

2006 Annual Report

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CUMBERLAND LEGAL AID CLINIC

2006 ANNUAL REPORT

PROGRAM OVERVIEW

Established in 1969, the Cumberland Legal Aid Clinic (the Clinic) is a program of the University of Maine School of Law and provides legal services to low-income individuals in Maine. It is staffed by third year law students specially licensed under the Rules of Court to practice under faculty supervisors who are experienced members of the Maine Bar. The Clinic's mission is two-fold: educating law students through an intense, high-quality clinical and mentoring experience while providing pro bono legal services to indigent Maine citizens.

Because the legal work is performed entirely by law students who are also enrolled in other courses, the Clinic's geographic coverage is limited to courts within a one-hour drive of the Law School in Portland. Accordingly, we serve clients with cases in Portland, Biddeford, Springvale, Lewiston, Auburn, Bridgton, Alfred, West Bath and Bath courts. The Clinic also serves clients on a more limited basis throughout the state through the Prisoner Assistance Clinic.

The Clinic provided legal assistance to 710 clients during 2006. During the year, the Clinic opened 545 new cases and closed 567, and, at year-end, had 145 open cases. Family law (not including Protection from Abuse or "PFA" proceedings) comprised 38% of the Clinic's caseload in 2006. PFA cases comprised an additional 29%, for a total of 67% family-related cases of the total matters handled by the Clinic last year. The other significant categories of matters are criminal law (10%) and juvenile law (6%). Other areas of legal services included bankruptcy, public benefits, consumer law, housing, small claims, protection from harassment, wills/estates, power of attorney, and several other miscellaneous issues. The Prisoners Assistance Project in particular addresses a wide range of civil legal issues. Student Attorneys represented clients at both the trial and appellate levels and before administrative agencies.

During the past year, the Clinic's significant work in the area of family law has included several important and developing areas of the law. For example, the Clinic is presently litigating several cases implicating the fundamental constitutional rights of parents when a child's grandparents seek court-order visitation. This fall, the Maine Supreme Judicial Court issued a decision in one of the Clinic's cases, *Passalacqua v. Passalacqua*, 2006 ME 123, in which the Law Court emphasized trial courts' responsibility to ensure that parents' rights are adequately protected during such proceedings. In addition, the Clinic is representing clients in a number of cases in which claims of *de facto* parenthood have been raised.

The Clinic finds its clients through a number of means. On a daily basis the Clinic receives many calls from individuals seeking legal representation. When a student attorney has an opening in his or her caseload and the client is qualified, we may accept the case. Several cases have been referred to the Clinic from other organizations including KIDS Legal, the Immigrant Legal Advocacy Project, the Abused Women's Advocacy Project, Gay and Lesbian Advocates and Defenders, and others. We also receive a significant number of referrals from courts, especially the Androscoggin County Probate Court, which has appointed the Clinic as counsel on several complex cases involving parental rights, guardianship and other issues. The Clinic was asked by the Federal District Court to provide technical assistance on jury selection to a *pro se* litigant.

STUDENT PARTICIPATION

A total of forty-one law students enrolled in Clinic courses during 2006. This number represents an increase over prior years, due to the Clinic's expansion with the additional of the Juvenile Justice Clinic, described below. In addition, the Clinic hired four student interns for the summer of 2006. As a result, the Clinic was able to provide much-needed representation to individuals on a year-round basis.

GENERAL PRACTICE CLINIC

The bulk of the legal services provided through the Clinic are by students enrolled in the General Practice Clinic, which is a six-credit semester-long litigation clinic. Each semester, the General Practice Clinic enrolls fifteen students, each of whom represent from five to ten individuals in cases in a various areas of the law. Most students have a caseload comprised largely of family law and criminal law cases, with some additional cases in probate law, administrative law or other areas.

Client Story – “Alison”¹

Alison came to the Clinic in 2005 while her divorce proceedings were already underway. Several months earlier, she had walked into the room of her 12 year old daughter (from a prior marriage) only to find her husband in her daughter's bed. While criminal charges were pending against him, her husband went on the offensive and hired an aggressive attorney to file for divorce against Alison. Alison could not afford to hire an attorney and her husband's lawyer continuously pressured her to agree to a quick settlement of the couple's property (including giving up her rights to real estate) and to allow Alison's husband to have joint custody of the couple's 7 year old daughter. When the Clinic became involved, Alison's student attorneys conducted discovery regarding the couple's financial situation, and were able to negotiate a very favorable settlement for Alison through judicial mediation. Alison wrote on her client evaluation form: “[The student attorneys working on my case] basically saved my life and my two daughters' lives, as they gave us all the strength to fight for what was right and not to give up.”

