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Fall 2018

William & Mary Law School Clinic News (Fall)

William & Mary Law School

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WILLIAM & MARY LAW SCHOOL



LEADERSHIP — INTEGRITY — SERVICE

TRAINING CITIZEN LAWYERS

FALL 2018

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Welcome to news about William & Mary's Clinical Programs!

It's been a banner year at the nation's oldest law school, with the addition of our ninth clinic, focused on Business Law (*page 17*), and the robust activities of our eight additional [clinics](#) and the Virginia Coastal Policy Center. Our students worked closely with experienced professors in solving legal problems for:

- **Elderly** community members;
- **Low-income taxpayers** in disputes before the IRS;
- **Veterans** with service-connected disabilities;
- **Survivors** of domestic violence, harassment and stalking;
- Individuals who are incarcerated and claiming **actual innocence**;
- Appellate court litigants with **First and Fourth Amendment claims**;
- Those struggling through the **dissolution of their families**;
- **Children with special needs** seeking appropriate education; and
- **Small business and nonprofit** start up and legal advice.

Students working with professors and partners in the Virginia **Coastal Policy Center** also addressed the challenges that sea level rise and recurrent flooding create for our military readiness and national security, economic development in coastal communities, impact on the health and habitability for vulnerable populations, and the repercussions when localities retreat.

Over 200 second- and third-year law students provide more than 40,000 hours of *pro bono* legal services annually through our clinical program, exemplifying Thomas Jefferson's philosophy that lawyers should be more than skilled members of the Bar; they should be ethical citizens and leaders in their communities, and on the national and international stage. Those who come here seek to serve the greater good; our clinics give them an opportunity to do so for the most vulnerable among us.

- Patty Roberts, Vice Dean,
Clinical Professor and Director, Clinical Programs
William & Mary Law School Class of 1992



Puller Clinic Develops Law School's First On-line Venture

By David Boelzner

In 2017, the Law School embarked on its first venture into on-line education by offering a Certificate in Military & Veterans Health, Policy and Advocacy (MVHPA). The four-course curriculum was developed by the faculty of the Puller Veterans Benefits Clinic—Caleb Stone, Elizabeth Tarloski, Judy Johnson, Elyse Peterson (in consultation with Aniel Szymanski), and Dave Boelzner. Each course comprises a number of video lectures, readings, and exercises for the students to complete.

Courses include Veterans Disability Benefits and Writing for Advocacy, followed eight weeks later by Psychological Challenges and Resulting Legal Issues and Application of Techniques for Military and Veteran Advocacy. The latter capstone course delves more deeply into the details of how to successfully pursue a veteran's claim through the entire process and addresses some special issues, including discharge upgrades.

The Application course utilizes a sample case file for students to use throughout the entire process: fact gathering and records requests, assessment of the potential claims and formal filing, generating new supporting evidence, disagreeing with an initial unfavorable decision, seeking the specific benefit for unemployability, appealing to the Board of

Veterans' Appeals, and analyzing a Board decision for possible appeal outside the VA to the Court of Appeals for Veterans Claims. This new capstone course launched this summer.



William & Mary Law School ranks number one among law programs on the 2018-2019 list of Top 10 Military Friendly® Graduate Schools, Victory Media announced on April 4. The Law School ranks fifth overall among graduate schools. This is the third year in a row that the Law School has made the Top 10 list.

Students who have completed the certificate course thus far include employees of the Virginia Department of Veterans Services, pro bono attorneys and advocates, law school clinicians, and members of the armed services. Many of the students have been veterans themselves. The next cohort starts in January 2019. For more information or to register go to our [website](#).

Starbucks Military Mondays



Military Mondays is a partnership between the Puller Clinic and Starbucks' Armed Forces Network, and originally launched in the Hampton Roads area of Virginia - home to more than half-a-dozen active military bases, upwards of 100,000 active-duty and reserve personnel and thousands of veterans. Since its inception in 2015 William & Mary Law School's Puller Veterans Benefits Clinic's Starbucks Military Mondays initiative has provided free advice and counsel to over 360 veterans. The Puller Clinic would like to thank Dominion Energy and Starbucks for their generous support of this initiative. To learn more about William & Mary Law School's Starbucks Military Mondays program read [here](#) and [here](#).



