Aiding the U.N. Human Rights Committee

In June 2006, the Rutgers-Newark Constitutional Litigation Clinic ("Con Lit Clinic"), working with approximately 30 Human Rights Groups, submitted a "shadow report" to the United Nations Human Rights Committee ("UN Committee") in Geneva outlining our federal government’s failure to comply with its obligations under the International Covenant on Civil and Political Rights ("ICCPR").

The shadow report was filed in response to the U.S.’s 2005 report filed with the UN Committee, wherein our country awarded itself high marks on its human rights efforts and avoided discussing obvious international human rights violations, such as the detention of "enemy combatants" at Guantanamo Bay.

Landmark Human Rights Suit Heads for Trial

The Constitutional Litigation Clinic has had overwhelming success with its human rights challenges to the abusive practices that the United States government uses to detain political asylum seekers and other immigrants.

The lawsuit of Jama v. U.S., originally filed in 1997, is now headed for trial after surviving a motion to dismiss and a motion for summary judgment. This case produced two opinions establishing that non-treaty based customary international law protects immigrants from human rights abuses while in federal custody on United States soil.

The Rutgers Constitutional Litigation Clinic ("Con Lit Clinic") has requested international help - the Inter-American Commission on Human Rights ("IACHR") - to restore voting rights to felons on parole or probation who, under N.J. law, are denied the right to vote. With the ACLU’s support, the Con Lit Clinic filed a petition with the IACHR on September 16, 2006 alleging that New Jersey's disfranchisement statute violates the American Declaration of the Rights and Duties of Man.

Though the IACHR has no power to enforce its decisions in the U.S., Con Lit Clinic Director Frank Askin stated that he and his colleagues were hopeful that our state government would respect "the moral suasion of such an eminent hemispheric body."

The Con Lit Clinic’s goal is for the IACHR to declare New Jersey’s post incarceration voting restriction statutes to be violative of universally accepted human rights and to urge all states to amend their felon disfranchisement laws to satisfy these rights.

The petition to the IACHR requests that the commission investigate disfranchisement complaints originally filed against the State of New Jersey in 2004. The Con Lit Clinic’s complaint charged that the disparate impact of felon disfranchisement on African-American and Latino communities in New Jersey is a denial of equal protection under the law, since the racial profiling exhibited by those laws weakened the political clout of minority communities.

Empirical data collected by Con Lit Clinic students illustrated that approximately 80 percent of inmates, 78 percent of parolees and 60 percent of probationers in the New Jersey criminal justice system were African-American or Latino.

"Since drug arrests…are essentially a function of police targeting, it became quite obvious that the sharp change in the racial composition of the felon population was a direct result of a conscious focus of law enforcement activity on the minority community," according to Professor Askin.

The initial complaint in the case of New Jersey State Conference/NAACP v. Peter Harvey, Attorney General of New Jersey was filed in 2004, dismissed by the New Jersey trial court and Appellate Division, and the N.J. Supreme Court denied review.

Established by the United States and Latin-American countries in 1959, the IACHR is expressly authorized to examine allegations of human rights violations in its member states. □
Students Push Third Circuit for Notice in SSI Cases

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n a series of Third Circuit Court of Appeals cases reversing denials of SSI disability benefits to Urban Legal Clinic ("ULC") clients, ULC students have successfully challenged the Social Security Administration's ("SSA") policy of taking unannounced "administrative notice" of the availability of "other jobs" that claimants could perform.

Under settled law, once claimants demonstrate a prima facie disability case by proving that their medical impairments preclude performance of their past work, the burden of proof shifts to the SSA to demonstrate the availability of "other work" that claimants might perform, taking into account their age, education, and prior work history. In adjudicated hearings, the SSA often meets this burden by presenting vocational expert witnesses, who are subject to cross-examination by claimants. Where a disability claim is based solely on exertional or strength-related limitations, however, a SSA regulation, commonly referred to as the "grid," permits the agency to take notice of the availability of "other jobs" without opportunity for cross-examination or rebuttal. The agency further is not required to provide notice to claimants of intent to rely on the grid framework. Although the U.S. Supreme Court upheld the grid in 1983, the agency has since attempted to extend its application to people who suffer from non-strength-related limitations, such as mental, visual, auditory, or sensory difficulties.

