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HARVARD NEGOTIATION AND MEDIATION CLINICAL PROGRAM

HNMCP Project To Contribute To The Next 50 Years Of The Community Relations Service
Via HNMCP

The Community Relations Service (CRS) serves as “America’s Peacemaker” for the U.S. Department of Justice, helping local communities address conflicts and tensions. CRS helps communities develop strategies to prevent and respond to violent hate crimes committed on the basis of actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion, or disability. By providing mediation, facilitation, training, and consulting services, CRS helps communities enhance their ability to independently prevent and resolve future conflicts.

As the Community Relations Service celebrated its 50th anniversary in 2014, CRS director Grande Lum ’91 and Harvard Negotiation & Mediation Clinical Program (HNMCP) Director Robert Bordone’97 connected to discuss how HNMCP might aid the CRS in thinking through the conflict resolution needs of the nation over the next 50 years.

“It was a great honor for HNMCP to work with the CRS during this past fall. The work that CRS does is critically important for our country, especially during this period of heightened racial tension. I am particularly proud to have a collaboration with Director Lum, an alumnus not only of the Law School but also of the Harvard Negotiation Project in the early 1990s. We hope to partner with CRS in the future on its important mission related to community-problem solving and violence prevention.”

Jennifer John ’15, Sam Koplewicz ’16, and Caroline Sacerdote ’15, spent the Fall 2014 semester first interviewing stakeholders, including CRS employees and community groups, law enforcement, government officials, advocacy organizations, and educators. The team then developed a suite of recommendations. Through this project—and at a pivotal and fraught time in the nation’s history—John, Koplewicz and Sacerdote not only considered important issues related to identity and bias, but also developed concrete recommendations on how to best advance positive community relations in the years to come.

“We interviewed CRS regional directors and conciliators in offices across the country. These are people with amazing resumes—former attorneys, chiefs of police, community organizers—with incredibly diverse and interesting perspectives doing important work in their communities,” notes Koplewicz. “Being able to speak with them, and meet with CRS Director Grande Lum was a rare opportunity and the highlight of the project for me was being able to listen in on, and contribute to, the ongoing conversation on conflict mediation around the nation.”

John and Sacerdote also noted how energized the team was by working with the very government agency addressing issues of racism and prejudice at the precise moment when grand jury decisions in Ferguson and Staten Island were released. “This project created space for us to think critically about how massive institutions such as the Federal Government can address these issues in a way we would never normally be able to tackle in law school,” says John.

“We got a lot of support from Alonzo [Emery ’10, the Clinical Instructor supervising the project] and from HNMCP in general,” noted Sacerdote. “Alonzo provided the perfect balance of support and autonomy, so we could really feel like we owned the project. As a result I think I internalized an unexpected sense of responsibility. I felt very privileged to be working on these issues right now.”

“Yes,” agrees John. “I was deeply invested in the outcome of the work. I knew I would care about this project before the decisions in Ferguson and Staten Island, but the kind of relationship we developed with the client was unexpected. We really wanted to do well for them, knowing that our project could potentially address issues deeply dividing the country.”

In reflecting on the project, Emery notes: “I was humbled by the depth of experience and passion of every single CRS employee we met. Their absolute dedication to some of the nation’s most pressing issues lent the students a heightened sense of commitment and we spent many a long night considering how we might prove most useful. I think all of us at HNMCP felt a renewed sense of responsibility. I invested in the outcome of the work.

“It is an important time for CRS, and the nation, to assess how youth can contribute to preventing discrimination and senseless violence in our country. There is no question that youth play an important role in local police-community relations,” said CRS Director Grande Lum. “It is important that CRS recognizes youth as a key player in building community relationships. HNMCP students not only provided new and immediate solutions for CRS to assist communities, they also offered comprehensive and candid feedback that has led CRS to reflect on its future objectives.”
From Brazilian Soccer to the U.S. Office of Special Counsel: A clinic student’s work with Alternative Dispute Resolution

By Laurence Hull ’15

While this may beggar belief, my immersion in the world of alternative dispute resolution (ADR) is a recent phenomenon—but one that has been truly incredible. My interest in ADR originally stemmed from my interest in international relations and conflict resolution. Specifically, conflict resolution theory introduced me to the idea of “ripeness”—that the effectiveness of peace initiatives is often a matter of timing and circumstances as much as substantive measures. To me, this naturally raised the question of how we can induce that ripeness rather than letting the death toll and other damage rise any further.

Throughout my undergraduate career at Morehouse College, I wrote reams of papers on subjects such as peacekeeping reform, and the role of “justice vs. peace” in post-conflict transitions, searching for an answer to this question. While my ADR experiences at Harvard have exposed me to fields beyond this question, my focus remains on understanding how practitioners and advocates can help parties come to “peaceful” accords.

My first exposure to ADR at Harvard was through a one-day training session for Harvard Negotiators during fall of 2012, where we were given an introduction to interest-based negotiation. As an Englishman and long suffering fan of Arsenal football club, imagine my glee when we dove head first into a simulation involving Brazilian soccer! The experience sparked my interest in the different ADR offerings at Harvard: I honed my practical negotiation skills with Harvard Negotiators, joined the Harvard Negotiation Law Review (where I am now co-Editor-in-Chief) and took the “Negotiation Workshop” that spring.

