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Andrew Spore J.D. ’15, an alum of the Judicial Process in Community Courts Clinic and class, initially wrote his final paper on a proposal that certain vulnerable tenants facing eviction proceedings have a right to counsel. Often called “Civil Gideon”, the effort to expand the right to counsel for low income litigants from criminal proceedings to civil cases in which basic needs like housing are at stake is gaining momentum. One approach to expand the availability of counsel in contested civil trials is to select types of trials like evictions and create a statutory right of low income tenants to a free attorney.

And so, in Spring of 2014, following his clinical internship with a federal judge, Andrew Spore researched an existing project that provided attorneys for low income tenants in selected eviction situations; disability, alleged criminal conduct, and children. The success of that project led Andrew, in collaboration with the legal services programs behind the pilot and a subcommittee of the Boston Bar Association, to draft a statute that would allow a Housing Court judge to appoint counsel in these targeted eviction cases.

Andrew continued with the drafting process in the Fall of 2014 and Spring of 2015, eventually rewriting his paper and draft statute. With the help of various interested organizations, his drafting focused on three considerations; eligibility considerations, the delivery model, and sources of funding. Just before graduation, he produced 6 draft versions of “A Right to Counsel in Certain Eviction Cases”, reflecting different policy choices among the key considerations.

Remarkably, on January 16, 2015, Representative David Rogers along with 44 House and Senate co-sponsors, filed House Bill 1560, An Act establishing a right to counsel in certain eviction cases. The influence of Andrews’s work is obvious in the text of the proposed legislation.

This is the first time in memory that a student paper has become a pending bill in our State House.

“This collaborative process was unlike any other work I undertook while at Harvard Law School,” said Andrew. “Through it, I gained perspective on the systematic problems in the Massachusetts housing courts and the ongoing efforts to reform and improve those courts. Hopefully, the pending bill will only increase the momentum of this project and passage of the bill will be forthcoming.”

“This is the first time in memory that a student paper has become a pending bill in our State House.”
- Hon. John C. Cratsley (Ret.)
Protecting Independent Medical Device Research

By Andy Sellars, Clinical Fellow, Cyberlaw Clinic

Over the past several months the Cyberlaw Clinic has been working with medical device researchers Hugo Campos, Jay Radcliffe, Karen Sandler, and Ben West, in a proceeding before the Copyright Office regarding the anticircumvention laws created in the Digital Millennium Copyright Act. Here’s what we’ve been doing, and why we’re doing it.

The Clinic has written about this proceeding twice before, but as a quick review: our clients each study the safety, security, and effectiveness of medical devices. Some look at the devices from a system design perspective, analyzing the hardware and software of the devices for misconfigurations or vulnerabilities. Others look at the devices as they are applied to a particular patient’s care, and help patients retrieve important information off the devices that the device otherwise would not share, or would only make available through periodic checkups with doctors once every several months. Their research has helped patients and doctors better tailor care, the public understand the nature of medical device risks, and regulatory agencies like FDA improve government oversight of devices.

The good news is that their research is having an impact: manufacturers have responded to concerns raised by independent device researchers by improving the security of devices through use of technologies like encryption. The bad news is that the use of encryption and other “technological protection measures” (to use the term of art from copyright law) on these devices means that this research is now at times regulated by copyright’s anticircumvention laws. These laws state that no person may circumvent a technological protection measure protecting a copyrighted work (e.g., by decrypting an encrypted work) without permission from the copyright owner, unless their circumvention is covered by one of seven statutory exceptions, none of which exactly cover the types of research here.

Once every three years, however, the Library of Congress and Copyright Office conduct a rulemaking to determine whether other temporary exemptions should be granted, in cases where otherwise-lawful uses of copyrighted works are substantially affected by the anticircumvention laws. In the past, this rulemaking has been used to ensure that visually impaired readers can circumvent the controls on eBooks to allow the books to be read aloud, that teachers and students can circumvent the encryption on DVDs for media studies projects, and that cell phones can be “jailbroken” to allow an owner to use the phone on a different carrier’s network. When the proceeding began again last fall, the Clinic petitioned for an exemption to help make sure that medical device research and patient access to data would be protected as part of the next round of exemptions.

