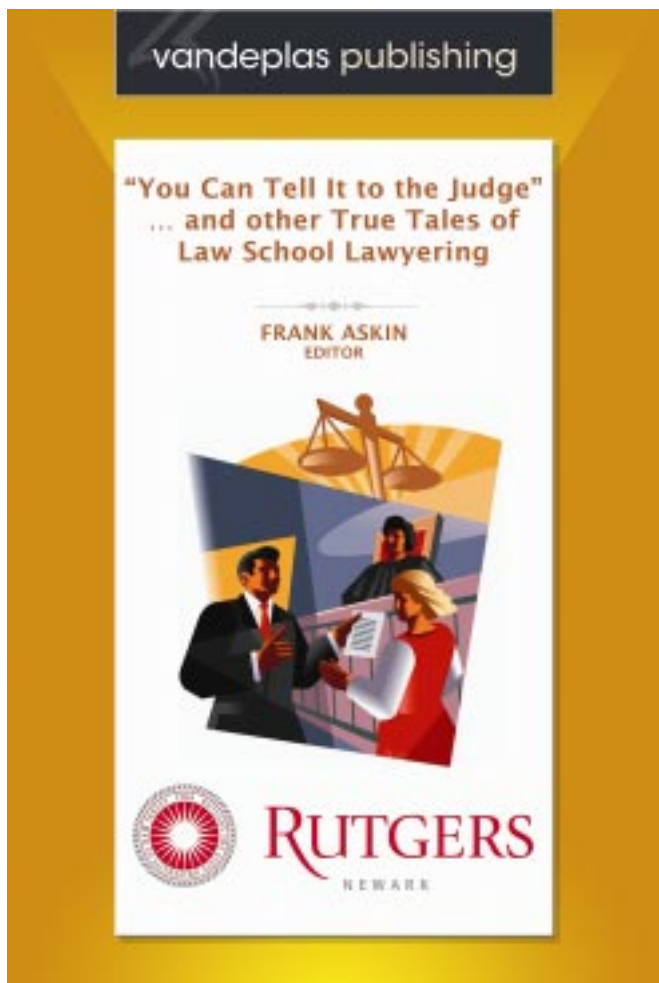
This 219-page book, published by Vandepas Publishing, describes the diverse activities of the law school clinics, ranging from challenging the constitutionality of the war in Iraq to fighting for equal funding for inner-city schools. It describes how eager students have helped invalidate zoning laws that screened out affordable housing in upscale suburbs; successfully challenged inhumane conditions of confinement of immigrant asylum seekers by the U.S. Immigration and Naturalization Service; guaranteed fair hearings for persons denied Social Security and SSI disability benefits; aided families with special-needs children to navigate institutional bureaucracies and obtain their rights; forced municipalities to open public parks to residents from neighboring communities; secured free elections and free speech for residents of common-interest communities governed by tyrannical trustees; won hiring and promotional rights for non-whites in police and fire departments; and helped change the way the public views non-human sentient beings.

In 26 essays, Rutgers School of Law-Newark faculty members explain how clinics in constitutional litigation, environmental law, child advocacy, special education, urban justice and animal rights have used live clients and current issues to train students to represent the public interest and reform the law while learning the tools of their trade.

Contributors to the book, in addition to Professor Askin, are Clinical Professor Penny Venetis, co-director of the Constitutional Litigation Clinic; Professor Jon Dubin, director of the clinical program; Clinical Professor Randi Mandelbaum, director of the Child Advocacy Clinic; Clinical Professor Robert Holmes, director of the Community Law Clinic; Clinical Professor Esther

Canty-Barnes, director of the Special Education Clinic; Professor Jonathan Hyman, of counsel to the Constitutional Litigation Clinic; Professor Paul Tractenberg, education law specialist who instituted New Jersey's school-funding litigation through the Constitutional Litigation Clinic; Professor Gary Francione and Adjunct Professor Anna Charlton, who ran the school's former Animal Rights Clinic; Professor John Payne, land-use authority who handled the landmark Mt. Laurel litigation through the school's Environmental Law Clinic; Clinical Professor Laura Cohen of the Urban Legal Clinic; and Clinical Professor Jennifer Rosen Valverde of the Special Education Clinic.