In the fall of 2013, I was a member of HNMCP’s project with the U.S. Office of Special Counsel (OSC). While the government shutdown made this project more challenging than anticipated, it was also far more rewarding than I could have appreciated when I registered for the clinic. Thanks to its success in protecting federal employees from prohibited personal practices (such as reprisals for whistleblowing), OSC was inundated with a mounting caseload, without an increase in resources. My teammates and I were tasked with analyzing OSC’s complaint processing structure—from intake to resolution—and making recommendations for possible improvements. Working on the project gave me a greater appreciation for the role of institutions like OSC in creating an environment where merit and equality of opportunity are paramount. Additionally, my final paper for the accompanying Dispute Systems Design class focused on South Africa’s Truth and Reconciliation Commission—specifically focusing on the perceptions and treatments of combatants from both sides, who would be potential spoilers for lasting peace.

After nearly three years at the law school, I’ve been privileged to hone numerous useful skills and learn many important lessons thanks to Harvard’s ADR program. In my experience, the most important of these was thinking about another party’s interests in a strategic manner. Whether they are your “opponent,” your client, or even your colleagues, my experiences with the ADR program have imprinted on me how critical it is to seek to understand others—find out what truly motivates them and you have probably identified the most pressing issues that need to be resolved in any “solution” you propose.

After graduation I’ll be returning to Clifford Chance’s office in Washington, DC, where I spent my 2L summer (as well as three weeks in their office in Dusseldorf, Germany). What I found was that while matters I worked on were incredibly varied and challenging—the “solution” to each one invariably required asking myself “what do the parties really want here?” My hope is that no matter where my career takes me, this question will remain at the forefront.

“My teammates and I were tasked with analyzing OSC’s complaint processing structure—from intake to resolution—and making recommendations for possible improvements. Working on the project gave me a greater appreciation for the role of institutions like OSC in creating an environment where merit and equality of opportunity are paramount.”

- Laurence Hull ’15
Last semester, I took a legal theory seminar in which we read some of the seminal works by American legal theorists that form the basis for what has evolved into our law today. As I sat in class trying to analyze the article with my classmates, the images and examples that came to mind were not only my own personal experiences, but also my clinical clients’ stories. My clinical education has been and continues to be a central part of my legal learning. Through clinical learning, I have gained a complex understanding of substantive areas of law, both “law in the books” and “law in practice,” and I have real experiences to draw upon to help me see the difference between “ought” and “is.”

In the Family and Domestic Violence Law Clinic, I had the opportunity to advocate for women who are domestic violence survivors. These women make decisions every day, big and small, to avoid abuse. Many of these women decide not to ask for the little the law provides to avoid angering the men they are trying to leave. Other women want (and deserve) more than the law provides. In my biggest case, I worked with a client who is herself the subject of a wrongfully granted restraining order. Her husband has repeatedly used legal avenues to continue his control and abuse despite her having left and filed for divorce.

The wide gap between “is” and “ought” became painfully apparent when I went into court to argue against the extension of the restraining order. Although the standard required the judge to evaluate whether to continue the order by analyzing whether it was necessary to prevent continued abuse against the “victim”, the judge seemed to decide to extend the order “to avoid contention” for the duration of the divorce proceedings. At one point, he asked me whether granting the order to the husband against the wife wouldn’t actually protect both parties. I was, perhaps naively, stunned. But thanks to the urging of my clinical supervisor and my interest in changing the background rules and in educating those who apply them, we decided to appeal his decision. In addition to being legally incorrect, an important reason that we decided to appeal, and that our client supported and encouraged that decision, was to work towards better law that actually protects survivors from abuse.

The Family and Domestic Violence Law Clinic was the second of four different clinics I will work in during my time at HLS. This is strategic. I plan to work with children, and specifically with immigrant children. Working with this population requires knowledge and skills in a number of different “legal fields,” because for these children, family law problems, immigration problems, education problems, and others are all shades of the same color. As part of my strategy, I was a clinical student with the Harvard Immigration and Refugee Clinic, the Family and Domestic Violence Law Clinic, the Florence Project in Arizona (an independent clinical placement with unaccompanied child immigrants) and the Child Advocacy Clinic (working in education law) this Spring. The ability to apply what I learn outside of clinics to my own legal practice is central to my own process of becoming the lawyer I hope to be.

I am of the opinion that the most exciting learning happens when my classes speak to each other, when I can play out conversations between professors who may have never spoken in my head, when my semester turns into a web of connections and links and winding paths to be followed to the next insight or deeper understanding of something I thought I understood. My experience as a clinical student has provided not only a different format for learning that promotes making these connections, but an excitement and a grounding purpose as I continue my legal studies. As I finish my final semester at HLS, and after having spent four years at Harvard pursuing a concurrent degree (a Masters in Education), my clinical experiences have been the glue that brings together the vast amount of knowledge I have worked so hard to accumulate. In the end, what is all that learning worth if it isn’t to understand how to live it?
I’ve always loved school. Starting from a young age, I even loved the journey to get there. It was time spent with my siblings—an opportunity to tease each other and a chance to get a taste of what felt like the grown-up responsibility of walking alone.

The students in Nqutu, a small, rural area in eastern South Africa, are often just as excited as I was about school. However, as I heard during a trip there this past January with the International Human Rights Clinic, the morning starts for many of them at 4 or 5 a.m., when they wake to fetch water, let out their family’s cows, and help their younger siblings get ready. They then set off on a walk that often exceeds 10 miles.

They tease each other and gossip as I once did, doing their best to protect their uniforms and textbooks from the dirt and weather. But, as the students told us, by the time they arrive at school two hours later, their energy has worn off—and they are fully aware, as they do their best to pay attention in class, that they will have to repeat the journey all over again at the end of the day.

Since 2009, the South African government has dragged its heels on finalizing a national scholar transport policy that would address the education system’s many transport-related problems. This is no small matter. As a result of this failure to act, the government is not fulfilling a fundamental right in South Africa’s constitution: the right to a basic education.