VA General Counsel Byrne Visits with Law Students and Faculty



Vice Dean Patricia Roberts, Director of Clinical Programs and Co-Director of the Lewis B. Puller, Jr. Veterans Benefits Clinic, chats with James M. Byrne, Richard Hippolit and Paul Hutter.

Photo by David F. Morrill ;

Story by Staff | April 5, 2018

Department of Veterans Affairs (VA) General Counsel James M. Byrne (now serving as Acting Deputy Secretary) visited William & Mary Law School on Tuesday, April 3 to address the combined classes of the [Lewis B. Puller, Jr. Veterans Benefits Clinic](#). A Marine veteran himself, Byrne spoke about his military and legal career and how he came to the post.

Byrne stressed the rewards of government service and the importance of being flexible in whatever job you land in, “blossoming where you’re planted.”

Byrne brought with him Deputy General Counsel for Legal Policy Richard Hipolit, and Lara Eilhardt of the Benefits Law Group, each of whom also spoke to the students about government service as lawyers and about the department. Also accompanying the VA’s chief lawyer were several William & Mary Law alumni who now work in the General Counsel’s office: Ken Walsh ’00, Alexa Roggenkamp ’13, Mark Villapando ’12 and Sarah Blackadar ’16.

After the formal class session the visitors stayed and chatted informally for a couple of hours with Puller Clinic faculty Dave Boelzner, Elizabeth Tarloski and Caleb Stone ’15, as well as Dean Davison M. Douglas and Vice Dean Patricia Roberts. Also participating in

the session was Paul Hutter, former General Counsel of VA, adjunct professor at William & Mary, and a current member of the Puller Clinic’s advisory board, who helped arrange the visit.

Since his appointment to the VA, Byrne has been extraordinarily supportive of law school clinics serving veterans. The VA recently recognized the National Law School Veterans Clinic Consortium as an official Veteran Service Organization, entitling the clinics to inclusion in major policy discussions at VA (along with such organizations as the American Legion, Veterans of Foreign Wars, Disabled American Veterans, etc.). Eilhardt serves as the liaison with the clinics.



Significant Growth in Clinical Program Helps Inspire New Space

By Jaime Welch-Donahue



William & Mary's nine clinics and a policy center just celebrated the first year in the Law School's recent addition, the [James A. and Robin L. Hixon Center for Experiential Learning and Leadership](#).

The two-story, 12,000-square-foot center marked the culmination of a 16-year building program, which has more than doubled the physical size of the school and has also included the addition of the North Wing and the Wolf Law Library. According to Dean Davison Douglas, the new space reflects the school's "strong emphasis on preparing students to practice law the day they graduate." "The vision that Jim Hix-



on had with us of expanding what this school does to train our students and to prepare them to be citizen lawyers comes to fruition in this critical addition," he said.

James A. Hixon, J.D. '79, M.L.T. '80 retired from Norfolk Southern Corporation, where he was executive vice president, law and corporate relations. "I think as a graduate of the Law School that it is very important that you do what you can to give back. It is

what gave me my training," he said. "I think it is important that you help future generations of lawyers."

The center's first floor features offices for managing attorneys to meet individually with students enrolled in clinics, multiple client interview rooms and student work areas, and two spacious multipurpose conference rooms for use by the school's nine clinics. The Legal Practice Program, the Virginia Coastal Policy Center, and the school's leadership activities encompass the second floor. The space provides offices where legal writing faculty can provide one-on-one instruction to students, two classrooms, and the new James A. Penney & Laura Leigh Young Courtroom that provides additional space for trial and appellate advocacy training. Visitors can access the center from the school's lobby or through entrances in Penny Commons. From the entrance facing South Henry Street, people may enter or exit the commons via a walkway that winds alongside a planned garden area.

The new clinic space is accessed through a beautiful, light-filled atrium space, named for James D. Penny J.D. '83 and Pamela Jordan Penny '77, in recognition of their support for the project. Jim and Pam Penny share the belief "that great physical spaces have the ability to inspire." It is their hope, Jim said, that Penny Commons "will be an inspirational gathering space for law students, faculty and staff, and visitors to the Law School, particularly those who come to this space looking for legal advice and representation from our legal clinics."



Guests stand outside the new clinic conference room

Experts Converge at William & Mary for Forum on Preparing for a Climate-Changed Future

On Monday, July 9, William & Mary hosted a forum on “Preparing for a Climate Changed Future: Navigating the Impacts on our Military and Coastal Communities.”