Client Story – “Denise”

Denise, who is 19 years old, contacted the Clinic for representation on her criminal charges for endangering the welfare of a child. She and her 7-week child were visiting the baby's father one evening when the police raided his apartment and found a large amount of marijuana. Although there were no allegations that Denise had any knowledge of the marijuana, the District Attorney's office steadfastly refused to drop the charges on the basis that Denise had exhibited extremely poor judgment placing her child at risk. Denise was reluctant to go to trial; she has hopes of going to nursing school and feared that any criminal convictions could cut short her dreams. Her student attorney negotiated a unique agreement with the DA's office for a “deferred disposition.” Denise promised to stay out of trouble for a year and to take parenting classes; if she completes the terms, the State will drop all charges against her.

¹ The names of all clients mentioned in this report have been changed to protect client confidentiality.

PRISONER ASSISTANCE CLINIC

In January 2003, the Clinic started the Prisoner Assistance Clinic, which was funded for its first three years by a discretionary grant from the Maine Bar Foundation and to a lesser extent through a contract with the Maine Department of Corrections. The origins of the Prisoner Assistance Clinic stem from the funding restrictions imposed in mid-1990s by the Legal Services Corporation which precluded Pine Tree Legal Assistance from providing any civil legal services to prisoners. However, prisoners have family, custody, consumer, and other civil legal matters, many arising from the circumstances of their incarceration. The Justice Action Group, the Maine Bar Foundation, and others identified this as a gap in access to justice and concluded that providing services through the Clinic would be a cost-efficient way to close this gap.

Prisoner Assistance Clinic law students go to the Maine Correctional Center in Windham every week to meet with prisoners with civil legal matters. More than 60% of the matters involve family law, such as parental rights and child support. Many prisoners have consumer-related questions, particularly in the area of bankruptcy. Other matters range from tax to housing to probate to personal injury defense. In the final quarter of 2006 alone, students had 89 visits with prisoners at MCC-Windham, and 105 phone contacts and dozens of mail contacts with prisoners in other facilities. This is a three-credit clinical course with an emphasis on interviewing, counseling and providing unbundled legal services. The program is popular with students, corrections staff and prisoners alike.

Client Story – “Trisha “

Many of the cases handled by the Prisoner Assistance Clinic involve ensuring that incarcerated parents are able to maintain some contact with their children while they serve their sentences and that their parental rights are preserved. For example, Trisha had a baby boy while she was incarcerated in the Women’s Center at the Maine Correctional Center. The baby’s father is incarcerated out of state. Trisha’s student attorney helped identify and arrange for care of the child while Trisha completes her sentence. Trisha will be released to home confinement shortly and the Clinic will represent her at an upcoming mediation to determine where the child will live at that time and thereafter.

JUVENILE JUSTICE CLINIC

The Juvenile Justice Clinic, a new program launched in the fall 2006, enrolls up to five students each semester, who work under the supervision of one faculty member, and who have the opportunity to work with troubled youth on a number of levels. The primary focus of the caseload is direct representation of juveniles charged with criminal activity in state courts. Accompanied by the faculty supervisor, the students appear in Biddeford District Court for most juvenile court days (generally one to two days each week) and represent juveniles in the various proceedings that may arise, such as arraignments, detention hearings, plea negotiations and trials. The Clinic represented 43 children in juvenile proceedings during 2006. In its first semester the Juvenile Justice Clinic handled a wide variety of cases including: federal gun charges, gross sexual assault, unlawful sexual contact, burglary (business, vehicle and residential), theft, possession of scheduled drugs, assault (domestic, on a police officer and generic), terrorizing, illegal transportation of alcohol, probation violations, operating after suspension, beyond restriction and under the influence.