ULC students first challenged this practice in Sykes v. Apfel, 228 F.3d. 259 (3d Cir. 2000) on the grounds that it violated procedural due process, the Administrative Procedure Act, and the Social Security Act. In a significant ruling, the Third Circuit held that the agency must either present expert testimony, subject to cross-examination, on the availability and performability of other work or, alternatively, provide advance notice of its intent to take administrative notice of job facts and a meaningful opportunity to rebut those facts at the hearing.

In Sykes, the agency had assumed, without any vocational evidence or notice to the claimant, that claimant's one-eyed blindness and postural restrictions on use of an impaired right arm, would have no impact on the job base available for persons of similar age, education, work experience and strength-related limitations. At the Third Circuit-ordered new hearing, ULC students successfully cross-examined a vocational expert, obtaining concessions that the claimant could not make a successful adjustment to a sufficient number of jobs if his cumulative visual and postural limitations were properly evaluated.

The ULC also convinced the SSA to issue a rare Acquiescence Ruling (AR), in which the agency agreed to abide by Sykes within the Third Circuit (AR01-1(3)). Under its "informal non-acquiescence" policy, the SSA typically only follows circuit court decisions in the relatively few cases that are actually appealed into federal court; in far more frequent agency adjudications, it continues to apply conflicting rules and practices. By issuing an AR, however, the agency also "consents" to apply the circuit court precedent in the thousands of cases adjudicated at all administrative levels. Thus, under the AR -- perhaps the first ever to be procured by a law school clinical program - - thousands of claimants with non-strength-related afflictions in New Jersey, Pennsylvania, Delaware and the Virgin Islands, are now protected from the SSA's national policy of applying routine, unannounced administrative notice of jobs through the grid "framework."

Unfortunately, the SSA soon began to undercut the AR by authorizing unannounced administrative notice and "grid framework" denials in a situation left open in Sykes - where the agency believes non-promulgated rulings support such notice. Upon request, the ULC provided materials and guidance to an attorney confronted with this issue in Allen v. Barnhart, 417 F.3d 396 (3d Cir. 2005). In Allen, the court extended Sykes in dicta by suggesting the agency could not provide unannounced notice of jobs based on non-promulgated SSA rulings.

In two cases currently before the Third Circuit, and in several filed this year in the U.S. District Court, ULC students are attempting to extend Sykes and Allen to preclude more definitively unannounced notice and grid "framework" denials based on non-promulgated guidance in non-exertional limitation cases. In another case presently before the Third Circuit, clinic students are challenging administrative notice in a situation not expressly covered in the grid - where claimants are both illiterate and unable to communicate in English. □
Urban Legal Clinic Saves Home from Tax Foreclosure

The Urban Legal Clinic (ULC), which represents poverty-bound clients in both civil and criminal proceedings, recently scored a major victory on behalf of a 62-year-old mentally ill client, Mr. S. Mr. S. came to the ULC with a foreclosure order on his Newark home and little idea of what to do next. A private real estate investor had purchased tax liens on the home totaling $21,000. Unless Mr. S. paid the back taxes within two weeks, he would lose the home in which he had lived throughout his life.

Apart from a meager monthly income of $100, Mr. S. had no source of funds with which to satisfy the liens. ULC students Frank Mardy, Rosa Barreca, and Michael D’Alba sprang into action. First, over the course of many months of interviewing and counseling Mr. S., they earned his trust and learned about his hermetic existence. Mr. S. had lived alone since the death of his parents 15 years earlier. He suffered from paranoia and serious, chronic asthma. He had no telephone and had not had running water, heat, or electricity for seven years. He often went hungry, relying at times on “Meals on Wheels” for food. Mr. S.’s house was the anchor of his life, and he told the students that if he lost it, he would kill himself.

Under the supervision of Professor Jack Feinstein, the students pursued a series of inter-connected legal strategies aimed at saving the house. First, they learned that a relative had left Mr. S. a small inheritance, but the will was tied up in probate in part because Mr. S. had filed an objection to it. Following the clinic’s advice, Mr. S. withdrew that objection and, in short order, received a bequest that enabled him to cover the lien.