Panelists, including Elizabeth Andrews, Director of the [Virginia Coastal Policy Center](#) at William & Mary Law School, offered ways that Hampton Roads communities and military bases can address the impacts of a rising

sea, based on the approaches of other regions and installations facing the same threats.

The event was sponsored by The Center for Climate and Security, the Virginia Coastal Policy Center (VCPC), and the Whole of Government Center of Excellence.

Tourism Resilience Workshops



The Commonwealth Center for Recurrent Flooding Resiliency, the Old Dominion University Resilience Collaborative, Virginia Sea Grant, and VCPC hosted two Tourism Business Resilience Workshops as a follow-up to the Tourism Business Resilience for Coastal Virginia Assessment Report. One workshop was held in Virginia Beach on February 26 and the second in Williamsburg on February 28. The workshops aimed to help tourism business owners and managers assess their organizations' resilience, as well as provide information on tools available to improve tourism business resilience. Sponsors included the Coastal Virginia Tourism Alliance, Gold Key | PHR, The Miles Agency, the Greater Williamsburg Chamber & Tourism Alliance, Fairfield Inn and Suites in Williamsburg, the City of Williamsburg, and Williamsburg Economic Development.

VCPC Quick Highlights

- VCPC had its annual field trip to visit and learn from state legislators, lawyers with the Virginia Office of the Attorney General and the Division of Legislative Services, and an attorney-lobbyist with the Chesapeake Bay Foundation.
- VCPC hosted its 5th Annual Conference, which addressed the impacts of sea level rise on the Hampton Roads area, and the broader implications of recurrent flooding on military efforts and installations. The 6th Conference, Building a Resilient Virginia, will be held on Friday, November 2; the Conference will conclude with remarks from Virginia Governor Ralph Northam.
- NOAA awarded VIMS with \$835K to fund "nature based" flood resilience research. VIMS will partner on the project with several state agencies, VCPC, Wetlands Watch, and Albemarle-Pamlico National Partnership.
- Most recently, the National Sea Grant College Program announced funding for a Shellfish Aquaculture Project which includes VCPC, the National Sea Grant Law Center, the Rhode Island Sea Grant Legal Program, the Carl Vinson Institute of Government, and the California Sea Grant Program.

Virginia Governor signs bill establishing new cabinet position to address coastal adaptation and flooding

By David F. Morrill



Virginia Governor Ralph Northam signs HB 345, establishing a new cabinet position for Virginia: Special Assistant to the Governor for Coastal Adaptation and Protection. The new cabinet position will function as the lead in developing and providing direction and ensuring accountability for a statewide coastal flooding adaptation strategy. Photo by David F. Morrill

Governor Ralph Northam visited William & Mary Law School on Friday, June 22 to sign two bills, House Bill 345 and Senate Bill 265, establishing a new cabinet position for Virginia: Special Assistant to the Governor for Coastal Adaptation and Protection.

The new cabinet position will function as the lead in developing and providing direction and ensuring accountability for a statewide coastal flooding adaptation strategy.

“It’s our honor as a law school to host this signing ceremony for creating legislation establishing a new position,” said Davison M. Douglas, Dean of the Law School and Arthur B. Hanson Professor of Law. “Our law school, and our university, is intensely interested in issues of coastal protection and adaptation; this includes the work of our Virginia Coastal Policy Center, which has become a major center for addressing these issues, as well as William & Mary’s Virginia Institute of Marine Science.”

On hand to witness the signing was Elizabeth Andrews, Director of the Law School’s Virginia Coastal Policy Center. With the Center engaged in policy analysis to assist state agencies, localities and planning district commissions, Andrews is grateful for the increased focus on adaptation that the new position will provide, and the many people who made passage of the bill possible.

“This bill is important because it establishes a funneling point for economic development efforts, fundraising efforts, looking at different research efforts that try to deal with sea level rise and recurrent flooding in our coastal areas,” Andrews said. “It’s a very important bill for the Commonwealth and for Hampton Roads.”

Virginia Coastal Policy Center Receives Grant from Virginia Environmental Endowment

By Jaime Welch-Donahue

The Virginia Coastal Policy Center (VCPC) at William & Mary Law School has received a \$30,000 grant from the Virginia Environmental Endowment (VEE) for a project titled “Integrating Resilience into State and Local Plans.”