Books may be purchased from Amazon.com or Vandepas Publishing, at 801 International Parkway, Lake Mary, Florida. They also may be ordered from Barnes and Noble and Borders bookstores. □



*In 26 essays, faculty members explain how the clinics at Rutgers School of Law-Newark have used live clients and current issues to train students to represent the public interest and reform the law while learning the tools of their trade.*

# Student Wins Fulbright Fellowship

Randle DeFalco, a 2009 graduate of Rutgers School of Law - Newark and Constitutional Litigation Clinic alumnae, has been awarded a prestigious Fulbright Fellowship to pursue potentially ground-breaking research in international human rights law. As a Fulbright Fellow, DeFalco will study the possible prosecution of former Khmer Rouge leaders for the widespread starvation that occurred in Cambodia between 1975 and 1979. Beginning in September, he will be based for approximately 10 months at the Phnom Penh headquarters of the Documentation Center of Cambodia (DC-Cam).

As a 2008 recipient of a summer grant from the Rutgers Public Interest Law Foundation, DeFalco worked at DC-Cam where, among other activities, he participated in the non-profit's fieldwork aimed at involving the larger Cambodian population in the ongoing legal process and providing a historical record for future generations. Hearing the stories of survivors, DeFalco recalls, "For many, memories of starvation are the most haunting and persistent. A common question from survivors was whether the Khmer Rouge Tribunal will prosecute anyone for the widespread starvation that the Khmer Rouge regime caused."

At DC-Cam, DeFalco also conducted legal research for the Tribunal, formally known as the Extraordinary Chambers in the Courts of Cambodia (ECCC). The ECCC was created by the Cambodian government and the United Nations to put Khmer Rouge leaders on trial for crimes against humanity. DeFalco's work for the ECCC culminated with his co-authoring an extensive legal research paper on two critical issues of law that will be contentious at the Tribunal.

*Continued - see 'Fulbright' on page 10*



# National Higher Education Organizations Join Rutgers Clinics' OPRA Battle

The Clinical Legal Education Association, Society of American Law Teachers, Association of University Professors, and Association of American Law Schools have joined the battle to protect Rutgers-Newark clinical case files from public disclosure under the state's Open Public Records Act (OPRA) in briefs filed with the Appellate Division of the New Jersey Superior Court. The appeal is from the dismissal of a lawsuit seeking to compel the Rutgers Environmental Law Clinic (RELC) to disclose case files under New Jersey's Open Public Records Act.

The lawsuit was brought against Rutgers University and the RELC by a real-estate developer whose plans to build an outlet mall

were opposed by a citizens' group that the RELC represented. Last year, Superior Court Judge Travis Francis ruled that even though Rutgers is a state university and therefore subject to OPRA for most matters, the law school clinics themselves are not state actors for OPRA purposes. *Sussex Commons v. Rutgers University and Rutgers Environmental Law Clinic*, Mid. Co. Law Div., Docket No. L-8465-06 (October 7, 2008).

Judge Francis noted that state universities are hybrid entities -- sometimes state actors and other times not for legal purposes -- and that such universities' law school clinical programs are even further attenuated from the State. To bolster this point, the Judge relied

heavily on a 1989 decision of the New Jersey Supreme Court in *Executive Commission on Ethical Standards Re: Appearance of Rutgers Attorneys*, 116 N.J. 216 (1989), which held that Rutgers-Newark clinical professors representing clinic clients were not subject to the state conflicts of interest law provision that prohibited state employees from representing clients before state administrative agencies. Judge Francis quoted numerous passages from *Appearance of Rutgers Attorneys* in his opinion to support his ruling that the extension of OPRA to the Rutgers clinics would produce undesirable chilling effects on the attorney-client relationship and both educational and representational disadvantages that the state legislature could not have intended to inflict on state university law clinics.

On the developer's appeal of Judge Francis's order, the amicus briefs of the various national higher education associations and that of the Rutgers-Newark Clinical Program stressed the deleterious impact and chilling effects on public law schools' clinical legal education programs from a potential ruling that clinical case files are records available to the public under open records laws. A decision is forthcoming. □

## Students Register Jail Inmates to Vote, Delivering 257 Absentee Ballots

A team of three students from the Constitutional Litigation Clinic, working under the supervision of Professor Frank Askin, succeeded in collecting nearly 450 voter registrations at the Essex County (NJ) Jail and delivered 257 completed absentee ballots for the November 4, 2008 presidential election.