Our partners, Equal Education and Equal Education Law Centre, have been campaigning for a range of improvements in the educational system, taking on everything from schools without water and electricity to access to textbooks. In 2014, their student-powered movement shifted its focus to another critical piece of the puzzle: safe, affordable, and reliable school transport. Not only has the national government failed to fix the problems it itself acknowledged in the draft national scholar transport policy, but the KwaZulu-Natal government has ignored the legal responsibilities it previously set for itself. Provincial policy requires KwaZulu-Natal to provide transportation subsidies to learners who walk more than 3 kilometers to school—a distance easily exceeded by dozens of students we talked to in our short time in Nqutu. None of the students we spoke with were receiving this assistance.

Principals told us they had submitted applications to the provincial government and never heard anything back. Determined to make sure children receive an education, some adults who live closer to school have opened their homes to students from more remote villages. Others drive trucks with more than 20 students packed into the back.

These stop-gap solutions are unsustainable; the government has the responsibility to act. Without a safe, reliable way to get to school, students’ ability to learn is compromised, and education’s promise of a better, more equitable future goes unfulfilled.

The solution may have to be multi-faceted. As we learned on our visit, though many of the difficulties students face are common, there are also different obstacles from school to school; one school may simply need a bus, while another may have learners who are so dispersed that school boarding facilities are the best response. Still, such complexities are not sufficient reason for continuing to stall—especially not when South Africa’s students, in the face of so many challenges, continue to embark upon their long walk to education every day.

Katie King, J.D. ’16, has been working with the International Human Rights Clinic since last September on issues related to the right to education in South Africa. She spent her 1L summer interning at Equal Education Law Centre in Cape Town.
The idea of trade evokes a myriad of images: the customs inspector reviewing import permits, the consumer reading labels of origin in a produce market, the trade lawyer negotiating the details of a new trade agreement. Trade encompasses, of course, all of these activities. But it is also much, much more than tariff barriers and the World Trade Organization. Trade begins with and follows the enterprising farmer as she seeks land title, obtains financial literacy, overcomes seed regulations, chooses fertilizers, harvests and transports to market.

Katrin Kuhlmann, of non-profit organization New Markets Lab, works with local entities, development funds, and international institutions to navigate the regulatory challenges that impact business growth, particularly in the agricultural sector. Although an HLS alumna and former USTR negotiator, Katrin’s holistic model eschews the traditional, narrow-minded focus of the trade lawyer – the end game of export. Instead, the New Markets Lab recognizes the need for prioritization of and structural support of systems like the agricultural value chain that enable goods to reach market. In developing countries like Tanzania, it is information sharing, capacity building and teamwork that are critical to the flourishing of local and export trade.

New Markets Lab listens to the issues these entrepreneurs face during business development and facilitates legal tools and solutions with local partners where there are gaps in the value chain. Currently, for instance, the New Markets Lab is partnering with the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) and AGRA, examining how legal and regulatory systems impact farmers and entrepreneurs in fundamental areas such as access to seeds. The New Markets Lab is also developing a Women’s Legal Guide for East Africa with the Aspen Network of Development Entrepreneurs (ANDE), offering a knowledge ‘bridge’ to the female entrepreneur. Through Katrin’s approach, the entrepreneur gains much more, practically, than the withdrawal of a levy on an inaccessible trade border. The reduction of regulatory barriers and information asymmetry helps to empower local communities to engage in and expand their trade, so they may reach that border in the first place.

In January 2015, I had the opportunity to visit Tanzania with Katrin and four other students as part of a three week independent clinical placement with Harvard Law School. First, in Washington D.C., we participated in a workshop that linked high-level trade and aid policy with real legal challenges in developing markets, meeting with experts across the public and private sectors. On arrival in Tanzania, we were prepared to learn about entrepreneurship through the lens of trade: what were the challenges for enterprises reaching local, regional, and overseas markets?

As we discussed issues and solutions on the ground, it was evident that enterprises were daily confronted with issues of trade, whether recognized as such or not. Title and business registration, access to loans, food standards compliance, logistics challenges – each entrepreneur had a tale of confrontation with the often complex regulatory environment in his or her ambition to succeed, grow, and market.

In January 2015, I left Tanzania with memories of cloves, tomato farms and Masai warriors. But my experience with New Markets Lab also impressed on me a greater appreciation of how trade lawyers can assist development far beyond concessions in a trade agreement. As Devota Likokola, a Member of Parliament, stressed to us, “there is only so much theory; you must focus on the practical”. She is undoubtedly correct. Trade is practice – the collective practice of enterprises working together in a value chain to reach markets locally and overseas. Trade lawyers and policy makers can and should connect high-level policies to that practice, and thereby demonstrate their development commitment to countries around the world.
During the January term, I worked at the Strategic Investments Unit (SIU) of the Rwanda Development Board (RDB) based in Kigali, Rwanda. The SIU is responsible for negotiating private-public partnerships with investors on behalf of the government and sits in the RDB, a government agency designed to increase economic development, in part, by facilitating international investment.

For the past few years, I have explored my interest in the investment space in East Africa. Last spring, while taking an international investment law course, I began to explore clinical opportunities in the region. I chose to do clinical work in Rwanda because of the generally positive mood surrounding the country’s ambitious plan for economic development. I wanted to understand how Rwanda approaches foreign investment as a part of this development effort.

When I arrived at the SIU in early January, I was immediately given a list of active work assignments from which I could choose. At the time, the SIU was working on a number of projects in different sectors, from energy to financial investments. I worked with a team of financial experts and legal experts tasked with evaluating investment proposals and negotiating the terms of investment for approved projects. That meant digging into the business cases for investments (accompanied with financial models and work plans) and teasing out their assumptions, risks and potential value. For these proposals, I provided evaluative feedback for the heads of the unit and other stakeholders (e.g. staff of relevant ministries) as well as clarification questions, which were forwarded to the investors. This was a very rich experience because I saw not only how the process works from a micro perspective, but also how the SIU’s work operates as part of RDB’s larger strategy.