Each semester, one student is responsible for representing juveniles participating in the Maine Juvenile Drug Treatment Court (MJDTTC) in Biddeford District Court and assisting in policy development on a county-wide and a state-wide basis through the Clinic's involvement with the MJDTTC project. The juvenile drug treatment court is a therapeutic, collaborative approach to adolescents with serious substance abuse and delinquency issues. We are part of the "treatment team" which includes a District Court Judge, assistant district attorneys, Juvenile Community Corrections Officers, substance abuse counselors, a MJDTTC case manager, mental health case managers, parents and teachers. The team meets on a weekly basis to review the progress of the participants in JDTC, reward those who are making good progress toward their goals, and try to creatively help solve problems of the participants who are struggling. The JDTC works with adolescents and their families for at least one year. Our goals are to make sure the participants graduate with after effectively addressing their treatment, education, vocation and family issues. One of the state supervisors for the MJDTTC program referred to the Biddeford JDTC as "the standard that all other JDTCs are measured by." The Juvenile Justice Clinic served 12 juveniles this past semester as part of the JDTC program. Faculty and students are also active participants on the statewide JDTC steering committee, which develops and assesses the policies of the JDTC program.

Client Story – "David"

David is a MJDTTC participant. He moved from one school district to another in the middle of his semester, and did not want to change schools because he was successful and comfortable at his old district. The JDTC student attorney worked with the superintendents of both school districts, as well as with KIDS Legal and a therapeutic residence facility to keep David in his school. David just made honor roll for the first time in his life.

Juvenile Justice Clinic students work on other policy initiatives as well. For example, in collaboration with the Muskie School of Public Service, a Juvenile Justice Clinic student is presently examining the issue of Disproportionate Minority Contact (DMC) between juveniles of color and law enforcement in Maine. The DMC project, which tracks and analyzes data regarding the presence of minorities in the juvenile justice system, is mandated by the federal government's Office of Juvenile Justice and Delinquency Prevention. Due to Maine's low number of minorities we are one of the last states to initiate a process to effectively track DMC numbers. The goal of the program is to sensitively collect and accurately record a juvenile's ethnicity, race, citizenship and language when the juvenile comes in contact with law enforcement. This data will be analyzed to determine if any minority group is being disproportionately targeted by law enforcement officials. A Juvenile Justice Clinic student helped the state's Juvenile Justice Advisory Group and policy analysts from the Muskie School for Public Service develop a training program for the state Department of Corrections. The student played a significant role in developing the materials for the program and was one of the lead trainers.

Juvenile Justice Clinic Students had the opportunity to expand their knowledge and understanding of the complexity of juvenile defense through additional trainings. For example, the students traveled to Bangor to hear Dr. Abigail A. Baird of Dartmouth College's Department of Psychological and Brain Science, one of the nation's leading experts on juvenile brain development. In addition, with the financial support of the Maine State Bar Association, two

students traveled to Washington, D.C., to attend the National Juvenile Defender Summit, an invitation-only premier national conference for juvenile defenders.

A new project of the Juvenile Justice Clinic to be launched in early 2007 is the “Street Law Project,” in collaboration with KIDS Legal. The kids engaged at the Preble Street Teen Center define the parameters and goals of the street law project. Clinic students will show up every Monday at lunch, and talk to anyone who has questions or issues. In addition, students will offer legal advice and/or representation when necessary, present informational programs when requested and help facilitate whatever services the adolescents need.

Client Story: “Michael”

When the Juvenile Justice Clinic started working with Michael, he was detained at Long Creek Youth Detention Center and the county District Attorney and Juvenile Community Corrections Office (probation officer) were looking for him to be committed to Long Creek. His student attorney was able to work with Kids Legal, Sweetser, Youth Building Alternatives (YBA) and Reardon’s Place (a local shelter) to get Michael out of Long Creek and back home. The process went something like this: the student, with the help of KIDS Legal, convinced Reardon’s Place to accept Michael for a bridge placement between Long Creek and his home. She also arranged to get Michael back into school, with a teacher providing transportation from Portland to his high school. At the detention hearing, the court ordered Adam released to Reardon’s Place. Michael did well and, with support from the Sweetser programs, eventually was allowed to go home. Michael’s JCCO kept threatening to lock Michael up if he did not go to YBA – the student attorney helped Michael through the entire admission process, including transporting him to his final interview. Michael has now been accepted. Michael’s JCCO has promised to let Michael off probation in June if he successfully completes a semester at YBA.

DOMESTIC VIOLENCE PROJECT

All students enrolled in the Clinic courses are required to participate in the Domestic Violence Initiative, through which students attend at least one or two days of the protection from abuse (PFA) docket calls in Lewiston District Court, and represent any victims there who need representation. The Clinic’s work in this program is highly valued by the courts as the PFA proceedings are often highly contentious and emotional. With the assistance of counsel, most cases can be settled without a trial. In 2006, the Clinic represented 210 victims in PFA cases. Clinic student attorneys work closely with court advocates from the Abused Women’s Advocacy Project (AWAP), a non-profit organization based in Lewiston-Auburn, to ensure that every client receives, not only legal representation in her protection order case, but also the necessary support and resources to escape violence. In addition, every Clinic student receives training, not only on the legal remedies available to victims of domestic violence, but also the dynamics of domestic violence.