In our petition filed in November and initial comment filed in February, we described how researchers access and analyze the source code and data outputs of devices — both in general and as they relate to an individual’s care — and the impact their research has had on device design, use, and governance. The comments also detailed how this research is currently protected under the law (and does not infringe any copyrights in medical device software or outputs), and how anticircumvention laws now jeopardize current and future research.

In March, opponents to exemption had a chance to respond. A few different industry organizations and researchers raised concerns about the proposed exemption. (Those opposition comments are available here.) In early May, the Clinic filed a reply comment, responding to their concerns. The comment notes that research of this nature has been done for several years, and while the opponents raised abstract concerns about safety and effectiveness of such research, they failed to cite a single case where such research risked human life or public safety. In fact, they instead demonstrated the value of this research, by repeatedly citing to independent research conducted by coalition members in their opposition comment, and in admitting that the industry has changed its practices after issues were raised by independent research.

Later in May, I had the chance to travel to Washington with one of our clients, Ben West, to participate in roundtable hearings held by the Copyright Office as part of this proceeding. Ben and I discussed the details of the proposed exemption with several members of the Copyright Office, along with fellow proponents Laura Moy from New America Foundation’s Open Technology Institute and Sherwin Siy from Public Knowledge. The transcript of that hearing is available here, and Prof. Rebecca Tushnet has provided a summary of what was discussed at the hearing.

After the hearing, the Copyright Office sent us a letter asking for our clients’ input on whether the exemption should include a requirement that a researcher must disclose any issues they find with a medical device to the device’s manufacturer, before telling others. This appears to come out of discussions from two of the other proposed anticircumvention exemptions, where computer researchers are more likely to uncover vulnerabilities that, at least theoretically, could be exploited by bad actors. (As one of our clients has demonstrated, there are such vulnerabilities in medical devices, too, but to date there has been no recorded incident of a vulnerability being exploited outside of a controlled setting.)

The Clinic responded to that letter yesterday, noting that both law and reason counsel against such a requirement in this case. As the letter notes, researchers typically disclose issues to manufacturers as part of their process, but there are very good reasons why researchers in certain cases may instead choose to inform other researchers, government regulators, doctors, patients, or the public first or instead of telling the manufacturer. Furthermore, the First Amendment protects the right of a researcher to decide where and to whom they will share information. Were the Copyright Office to impose a requirement here that a researcher only benefit from the exemption if they revealed their research to manufacturers, this conditioning of a government benefit based on a limitation of speech rights would be unconstitutional. At heart, the decision on where to share computer security research is an ethical, and not a legal, one, and ethics do not necessarily dictate that a researcher inform a manufacturer first in all cases.

This is likely the last filing the Clinic will make in this proceeding. Under this rulemaking’s procedure, the Copyright Office will now solicit the views of the Department of Commerce’s National Telecommunications and Information Administration, and then make a formal recommendation to the Librarian of Congress, who will then issue a final rule granting or rejecting our proposed exemption. We expect that rule to come later this year.

We could not have done this without the work of several Cyberlaw Clinic students and interns, including SARAH BAUGH (HLS ’16), JONATHAN DIAZ (HLS ’16), EVITA GRANT (HLS ’16), MEGAN MICHAELS (HLS ’16), JOO-YOUNG RGNILE (HLS ’15), MICHAEL ROSENBLOOM (Columbia Law ’17), and SHUDAN SHEN (HLS ’16).
HEALTH LAW AND POLICY CLINIC  Via HLS News

CHLPI study finds life-threatening barriers in access to breakthrough Hepatitis C drugs

A team of researchers from Harvard Law School’s Center for Health Law and Policy Innovation, Brown University’s Department of Medicine, Rhode Island’s Miriam Hospital, Treatment Action Group, and Kirby Institute of Australia, has released findings from a nationwide study of Medicaid policies for the treatment of hepatitis C virus (HCV), which affects over 3 million Americans. The study examined reimbursement criteria for sofosbuvir (Sovaldi), a highly effective medication to cure HCV in the overwhelming majority of patients. The article, which was published today in the Annals of Internal Medicine, details the coverage restrictions put in place by most Medicaid programs, and calls for policy change to improve access to new life-saving HCV treatment.