While working in the SIU, I worked closely with one of the attorneys in drafting project documents for use in the negotiation process. Specifically, I worked on revising the current power purchase agreement documents that will be used in negotiating future power generation projects. These will form the basis for negotiations and, hopefully, will allow the government of Rwanda to attain fair terms as the country pushes to provide electricity to its rural population.

Through my clinical experience, I have made significant improvement in my contract drafting skills, both conceptually and technically. I now have a much better understanding of how different clauses allocate risk among parties and how the different documents in a project interact. Beyond the hard legal skills I have gained, my clinical experience was both insightful and rewarding. Through this work, I got an up close look at how governments (the Rwandan government as well as generally) approach investment. I was able to make meaningful contributions to projects that have the potential to be tremendously positive for the people of Rwanda. This has been a wonderful experience that will inform my future work in the investment space in East Africa, as a lawyer as well as an investment professional.

**EMMETT ENVIRONMENTAL LAW AND POLICY CLINIC**

Clinic Files Amicus Brief in the U.S. Supreme Court in *State of Michigan v. Environmental Protection Agency*

Via the Emmett Environmental Law and Policy Clinic

On March 4, 2015, the Clinic filed an amicus brief in the U.S. Supreme Court on behalf of the Union of Concerned Scientists in *State of Michigan, et al. v. Environmental Protection Agency, et al.* (U.S. 14-46 and consolidated cases). This case involves challenges to the Environmental Protection Agency’s regulations limiting emissions of mercury and other hazardous air pollutants (HAPs) from power plants. In its brief, the Clinic argued that Congress, in directing EPA to regulate power plant HAP emissions if “appropriate and necessary,” intended that the agency make a decision based on a scientific analysis of the public health impacts of the industry’s emissions, and that cost would be factored in later when setting the regulatory standards. Clinic student James Zhu (J.D.’16) wrote the brief with Clinic Director Wendy Jacobs and Senior Clinical Instructor Shaun Goho.
Supreme Court citing: Clinic students work on *City of Los Angeles v. Patel*

Via HLS News

On March 3rd, the nine justices of the Supreme Court peppered Tom Goldstein, veteran of 35 oral arguments before the Court and a cofounder of SCOTUSblog, with nearly 75 questions in 30 minutes – questions he was able to answer with the help of seven Harvard Law students who spent their January term working around the clock to research, write and edit the entire respondents’ brief in *City of Los Angeles v. Patel*.

The students – part of a group of ten who participated in the Supreme Court Litigation Clinic, which pairs Harvard students with seasoned Supreme Court litigators as they work on cases currently pending before the Court – spent three weeks learning the ins and outs of a case scheduled for oral argument in early March, then writing a brief tackling several difficult questions of Fourth Amendment law, ultimately gathering for hours around a screen to edit every word.

“I was surprised how similar the whole thing was to Ames,” said Sean Mirski ’15, who was an oralist on last year’s winning Ames Moot Court Competition team. “In Ames, that’s a process that works well but is incredibly inefficient, because you argue for hours over a comma. In a law firm environment, it works better because there’s more hierarchy. Someone has the final authority to recognize a discussion is no longer productive and move it along.”

Working with Goldstein and various other lecturers, including Kevin Russell and Tejinder Singh ’08, who enrolled in the clinic when he was a student at Harvard, the students worked from about 8 a.m. to 1 a.m. each night, taking breaks in the middle of the day to attend lectures on Supreme Court advocacy or meet with individuals who have extensive Supreme Court experience, including Justice Elena Kagan ’86, Judge Brett Kavanaugh of the D.C. Circuit, Solicitor General Donald Verrilli, SCOTUSblog reporter Lyle Denniston, and seasoned Supreme Court litigators such as Pamela Karlan and Lisa Blatt.

The bulk of their time, however, was spent working on Patel. The students worked on a brief for the motel owners, who argued that the Fourth Amendment protects their privacy interest in the registries, which they are required to maintain by law and which includes information such as guest names, credit card numbers, license plate numbers, and room rates. The motel owners argued that the ordinance is facially unconstitutional under the Fourth Amendment because it allows the police to inspect registries without judicial review prior to inspection.

The Court heard the case on Tuesday, March 3. Although none of the students could attend the oral argument, they met last weekend for brunch at the home of Tara Norris ’15, a student who also worked on the brief, to listen to the audio recording of the argument.

Alex Shank ’15 recalled several moments in the oral argument where it was clear that the students’ research was critical to a point of discussion. “They began talking about the history of hotel regulations, and that was Maya [Brodziak ’16] research,” Shank said. “We all said, ‘She looked at that! That’s her citation.’” At another point in the argument, the justices began mentioning different examples of industries that could be considered closely regulated under the government’s standard, such as hospitals and parking garages, a list that mirrored one the students had come up with in their research.
Through HLS’s externship clinics, students have the opportunity to work under the supervision of attorneys who are enthusiastic and interested in giving students glimpses into their day to day work, and in teaching them about ethical and professional responsibilities. Students learn to sharpen their analytical skills, and further develop their research and writing skills. Through these experiences they also learn about work-life balance, how to develop mentorship relationships with busy attorneys, and other issues that are part of law practice. At an HLS reception for Externship Supervisors, Jack Corrigan, who directs the Criminal Prosecution Clinic, noted that seeing students dedicated to making a difference rekindles idealism for everyone.

In the 2014-15 academic year, 304 HLS students worked on a wide range of legal matters including consumer protection, cybercrime, capital punishment, sports, employment, legal reform, and more. The clinical placements include death penalty legal resource centers, non-profit organizations, and local, state and federal governmental agencies across the United States.