Unfortunately, however, when Mr. S. attempted to satisfy the lien, the investor refused to accept payment. It became clear that, in light of the recent appreciation of Newark real estate values, the investor did not want to give up his claim to the house. The ULC thus filed an order to show cause, arguing that, given Mr. S.’s exceptional problems and his ongoing efforts to pay off the debt, the investor should be compelled to accept payment.

In their supporting brief, the students compellingly documented Mr. S.’s long struggles with mental illness, asthma, and poverty.

The court signed the Order to Show Cause and, when the investor’s attorney read the ULC brief, he conceded that a court would not allow someone in Mr. S.’s condition to lose his home. The investor agreed to a payoff figure, the court entered a consent order, and Mr. S. continues to live in the only home he has ever known.

Following the clinic’s advice, Mr. S. received a bequest that enabled him to cover the lien... the investor [however] refused to accept payment.

The ULC thus filed an order to show cause... the investor’s attorney read the ULC brief... [and subsequently] the investor agreed to a payoff figure...
Homeless Youth to Benefit from Clinical Collaboration

The Community Law Clinic ("CLC") at Rutgers School of Law-Newark has begun a unique collaboration with Covenant House New Jersey ("CHNJ") to increase direct legal assistance for clients at Covenant House-Newark. The collaboration, called the Youth Advocacy Project, is supported by a grant from the New Jersey State Bar Foundation.

"This initiative brings the considerable experience of our clinical program...to the state's largest non-profit provider of care and services for vulnerable young adults," said Professor Jon C. Dubin, Director of Clinical Programs.

"Because Covenant House is a 24/7 facility," Dubin added, "the Youth Advocacy Project also provides evening law students with an opportunity for hands-on, intensely supervised legal training."

In aiding Covenant House-Newark to extend its support for vulnerable youth aging out of foster care, the Youth Advocacy Project also will train new lawyers in the representation of young adults and non-profit institutional clients.

CLC students who participate in the collaboration with Covenant House-Newark will be guided by faculty members with extensive experience in community development and transactional legal work for non-profits. CLC students also will provide legal representation in civil matters, and facilitate community education efforts to Covenant House-Newark's low-income children and families.

Faculty and students in the Community Law Clinic, the Child Advocacy Clinic, the Special Education Clinic, and the Urban Legal Clinic will participate in the Youth Advocacy Project. These clinics will provide Covenant House legal services in areas such as SSI disability, foster care transition, housing, and special education.

Rutgers School of Law-Newark has eight in-house clinics, where students learn essential lawyering skills by working on legal cases involving under-represented individuals and communities.

Holmes Honored by ABLS

On October 26, 2006, the Association of Black Law Students ("ABLS") at Rutgers School of Law-Newark honored Professor Robert C. Holmes (Associate Director of Clinical Programs & Director of the Community Law Clinic) at its annual gala, Jazz for Justice. Professor Holmes is the first ever recipient of the ABLS's award and was given special recognition for his achievements in pioneering a community-oriented transactional clinic at Rutgers and his long-term community activism.

The Jazz for Justice gala is an annual fundraiser held for the Wanda Green Memorial Scholarship. Wanda Green was a flight attendant who lost her life when Flight 93 crashed in Pennsylvania. Ms. Green exchanged flights with her friend and Rutgers Law School alumna, Donita Judge. The scholarship is awarded annually to help minority law students who lost a parent or guardian on September 11.

Rutgers Law School Hosts National Summit on Cuba: 2006

On October 28, 2006 critical questions on the future of Cuba, U.S. foreign policy towards the island and the role of the Cuban-American community were addressed at the "National Summit on Cuba: New Jersey, 2006," held at the law school.

Welcoming remarks were delivered to the 140 summit participants by Newark Deputy Mayor Margarita Muñiz, Rutgers Provost Steven Diner and Dean Stuart Deutsch. All three were united in stressing the importance of this cultural event and its presence in Newark.

In addition to six panels covering such topics as the "Overview of Current U.S. Cuba Policy" and "On Race and Cuba," the Summit was the New Jersey premiere of "Those Left Behind." This new documentary by Cuban-American filmmaker Lisandro Perez-Rey explores the relationship between four Cuban-Americans who remain on the island after Fidel Castro's Communist regime seized government power.

Overseeing the event was Associate Clinical Professor of Law, Charles I. Auffant. He was joined by members of the Rutgers law faculty Twila Perry, Tanya Hernandez, David Troutt, Carlos Gonzalez, Robert C. Holmes and Professor Emeritus Alfred Slocum as moderators.