In a campaign that began in mid-September and ended on Election Day, law students spent hundreds of hours at the jail and made countless trips to county administrative offices in Northern New Jersey to process registration forms and ballots.

Under New Jersey law, inmates are eligible to vote as long as they are not serving a sentence for an indictable offense or on parole or probation. Many County Jail inmates were serving short sentences for minor offenses or awaiting trial. With the cooperation of jail officials, the students signed up voters and later delivered and collected absentee ballot applications from

those who expected to still be incarcerated by Election Day.

The three clinic students assigned to the project - Randle DeFalco, Laszlo Szabo and Kathleen Wells - recruited additional law students to assist them at the jail. Some of the inmates lived in pods, allowing students to meet with them in groups. Others lived in private cells requiring the students, accompanied by a jail official, to go from cell to cell to deliver the ballots and instruct the voters on how to fill out the complex form. Since some of the inmates were of limited literacy, the process was quite time-consuming. A complication occurred when a gang war in Newark caused jail officials to lock down the facility for three days in the week before the election. Thus, the students had to do their final visits over the weekend and up to Election Day itself.

Students reported that the inmates were enthusiastic about the opportunity to vote, and many were pleasantly surprised upon receiving

their absentee ballots since they were skeptical that they actually would be permitted to vote. Many inmates, ignorant of the law, had to be convinced that they actually were entitled to vote.

The students ended the project by filing a detailed report of their activities, including exhibits setting forth every written communication with jail and county officials as well as inmates, which may serve as a guide for students in future years. □



*Randle DeFalco, student leader of the Constitutional Litigation Clinic's inmate voter registration project.*

# ULC Urges High Court to Protect Youths' Rights

Urban Legal Clinic students Kelly Targett '09 and Matthew Coleman '09, together with Clinical Professor Laura Cohen, recently spearheaded a successful amicus curiae effort in *State v. PMP*, a juvenile delinquency case heard by the New Jersey Supreme Court in April. *PMP* raised the critical question, never before considered by the Court, of when the right to counsel attaches for children charged with delinquency. The ULC amicus brief, which was co-authored by the National Juvenile Defender Center and signed by the American Civil Liberties Union of New Jersey, the Rutgers-Camden Children's Justice Clinic, and the Northeast Juvenile Defender Center, argued that cutting-edge adolescent psychological and brain development research establishes that young people are particularly vulnerable to overreaching by police and other adults. They further do not understand their constitutional rights or the consequences of waiving those rights, thus requiring access to counsel from the earliest stages of a delinquency case. The brief also included a 50-state survey of statutes, court rules, and case law governing the right to counsel in juvenile court proceedings.

In July, a 5-2 majority of the Court held that the right to counsel attaches as early as the filing of the delinquency complaint and issuance of an arrest warrant and cannot be waived except in the presence of and after consultation with a defense attorney.

This re-affirmation of children's due process rights was heralded by legal experts and newspapers across the state, including an editorial in the Newark *Star Ledger*. □



Clinical Professor  
Laura Cohen

# Child Advocacy Clinic Seeks to Establish Sibling Rights



Clinical Law Student, Alnisa Bell, recently helped argue that New Jersey should not have to choose between permanency and maintaining the sibling relationship, where both are important and in the best interest of a child.

There are more than 550,000 children in foster care in the United States at any given time. Roughly 60% to 70% of these children also have siblings in the foster care system. While child welfare policies long have encouraged the placement of siblings together, child welfare laws and practice show different results: Only about 40% of these children are placed with a sibling.

The Child Advocacy Clinic (CAC) recently became involved in a case that raises the issue of whether the Family Court should and could preserve a bond between foster siblings. The CAC represents three children who, in late 2005, were removed from the care of their mother due to severe neglect caused by the mother's long-standing substance abuse addiction. The oldest and youngest children have been placed with a family friend for the last three years. The middle child, a boy with exceptional needs, currently resides in a residential treatment facility for children with profound disabilities.