“Federal Medicaid law requires coverage of sofosbuvir, yet reimbursement criteria for Medicaid programs effectively cut off access to treatment. Intentional or not, the denial of treatment by the overwhelming majority of states goes against the spirit of the federal law,” said Dr. Lynn E. Taylor of Brown University Department of Medicine, lead author of the study.

The most frequently found restrictions fall into three main categories: how much fibrosis (scarring of the liver) a patient has (limiting treatment to individuals with more advanced fibrosis); substance use (mandating a period of abstinence from alcohol/drug use and/or demanding toxicology screening); and provider limitations (allowing only certain specialist physicians to prescribe sofosbuvir or requiring consultation with a specialist).

“Ultimately, we found that access restrictions are not based on scientific evidence, current treatment guidelines or clinical data,” said co-author and Harvard Law School’s Center for Health Law and Policy Innovation Director Robert Greenwald. Greenwald adds, “Notably, 74% of the 42 state Medicaid programs for which information is available limit treatment to individuals with advanced fibrosis or cirrhosis.” Such restrictions contradict the American Association for the Study of Liver Disease and the Infectious Disease Society of America guidelines which support treatment for all HCV-infected persons, except those with limited life expectancy (less than 12 months) due to non-liver-related diseases.

“Rates of advanced liver disease complications and associated healthcare costs are rising in the United States.” said Taylor. “Although there is a high risk of progression to decompensated cirrhosis and liver cancer among patients with advanced fibrosis, limiting access to people who have already progressed to late-stage disease as compared to treating earlier to prevent these liver-related complications seems counter-intuitive as a public health strategy.”

Restrictions based on drug and/or alcohol use were also common. Among the state Medicaid programs for which information was available, 88% of states include drug and/or alcohol use or abuse in their eligibility criteria, with 50% requiring a period of abstinence of 3 to 12 months and 64% requiring negative urine drug screening. “This is particularly concerning because the majority of new and existing cases of HCV in the United States exist among people who inject, or have injected drugs,” said Taylor. “Rather than excluding people who use alcohol or drugs from treatment, even those with cirrhosis, they should be a priority group due to both improved individual health outcomes and potential HCV cure as prevention benefit.”

Since 2002, National Institutes of Health HCV guidelines have supported HCV treatment regardless of injecting drug use. International guidelines from the American Association for the Study of Liver Disease/Infectious Diseases Society of America, the European Study for the Association of the Liver, the International Network for Hepatitis in Substance Users and the World Health Organization, now all recommend treatment for HCV infection among people who use drugs. “There is compelling evidence that HCV treatment is safe and effective among people who inject drugs,” say Taylor.

“The Medicaid restrictions generally apply to the poorest and most underserved patients with HCV infection, are highly stigmatizing, and not evidence-based,” said Associate Professor Jason Grebely, co-author of the paper from the Kirby Institute at UNSW Australia. “The data suggest that state Medicaid policies for access to new HCV therapies should be reviewed and revised in line with national and international clinical recommendations.”

“It is unacceptable for treatment to be held hostage by state Medicaid programs,” adds Tracy Swan, co-author and Hepatitis/HIV Project Director at Treatment Action Group. “Medicaid programs have never forced people to wait for treatment until they are so sick that they are left with a higher risk for liver cancer – even if they are cured. We would never refuse treatment for cancer or other infectious diseases- until people developed severe organ damage, nor do we withhold treatment for these illnesses from people who drink alcohol or use drugs.”

In distinct contrast to the situation in the United States, Australia’s Pharmaceutical Benefits Advisory Committee (PBAC) has recently recommended two highly effective sofosbuvir-based regimens for Pharmaceutical Benefits Scheme (PBS) listing, without drug use or disease stage-related restrictions. Assuming that price negotiations are completed and Federal Cabinet approval gained, Australia should have the broadest access to interferon-free therapy internationally, with PBS listing expected in December 2015 or April 2016,” said Professor Greg Dore from the Kirby Institute.