The grant will support a range of endeavors: VCPC's sixth annual conference; a project on Decentralized Wastewater Systems Data and Analysis, co-sponsored with the Virginia Institute of Marine Science; student white papers on a number of topics, including funding mechanisms for sea level rise and flooding resilience measures; and resilience workshops.

In partnership with the Virginia Institute of Marine Science and Virginia Sea Grant, VCPC provides law students at William & Mary with the opportunity to conduct science-based legal and policy analysis to help inform decision-making about coastal resources and water

quality issues at a local, regional, and national level. VCPC has provided policy advice to a host of decision-makers, from government officials and legal scholars to non-profit and business leaders.

VEE has provided financial support for VCPC since its founding at the Law School in 2012 according to Elizabeth Armistead Andrews, VCPC Director and a Professor of the Practice of Law. “VEE has been a key supporter of VCPC from the start, and provides crucial funding that enables us to educate future leaders and address cutting edge coastal issues,” said Andrews. “We very much appreciate both their support and their leadership in helping to protect Virginia’s environment.”

Project Spotlight: The RAFT



In collaboration with UVA’s Institute for Environmental Negotiation (IEN) and Old Dominion University/Virginia Sea Grant, VCPC students are engaging in an interdisciplinary academic partnership. Fittingly nicknamed “The RAFT,” the Resilience Adaptation Feasibility Tool assesses and assists coastal localities impacted by sea level rise and flooding. Considering environmental, social, and economic factors, The RAFT begins

by using an assessment tool to indicate a locality's resilience to coastal storm hazards. Following the assessment, The RAFT team works with the locality to organize a community workshop where a Resilience Action Checklist is developed to identify actions that will improve the locality's resilience. After the workshop, the RAFT team continues to provide support to the locality in carrying out the actions identified in the Checklist. In previous semesters, VCPC students assisted with developing the assessment tool, conducting pilot community assessments, and organizing community workshops.

This semester, VCPC students are assisting with the implementation of the pilot communities' Resilience Action Checklists and will be conducting another round of locality assessments on a regional scale.

PELE Clinic Highlights and Achievements

In the [Parents Engaged in Learning Equality \(PELE\) Special Education Advocacy Clinic](#), law students advocate for local children with disabilities to receive the free, appropriate public education guaranteed them by federal law. The spring cohort of PELE students attended nearly 15 school meetings to advocate for their clients, and made a significant impact in the community.

Over the course of the last year, PELE students contributed over 2,600 hours of pro bono advocacy services serving families in Williamsburg and Newport News, Virginia. In the spring, a PELE student successfully mediated a case involving a student's placement at an appropriate school. Another team secured an emergency transfer for a victim of severe bullying, and this formerly bullied student is now thriving at her new middle school. Due to PELE students' advocacy, a young gifted and talented student returned to the classroom after inappropriately being placed on homebased instruction due to behavioral issues. In addition to working on their cases, Clinic students also put on two local trainings to educate parents about their rights.

Several PELE students secured summer internships in related organizations, including the Department of Justice's Disability Rights Section in Washington, D.C., Brooklyn Legal Service's Access to Justice Program in New York, Disability Rights Advocates in Berkeley, Legal Aid Justice Center's JustChildren Program in Richmond, and PresenceLearning in San Francisco.

During the summer, rising second-year law students intern in the Clinic. In June, the PELE interns collaborated with Williamsburg-James City County Public Schools to present to the Department of Social Services staff about special education law and the rights of foster parents. Later this summer, these students will also present advocacy strategies to military families in Norfolk, Virginia, home to the largest U.S. Naval base in the world, in a program sponsored by the Parent Educational Advocacy Training Center and the Virginia Department of Education.

The PELE Clinic also hosted its eighth annual [Institute](#)

[in Special Education Advocacy \(ISEA\)](#) this summer.

This conference is cohosted by Wrightslaw, a national clearinghouse of information and training in special education law and advocacy. In late July, 65 experienced lay advocates, attorneys, and law students came to William & Mary to learn law and best practices in advocacy from experts in the field, culminating in a Certificate in Special Education Advocacy from William & Mary Law School. Alumni of the program returned for an abbreviated refresher course for the last two days of the conference. ISEA aims to create a community of practice of attorneys and advocates engaged in special education advocacy, and maintains an active alumni base of over 400 professionals.



