



LAW FOR THE COMMUNITY AND THE WORLD

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ON THE GREEN

CLINICS AND EXTERNSHIPS AT VERMONT LAW SCHOOL

Message from the Associate Dean



[Margaret Martin Barry, Associate Dean for Clinical and Experiential Programs](#)

for lawyers to play in addressing current environmental and access to justice challenges. I was drawn to VLS by a desire to contribute to its mission of responding to these challenges, and remain grateful to colleagues who inspire and prepare our students.

Students who come to VLS to do environmental law learn that the field is broad. They find that they have the opportunity to develop expertise in water resources, land use, climate, and energy law, with the option of deepening their proficiency through pursuing certificates in each of these areas. They find that their educational experience provides real client and policy opportunities in each of these areas, and that such experiences are important features of the certificate concentrations offered. They find that the school fosters global connections through its [China Program](#), its special relationships with institutions in Spain and France, and through the broad reach of its Externship Program, and that it fosters local connections through its clinics and its institute focused on the lawyer's role in solving issues related to sustainable agriculture and food.

Students also find that interests in criminal law, business law, dispute resolution, and general practice are supported by real client clinical opportunities and certificate programs that allow for greater specialization in each of these areas.

In this issue, we share some of the victories and challenges that our current students have had in our clinics and externships. These are dedicated students who do amazing work. If the latest New York Times article is causing you to wonder why law school, why more lawyers – read on! §

News from

[Environmental and Natural Resources Law Clinic](#)

[South Royalton Legal Clinic](#)

[Externship Programs](#)

The Jafferwockey: Keeping Nonsense Out of Anchorage District Court

Jaffer Khimani '13, has set the bar high for all future bail interns who have the opportunity to work in the Anchorage Public Defender's Office (hereinafter PD's). He single-handedly incensed the entire District Attorneys office, caused several "everyone" e-mails to spread among the Alaska District Court judiciary, and simultaneously won the hearts of all defendants who are wrongfully kept in custody, in violation of their rights. Now you may find yourself asking, how did a mere extern cause such commotion? Because, for an extern, Jaffer was given an enormous amount of responsibility to assist the PD's with the pre-trial stage of their cases. Every day, Jaffer handled most, if not all, of the PD's district court bail hearings, changes of plea, and "Rule 5 hearings." Although Jaffer has not yet graduated, the Alaska Supreme Court allowed him and other students to conduct these hearings under a student practice rule.

During his first few weeks with the PD's Office, Jaffer was working tirelessly to understand the significance of the "Rule 5 hearings" when he came across a little-known 2003 Alaska Court of Appeals case, *Sproates v. State*, 81 P.3d 301 (Alaska App. 2003). The opinion explains, "Under Alaska Criminal Rules ... a defendant who has been charged with a felony but who has not yet been indicted by the



Jaffer Khimani '13

grand jury is entitled to a preliminary examination in the district court. If the defendant is in custody, this preliminary examination is to be held within the ten days following the defendant's initial

Jafferwockey—continued on page 2

appearance; if the defendant is not in custody, twenty days are allowed.” Basically, when the state charges a defendant with a felony, the state has ten days to conduct a preliminary hearing (a.k.a. a grand jury proceeding). If the state does not timely bring the charges to a grand jury, the defendant is entitled to a “Rule 5 hearing,” where the state can either drop the felony charges, or amend the complaint to include only misdemeanors.

Before Jaffer took over the position of “bail intern,” the district attorney at the Rule 5 hearing (these are always held in the morning) would inform the judge that the state would be indicting later that day, and the judge would stamp an order finding that, if the state had not indicted by 7 p.m., the felony charges were dropped and the defendant would potentially be free to leave.

Using the Sproates case as his ammunition, Jaffer entered the Rule 5 hearings ready to fire the following argument: Rule 5 requires that the preliminary hearing must be conducted at this moment, not later today, and that if the state has not yet indicted, the defendant can no longer be held in custody on the felony charges. Luckily for this young litigator, District Court Judge Chung found merit in Jaffer’s argument and decided in his favor. He continued to raise this argument whenever relevant and succeeded in guaranteeing that the rights of numerous accused Alaskans were protected.