Psychological experts have found that the children have a very strong bond with one another. Largely due to the CAC's advocacy, twice per month the Division of Youth and Family Services (DYFS), New Jersey's child welfare agency, transports the youngest and oldest children to the facility where the middle child resides.

Because the parents have not been able to care for the children for almost three years, the State moved for an order terminating their parental rights. The plan was for the oldest and youngest children to be adopted by their current caregiver, and the middle child by a yet unknown adoptive parent or parents. On the eve of trial, the parents surrendered their

parental rights as to the youngest and oldest children, as long as they were adopted by their long-term caregiver. The State then changed its position with regard to the middle child. In order to maintain sibling relations and because of the difficulty in finding an adoptive home in the tri-state area, the State recommended that the middle child remain at the institution so that the visits between the children could continue. In other words, the State concluded that to maintain sibling contact, it had to abandon efforts to find a family for the middle child.

Two CAC students, Alnisa Bell and Ireneo Bartolome, argued that the State should not have to choose between permanency and maintaining the sibling relationship, where both are important and in the best interest of a child. Rather, courts should be able to order both - the termination of parental rights and post-adoption sibling contact. In the end, the judge terminated the parental rights of the middle child and ordered DYFS to provide sibling visitation every other week, until the oldest and youngest children are adopted. However, the judge declined to order that sibling contact be maintained post-adoption, finding that he did not have authority to do so under current law.

This case raises the fundamental question of whether children who have had their ties to their biological parents severed due to abuse and/or neglect, and who are adopted by new parents, have the right to continue their relationships with one another. If so, is that right in conflict with the right to permanency? How can these conflicting interests be balanced or reconciled?

In New Jersey, the balance tilts toward permanency; however, the issue remains unresolved. Through an appeal, which is pending, the CAC hopes to change the legal landscape in favor of maintaining sibling relationships. □



# Constitutionality of Paperless Voting Machines Challenged

**F**rom January to May 2009, the Constitutional Litigation Clinic was in New Jersey Superior Court in Trenton challenging the constitutionality of New Jersey's 11,000 paperless computerized voting machines. The case was brought nearly five years ago and has been a roller-coaster ride up and down to the appellate court.

The case was tried by Clinical Professor Penny Venetis with the help of clinical law students Peter Ceccinini, Robert Clark, Madelon Gauthier, Christopher Greer, Alexander Lewis, Bronwyn Proffit-Higgins, Daniel Schoenberg, Michael Siegel, Nicole Siegel, Neil Vodoor, and Kacy Wiggum. Over 100 students have worked on the case since it first was filed. The law firm of Patton Boggs served as co-counsel.

The premise of the lawsuit is simple. Scientific studies, including one conducted on the voting machines used in New Jersey during the discovery phase of litigation, have shown that voting machines, like all computers, can be programmed to do whatever one tells them -- from playing chess to cheating on elections. Such insecurity is at odds with the constitutional right to vote. That fundamental right has been interpreted to mean that every vote should be counted as intended by the voter. Because scientists have found that computerized voting systems (including New Jersey's) are inherently insecure and can be hacked for improper purposes, the State of New Jersey cannot assure its citizens that every vote is being counted.

The lawsuit was filed before the 2004 Presidential election. Since then, the Clinic and its clients were instrumental in helping to pass legislation to protect the franchise. The first piece of legislation requires that all computerized voting machines produce a voter-verified paper ballot. A voter would approve of the paper ballot before casting her vote electronically. In the event of a recount or a voting machine failure, the paper ballot would count as the official ballot. The second

piece of legislation, which is considered the "gold standard" for auditing computerized voting machines, requires that a certain percentage of paper ballots (chosen randomly from each voting precinct after each election) be hand-counted to ensure the accuracy of the computerized voting machines.

After the legislation was passed, the State moved to dismiss the lawsuit as moot. Luckily, the Clinic convinced the Appellate Division to keep the case alive to ensure that the State complied with the new statutes. The State changed the deadline for compliance twice, extending it by over a year. After New Jersey's attempt to push back the deadline a third time, the Clinic urged the trial court to evaluate the lawsuit on the merits, and a trial date was set.