Students from the Rutgers Race and the Law Review Journal served as hosts.
IP Clinic Saves Domain Names

In September 2006 a young woman (“the client”) came to the Intellectual Property Division of the Community Law Clinic (“IP Clinic”) seeking help after her failed attempt to register an internet domain name for her business. Prior to the client’s visit she attempted to register a name for her company’s website and found her preferred internet domain name available. The client did not complete the purchase of the domain name and two days after her initial attempt, she discovered that her intended domain name was no longer available.

Unfortunately, the client’s situation is neither unique nor easily resolved. This internet domain theft experienced by the client is called “Domain Tasting” or “Domain Kiting.” The cause of problem is a loophole in the way domain names are registered, that gives name registrants a five day window during which the purchased names can be dropped, without paying any fees.

This five day grace period has spawned a scam whereby groups monitor and observe which domain names internet users look up and/or attempt to register. Those groups then register those domain names, pay nothing for them and prevent users with legitimate interest from registering those names. The group that claimed the website name then holds it for the duration of the grace period to determine the popularity of that particular website name. The group then proceeds to drop the name (if there is not enough traffic), or keeps it and places advertising on the site.

“On March 31, 2006, 764,672 [dot] com names were registered. Of those, only 61,169 were retained after the five-day period expired. The balance, a staggering 92%, was dropped just before the grace period expired,” as stated in an article by Bob Parsons, CEO of GoDaddy.com. “For the entire month of March, a total of 27,660,668 .com names were dropped just before the grace period expired. From March, 2005 to March, 2006, the scheme increased fifteen fold […]”

Since domain tasting is a scheme increasing in size and frequency, the IP clinic expects that many of its clients will soon encounter this phenomenon. Under the supervision of Professor John R. Kettle, IP clinical law student Alex Solo advised the client on how to recover the domain name that was stolen and how to avoid having domain names stolen in the future.

For the domain name that has been stolen, first and foremost, the client must do nothing related to that domain name for five consecutive days. The client should avoid visiting the website with the name in question and not try to locate the owner of the disputed domain name. Solo further advised the client that at the end of the five day period she should attempt to re-register the domain name and when doing so must complete her transaction.

Solo reasoned that this approach works because it contemplates the motivation for the scam. Since the domain thief has a five day grace period to decide whether to keep the website they will likely drop the domain name if they see no activity (hence the 92% rate of dropping described by Parsons). Therefore, there is a good chance that if the client tries to re-register the website after the grace period has ended, the domain name will be available again.

Solo also advised the client to always complete her future domain name purchase transactions, otherwise she is likely to have more domain names stolen.

Since domain tasting is a scheme increasing in size and frequency, the IP clinic expects that many of its clients will soon encounter this phenomenon.
An Idea for the Rich

Earlier this year, the U.S. Supreme Court ruled in Arlington v. Murphy, 126 U.S. 2455 (2006), that parents of children with disabilities no longer may recoup the costs of experts when they prevail in special education cases. This opinion effectively decimated the rights of students with disabilities to receive free and appropriate public educations under the federal Individuals with Disabilities Education Improvement Act (“IDEA”), unless they are financially able or geographically fortunate to access proper education.

The Supreme Court began to erode the educational rights of students with disabilities in Schaffer v. Weast, 126 S.Ct. 528 (2005), where it held that parents bear the burden of persuasion in special education cases. The decision overturned years of practice in New Jersey, the Third Circuit, and several other states which placed the onus on school districts to prove they provided a student with an appropriate education once a disabled student’s parent placed appropriateness at issue. School districts bore this burden due to their unique informational advantage, greater control over more persuasive witnesses, and higher level of expertise

Under Schaffer, parents now must affirmatively prove their cases, which typically requires the use of experts. Locating well-qualified professionals who are willing to testify on behalf of parents in New Jersey is a daunting task, regardless of payment. After Arlington, parents must not only locate experts able to testify, but also pay for the experts without any chance of reimbursement.

Professional evaluation and reports in special education cases cost $400 to $2,000 on average. This does not include the cost of reviewing a child’s school records, which are often extensive, or appearing in court and/or testifying - which may run $150-$500/hour.