It can be eye-opening to see an attorney in practice, in their communities, working hard to make a difference, even if this is not going to be where students stay to practice, says Liz Solar, Externship Director. “Doing an externship placement is a wonderful opportunity for students to hone their legal skills in that real-life setting and to also make a valuable contribution, whether it’s with a local DA’s office, an administrative law or legal services office. We also know from speaking with professors who teach clinical courses that clinical students deepen and enrich classroom discussions.”

This fall the State Attorney General Clinic, headed by Lecturer on Law and former Attorney General of Maine Jim Tierney, offered students a new opportunity to work with the AG’s Office in Connecticut. Two HLS students participated and one of them, Derek Manners, J.D. ’16, returned to continue his clinical work in the spring semester. Speaking about his time at the AG’s office, Derek said that “the chance to practice legal research, writing, document review, excel skills, and even some old fashioned algebra and statistics made for an entertaining and dynamic internship. Add to that the amazing and intelligent attorneys I got to work with; I couldn’t have been more pleased with this opportunity.”

In another blog post, Jim Tierney who regularly meets with his students and encourages them to participate in classroom discussion said that he particularly loves “the wide geographical diversity” at Harvard, and that almost all of his students want to “go back home and make their state and country a more just place to live.”

HLS students in the Judicial Process in Trial Courts Clinic share this desire to make a positive difference. Every year, they contribute over 500 hours of research and writing to the Massachusetts courts, bringing much needed help to the judges and clerks who operate with limited resources.

“Please give [my HLS student] the highest possible grade for his work with me,” said the Hon. Mark L. Wolf of the U.S. District Court. “Thank you for making it possible for him to work with me.”

“Seeing students dedicated to making a difference rekindles idealism for everyone.”

- Jack Corrigan, Lecturer on Law, Criminal Prosecution Clinic
FOOD LAW AND POLICY CLINIC

Lecturer Emily Broad Leib awarded Climate Change Solutions Fund grant

Via HLS News

Lecturer on Law Emily Broad Leib, the director of Harvard Law School’s Food Law and Policy Clinic, 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 to confront the challenge of climate change using the levers of law, policy, and economics, as well as public health and science.

Last year, Faust announced the creation of the $20 million Climate Change Solutions Fund in order to hasten the transition from carbon-based energy systems to those that rely on renewable energy sources, and to propel innovations needed to accelerate progress toward cleaner energy and a greener world. The inaugural round of awardees reflects the University’s longstanding commitment to supporting collaborative solutions to the climate challenge across a wide range of disciplines.

“Climate change poses a serious threat to the future of our planet,” Faust said. “Universities have a critical role to play in generating innovations that will lead the transition to clean, affordable, and renewable energy sources, and Harvard is committed to advancing such efforts as we continue to serve as a model of sustainability for institutions around the world.”

Forty percent of food produced in the United States goes uneaten, according to Broad Leib. She and her team will use their award to continue addressing the global problem of food waste. The HLS team is identifying key legal and policy levers to reduce the emissions associated with food waste by investigating, amending, and enacting new polices — such as tax incentives and liability protection — that remove the barriers to food donation. They will also continue to raise awareness of the billions of pounds of food wasted because of confusion from misleading food expiration-date labeling, an issue first brought to light in a 2013 report FLPC released with the Natural Resources Defense Council.

“I’m thrilled that through this support we will have the opportunity to expand our work looking at creative ways that we can use law and policy changes to significantly reduce food waste and its harmful environmental impacts, while at the same time increasing food donations and improving food access,” Broad Leib said.

MISSISSIPPI DELTA PROJECT

Harvard Law Students Visit Delta Center

Via the Delta State University

Harvard University Law School students recently spent a week in the Delta as part of an initiative between Mississippi State University and Harvard. The project is based in Clarksdale Miss. and is called the Harvard Mississippi Delta Project.

The students took some time during the week to tour the Delta. Dr. Roland Herts, director of Delta State’s Delta Center for Culture and Learning provided the students an overview of the Mississippi Delta National Heritage Area, and the center’s Lee Aylward led the Delta tour.

The mission of the Harvard Mississippi Delta Project is to improve public health and promote economic development in the Delta. These terms are viewed in the broadest sense to include a range of topics such as financial services, healthy eating, education, infant mortality reduction and more. In addition, the project hopes to engage Harvard Law School students in innovative, interdisciplinary approaches to social change. By using their legal knowledge to support local partners in one of the poorest and most under-served areas of the United States, they hope to be a small part of our region’s larger transformation.

More than 100 law students have volunteered with the project by providing pro bono legal assistance and policy analysis for nonprofit, for-profit and governmental clients in the Delta. The platform regularly considers new assignments to which it can contribute, and this year’s assignment is heir-ship.
On Friday, the Cyberlaw Clinic filed a comment on behalf of a coalition of medical device researchers in the Library of Congress’s triennial rulemaking regarding the Digital Millennium Copyright Act’s anticircumvention provisions. As we noted in the blog post from when the Clinic filed an initial petition in this rulemaking, every three years the Librarian of Congress, at the recommendation of the Register of Copyrights, considers exemptions to the general law against circumventing technological measures that prevent the public from accessing copyrighted works. These exemptions are granted in cases where the law against circumventing technological measures around copyrighted works unduly prevents the public from making lawful uses of those works.

The Clinic filed a public comment on behalf of researchers Hugo Campos, Jay Radcliffe, Karen Sandler, and Benjamin West, who each study the security and effectiveness of implantable medical devices, including pacemakers, cardioverter defibrillators, insulin pumps, and continuous glucose monitors. This research sometimes requires researchers to reverse engineer these devices in order to study their source code and outputs. The petition was filed to make sure these researchers are allowed to do this even when the device manufacturers encrypt, password-protect, or require proprietary tools in order to access this information.