The Clinic's case relied heavily on expert witnesses, including top computer science and security experts from Princeton University, Georgia Tech University and Argonne National Laboratories (owned by the U.S. Department of Energy and run by the University of Chicago). The scientists believe that protecting the franchise by making computerized voting machines more secure is an issue of national security, and volunteered thousands of hours of their time to this case.

Post-trial briefs were due throughout the summer. Professor Venetis and clinical law students hope that the Court will de-commission New Jersey's insecure voting machines and replace them with a more secure and auditable system that complies with state law.

The Clinic's lawsuit has been replicated by voting rights advocates in several states. With one exception (Pennsylvania), once the lawsuits were filed, the state governments-defendants took proper steps to secure their computerized voting systems -- often replacing them with better, more auditable systems. □

*Over 100 students have worked on the case since it first was filed.*

## SEC Aids Gifted Student with Psychiatric Disabilities

**T**he Special Education Clinic (SEC) successfully obtained accommodations and educational services for P.H., a 17-year-old academically gifted student who was unable to attend school due to a psychiatric disorder. Rather than respond to the parent's numerous requests for services, the public school district sought to issue P.H. a high school diploma and thereby force her to graduate.

P.H. had attended public school in the district from kindergarten to eighth grade. During ninth and tenth grades, she attended an exclusive, private high school in Connecticut on scholarship from a foundation offering educational opportunities to gifted students from poor urban areas. While in private school, P.H. began to experience anxiety attacks and attempted suicide. As a result, P.H.'s mother reenrolled her into the public school district, where she was accepted into a magnet school for gifted and talented students.

P.H. successfully completed 11th grade after her mother obtained psychiatric counseling and medication management for her. However, at the start of senior year, P.H. began to experience significant depression, suicidal thoughts, and school phobia, and missed a substantial portion of the school year. Although P.H. was enrolled in several Advanced Placement and Honors classes, her teachers were never notified of her ongoing medical condition or that her academic program should be modified. As a result, P.H. did not complete the first marking period. She was admitted to an inpatient psychiatric hospital when her condition worsened shortly thereafter. P.H. remained hospitalized for several months; upon exiting the inpatient program, she

*Continued on page 9*

continued in the partial treatment program for the remainder of the school year. P.H. received some educational services through the hospital; however, she did not complete the courses in which she initially was enrolled at the public high school.

Hospital personnel recommended a private school placement for the rest of the school year in a day program for academically gifted students with emotional and psychiatric disorders. The district rejected the recommendation and refused to meet to discuss the accommodations she required. Without necessary accommodations, P.H. received incompletes and an "F" as final grades for the year. Since P.H. still had sufficient credits to graduate, the district sought to give her a diploma and contended that she was not eligible for special education due to her previous high academic performance, advanced proficiency on the High School Proficiency Test and her performance on the SAT, which exceeded 2100.

When the district refused to provide P.H. another year of academic education and to remove the failing and incomplete grades from her transcript, the SEC filed applications for emergent relief and due process. After hearing testimony, the Administrative Law Judge agreed with the parent and prohibited the school district from graduating P.H. She also ordered the district to hold a meeting to determine the student's eligibility for supports and services under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act.

After the hearing, the school district held meetings to determine P.H.'s eligibility. The district ultimately determined that P.H. was eligible for Section 504 services and developed a plan to accommodate her psychiatric disabilities which included a modified schedule, counseling, and coordination of outpatient services with her schooling. The school district further agreed to remove all incomplete and failing grades from P.H.'s transcript and provide transition services for at least one year after graduation to ensure that P.H. has the opportunity to enroll in a college of her choice. □

# Interdisciplinary Partnership Benefits Child and Family with Multiple Needs

**W**hen Mr. A first sought assistance from the Special Education Clinic (SEC), in his own words he had "nowhere else to turn." Mr. A's daughter, M, is deaf with multiple developmental and psychiatric problems, and he sought the SEC's help in getting her the appropriate educational services to which she is entitled under the Individuals with Disabilities Education Act. The local school district's failure to properly address M's needs had resulted in poor educational progress as well as severe behavioral problems, including inflicting injury on herself and others. All of this was having a profound effect on the family's ability to function.