While in Alaska, Jaffer also learned to fish, visited numerous glaciers, gained experience in an environmental non-profit law firm, and scored a clerkship with superior court Judge Vanessa White in Palmer, Alaska. Jaffer returned to VLS after the holiday break for his final semester of law school.

[Professor Christine Cimini](#), Director of the [Externship Program](#), noted that the opportunities Jaffer had at the Anchorage Public Defender’s Office reflect the quality of the mentoring and the nurturing of student enthusiasm and creativity at VLS. “We are very fortunate to have extraordinary mentors for the consistently amazing group of students we place.” §

Clinic’s Tar Sands and GE Labeling Teams Testify at VT Legislature

by [Professor Doug Ruley](#), Director of the Environmental and Natural Resources Law Clinic

The [ENRLC](#) is active in two high-profile matters with local, regional, and national implications: the transportation of tar sands oil through Vermont, and legislation that would make Vermont the first state to require labeling of genetically engineered (GE) foods.

Like the highly-publicized fight over the Keystone XL pipeline, many citizens are opposing a proposal to transport tar sands oil through a pipeline that runs from Montreal to Portland, Maine, through Vermont’s pristine Northeast Kingdom. On behalf of the National Wildlife Federation, NRDC, and multiple other groups and individuals, the Clinic has filed papers to insure that any transport of tar sands oil will require a permit under Vermont’s unique land use law, known as Act 250. In early February, the Clinic tar sands team, including staff attorney [Ken Rumelt](#) and clinicians Mary Olive, Nat Green, and Cameron Field, appeared before the Vermont House Fish, Wildlife, and Water Resources Committee, where Ken testified on tar sands oil, Act 250, and the federal Pipeline Safety Act.

The Vermont legislature also has re-introduced a GE food labeling bill that stalled last year after a Monsanto-backed industry organization threatened to sue the state if the law passed. Representing the Vermont Public Interest Group and in coordination with other local partners, Clinic Associate Director Laura Murphy and clinicians Jillian Bernstein and Alex Funk

testified before the House Agriculture Committee. They explained their extensive constitutional analysis of GE food labeling showing that the State can pass a law that will be sustained against likely industry challenges. They also presented materials highlighting the compelling reasons for the law, including the risk of harms to public health. §

Environmental Clinic Wins Long Campaign for Passamaquoddy Bay

by [Professor Patrick A. Parenteau](#), Senior Counsel to the ENRLC

We had to add this news! The Environmental and Natural Resources Law Clinic has prevailed in its seven-year battle over a proposal to build a Liquefied Natural Gas terminal at Pleasant Point on the shores of beautiful Passamaquoddy Bay.

In 2005, the Clinic filed suit on behalf of a group of Passamaquoddy tribal members challenging the decision of the Bureau of Indian Affairs to approve a lease to construct the terminal at a site with great historic and spiritual significance to the Passamaquoddy people. The case wound a tortuous path through the federal courts, with two trips to the First Circuit before the matter was referred to the Interior Board of Indian Appeals.

As time passed the Canadian Government registered formal diplomatic opposition to supertankers transecting its waters, the market for East Coast LNG collapsed, and the developers’ financing faded. Still, the project, like the walking dead, lingered in the shadows. That ended on January 25, 2013, when the IBIA issued an order vacating the approval of the lease and declaring the case --at long last-- at an end.



Many hands contributed to this success, first and foremost the dozen or so clinicians who slaved over the countless briefs it took to counter the machinations of the government lawyers, including a companion case under FOIA that forced disclosure of documents hidden from public view for years. Justin Kolber, the clinic’s first Fellow, argued before the First Circuit in the early round. Teresa Clemmer, staff attorney and acting director of the clinic, took over the case and argued the second round before the Circuit. And last but not least, Laura Murphy administered the coup de grace by convincing the IBIA to bury this bad idea once and for all.

The Passamaquoddy refer to themselves as the People of the Dawn.