Based on its findings the study recommends that states review their access criteria and revise them as needed to align with national clinical recommendations. The study concludes that treatment access for people living with HCV should be based solely on clinical criteria and medical evidence. Since the current restrictions do not make clinical, public health, or long-term economic sense, these restrictions should be removed.
CHLPI launches campaign to promote federal law and policy reforms for type 2 diabetes

Via HLS News

As a direct response to the looming health epidemic, the Center for Health Law and Policy Innovation (CHLPI) officially launched a campaign to promote federal law and policy reforms for type 2 diabetes prevention and management on May 19. This effort is part of CHLPI’s broader, multi-phase Providing Access to Healthy Solutions (PATHS) initiative that first worked to strengthen local and state policy to address diet-related health conditions and more specifically improve type 2 diabetes treatment and prevention. PATHS is now focusing on federal law and policy reform.

The Federal Report, written by CHLPI staff and the clinic students, offers specific recommendations to decrease the incidence of type 2 diabetes and to promote effective management of the disease in those who have already been diagnosed. Beating Type 2 Diabetes: Recommendations for Federal Policy Reform builds off of the best-practices identified through years of work at the state and local level and the guidance of people living with and at-risk-for diabetes, health and social service professionals, food providers and producers, government officials and other stakeholders,” says Robert Greenwald, Clinical Professor of Law at Harvard Law School and Director of its Center for Health Law and Policy Innovation (CHLPI).

HLS students in the Health Law and Policy Clinic of CHLPI contributed to the report creation over the past two years, researching such issues as: Medicare coverage of medically-appropriate food as a cost-effective diabetes intervention; pre-diabetes services in Essential Health Benefits to improve health and reduce costs; and coordinated diabetes care models through diabetes-specific Center for Medicare & Medicaid Innovation Awards. “I found the opportunity to work on the PATHS report very rewarding,” says Krista White, ’16. “There’s a clear intersection between diabetes and many other serious and disabling health conditions, and the report calls for the types of policy reform and action that are needed to keep Americans healthy. It also suggests important measures to curb rapidly escalating costs associated with the healthcare system’s failure to effectively prevent and treat diabetes.”

CHLPI’s campaign also includes a series of federal policy roundtables, the first held on May 19 in Washington, D.C. Beating Type 2 Diabetes: A Policy Roundtable on Increasing Access to the Diabetes Prevention Program and Diabetes Self-Management Education focused on the need for stronger federal laws and policies to support cost-effective diabetes prevention and self-management programs. Two more roundtables, one looking at the role of community health workers in providing diabetes care and the other focusing on the role of food in federal diabetes policy, are slated to follow. Like the first, the upcoming roundtables will gather thought leaders from across disciplines, including legislators, federal and state agency staff, health payers and providers, and diabetes advocates to move the diabetes policy agenda forward as outlined in the Federal Report.

“Without federal action, one in three Americans will be diagnosed with type 2 diabetes by 2050. Not to mention that the staggering total cost of the disease to the United States is up to $245 billion dollars a year and continuing to climb.” - Robert Greenwald, Clinical Professor of Law at Harvard Law School and Director of the Center for Health Law and Policy Innovation
INTRODUCTION HUMAN RIGHTS CLINIC

Joint Publication Released on Encryption, Online Anonymity and Human Rights

Via International Human Rights Clinic

The International Human Rights Clinic and Privacy International released a publication today that examines the vital role that encryption and anonymity tools and services play in safeguarding human rights. The 30-page publication, “Securing Safe Spaces Online: encryption, online anonymity, and human rights,” complements a landmark report by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye.

Kaye’s report, which he will present to the United Nations Human Rights Council in Geneva today, calls on states to ensure security and privacy online by providing “comprehensive protection” through encryption and anonymity tools.

The clinic’s joint publication explores measures that restrict online encryption and anonymity in four particular countries – Morocco, Pakistan, South Korea, and the United Kingdom.

In all four countries, these restrictions impede private and secure online communication and inhibit free expression. The publication also points to opportunities for governments, the corporate sector, and civil society to eliminate or minimize obstacles to use of encryption and online anonymity.

The Clinic’s collaboration with Privacy International dates back to last fall, when we supported a coalition of NGOs calling for the creation of a new Special Rapporteur on the Right to Privacy. In March 2015, the Human Rights Council established this new Special Rapporteur.