PELE Clinic Names Professor Christina Jones as Director

Christina Jones was recently named Professor of the Practice and Director of the Parents Engaged in Learning Equality (PELE) Special Education Advocacy Clinic. Professor Jones served as a Visiting Professor and led the Clinic during the 2017-18 academic year, and continues her post as a member of the faculty.

A native of San Jose, California, she holds a Bachelor of Science in Business Administration from the University of California, Berkeley. She graduated *magna cum laude* from the University of Notre Dame Law School,

where she received the David T. Link Award for Outstanding Service in Social Justice. Professor Jones's ties to the PELE Clinic run deep: she was part of William & Mary's Law School's inaugural Institute of Special Education Advocacy (ISEA) as an intern, and returned to attend as a law student.

Professor Jones brings with her special education and disability advocacy experience from organizations including the U.S. Department of Justice Disability Rights Section, the Alliance for Catholic Education, Legal Aid at Work, Equip for Equality, and The Arc of the United States. Christina's close relationship with her cousin Jennifer, a young woman with autism, fuels her advocacy efforts.

Professor Jones was appointed to the Williamsburg-James City County Special Education Advisory Committee. She also joined the Advisory Committee for The

Next Move Program, a Richmond-based nonprofit that helps young adults with developmental disabilities get internships and learn job skills. A member of the Virginia and California Bars, she is also a member of the Council of Parent Attorneys and Advocates, the Disability Rights Bar Association, and the Virginia Education Law Task Force.

In addition to managing an active caseload, Professor Jones has taken steps to get students more actively engaged in the community, through outreach and volunteer opportunities with local disability organizations. In the next year, she intends to develop further collaboration with faculty and students in the School of Education, provide more targeted outreach to local military families, and expand the Clinic's training and consultative services to empower more parents to advocate for their own children.

Student Spotlight: Jennifer Quezada Castillo



The Special Education Advocacy Award recognizes a student for outstanding service to children with disabilities and

their families through the Special Education Advocacy Clinic, given by Claire Maddox ('05) and Robert Ribble in honor of their son Evan, and in memory of his twin, Brooks. The award is presented to a graduating 3L student who has shown a dedicated commitment to special education law and the rights of children. This year's recipient is Jennifer Quezada Castillo.

During her two semesters in the PELE Clinic, Jennifer won a manifestation determination review, which prevented a school from long-term suspending a child with autism for symptomatic behavior. Jennifer secured a guardianship for a client with Down Syndrome, and mentored another student team on the guardianship process. Due in large part to Jennifer's advocacy, a seventh-grade client with learning and

attention deficits got the supports he needed and passed his state standardized test in reading for the first time. Jennifer also trained families on best practices in special education, and conducted outreach to the Hispanic community.

"Jennifer has incredibly strong instincts, and a toughness to her that made her a formidable advocate for our clients," PELE Director Christina Jones said. After taking the bar this summer, Jennifer is joining the firm of Tingen & Williams in Richmond, where she will be focusing on criminal defense and immigration issues. She plans to incorporate service of children and adults with disabilities into her practice.

In Jennifer's words: "The clinic gave me the opportunity to apply the knowledge I acquired not only in the substantive portion of the clinic, but also the knowledge obtained from other courses. I learned how to engage with other professionals within the special education area through client advocacy. The space the clinic offered to develop practical skills and apply the classroom knowledge to real cases was invaluable. I enjoyed my experience with the clinic. The wealth of knowledge it offered was truly unique."

Life Animated—PELE Clinic Hosts Autism Awareness Film Screening

By Daniel Cohen, Class of 2019



The PELE Special Education Advocacy Clinic, in partnership with The Arc of Greater Williamsburg, hosted a screening of the Academy Award nominated documentary, *Life Animated*, at the Kimball

Theatre in Colonial Williamsburg. The film tells the story of Owen Suskind, who at the age of three began to withdraw and was diagnosed with autism. His family found a way to communicate with Owen through his love of Disney animated movies. The film traces the story of Owen and his family through the present and shows Owen living as a young adult with a disability. Owen was non-communicative for nearly a year, before his family realized that he was quoting lines from Disney movies. Slowly, his family used his passion to figure out a way to communicate and connect with him. The film spends time highlighting the impact that Owen's disability has had on his family including father, Ron Suskind, a Pulitzer Prize winning journalist, and older brother Walter, who knows that one day he will be responsible for helping to manage Owen's affairs.