As this comment notes, independent research into the safety, security, and effectiveness of implantable medical devices is vital for preventing potential malicious intrusion and detecting latent design failures. Increasing patient access to their own device data can also promote overall health. For example, independent researchers in the past have shown how pacemakers can be susceptible to attacks from radio transmitters and how to fix it, how similar vulnerabilities exist with insulin pumps, and how greater patient access to device information can help improve therapy and treatment. Research like this has lead the U.S. Government Accountability Office to urge the Food and Drug Administration to devote more resources to studying the safety and security of devices, and the FDA in turn has begun examining the security of devices more critically as part of its approval process. As devices increasingly adopt encryption, an exemption is necessary to ensure this research continues.

The comment is available here, and was drafted by Clinical Fellow Andy Sellars with the help of Cyberlaw Clinic students Sarah Baugh, Evita Grant, Megan Michaels, Joo-Young Rognile, and Shudan Shen. Opposition comments to the proposed exemption are due in late March, with a third round of comments in May. All comments will appear on the Copyright Office’s website.

The Clinic is pleased to have played a role in preparing a far-reaching new report released by the Global Network of Internet and Society Research Centers and the Berkman Center for Internet & Society at Harvard University, addressing questions about intermediary liability around the world. The report is a first output of a larger initiative on the governance of online intermediaries. It consists of: (a) a case study series exploring online intermediary liability frameworks and issues in Brazil, the European Union, India, South Korea, the United States, Thailand, Turkey, and Vietnam; and (b) a synthesis paper that seeks to distill key observations and provide a high-level analysis of some of the structural elements that characterize varying governance frameworks, with a focus on intermediary liability regimes and their evolution.

Clinical Fellow Andy Sellars helped to support the project overall, and he — along with the Clinic’s Managing Director Chris Bavitz and two summer 2014 Cyberlaw Clinic interns, Nick DeCoster and Michael Lambert — helped to craft the US case study.
Food Law and Policy Clinic Hosts Workshop on Food Policy in Navajo Nation

By Kristin Beharry, J.D. ’16 and Rosana Aragon Plaza, LL.M. ’15

Fundamental Navajo law includes the concept of ho’zho’, loosely translated to “balance.” In a workshop hosted by the Food Law and Policy Clinic (FLPC) from February 9-11, Navajo Nation food advocates described how their current food system is out of balance, leading to environmental, health, and economic challenges among its residents. Over three days, the Navajo advocates and FLPC staff and students talked through strategies to change laws and policies on the federal, tribal, state and local level to improve the food system and gain back this sense of balance. These discussions will play a key role in FLPC’s work to develop a toolkit that identifies the main food policy and advocacy challenges that the Navajo Nation faces today, and strategies to overcome these challenges through policy change.

The FLPC has been working with the Navajo Division of Health for the past two years, exploring ways in which Navajo leaders can address health and food sovereignty challenges in the Navajo Nation through food policy change.

In Navajo Nation, healthy food is often costly, difficult and time-consuming to find, while heavily processed, high-calorie and nutritionally poor foods are far more prevalent. The biggest Native American reservation in the United States, Navajo Nation includes large “food deserts,” defined by the U.S. Department of Agriculture as low-income communities that have “low levels of access to a grocery store or healthy, affordable food retail outlet.” Food insecurity is estimated to affect a staggering 76% of households in Navajo Nation. The lack of fresh, healthy food perpetuates health disparities, as over 40% of the total Navajo population (which stands at over 180,000 people) are overweight or obese.

How can these often remote, rural and low-income communities improve their access to healthy food and beverage options? And what role does law and policy play in improving the food environment?

During the workshop, FLPC staff and students discussed with Navajo food leaders the policies that affect the Navajo food supply at the tribal, local, state and federal level. The dialogue was helpful and constructive for both sides. FLPC members shared their knowledge of how to use law and policy to make positive impacts on health and food sovereignty, while Navajo advocates provided their unique insights as food advocates and as members of the community to which the toolkit is tailored. The discussions touched upon issues such as the interplay between Navajo, state and federal government, the infrastructure of the Navajo food system, healthy food access, federal and tribal food assistance programs, and school food in the Navajo Nation.

While the snow in Boston presented some challenges to touring the city, workshop attendees and the FLPC team were able to visit the North End and Copley Square neighborhoods for dinner, and participated in a tour of Harvard’s Peabody Museum of Archaeology and Ethnology, which features an extensive collection of Native American artefacts and art. On Wednesday, February 11th, some Navajo advocates led a presentation open to the public, describing their efforts to improve regional food systems in Navajo Nation by building upon community resources.

Lastly, representatives from the Harvard University Native American Program joined the workshop on the last day to describe resources around Harvard for the study of Native American issues as well as avenues for greater engagement between the Harvard and the Navajo Nation.

The FLPC team plans to visit our partners in Navajo Nation later this spring to learn more about their food system and lead trainings on how to advocate for better food policies in Navajo Nation.
HEALTH LAW AND POLICY CLINIC

The Center for Health Law and Policy Innovation Presents to the Presidential Advisory Council on HIV and AIDS on Alarming Trends in the Health Insurance Marketplaces

By Michael Wysolmerski, J.D. ’16

On January 12, 2015, I attended the 55th Presidential Advisory Council on HIV/AIDS (PACHA) in Washington, D.C. I attended the panel titled 2015 Healthcare Marketplace: A Review of Essential Health Benefits and Provider Networks. My supervisor at CHLPI, Carmel Shachar, presented on the panel, along with Doug Wirth, President and CEO of Amida Care, Melissa Harris, Acting Deputy Director of the Disabled and Elderly Health Programs Group at the Center for Medicare and Medicaid Services (CMS), and Brian Webb, Manager of Health Policy at the National Association for Insurance Commissioners.