The Clinic began work on the encryption and anonymity publication this past spring. Clinical students SARAH LEE, J.D. ’16, and MARK VERSTRAETE, J.D. ’16, worked on the publication throughout the semester and participated in a meeting of Privacy International’s global partners in April.

Clinic Files Reply Brief in Apartheid Litigation Appeal

Via International Human Rights Clinic

[The International Human Rights Clinic] and partners filed a reply brief in In re South African Apartheid Litigation, currently on appeal before the Second Circuit. The case, which is being litigated under the Alien Tort Statute, brings claims against Ford and IBM for the assistance and support they provided to the apartheid government and security forces to commit human rights violations against black South Africans.

At issue in the appeal is whether the Plaintiffs will be allowed to file their proposed amended complaints so that the case can proceed. In order to do so, the claims must “touch and concern” the territory of the United States with sufficient force, as mandated by the Supreme Court’s 2013 decision in Kiobel v. Royal Dutch Petroleum Co.

Plaintiffs argue that they meet this standard because the proposed amended complaints contain detailed and specific allegations of the ways in which both Defendants, in the United States, took actions to aid and abet the South African government and security forces. For example, the complaints allege that, in the United States, IBM developed hardware and software systems used to produce identity documents that stripped black South Africans of their citizenship and that Ford, in the United States, made decisions not only to sell but also to specialize vehicles used by the South African security forces to oppress and control the black population.

Oral argument before the Second Circuit [was] heard on June 24, and a decision is expected later this year.
New Joint Report on Civilian Harm from Explosive Weapons

Via International Human Rights Clinic

(Geneva, June 19, 2015) – Extensive civilian casualties caused by the use of explosive weapons in towns and cities around the globe show the urgent need for countries to agree to curtail the use of these weapons in populated areas, Human Rights Watch said in a report released today.

Air-dropped bombs, artillery projectiles, mortars, rockets, and other explosive weapons kill or injure tens of thousands of civilians every year. In the first half of 2015, Human Rights Watch documented incidents involving the use of explosive weapons that claimed civilian lives and destroyed vital infrastructure in populated areas of Iraq, Libya, Syria, Sudan, Ukraine, Yemen, and elsewhere.

The 35-page report, “Making a Commitment: Paths to Curbing the Use of Explosive Weapons in Populated Areas,” published jointly with Harvard Law School’s International Human Rights Clinic, says that countries should develop and implement a new non-binding agreement to reduce the harm from explosive weapons and offers options for developing such an agreement.

“Extensive precedent shows that the timely development of an explosive weapons commitment is feasible,” said Docherty, who is also a lecturer on law at the Harvard clinic. “Countries need only recognize the urgency of the problem and bring political will to deal with it.”

Explosive weapons that produce wide-area effects are particularly dangerous. They encompass weapons that produce a large blast and/or spread fragments over a wide radius, such as aircraft bombs; weapons that deliver multiple munitions that saturate a large area, such as Grad rockets and others from multi-barrel rocket launchers; and weapons that are so inaccurate that they cannot be effectively targeted, such as barrel bombs.

Momentum for international action is growing as recognition of the harm caused by explosive weapons in populated areas increases. In September, Austria will host a meeting to consider how to improve protection of civilians from the use of explosive weapons in populated areas.

This report was written by Docherty and Anna Crowe, clinical advocacy fellow, with significant research and writing contributions from BEN BASTOMSKI, J.D. ’15, KATE BOULTON, J.D. ’15, and ISHITA KALA, J.D. ’16.
Legal Services Center Launches Veterans Justice Pro Bono Partnership

Via WilmerHale Legal Services Center

On Tuesday, June 2, the Veterans Legal Clinic of the Legal Services Center launched the Veterans Justice Pro Bono Partnership. Through the program, the clinic will refer cases, offer trainings, and provide ongoing support to local attorneys who agree to provide pro bono representation to veterans discharged less-than-honorably in petitions to upgrade their discharge statuses. Having a less-than-honorable discharge can prevent a former servicemember from accessing care and treatment from the Department of Veterans Affairs and impede efforts toward stable employment, education, and housing.