CLIENT STORY – “Lelia”

Lelia is Sudanese immigrant who had recently taken her four young children and moved to the AWAP shelter to escape her abusive husband and his older sons. Lelia does not speak English. Many of her friends were reluctant to help her, by testifying or otherwise, because the problems which prompted her ultimately to leave the household were not commonly spoken about in public in her culture. Her husband had a history of physically abusing her, and his older sons began abusing her as well. The abuse included hitting, slapping, a knife attack, and the withholding of emergency medical attention after our client received a serious burn. Because her husband was more proficient in English than was our client and had been in this country longer, our client believed him when he told her that if she tried to leave or obtain help, she would be sent back to the Sudan without her children, or he would take the children and leave her stranded. He told her that the police would never believe her, and that the police would believe him. She had no access to money, no job, no one to turn to. The husband was virtually her sole contact with the outside world.

Finally, when the abuse became unbearable, Lelia took her children and fled the home while her husband and his sons were out, filed a Protection from Abuse petition, and moved to the shelter. The case was complicated because of our client’s reticence to discuss these issues in a public setting, the reluctance of her friends and neighbors to testify on her behalf, and the language barrier. The student attorney handling the case devoted hours to preparation, and was able, through both direct and cross-examination of witnesses at the hearing, educate the court on the dynamic involved in this particular relationship as well as our client’s cultural and economic disincentives to challenging the abuse and protecting her children and herself. After a five-hour hearing, the court granted Lelia’s Protection from Abuse petition.

CLINIC SEMINARS

All students participating in Clinic courses during the school year participate in weekly seminars. Every other week the students meet in small groups with a faculty supervisor to hold “case rounds,” in which students present and discuss specific problems, challenges and questions that have arisen in their cases. Other weeks the seminars cover substantive legal issues, information on topics related to Clinic work, guest speakers and the like. During 2006 the seminars topics included: the dynamics of family violence; case theory; discovery; special education; client interviewing and counseling; Guardians *ad Litem*; forensic psychology; protective custody cases; juvenile defense strategies; and criminal procedure. Our guest speakers included Hon. Donald Alexander (Maine Supreme Judicial Court); Hon. J. David Kennedy; (Maine District Court); Hon. Joseph Field (Maine District Court); Family Law Magistrate Daniel Driscoll; and the Director of the Maine Forensic Service, Dr. Ann LeBlanc.

In addition to this coursework, each student is required to write a memorandum describing and analyzing a specific client counseling opportunity that they had during the course of the semester. Such memoranda require students to consider and reflect on the attorney-client

relationship, the ethical obligations of attorneys, the dimensions and characteristics of client decision-making, and similar issues.

CLINIC STAFFING

All student work is supervised by members of the Clinic faculty. **Deirdre M. Smith** serves as Director and supervises students in the General Practice Clinic. **E. James Burke**, who had been a part-time Visiting Clinical Professor for more than two years, joined the Law School faculty in May 2005 as an Associate Clinical Professor. He has continued his work overseeing the Prisoner Assistance Clinic and the summer intern program and supervising General Practice Clinic students. **D. Jill Green** (formerly of Pine Tree Legal Assistance and the Attorney General's Office), joined the faculty in August 2005 as a Visiting Clinical Professor, overseeing our Domestic Violence Initiative and teaching in the General Practice Clinic. When Jill moved to Baltimore in May 2006, the Clinic hired **Christopher M. Northrop** as Visiting Clinical Professor. Chris, a nationally-recognized advocate for the rights of juveniles, oversaw the launch of the Juvenile Justice Clinic this past fall, supervised students in the General Practice Clinic, and supervised the Domestic Violence Project during the summer of 2006. In August 2006 **Tina Schneider** joined the Clinic faculty as an Adjunct Clinical Professor overseeing the Domestic Violence Project for the 2006-2007 school year.

The Clinic continues to have a committed and hard working staff. Diane Arbour, the Clinic's Administrative Manager for more than seven years relocated to North Carolina in December 2006. Fortunately, we located an outstanding replacement for her, **Karen Murphy**. Our administrative assistant, **Samantha Philbrick**, who has now been with the Clinic for nearly 5 years, and several students (both work-study employees and volunteers), also serve as valuable members of the team.