Watching the film after working in the PELE Clinic for the past year, I was struck by the dedication, courage, and strength of the Suskinds. Despite going through what would be many parent's worst nightmare, watching their child's development stagnate and regress, they helped Owen to find a place.

Through their hard work, they helped Owen to communicate and succeed, hitting many of life's important milestones: graduating from school, being in a relationship, and living on his own. While not every story has such a happy ending, the work of those of us in the disability advocacy community should be focused on these goals. The key to a fulfilling life is the acknowledgement of one's strengths and the support for one's passions. Owen's family was able to give him just that: An outlet and a purpose. The film culminates with Owen presenting at an international conference on disability in Paris, and explaining to the audience how his passion allowed him to connect with the rest of the world. Our goal should be to give to each individual with disabilities what Owen's family gave to him: the chance to find what is unique about themselves and the chance to share their perspective and knowledge with the rest of the world.

The screening was a huge success and drew a sizeable turnout from the community, including families of children and adults with disabilities, local advocates, and William & Mary students.



Domestic Violence Clinic and Family Law Clinics:

The Year In Review

[The Domestic Violence](#) and [Family Law Clinics](#) had a busy 2018. After receiving a new grant from the Department of Justice Office on Violence Against Women, the Clinics were once again able to engage in community activities and accept clients seeking legal assistance while leaving abusive relationships. There were eighteen (18) students enrolled in the two clinics this spring, and they handled over 70 cases involving protective orders, custody, divorce, or support.

The students receive a great deal of training and experience working with our clients. We partner with Avalon, the local domestic violence shelter and advocacy organization, to provide training to students on understanding the dynamics of abusive relationships and the impact of abuse on victims' lives. In addition, each student receives training on the potential impact of trauma on victims of sexual assault, as well as the effect that trauma can have on memory and recall of events, which can greatly impact a legal case. Students learn how to interview clients that have experienced trauma and avoid creating false memories. Classes also provide students with the opportunity to learn trial advocacy skills to assist students in the courtroom.

In the spring, one of our students assisted a young mother in maintaining custody of her children after leaving an abusive forced childhood marriage. Another student relied heavily on her language skills to assist a client whose primary language was not English leave an abusive marriage and protect her child. Other students worked closely with members of the military and local teachers who were seeking safety and protection.



Students were also able to engage with the community through work with coordinated community response organizations that combine perspectives from law enforcement, corrections, prosecutors, victim advocates, and social services to ensure that victims' needs are met in our community, and that we address the most dangerous cases in the area.

Each student also prepares a community outreach project. This semester projects included identification of services particularly for LGBTQI members of the community, and provision of therapy dog services to victims and children to help reduce stress and anxiety.

Student Voices

By Michaela Lieberman, JD '18

I count my experience in William & Mary's Domestic Violence Clinic among the most formative and gratifying of my law school career. Under the supervision of two excellent attorneys, Professors Barna and Cunningham, I had the opportunity to work directly with clients to ensure their safety and that of their families. I represented clients in Protective Order hearings, worked with the Victims' Advocacy Unit at the Commonwealth Attorney's Office, and consulted community resources including Child Protective Services to help our clients achieve their goals. The Domestic Violence Clinic taught me not only about the substantive and procedural laws governing civil protective orders, but also about providing more effective, trauma-informed direct services to clients. Through trainings with Avalon, a resource center for victims of domestic violence, as well as through engaging with William & Mary's Sexual Assault and Prevention Team, I learned to think critically about responding to and preventing sexual violence. I became acutely aware of the particular opportunity lawyers can play in such efforts. I am deeply grateful to our clients and my professors for allowing me to work alongside them in an effort to make our community safer, kinder, and more just.

Appellate Clinic wins case in Eighth Circuit Court of Appeals

On July 26, 2018, the United States Court of Appeals for the Eighth Circuit issued a published opinion in *Ross v. City of Jackson, Missouri*, in favor of Appellant James Ross, a client of the [William & Mary Appellate and Supreme Court Clinic](#). The opinion was a unanimous decision, authored by Judge Jane Kelly and joined by Judges James B. Loken and Raymond W. Gruender. The opinion can be read [here](#).