The Special Education Clinic (“Special Ed Clinic”) at the Rutgers University School of Law-Newark is one of a few organizations in New Jersey that provide free legal representation to indigent parents of children with disabilities in education matters. Money the Special Ed Clinic recoups from past cases is earmarked for retaining experts in future cases. Without reimbursement for expert costs, the budget of the Special Ed Clinic will deplete, leaving parents with little to no resources to fend for themselves.

The Arlington and Schaffer decisions all but ensure that the educational disparity between high and low-income families will increase. These decisions will have a devastating impact on the ability of parents with average, little or no income to challenge school districts’ decisions regarding their disabled child’s education.

As a result of the Supreme Court’s rulings, the education of children with disabilities is even more at the mercy of budget-conscious school districts. Consequently, Schaffer and Arlington will cause some school districts to resist even the simplest of legitimate requests by parents because the threat of litigation by many parents now is just that - an empty threat.

The Special Education Clinic was created in 1995 to address the critical shortage of legal assistance for indigent parents of children with disabilities in New Jersey. Clinic students have a substantial impact on the ability of parents to obtain an appropriate education for their children.

Clinical law students provide representation and advocacy to parents and caregivers seeking to obtain appropriate early intervention and educational services and placements, and educate parents and others involved in the lives of children with disabilities about their legal rights and responsibilities.

The Special Education Clinic receives support from the New Jersey State Bar Foundation and the New Jersey Court Improvement Committee.

U.N. Committee

Notably, the Con Lit Clinic’s report was used by the UN Committee to evaluate the U.S.’s human rights record. The UN Committee issued its report this past July and found that the U.S. government violated the ICCPR in many respects, as discussed in the group report.

Clinical Professor Penny Venetis wrote the introduction to the shadow report, in which she discussed the U.S.’s policy of exceptionalism, i.e. our country’s failure to acknowledge the binding nature of the ICCPR, and its insistence that it is exempt from certain mandatory treaty obligations. Indeed, the UN Committee commented negatively on our federal government’s insistence on actively practicing exceptionalism.

The federal government ratified the International Covenant on Civil and Political Rights (“ICCPR”), a human rights treaty, in 1992. Under this agreement member nations are required to annually report their treaty compliance to the United Nations.

Jama


These opinions make clear that private prison companies, their employees and corporate officials can be sued for committing human rights abuses. Hundreds of clinical law students have worked on the Jama case since it was filed nearly 10 years ago. Many of those past students continue to work on the Jama lawsuit pro-bono, now that they are experienced lawyers.

The Constitutional Litigation Clinic has worked on cutting-edge constitutional reform since its founding in 1970. Through the clinic, students not only learn the law, they make the law.

Clinical law students are actively involved in all aspects of the clinic’s work, including deciding which cases to take, interviewing clients, developing facts, crafting legal theories, drafting legal briefs and preparing for oral arguments. Students have litigated landmark civil rights and international human rights cases.
The Clinics at Rutgers-Newark are a powerful draw for prospective law students. More than 35 years ago, the law faculty unanimously approved a recommendation by a group of professors, students, and administrators to create an extensive clinical program.

Today, the school’s eight in-house, live-client clinics are widely recognized for their educational accomplishments and high-quality representation of underserved individuals, causes, and communities.

Each semester, more than 100 second and third-year students enroll in an unusually broad and diverse selection of clinics including Child Advocacy Clinic, Constitutional Litigation Clinic, Community Law Clinic, Environmental Law Clinic, Federal Tax Law Clinic, Special Education Clinic and the Urban Legal Clinic. Here are the stories of four out-of-state students who chose to attend Rutgers-Newark for its substantial clinical opportunities.

KATY GRAHAM
During Katy’s childhood her parents took in and cared for children with various unanswered needs. As a sister to foster siblings, Katy’s decision to pursue a law degree was heavily influenced by her upbringing. Katy ultimately chose to enroll at Rutgers-Newark Law because of the Child Advocacy Clinic (“CAC”) and its opportunities for practical training.

Specifically, Katy came to the CAC to advocate on behalf of youth who rely on the child welfare system for their well-being. As a third-year student in the CAC, Katy is working on a statewide educational project to teach teenagers transitioning out of the system about their legal rights.

Under the supervision of CAC professor Randi Mandelbaum, Katy argues before family court judges as the voice of New Jersey’s foster youth.