Whales and porpoise and other marine life play a prominent role in their culture, nutrition, ceremonies and heritage. Thanks to the clinic the critically endangered right whales that ply the waters of Passamaquoddy Bay will not have to compete with tankers. §

Strengthened By Second-Semester Students

In past years, the [Environmental and Natural Resources Law Clinic](#) and [South Royalton Legal Clinic](#) had occasional returning students, but VLS recently formalized an Advanced Clinic course that each clinic director can approve. “Second-semester students enhance our representation of our clients and our educational mission,” said [Doug Ruley](#), ENRLC Director. He added that the new [Center for Legal Services](#) provides plenty of room for first- and second-semester clinicians.



Jillian Bernstein

The [Advanced Clinic](#) option encourages greater reflection on the multidisciplinary nature of the litigation clinic students pursue. “Before working at the clinic, I used to tell my friends and family that I was tired of learning the law; I wanted to learn how to be a lawyer. That is exactly what the clinic is all about,” said Jillian Bernstein, leader of the GMO labeling team at ENRLC. “I stayed for a second semester so I could continue to learn and grow as a lawyer in a safe environment where I can take the lead on my cases but still have help or backup as I need it.” §

Northeast ACC Award

Allison Cameron is this year’s recipient of the Association of Corporate Counsel Northeast Chapter Law Student Ethics Award. Allison was nominated by [Prof. James May](#), Director of the South Royalton Legal Clinic, based on the quality of her advocacy and attention to ethical challenges in her work at the clinic.

The Northeast Chapter created the awards program “to recognize and encourage the ethical practice of law at the earliest stages of a young lawyer’s professional career, and at the same time to shine a spotlight on ethics more generally, demonstrating that the legal community values lawyers who are guided by ethical principles.” §

Making Laws at the Vermont Legislature

by [Michele Childs](#), VLS Legislative Clinic Supervising Attorney and Attorney with the Vermont Legislative Council

In a different role from those students in our in-house environmental law clinic who are advocating on behalf of clients at the legislature, six VLS students this spring are getting a front-row seat for the legislative action happening in Montpelier, VT. This and each spring, students in the [Legislative Clinic](#) spend two days a week working in the Office of Legislative Council, providing nonpartisan legal, policy, and drafting services to the Vermont General Assembly. Vermont’s citizen legislature provides a unique opportunity for students to experience the legislative process from the idea stage through enactment by working directly with legislators to craft legislation, attending committee hearings and floor debates, and providing legal and policy research throughout the process. “It is such a great experience to be a part of the process of law-making,



Will Labate, Kelly Jacobsen, and Brian Durkin

instead of simply reading a statute or a court’s interpretation of a law,” said Margaux Valenti ’13. “Not many students can say they wrote a bill that was introduced in the Vermont House of Representatives.”

So, what does a clinic student’s day look like? Will Labate ’14 was willing to share his journal outline for the week of January 28:

- I met with a member of the House of Representatives to discuss his bill drafting request regarding requiring an offender to complete court ordered restitution payments prior to discharge from probation. Afterward, I discussed the client’s thoughts with my supervising attorney and drafted the bill accordingly.
- I researched other states’ medical marijuana laws to identify the registered caregiver-to-patient ratios and marijuana possession limits for caregivers who serve multiple patients.
- I attended a meeting of the Senate Committee on Judiciary to watch legislative counsel conduct “mark up” of a bill on concussions in youth athletics.
- I drafted a bill relating to smoking restrictions in public places.
- I attended a meeting of the House Committee on Judiciary and took notes on an update from the Court Administrator regarding various housekeeping measures sought by the Judiciary. Later, I drafted a committee bill that reflected the proposal from the Court Administrator.
- I got to see Bill McKibben speak to the General Assembly about climate change! §

Vermont Immigrant Assistance (VIA)

by [Arthur Edersheim](#), SRLC Staff Attorney and Assistant Professor of Law

Our collaboration with the [University of Vermont’s Behavioral Therapy and Psychotherapy Center](#) in the Department of Psychology involving the New England Survivors of Torture and Trauma (NESTT) program has gone very well since I last introduced the program in the prior newsletter. Vermont Law School JD students and UVM Ph.D. psychology students have participated in team meetings to discuss best practices in coordinating services for asylum seekers and torture survivors. The law students developed teaching materials on asylum law and procedures which they presented to the psychology students. In turn, the psychology students taught the law students the principles of basic psychological testing and procedures for evaluating suspected torture and trauma survivors. We had hoped to begin partnering law students and psychology students on active asylum cases, while continuing the co-teaching component, but that has not happened yet. The law students have been working on their own asylum cases, and we hope to put our preparation to practice by combining resources on actual cases soon.