Mr. Ross was arrested at his former place of work without a warrant for “making a terrorist threat,” based solely on a Facebook comment he wrote expressing his support for gun control. The comment was made in response to a Facebook friend posting pro-gun pictures of different guns and explaining what they are used for. Mr. Ross commented sarcastically, asking “Which one do I need to shoot up a kindergarten?” The police arrested him the next day without investigating to see if Mr. Ross’ comment was a true threat. Despite the police concluding that Mr. Ross’ charges were unsupportable in the initial interview, Mr. Ross was charged, held in custody, and only released several days later when he posted bail.

Mr. Ross sued police officers for violations of his First and Fourth Amendment rights. The district court granted the defendants’ motion for summary judgment, concluding that officers were entitled to qualified immunity. According to the court, the police officers could have reasonably interpreted Mr. Ross’s political comment as a true threat, and therefore the comment was not protected speech and his First Amendment rights had not been violated. The court also found that Mr. Ross’s Fourth Amendment rights had not been violated because police officers had at least arguable probable cause to make a warrantless arrest.

The primary legal issues in the case were whether a law enforcement officer violates clearly established First and Fourth Amendment law by arresting a person for posting a satirical comment regarding his opinion on gun control on the internet. Mr. Ross argued that the First

Amendment provides robust protections for political speech such as Mr. Ross’s comment. Mr. Ross also argued that under the Fourth Amendment, police officers must have probable cause to arrest someone without a warrant.

The Eighth Circuit reversed the district court’s decision to grant summary judgement, finding that there was no “arguable probable cause” that would have justified Mr. Ross’ arrest. At the time of the arrest, there was not sufficient evidence to lead a reasonable person to believe that Mr. Ross had made a terrorist threat. The Court stated that the police did not attempt to conduct the minimal further investigation required to determine if Mr. Ross’ comment was a true threat. Furthermore, once they did investigate Mr. Ross’ comment, the police found that it was not a threat.

Laura Bladow, J.D. ’18 a third-year law student at William & Mary at the time of argument, argued the case with the support of Kiren Chauhan, J.D. ’18. Past Clinic members Christine Anchan, J.D. ’17, and Carol Lewis, J.D. ’17, were primarily responsible for the briefing. Students in the clinic practice under the supervision of Adjunct Professor Tillman J. Breckenridge, a partner at Bailey & Glasser LLP and director of the Appellate and Supreme Court Clinic.



Appellate & Supreme Court Clinic Director Tillman Breckenridge was named by Savoy Magazine as one of 2018’s most influential black lawyers. The full story can be found [here](#).

Fun fact!!

16 Cases have been argued in the U.S. Court of Appeals by students from our Appellate and Supreme Court Clinic since 2013

One Student's Reflection on His Experience in the Elder & Disability Law Clinic

Throughout my time in the [Elder & Disability Law Clinic](#), I have had the opportunity to work with several clients and assist them with achieving their goals. The work itself required considerable levels of organizing, drafting, and, most importantly, communicating. Initially, I believed that I would be the primary source of assistance for my clients. I was wrong, however, because my casework produced relationships in which the clients helped me to better myself just as much as I helped them to resolve their legal issues. Specifically, my time in the Clinic revealed to me that my weaknesses are organizing and drafting, while communicating is my strong suit.

Although I halfway expected my organization skills to be tested during my time in the Clinic, I did not expect my drafting skills to undergo the level of development that they did. Particularly, organization has always been a weakness of mine. In the past, I had difficulty with consistently and properly organizing my class notes

and papers. The Clinic, however, taught me to conduct weekly file maintenance for both the physical file and the share-drive file. I began the Clinic with a strong sense of confidence in my drafting skills. I soon learned that my letters to clients and third parties were somewhat deficient in structure and substance.

Through trial and error, as well as constructive feedback from Professor Mock, I was gradually able to formulate more effective approaches to writing letters. Regarding my communication skills, I was surprised to find myself at ease when communicating to clients in person and over the phone. Typically, I am somewhat anxious when speaking to someone for the first time, but my intake interviews and introductory phone calls showed me that I can be an effective communicator.

In conclusion, my time in the Clinic has not only proved to be worthwhile and rewarding, but also it has allowed me to refine my professional skills.