The Partnership kicked off with a half-day training at the Boston Bar Association, where attorneys learned about military law and culture, the review boards, and service-related medical diagnoses and treatment, among other topics. In addition to Veterans Legal Clinic attorneys Daniel Nagin, Betsy Gwin, and Dana Montalto, presenters included Susan Lynch, an attorney and Major in the Judge Advocate General Corps of the U.S. Army Reserves, and Dr. Sandra Dixon, a core faculty member of William James College who teaches about trauma and meeting the needs of returning veterans. In attendance were more than two dozen attorneys, including solo practitioners, public-interest lawyers, and members of some of Boston’s leading law firms.

Hundreds of thousands of servicemembers were separated with less-than-fully-Honorable discharges in the past decades, including more than 200,000 in the Post-9/11 Era. Despite the availability of a legal remedy and a demand for legal assistance, very few attorneys offer representation to former servicemembers before the records correction boards and even fewer provide pro bono representation to low-income veterans.

The mission of the Veterans Justice Pro Bono Partnership is to close that gap by providing attorneys interested in assisting those who have worn the uniform with the skills and resources necessary to represent them.

Clinic Submits Comments on Proposed Regulations for Offshore Drilling in the Arctic

Via Emmett Environmental Law and Policy Clinic

The Emmett Environmental Law & Policy Clinic submitted comments on the Department of the Interior’s (“DOI”) proposed regulations for offshore exploratory oil drilling in the Arctic. The Emmett Clinic supported the agency’s proposals to require that operators maintain a secondary drill rig in the Arctic to respond to potential losses of well control and that operators have prompt access to, and immediately deploy, source control and containment equipment in the event of an oil spill.

In particular, the Clinic criticized DOI’s reliance on a performance-based standard for the secondary drill rig requirement. The Clinic proposed that the regulations should instead mandate that a relief rig always be available within a minimum distance from the drill site, while still including a performance-based standard as a backstop. In addition, the Clinic suggested several ways that the regulations could be changed to improve public access to information and provide better opportunities for public participation in the regulatory process.

The comments were part of the Emmett Clinic’s on-going focus on the impacts of offshore drilling, especially in the Arctic. Previous Emmett Clinic offshore drilling work is available here.

Clinic student JAMES ZHU, J.D. ’16, took the leading role in drafting the comments. ABHISHEK BANERJEE-SHUKLA, J.D. ’15, and PRADEEP SINGH, LL.M. ’15 also contributed to them. The students worked under the supervision of Clinic Director Wendy Jacobs and Senior Clinical Instructor Shaun Goho.
In the Family and Domestic Violence Law Clinic, our work involves helping domestic violence victims, both men and women, escape abuse and regain control of their lives. We work with clients to obtain divorces, child custody, patriarchy, child support, and restraining orders. This semester, a restraining order matter arose that significantly shifted my understanding of both abuse and the law’s ability to support survivors trying to leave their abusers. Our client suffered severe physical injuries as a result of an attack by her husband, which forced her to undergo medical treatment and miss several weeks of work. During her recovery, she sought out an ex-parte restraining order, and we represented her in hearings related to an extension of the order. While our primary objective was to extend the restraining order, we also requested lost wages and medical expenses to address the financial consequences of her husband’s attack.

In conducting research prior to the extension hearing we discovered that Massachusetts law clearly permits a court to provide monetary compensation to abuse victims. In fact, the law explicitly provides that, once the court has determined that a person has suffered abuse, it may, in addition to ordering a restraining order extension, require “the defendant to pay the person abused monetary compensation for the losses suffered as a direct result of such abuse. Compensatory losses shall include, but not be limited to, loss of earnings or support, costs for restoring utilities, out-of-pocket losses for injuries sustained, replacement costs for locks or personal property removed or destroyed, medical and moving expenses and reasonable attorney’s fees.” M.G.L. c. 209, §3(f).

We had to return to court three times in order to obtain full relief for our client. During one hearing, one judge elected to pass us to a different judge to hear the compensation remedy, after she noted how unusual the request seemed to her. But in the end, the clear language and intent of the Massachusetts legislature to protect abuse victims from the further economic harms of abuse won out. Our client walked away with not only the standard year-long extension order but also with an order for lost wages and additional money for medical expenses.