PROGRAM EVALUATION

The Clinic evaluates the effectiveness of its programs in a number of ways. Most of our cases are of not of the kind whose "outcomes" can be tracked. Most cases settle and it is not always easy to quantify the quality of the agreement. Cases that go to hearing, particularly in family law, often result in orders cannot be categorized as a "win" or "loss." Therefore, it not possible for us to determine the percentage of cases won. However, there is little question that, in nearly all of our clients' cases, the very fact of having legal representation served as a significant advantage in the final settlement reached or court order issued. At the very least, all of our clients had someone available to them to explain the process, to review their options, to advise them on selecting which option to pursue, and to advocate their positions.

Every client and every student attorney is asked to complete an evaluation of the Clinic program. The client evaluations returned this year were uniformly positive. Some comments included: "Cumberland Legal Aid has been a light in the dark"; "They did a wonderful job"; "Thanks for putting a little girl back in her daddy's life"; "My student was very helpful in this stressful situation"; "They take time for every case and make you feel important"; "I know my student attorneys will be great lawyers!"; "My student attorney broke it down so that I could understand it and explained different options"; and "You have made a difference." The Clinic received high marks from its student attorneys as well, and many remarked that it was the most rewarded or pivotal experience of their law school careers.

FUNDING SOURCES

In 2006 more than half of the funding for the Clinic's programs came from external sources. The largest single source of such external funds is the **Maine Civil Legal Services Fund**. Another significant source is the **Maine Bar Foundation**, with the **Campaign for Justice** and the **Muskie Fund for Legal Services** also providing critical support for the Clinic's work.

This year, the Clinic was awarded a challenge grant from the **Sam L. Cohen Foundation** to secure funding for the launch (and first two years) of the Juvenile Justice Clinic. Fortunately, we were able to meet the challenge amount by the start of 2007 with support from the Simmons Foundation, the Betterment Fund, the Class of 1981 Reunion Gift, the proceeds from the auction of the estate of the late Honorable Edward T. Gignoux, and several individual donations.

After six years of funding from the United States Department of Justice Office of Violence Against Women the Clinic's funding for the Domestic Violence Project ended in September 2005. Fortunately, during the years of the contract the Clinic formed a close partnership with the **Abused Women's Advocacy Project**, a non-profit organization based in Lewiston-Auburn providing services to victims of domestic violence. When AWAP itself began receiving federal funds, the Clinic and AWAP entered into an agreement under which AWAP will provide funding for the continuation of the Domestic Violence Project for an additional two years.

The **Maine Women's Fund** awarded the Clinic's Domestic Violence Project a grant and featured the program in its fall newsletter. The Clinic was the lucky "winner" of a raffle sponsored by the Maine Women's Fund in which ticket-holders select the grantee to receive an additional \$2500 grant. The winning ticket-holder had selected the Clinic program out of twenty different programs to be the grant recipient.

OTHER NEWS AND EVENTS

On December 5, 2006, the Clinic held a reception to dedicate the **Judy Potter Library** on the second floor of the new addition to the Clinic's building. The Library was named after Professor Judy Potter, who was on the Clinic faculty from 1972 until her retirement in 2004, and served as the Clinic's director for many years. The Clinic's building addition was completed in 2004 and funded through contributions to the Law School's Foundations for the Future capital campaign. The Clinic renovations were made possible largely due to a generous lead gift of two Clinic alumni, Robert Levine '88 and Vilean Taggersell '87, who offered a warm tribute to Professor Potter at the reception.

During the 2006 spring semester the Clinic hosted nine undergraduate students from the **University of Southern Maine's School of Social Work** as part of the school's service learning program. The students researched local resources for substance abuse treatment and juvenile services and provided information and referrals to individuals contacting the Clinic for representation. In addition, Jim Burke was a guest speaker at a USM SOSW graduate seminar.

Laura Merten '06, was the recipient of the **2006 Cumberland Bar Association Public Interest Fellowship** to research and develop a resource manual of local services and agencies

working with children in the juvenile justice system. The manual will be an invaluable resources for students enrolled in the Juvenile Justice Clinic as well as others representing juveniles.

This year the Clinic worked with the State of Maine's Office of Public Safety and Office of the United States Attorney **Project Safe Neighborhoods** by hiring a law student, Erika Kahill '06, to collect and organize data in five Maine district courts to track the incidence of firearms in domestic violence.