Elder & Disability Law Clinic Case Load

Estate Planning - 12

Guardianship/Conservatorship – 8

Medicaid – 5

Medicare – 1

Social Security – 1

Elder Abuse – 1

Consumer Protection – 1

Probate – 1

Veterans Benefits – 5

Other – 7

Total = 44 closed cases for '17-'18

Estate Planning - 7

Guardianship/Conservatorship – 19

Medicaid – 5

Medicare – 1

Social Security – 5

Elder Abuse – 0

Consumer Protection – 0

Probate – 0

Veterans Benefits – 4

Other – 2

Total = 43 cases pending for '18-'19

Medicaid Mishaps: What to Expect When You Accept

By Kristel Tupja, '17

Many senior citizens turn to Medicaid as a solution to expensive healthcare costs, and for good reason. Medicaid is a welfare program that is means tested, which provides coverage for nursing homes and other types of long-term care such as assisted living and home health care. It is important to be prepared if and when you or a loved one choose to apply for Medicaid. As mentioned, Medicaid is a means tested program, and qualification depends on meeting certain financial and non-financial requirements. Under the non-financial requirements, the applicant must be a resident of Virginia and either over 65 years of age or disabled, as defined by the Social Security Administration, and in need of long-term care. The financial requirements limit all assets owned by the applicant to \$2,000. This number includes the fair market value of any real estate.

If the applicant becomes eligible for Medicaid but currently owns a house, the house must be placed on the market to be sold within 6 months of obtaining eligibility. This is where things can get very tricky. What if the applicant becomes eligible for Medicaid but is in and out of the nursing home and, in the interim, still resides at home? Do they still have to put the house up for sale? The answer is no, but they should certainly tread very carefully. If Medicaid continues to pay for any time spent in a nursing home/ hospital/ rehabilitation center while the house is still an asset, Medicaid has the authority to recover the full amount it expended once the house is eventually sold. If the person dies while still owning the asset, Medicaid can recoup such amount from that person's estate through a process known as "estate recovery." Sections 32.1-326 and 327 of the Virginia Code, along with Federal Regulation CFR 42, Section 433.36 grant Medicaid the power to request estate recovery of funds paid on behalf of the Medicaid recipient when the Medicaid recipient dies. Clients of the Elder & Disability Law Clinic have been unpleasantly surprised when Medicaid mailed them an estate recovery letter that requested payment for thousands of dollars

when the Medicaid recipient died.

When an applicant becomes eligible for Medicaid, often the individual is unaware of the estate recovery process and when it occurs. More often than not, eligible applicants are presented with brochures and factsheets that address the issue. It is vital to carefully read all of these materials, as some Medicaid offices may not be as thorough in explaining estate recovery.

When someone does receive an estate recovery letter, there may be options for lowering the total bill. Virginia Code §32.1-327 explains that the estate recovery claim may be waived if the Department of Social Services determines that enforcement of the claim would result in substantial hardship to the heirs or dependents of the individual against whose estate the claim exists. In other words, if paying the bill would cause extreme financial hardship to the family of the Medicaid recipient, Medicaid will waive the bill. While this is promising, it is very difficult to prove because estate recovery is usually covered by the sale of the house. Another way to lower the estate recovery bill is to provide receipts for repairs or maintenance to the house conducted in order to sell the house. These are easier to prove and can significantly lower the estate recovery bill.

Regardless, the main idea is that Medicaid can and will request estate recovery if the Medicaid recipient does not sell an extremely valuable asset, such as a house, before accepting Medicaid funds. At the Elder & Disability Law Clinic, we understand the Medicaid rules, including estate recovery, and are equipped to assist those applying for Medicaid, and their family members, fully understand the application process and whether estate recovery will be an issue for them.



Introducing Our Newest Addition: The Business Law Clinic!

Businesses and their attorneys should be partners in ensuring that organizations grow smoothly and function at an optimal level. [The Business Law Clinic](#) provides students the opportunity to work closely with small business owners and boards in addressing the myriad legal issues that businesses face on a daily basis. From contracts to human resources questions, to legislative initiatives to expansion plans, students are able to contribute fact-finding, drafting, research, analysis and negotiation skills. Students work with both for-profit and non-profit organizations. Along with practical use of legal knowledge, students also are able to

gain a comprehension of the intricacies of business operations as well as the deeply intertwined natures of corporate culture and decision-making. Students can begin to appreciate the far-reaching effects that any given action can have and the consequent necessity to un-



derstand how all the pieces of a business fit together.

The clinic is taught by Sharon Owlett, former VP and General Counsel to several Fortune 500 companies.

A special thank you to 3L Nathan Mehta, who worked diligently this past summer to put together our inaugural William & Mary Law School Clinical Program Newsletter!!