I attended the panel as part of my work as a student in the Health Law and Policy Clinic of the Center for Health Law and Policy Innovation (CHLPI). This semester at CHLPI, I am working on the Speak Up project. The Speak Up project encourages consumers living with HIV to report issues they are having with insurance as the Affordable Care Act (ACA) is implemented to advocates. Some of the data used in Carmel’s presentation was drawn from Speak Up activities.

The panel was extremely interesting because it demonstrated the difference in effectiveness of care in different parts of the country. Mr. Wirth started the panel with an uplifting presentation about Amida Care, a Medicaid Special Needs Plan for people with HIV in New York City. This Medicaid Managed Care Plan takes a holistic approach to providing HIV care, offering not only standard medical care but also whole person care services such as African dance classes and yoga classes. Amida Care includes a Member Advisory Council, which allows elected members to meet with the CEO, COO, Medical and Pharmacy Directors to make recommendations. Amida Care’s member participation struck me as refreshingly different than a normal insurance plan.

Despite the incredible program at Amida Care, the panel highlighted for me how much more work needs to be done. Carmel’s presentation laid out the issues that CHLPI is seeing with marketplace plans using actuarial value to pass on costs disproportionately to people living with chronic health conditions such as HIV. As a result, people enrolling in these plans are facing unaffordable copays for drugs. While Amida Care represents an example of what can happen with HIV care, it also struck me as very far off in the future for many states, especially those in the South where the problems of a lack of insurance coverage and of affordable health care are the most acute.

Already, the ACA is being implemented unevenly throughout the country. If the Supreme Court decides in King v. Burwell that federal subsidies only apply to state run exchanges, this problem will be exacerbated.

The panel, though, provided some useful strategies going forward to increase coverage for people living with HIV in states that are lagging behind. Regardless of the result of King, Ms. Harris from CMS had an exchange with Professor Greenwald (a member of the PACHA and co-chair of its Health Care Access Committee) that showed me how advocates and the government can work together to help resolve these issues. Professor Greenwald noted that the cost-control language in Medicaid regulations has proven very effective and urged HHS to work towards implementing similar regulations for marketplace plans along with stronger anti-discrimination provisions. The agreement among the panelists and others in the room that this was needed made me hopeful that, with increased government scrutiny on insurance companies, some of the practices CHLPI has been documenting might begin to be fixed.

The panel provided the unique opportunity for me to see the work of the Speak Up project being used to advocate directly for policy changes (and I also enjoyed the momentary break from Boston’s constant snow). Though the panel definitely showed me that an uphill battle still exists to fix many of the issues regarding HIV care, the example of Amida Care highlighted that real change is attainable that will make a difference at both the individual and the public health level.
Faces of Excellence

An Interview with Fulbright Scholar Grace Nosek, HLS J.D. ’14

HLS Alumna Grace Nosek J.D. ’14 was awarded a Fulbright Fellowship to conduct research. She is one of 22 students from across Harvard University to receive the prestigious grant.

As a student at Harvard Law School, Grace participated in the Clinical and Pro Bono Programs. Taking pride in her achievement, we reached out and asked her to tell us about her work with the Fulbright Fellowship and her time at the law school. Please read the interview below.

OCP: Why did you choose to study law and what sparked your interest in the Fulbright Scholarship?

GN: As a child, I was mesmerized by the color of a spring afternoon and the iridescence of a twilit forest. This love of the natural world led me to study environmental issues throughout my academic career. I also cared deeply about the connection between social justice and environmental issues. Watching one’s crops wither and die, not having clean air to breathe or clean water to drink—these realities represent a uniquely oppressive kind of helplessness. Wanting to both protect the natural world and empower citizens with a voice in government decision-making, I decided to study law.

Many of the most intractable environmental issues of our time require international cooperation; they also present opportunities for countries to learn from one another. Thus the Fulbright fellowship seemed like a perfect opportunity to continue working on the issues that brought me to law school.

OCP: How did your time at Harvard Law School influence your decision to pursue a Fulbright Scholarship?

GN: My time at the Food Law and Policy Clinic showed me how much I loved working on policy research. I also found myself returning to a theme that emerged throughout my classes, and especially during my experiences with the Clinical and Pro Bono Program, which was the inextricable connection between all social justice issues. I wanted to continue exploring those connections, taking a holistic vision of environmental and environmental justice issues. There are few better ways to force yourself to gain new perspective on issues than to explore them through the lens of another country’s legal regime. It has been incredibly intellectually engaging to begin that process as I settle into my fellowship in Victoria, BC.

OCP: What did you find most challenging about your experience in the Clinical and Pro Bono Programs?

GN: The clinical programs push you from theory to practice—they give you a lot of responsibility, which is very different from the insulated world of the classroom. I was challenged by but also revealed in that responsibility. While at the Food Law and Policy Clinic, I honed my research and interviewing skills as a co-author of a comprehensive policy report on food waste in America, produced in partnership between the Food Law and Policy Clinic and the Natural Resources Defense Council. The report required that I reach out to a diverse set of stakeholders, including scientists, industry representatives, government actors at the state and national levels, and non-profit advocates. I felt pushed but also supported, which for me is the sweet spot for personal and academic growth.