At the time Mr. A retained the SEC, M was receiving only two hours per week of home tutoring. The once middle-class family with six children now was struggling to make ends meet, living off approximately \$15,000 annually. Mr. A, overwhelmed and depressed, had been unable to find steady work in the current economy for more than one year. The family home was in foreclosure and utility companies threatened to turn off their heat and electricity. The family had little money for food and other necessary expenses. Although M was eligible for the Supplemental Security Income (SSI) program, Mr. A had been unable to complete the necessary paperwork.

This case presented many challenges. While the ultimate goal was a residential placement for M in a school for the deaf that could accommodate her needs, clinical law student Peter Wagner '09 first set out to quickly locate a temporary school placement. After M was enrolled in a local school for students with multiple disabilities, Peter successfully advocated for a full reevaluation of M at the school district's expense, to be conducted by independent evaluators with extensive experience in working with students with hearing impairments. This included

educational, speech and language, psychological, and psychiatric evaluations. The SEC recently obtained the evaluation results and the clinic now is using them to advocate for an appropriate residential program for M.

Following a thorough social assessment, social work intern, Carol Rogoff MSW '10, assisted Mr. A in accessing necessary social supports and community resources. Carol helped Mr. A to amass the documents needed to complete and submit various public benefits applications. Carol also identified possible funding sources for a new processor for M's cochlear implant, which had broken more than one year earlier but which the family could not afford to replace. The family subsequently was approved for food stamps and utility assistance, and is waiting for a determination regarding SSI. In addition, Carol spent many hours with Mr. A building his comfort level with allowing an outside child behavioral support agency to come into the home to

provide some respite care and additional assistance. These services are now in place.

Peter and Carol worked tirelessly in tandem and independently

to obtain essential supports and services for M and her family. While Peter served as the zealous advocate with the school district, Carol fostered a level of trust with the family such that they were willing to accept the assistance and supports they so desperately needed. Together, Carol and Peter's interdisciplinary advocacy helped this family to take initial steps to get back on their feet and focus attention on meeting M's educational needs as well as the needs of her five siblings. □

*The family had little money for food and other necessary expenses.*

# Community Law Clinic Touts Success of Guardianship Program

The 2008-09 law school year marked the successful completion of the first year of the Community Law Clinic's Guardianship Project.

Guardianship is a statutorily recognized and court sanctioned procedure. The goal of a guardianship proceeding is to provide protection for people who lack sufficient mental or physical capabilities to protect and advocate for themselves. After the filing of a complaint or petition for guardianship and review of the evidence and findings contained in various reports, a court may appoint a guardian to protect the financial and personal affairs of a person it determines to be incapacitated.

This project provides clinical law students practical legal experience in a growing area of law. As the life expectancy of adults increases and advances in medicine save more lives,

diseases that negatively impact cognitive skills, such as Alzheimer's, as well as other incapacitating conditions, foster a growing demand for attorneys skilled in guardianship law.

In this project, clinical law students advocate on behalf of the allegedly incapacitated person. As advocates, students

***There is a monumental responsibility placed on the attorney in guardianship proceedings. If there is a finding of incapacity, the adjudicated incapacitated person loses his or her ability to enter into contracts, to vote and to get married.***

handle the complex legal work involved in investigating the legal validity and implementation of guardianship, which includes verifying, or negating as the evidence indicates, legal grounds for guardianship.

If there is a finding of incapacity, the adjudicated incapacitated person loses his or her ability to

make all decisions concerning his or her life. These decisions range from the ability to enter into contracts, to vote and to get married. Thus, there is a monumental responsibility placed on the attorney to properly protect the rights of such persons.