NANA WILSON
A native Texan, Nana Wilson came to Rutgers-Newark after aiding foster children and sexual abuse victims as a social worker for fifteen years. Nana chose to pursue her legal education at Rutgers-Newark after learning about its Child Advocacy and Special Education Clinics.

Nana enrolled in the Special Education Clinic in Fall 2005. Under the supervision of Esther Canty-Barnes, she assisted a custodial grandmother in securing residential placement for one child and in obtaining necessary educational evaluations of another child.

Nana is currently enrolled in the Child Advocacy Clinic where she represents children involved in child welfare disputes.

CHRISTOPHER KELLY
Christopher Kelly came to Rutgers-Newark from Charlottesville, Virginia, where he taught at a specialized school for children with autism. Christopher applied to Rutgers-Newark because of its Special Education Clinic (“SEC”) and enrolled without visiting the campus.

Christopher enrolled in the SEC in Fall 2005 and Spring 2006. Under the supervision of Jennifer Rosen Valverde, Christopher assisted a mother with limited English proficiency in obtaining intensive remedial reading instruction for her teenage son. He also successfully negotiated a settlement agreement between a client and a local school district.

JESSICA LEWIS
Also hailing from Charlottesville, Virginia, Jessica Lewis came to Rutgers-Newark because of its Special Education Clinic (“SEC”). Jessica enrolled in the SEC in Fall 2005 and Spring 2006. She continued her casework during the summer of 2006 and remains working in the Clinic as a legal intern.

Under the supervision of Esther Canty-Barnes, Jessica has dedicated the majority of her time to a case involving a child with complex health care needs. Jessica has advocated on behalf of the child and his parent at Office of Administrative Law hearings; drafted due process and emergency relief petitions; presented oral arguments on the record; and participated in witness preparation and examination.
Each year in New Jersey close to 800 young people age out of foster care. At age 18 those young adults are legally eligible to leave the foster care system. Those young adults are often unprepared to make informed decisions about work, education, housing and critical issues necessary to become self-sufficient adults.

To assist these young people’s transition to adult independence and to help the four thousand 15 to 21-year-olds currently in foster care placement, the Child Advocacy Clinic (“CAC”) at Rutgers School of Law-Newark partnered with the New Jersey Child Placement Advisory Council (“CPAC”) to develop a manual, Aging Out: Don’t Miss Out.

"The need for this manual is critical," said Lila Bernstein, chair of CPAC. "Most of these youth are unaware that there are services and resources available, such as housing, health insurance, clothing, and vouchers for post-secondary education. In fact, DYFS is mandated to provide these and other services until they are 21."

CAC law students wrote the 28-page publication, which explains social services, court processes and informs the youth about their entitlements from the New Jersey Department of Youth and Family Services ("DYFS").

With support from the New Jersey State Bar Foundation, the Rutgers Child Advocacy Clinic focuses on addressing the needs of children and their families through individual advocacy, community education/outreach and policy development. Established in 1978, the New Jersey Child Placement Advisory Council reviews the policies, practices and procedures of DYFS.

Clinical law students in the Child Advocacy Clinic (CAC) are trained to use an interdisciplinary approach to provide holistic and comprehensive representation and services to low-income children and their families. The clinic addresses the needs of three groups – children in foster care, children with disabilities, and children living in families headed by kinship caregivers (relatives other than their natural or adoptive parents). Law students represent clients in court matters involving child abuse and neglect, in administrative hearings concerning the denial or termination of public benefits, and in other legal venues.

Advocacy in a Different Key

The Rutgers Constitutional Litigation Clinic has established a Mediation Advocacy Project, in which students represent claimants in the mediation of their employment discrimination charges at the EEOC.

Under the supervision of Professor Jonathan Hyman, students actively participate in all aspects of the mediation process: establishing a good lawyer-client relationship with the claimant; learning the facts and researching the law; preparing a tactical strategy; and participating in the mediation. When the process results in an agreement, students negotiate the specific terms and the language of any releases to which the parties agreed.

Over the Project’s lifetime it has produced satisfactory monetary recoveries for a substantial number of clients-totaling more than $100,000 over several years. Those associated with the project also have developed non-monetary solutions appropriate for specific clients and negotiated improvements in employers’ handbooks and practices.