It was nothing short of thrilling to dive into my work, knowing that all my hours tracking down various data about food date labels would make a tangible difference in American food policy. The clinics also provided a space for less conventional avenues of learning and advocacy that I really appreciated. When I approached my supervisor at the Food Law and Policy Clinic, Emily Broad Leib, about making a short film to raise awareness on food waste, she was incredibly encouraging. Experimenting with creative advocacy and film (a medium I had never before worked with) was one of the most meaningful experiences I had at HLS.

OCP: What can you tell us about the work you’ll be doing as a Fulbright Scholar?

GN: I’ll be conducting a comparative study into how governments in Canada and America can ensure citizen participation in energy infrastructure decisions. Supervised by Chris Tollefson, professor at the University of Victoria’s Environmental Law Centre, my research project will include a comprehensive review of the legal and regulatory regimes surrounding pipeline approval.
Dehelia Umunna has been appointed Clinical Professor of Law at Harvard Law

Via HLS News

Dehelia Umunna has been appointed Clinical Professor of Law at Harvard Law School. She has been a lecturer at HLS since 2007, and is Deputy Director and Clinical Instructor at HLS’s Criminal Justice Institute (CJI), in which she supervises third-year law students in their representation of adult and juvenile clients in criminal and juvenile proceedings and arguments before Massachusetts’ Supreme Judicial Court and Appeals court.

“Dehelia’s students revere her; her colleagues at HLS and nationally look to her as an exemplary advocate, teacher, and mentor,” said Martha Minow, dean of Harvard Law School. “From her unprecedented win record in criminal defense trials, her deft leadership of the Criminal Justice Institute day-to-day, and her superb coaching of student moot court teams, her published scholarship, to her numerous awards in recognition of her outstanding work as a criminal defense attorney, advisor, and teacher, Dehelia is simply extraordinary, an inspiration to her students and her clients in every way. It is a true privilege to be her colleague.”

Prior to coming to Harvard Law School, Umunna was a trial attorney with the D.C. Public Defender Service and an adjunct professor of law and Practitioner in Residence at the Washington College of Law, American University. She currently serves as a faculty member for Gideon’s Promise, and is a frequent presenter at Public Defender trainings across the country. She was a board member of the District of Columbia Law Students in Court Clinic and was a guest lecturer for several years at the George Washington University Law School.

She is the author of the article “Rethinking the Neighborhood Watch: How Lessons from the Nigerian Village Can Creatively Empower the Community to Assist Poor, Single Mothers in America,” published in the American University Journal of Gender, Social Policy & the Law.

“I am blessed and honored to join Harvard Law School’s remarkable faculty,” said Umunna. “I relish this extraordinary opportunity to continue work that I am truly passionate about, and I am grateful for the deep interest and commitment of the school to issues of criminal justice, mass incarceration, indigent defense and social justice.”

Umunna received her law degree from the George Washington University Law Center. She also holds a Masters in Public Administration (MC) from the Harvard Kennedy School of Government and a B.A. in Communications from California State University, San Bernardino.

Susan Crawford appointed clinical professor of law at Harvard Law

Via HLS News

Susan Crawford has been appointed clinical professor of law at Harvard Law School. She had been the John A. Reilly Visiting Professor in Intellectual Property at HLS. She has also been a faculty co-director of the Berkman Center for Internet & Society since 2012.

“Susan Crawford’s teaching, writing, and public service make her a genuine leader in technology, law, and innovation during this time of crucial challenges and opportunities,” said Martha Minow, dean of Harvard Law. “Her creativity, foresight, and clarity help cities become more responsive to their residents, raise questions for public debate about access and equality, and open tremendous opportunities for students and citizens to participate in and affect the information revolution. I am thrilled to welcome her to the full-time faculty of the Law School and the Berkman Center for Internet and Society.”

Jonathan Zittrain, faculty director of the Berkman Center and Bemis Professor of International Law at HLS said, “The Berkman Center hasn’t merely gained a new faculty member, but an additional dimension. There is no such thing as a boring conversation with Professor Crawford. She rigorously develops positions bold and thoughtful and concrete enough to stimulate serious and productive debate—to get us beyond our assumptions and habits.”

Susan Crawford was formerly a professor at Cardozo Law School and the University of Michigan Law School. She served as Special Assistant to the President for Science, Technology, and Innovation Policy during 2009. Crawford also co-led the FCC transition team between the Bush and Obama administrations, and was a member of former New York Mayor Michael Bloomberg’s Advisory Council on Technology and Innovation. She is a member of current New York Mayor Bill de Blasio’s Broadband Task Force.

She is the author of “Captive Audience: The Telecom Industry and Monopoly Power in the New Gilded Age” (Yale University Press, 2013) and co-author of “The Responsive City: Engaging Communities Through Data-Smart Governance” with Stephen Goldsmith (Jossey-Bass, 2014), as well as many law journal articles. Crawford is a frequent contributor to Medium.com’s Backchannel.

“I am excited and honored to join the Harvard Law School faculty. I welcome this extraordinary opportunity, and I am grateful for the deep interest of the law school community in the intersections among technology, policy, governance, and quality of life,” said Crawford.

Crawford was a member of the board of directors of ICANN from 2005-2008 and is the founder of OneWebDay, a global Earth Day for the Internet that takes place each September 22nd. She has been named one of TIME Magazine’s Tech 40: The Most Influential Minds in Tech (2013), Newsweek Magazine’s 100 Digital Disruptors (2012), Prospect Magazine’s Top Ten Brains of the Digital Future (2011), Fast Company’s Most Influential Women in Technology (2009), and was an IP3 Awardee (2010).

Crawford received her B.A. and J.D. from Yale University. She served as a clerk for Judge Raymond J. Dearie of the U.S. District Court for the Eastern District of New York. She was a partner in the law firm Wilmer, Cutler & Pickering (now WilmerHale) until the end of 2002, when she left that firm to enter the legal academy.