Students working on the guardianship project gain the additional benefit of collaborating with Master's level social work students, particularly in the interviewing and fact investigation stages. Students have handled these cases skillfully and zealously, helping to expand the Community Law Clinic's mission to provide support to local area communities. □



## Missing *Continued from page 1*

matrimonial law firm in Denver and convinced one of the partners to represent T.B. pro bono. Mitch then arranged transportation for the client to travel round-trip to Colorado and for her son to return to New Jersey. The next day, T.B. was reunited with her son, with whom she had had no contact in more than one year. Shortly thereafter, they returned to New Jersey together. □

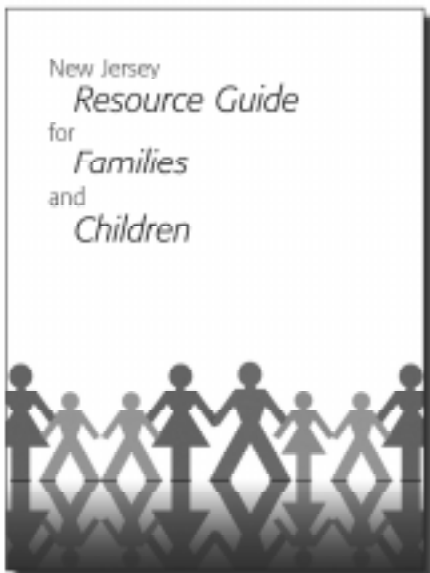
## Fulbright *Continued from page 5*

DeFalco, a native of Ontario, Canada, with a long-time interest in international issues and human rights, received a B.A. in global history from a New Jersey Institute of Technology and Rutgers-Newark joint degree program. At Rutgers Law School's May 2009 commencement, his demonstrated leadership in public service activities was recognized when he was awarded the Eli Jarmel Memorial Prize as the student with the greatest interest and proficiency in public interest law.

Winning the Fulbright Fellowship is gratifying to DeFalco for a number of reasons. "Personally," he explains, "the research will give me a way to use my legal education to provide an important service to the Cambodian people, who are still addressing the difficulties that face post-conflict nations and yet welcomed me so warmly during my short time there." In addition, his research into the possible prosecution of enforced starvation will represent a significant addition to the body of international law criminalizing the abuse of civilians. "To be able to make such a contribution is extremely gratifying," he adds, "and will help me to realize my professional goal of working for the betterment of humanity through the pursuit of international justice." □

# SEC Develops Resource Guide for Families and Children

**W**ith a grant from the New Jersey Court Improvement Committee, the Special Education Clinic developed the New Jersey Resource Guide for Families and Children to assist disadvantaged, disabled, and at-risk children, their families and their advocates in identifying available resources within the state. The Resource Guide provides explanations of and contact information for a wide range of state, government and non-profit agencies in New Jersey that offer services such as medical, welfare, education, and legal assistance. A copy of the Resource Guide is available on the clinic's website at [http://specialeducation.rutgers.edu/resource\\_dir.pdf](http://specialeducation.rutgers.edu/resource_dir.pdf). □



*A copy of the Special Education Clinic's 'New Jersey Resource Guide for Families and Children' is available on the Clinic's website at [http://specialeducation.rutgers.edu/resource\\_dir.pdf](http://specialeducation.rutgers.edu/resource_dir.pdf).*

# Zoning Variance Saves Covenant House Youth Homes

**T**he Community Law Clinic celebrates another victory, thanks to the hard work of students who obtained a zoning variance that prevented the closing of two Covenant House youth shelters. Had the shelters closed, 14 at-risk youth would have become homeless.

All cities enact zoning ordinances to regulate neighborhood and community land use. These ordinances serve to protect the health, safety and property values of a community. A municipality will, however, grant a zoning variance under certain conditions -- such as when a building or project meets a community need and poses no risk to the health and safety of the community.

Covenant House purchased two three-family houses in the City of Newark as part of the organization's "Rights of Passage Program," which is a transitional living program that provides select Covenant House residents between the ages of 18 and 21 with no cost housing (any rent paid is set aside in a savings account for future use by the residents). Covenant House also provides assistance and support to the residents, including help in obtaining job skills and employment and lessons on money management and independent living. The units were fully occupied with eight young men, six young women, and a resident office.

One year after Covenant House acquired the houses, they learned from city officials that their use of the property violated the city's zoning ordinance because it constituted congregate living. Covenant House immediately contacted the Community Law Clinic for assistance.