To be sure, the victory in hand does not end the process, either for the client’s self-liberation from her abuser, or for her ability to collect on the judgment. Violations of restraining order provisions related to compensation can be tricky to enforce, especially when clients may still fear inciting their abuser’s wrath if they push too hard to collect a judgment. Likewise, the economic impact of abuse does not boil down so easily into a one-time snapshot of lost wages over a few weeks following abuse. Some clients become homeless upon leaving abusers (indeed, the National Network to End Domestic Violence found that 63% of homeless women have been victims of domestic violence as adults). Others have difficulty finding work because of lost income-earning years during the abusive relationship, or they lose their current job due to missed work, caused either by the abuse, or because of court dates related to the abuse. Immigration issues often arise as well, as many abusers use the threat of reporting a spouse as a form of control and intimidation.

Nevertheless, what is clear from our client’s victory in court and the language of the statute is that the purpose of 209A is to provide remedies for victims that encompass financial losses. In the words of one Massachusetts appellate court, “In terms of the relief available under the Abuse Prevention Act, the statute is sui generis. It incorporates elements of domestic relations relief, criminal relief, equitable relief and tort.” Mitchell v. Mitchell, 62 Mass. App. Ct. 769, 773 (2005) (quoting 3 Kindregan & Inker, Family Law and Practice § 57.8 (3d ed.2002)). Restraining orders under Massachusetts law have greater power than is currently recognized. Accordingly, I hope that our client’s victory and those like it inspire clients and their attorneys to make use of the full scope of relief authorized under chapter 209A, §3, and more broadly to push the conversation on remedying domestic violence to recognize the significant economic impact of abuse.

Housing Law Clinic’s Julia Devanthéry wins appeal against Wells Fargo

Attorney and Clinical Instructor Julia Devanthéry of the Housing Law Clinic (LSC) recently won an appeal in the case of Wells Fargo Bank v. Cook, et al. Her clients were two homeowners from Mattapan who had been fighting eviction after the unlawful foreclosure of their home.

The central issue in the case was whether a massive 2008 foreclosure prevention workshop held at Gillette Stadium qualified as a “face-to-face” meeting between lenders and borrowers under the regulations which govern Federal Housing Administration insured mortgages. The Appeals Court concluded that Wells Fargo had failed to demonstrate that the Gillette event met the requirements of the regulations since the bank representative rejected the borrowers’ attempt to make a payment, and didn’t have the requisite authority to modify their loan at the event.

Devathéry, quoted in a Massachusetts Lawyers Weekly article, says “Wells Fargo tried to argue that the HUD regulation merely requires that a lender representative have a meeting in the same room with borrowers,” but that in fact, the regulation contemplates “something much more nuanced and personalized.” Devanthéry says she and her clients are hopeful that the decision will “translate into compliance by FHA-insured lenders to really work with borrowers in a way that allows them to avoid foreclosure if at all possible. In giving FHA-insured mortgages to borrowers, lenders take on additional consumer protection obligations in exchange for mortgage insurance from the federal government. By foreclosing on the Cooks’ home without first complying with the HUD regulations, Wells Fargo is essentially trying to take the benefits of this federally subsidized insurance program, and none of the obligations or responsibilities that go along with it.”

“The win would not have been possible without the work of several outstanding clinical students and the leadership of Housing Clinic director Maureen McDonagh,” Devanthéry said.
Emily Broad Leib named Assistant Clinical Professor of Law

Via HLS News

Emily Broad Leib ’08, cofounder and director of Harvard Law School’s Food Law and Policy Clinic, has been named Assistant Clinical Professor of Law at HLS.

Broad Leib has worked at the Center for Health Law and Policy Innovation, of which the Food Law and Policy Clinic is a part, since 2010. She founded the Food Law and Policy Clinic in 2011, and in 2013 was appointed Deputy Director of the Center for Health Law and Policy Innovation.

“In a few short years, she has helped build the Food Law and Policy Clinic into the nation’s most innovative and influential clinic addressing complex problems surrounding the production, distribution, and safety of food and related issues of health and equity,” said Martha Minow, Dean of Harvard Law School. “Emily’s passion, imagination, and strategic analysis have inspired students and faculty around the country. We are so delighted she is joining Harvard Law School’s clinical faculty.”