Htar Htar Yu

An interesting additional element has become part of the [NESTT](#) program. Refugees and asylees are eligible for Supplemental Security Income benefits for the first seven years after entry into the United States. After seven years, a refugee or asylee has to naturalize and become a U.S. citizen for such benefits to continue. A sizeable portion of the folks who qualify for disability benefits and are elderly are also torture survivors. A number of these individuals are unable to naturalize because they are unable to pass the English or civics portion of the naturalization test. Individuals can be granted a waiver of the English and/or civics portion of the test if they submit a medical exam explaining that they have a severe impairment which makes them incapable of passing those parts of the tests. Law clinic students have been researching the appropriate legal standard for these waivers, while Ph.D. students have been designing objective psychological tests and criteria to determine in a systematic manner who qualifies for a waiver. Although this project does not directly involve filing asylum applications for torture survivors, it is directly related to asylum practice both in the population served and the coordination of law and psychology students in developing objective tests and criteria to meet legal definitions. §

Children First! Legal Advocacy Project (CF!),

by [Professor Alexander Banks](#), *Coordinator*

In January 2013, we saw the conclusion of one of the longest-running cases in [Children First's](#) history. In late 2005 we were contacted by a Probate Court in our service area. We were asked to represent five siblings born to a Mom and three different Dads who were the subject of a guardianship proceeding. The Mom and most recent Dad were living out of state. In that state, the equivalent of Vermont's Department for Children and Families had given them a choice: find a relative to take the children or the children would be taken into the State's custody. There was a history of horrific domestic violence, substance abuse, neglect and undeniable, significant physical abuse of the children. An uncle living here in Vermont stepped forward and the children came into his care and the guardianship was established.

Over the next two-plus years we represented the children in Probate Court. On several occasions, Mom moved to terminate the guardianship and obtain the return of her children. Mom, whose issues had been far from resolved, hoped that by relocating to a nearby state she could outrun the well-documented history that was left behind in her home state. She almost succeeded. Because juvenile records are confidential, the records in their home state were very difficult to access. However, our Clinic students were both resourceful and persistent. On one occasion we were able to produce the testimony of an out-of-state social worker. On another occasion, on the eve of trial, our Clinic student unearthed the fact that the current husband (father to 2 children and stepfather to the other 3) was facing charges in his home state including assault with a deadly weapon. Armed with that information, we were able to persuade Mom's attorney that proceeding with the motion to terminate the guardianship was not a prudent course of action.

It was little surprise that children who had lived through what these children had lived through would have complicated issues and they did. Two children were placed in residential facilities including the middle child, BB. By the fall of 2007/winter of 2008, the uncle was simply overwhelmed. With the uncle's consent, a CHINS was filed for the youngest four children. Because we had a history with these children, the Juvenile Court appointed us to represent them in the CHINS proceeding. The proceedings were intensely litigated and protracted.

From the first time we met BB, he expressed a deep desire to know his biological father. Throughout these extended proceedings, Mom simply refused to identify BB's biological Dad. Ultimately, BB, on his own initiative, managed to track down his biological Dad, and, after a substantial amount of advocacy, he is living happily with him today.

Giving a voice to children in these very difficult cases is both a privilege and a challenge. I am always heartened to see how effectively our students delve into these cases, connecting with their clients and advocating for them in a system that is often not prepared to hear their voices. §



[Alexander Banks](#), *Coordinator*



ENRLC Students - Ready to Lead! Juliette Balette (Clean Water Act enforcement), Jillian Bernstein (GMO labeling), Rachel Stevens (Graniteville), and Mary Olive (Tar Sands)

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