In advance of their presentation before the zoning board, clinical law students engaged in weeks of legal research and preparation of oral argument to persuade the board to grant a variance. The Clinic aimed to demonstrate the community value and benefit of the transitional housing units and the compatibility of that value with the city's master plan. Students refined their arguments through two mock hearings, at which clinic supervisors served as zoning board members. Witnesses, including an architect, a



*One of two three-family houses purchased by Covenant House in the City of Newark as part of the organization's "Rights of Passage Program." The CLC recently obtained a zoning variance to keep the houses open.*

professional planner, the executive director of Covenant House, the resident supervisor of the transitional housing, and two residents of the housing, volunteered their time to participate in the rehearsals as well.

On the night of the hearing, students had the opportunity to watch the presentation of other cases prior to their own, which gave them greater insight into the legal process and boosted their confidence. Students gained further insight into the process when it was suggested that, before their presentation, they discuss the matter privately with local residents who were in attendance to register their objections to the variance. By the time the students were called upon to make their presentation, they had convinced all objectors to withdraw their opposition.

The Zoning Board for the City of Newark voted unanimously in favor of granting the variance. □

## Student Profiles

**T**he Clinics at Rutgers-Newark are a powerful draw for prospective law students, with more than 100 students enrolling each semester. Here are the thoughts of some students about their clinical experiences.

### FRANCESCA RODRIGUEZ '09



With an interest in tax and accounting work and CPA training, Francesca came to law school expecting to make a transition to work as a tax lawyer. She clerked in her

summers at a tax and accounting law firm in midtown Manhattan, Collins, Fazio, and Mannuzza, LLC, known for representing entertainment stars such as Sean "P-Diddy" Combs, Curtis "Fifty Cent" Jackson and Gerald Levert.

But in her words, "the law came to life" in her three terms in the Federal Tax Clinic. She learned "the manner in which the law impacts real people's lives which one can't imagine from reading books in law school classes." The clinic "bridged the gap between the theory of the casebook and the real world" and provided her with a sense of identity as a lawyer and the realization that her work could have a significant impact and "really make a difference." Although hired as a tax associate at Collins, Fazio upon graduation, her offer recently was deferred for 6-8 months due to the recession. Francesca plans to use the time as an opportunity to further explore a budding interest in public service legal work before returning to the private sector.

### WAMAITHA KAHAGI '09



Lois Wamaitha (now Wamaitha L. Kahagi) came to the U.S. in 1998 through the Diversity Visa Lottery Program, which affords immigrants the opportunity to live and

work in the U.S. and become citizens. Her law school experience and work in the Special Education Clinic inspired Lois to apply for citizenship. "My country does not offer dual citizenship yet, and I felt that by applying for my citizenship I was no longer a Kenyan. However, this country offered me the opportunity to go to law school, a goal that I had all but given up... Ultimately, I felt that to be the lawyer I wanted to be, I needed to truly pledge to uphold the law of the United States of America. I am glad I am graduating as a citizen." She became a naturalized citizen on January 13, 2009 and graduated in May 2009.

During her two semesters in the Special Education Clinic, Lois provided legal services to parents of students with special needs. There, she found the opportunity to put the theory she learned in class into practice. "The clinic at once provides you with the excitement of live client advocacy alongside the more mundane but vital tasks of performing research and drafting correspondence. It helped me to put the theory I learned into practice, with the help of my colleagues in the clinic with whom I could exchange ideas."

### CHRISTOPHER GREER '09



Christopher Greer graduated from the law school in May 2009 cum laude. He received the prestigious Judge J. Skelly Wright Prize at graduation for his contribution and

commitment to civil liberties. As a student in the Constitutional Litigation Clinic, Chris served on trial teams in two cutting-edge cases.

The first case was *Jama v. Correctional Services Corp.*, a human rights case brought on behalf of political asylum seekers who were abused while in detention awaiting the resolution of their asylum claims. Chris' work helped secure a victory for the clinic's clients. Chris also helped prepare for a lawsuit challenging the constitutionality of New Jersey's computerized voting machines (described elsewhere in this publication).

Chris describes his experience in the clinic as "formative." "I was able to learn the art of lawyering from skilled and experienced litigators while at the same time working on issues of fundamental importance to a free society."

Chris has accepted an offer at the law firm of Shearman and Sterling in NYC, and wishes to continue working on civil rights and human rights issues. □

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