Broad Leib is recognized as a national leader in Food Law and Policy. She teaches courses on the topic and focuses her scholarship and practice on finding solutions to today’s biggest food system issues, aiming to increase access to healthy foods, prevent diet-related disease, and reduce barriers to market entry for small-scale and sustainable food producers. She has published scholarly articles in the Wisconsin Law Review, the Harvard Law & Policy Review, and the Journal of Food Law & Policy, as well as in the Routledge International Handbook of Food Studies.

In February, Broad Leib was awarded a research grant in the inaugural year of Harvard President Drew Faust’s Climate Change Solutions Fund. Broad Leib’s project, “Reducing Food Waste as a Key to Addressing Climate Change,” was one of seven chosen from around the university to confront the challenge of climate change by leveraging the clinic’s food law and policy expertise to identify systemic solutions that can reduce food waste, which is a major driver of climate change. Broad Leib’s groundbreaking work on food waste has been covered in such media outlets as CNN, The Today Show, MSNBC, TIME Magazine, Politico, and the Washington Post.

“I am filled with gratitude and enthusiasm about joining the Harvard Law School faculty. It has been an honor to work at such a supportive institution and help foster Harvard Law School’s emergence as a leader in the field of food law and policy,” Broad Leib said. “I am grateful for the opportunity to continue to grow this burgeoning field and to work with such innovative, passionate, and committed students and faculty to forge a more just, healthy, and sustainable food system.”

Prior to joining the Center, Broad Leib spent two years in Clarksdale, Mississippi, as the Joint Harvard Law School/Mississippi State University Delta Fellow. There, she directed the Delta Directions Consortium, a group of university and foundation leaders who collaborate to improve public health and foster economic development in the Delta region. In that role, she worked with community members and outside partners, and with support from more than 60 HLS students, to design and implement programmatic and policy interventions on a range of critical health and economic issues in the region. Broad Leib received her J.D. from Harvard Law School, cum laude, and her B.A. from Columbia University.
Congratulations to Eloise, Julia, and Toby on their promotions

The Office of Clinical and Pro Bono Programs extends heartfelt congratulations to Eloise Lawrence (Harvard Legal Aid Bureau), Julia Devanthéry (Housing Law Clinic), and Toby Merrill (Project on Student Predatory Lending) on their recent promotions to the position of Clinical Instructor.

Eloise Lawrence has served as a staff attorney at the Harvard Legal Aid Bureau for over three years representing tenants and homeowners in post-foreclosure evictions and working closely with community organizers as part of Project No One Leaves. Previously, she was a staff attorney in the Consumer Rights Unit of Greater Boston Legal Services where she brought affirmative suits on behalf of mortgagors against loan originators, servicers and foreclosing entities. Prior to the foreclosure crisis, she was an attorney at the Conservation Law Foundation, and started her legal career as a Skadden Fellow in Chicago representing public housing residents in civil rights class actions. Eloise received a J.D. from Northwestern University School of Law in 2002 and a B.A. from Stanford University in 1995.

Julia Devanthéry joined the Legal Services Center as Staff Attorney for the Mattapan Initiative in 2013. She now co-teaches and supervises students enrolled in the Housing Law Clinic. She also maintains a caseload of post-foreclosure, private housing, and subsidized housing eviction cases, and practices primarily in the Boston Housing Court. Previously, Julia was the Manager of Legal Advocacy at HomeStart, Inc. where she represented low-income tenants on the verge of homelessness. Prior to working at HomeStart, she was clinical law fellow at Northeastern University School of Law’s Domestic Violence Institute.

Toby Merrill founded and directs the Project on Predatory Student Lending, which represents low-income student loan borrowers in predatory lending cases against for-profit and occupational schools and related entities. Toby twice represented legal aid providers and their clients in the US Department of Education’s negotiated rulemaking sessions, by which the Department promulgates new student loan regulations, and is a member of the advisory council on Private Occupational Schools to the Massachusetts Division of Professional Licensure. Toby joined the Legal Services Center’s Predatory Lending Practice in 2012 as a Skadden Fellow, after clerking for the Honorable Janet C. Hall of the United States District Court for the District of Connecticut.

Our office wishes them success in their next endeavors!