



# DUQUESNE UNIVERSITY SCHOOL OF LAW TRIBONE CENTER FOR CLINICAL LEGAL EDUCATION

SPRING 2021

## Clinical Legal Education and Remote Client Representation

In addition to making the transition to remote learning for students, the Clinical Legal Education Program moved to a remote client representation model. Over the summer, clinical faculty spent hours developing these representation models working with students, clients, and the courts or other service partners. The result is a successful deployment of remote services that started in the fall semester. Students are meeting with clients remotely, appearing in courts via video conferencing and working with community partners to continue their experiential learning while serving the community.

For example, by working with the Allegheny County Court of Common Pleas Family Division, the Family Law Clinic is receiving direct referrals from the court. The Family Law Clinic and the court have developed a process to assure that client pleadings and cases are seamlessly forwarded through the process. This helps pro se litigants navigate the new reality of remote court proceedings in family court while receiving assistance from a student attorney to navigate the difficulties of family law.

## STUDENT SPOTLIGHT:



**James Benedek**, Student Manager for the Wills & Healthcare Decisions Clinic has worked diligently to serve pro bono clients seeking estate planning services. During the 2020-2021 school year, James, a self-starter and hard worker, created explanatory videos for future Wills Clinic students to help navigate client service and ensure that all client documents are appropriately collected and maintained. He has developed spreadsheet programs to simplify and streamline the client intake process. James has brought enthusiasm, dedication, and innovation to his position as the Wills Clinic Student Manager, helping to develop new ways to help the clinic serve clients seeking to prepare an estate plan. As a prior student in the Wills Clinic, James and his student partner, Andrew Bird, assisted in preparing estate plans for clients experiencing medical crises and clients seeking to leave property to children and grandchildren. James' commitment to the law school motto *Salus Populi Suprema Lex* is reflected in his service to income-qualified clients through the clinic.





At the Allegheny County Bar Association/Homer S. Brown Committee's 22nd Annual Dr. Martin Luther King, Jr. Prayer Breakfast Program on January 18, 2021, **Professor Tracey McCants Lewis** received the Drum Major Justice Award. This award is presented to an individual or organization recognizing his, her or their contributions in perpetuating the convictions of Dr. King to make justice, equality, and opportunity a reality for all people. The name of the award originates from one of Dr. King's final sermons about a eulogy that might be given in the event of his death. According to Dr. King, "If you want to say that I was a drum major, say that I was a drum major for justice. Say that I was a drum major for peace. I was a drum major for righteousness." This is a very well-deserving award. CONGRATULATIONS!

**Civil Rights Clinic:** The Civil Rights Clinic is a yearlong clinic that offers income-qualified clients legal assistance with record expungements. Students participated in weekly seminars that address substantive and procedural law issues, then experienced hands-on training in case intake and interviewing, client counseling, fact investigation, case analysis, mediation, negotiation, research, and drafting of documents.

Under the direction of supervising attorneys, Professors Tracey McCants Lewis and Barbara Griffin, students provided advice and represented individuals pursuing expungements and

pardons. Students then drafted the necessary petitions and motions and filed the petitions in the appropriate counties.

Students also assisted individuals with the completion of the complex Pennsylvania Board of Pardons' clemency application and completed filings with the Board. After the lengthy Board investigation process, students prepared clients who have been selected for public pardon hearings through mock hearings.



**Professor Barbara Griffin** has been named to chair the Pennsylvania Lawyers Fund for Client Security by the Pennsylvania Supreme Court. Professor Griffin has become the first woman and first African American to chair this fund. In 2018, Professor Griffin was also named the Tanya Niemen Pro Bono Professional of the Year by the National Association of Pro Bono Professionals. We are so proud to have her talents and experience in our clinic. CONGRATULATIONS!

**Family Law Clinic:** Student attorneys from Duquesne University's Family Law Clinic helped to provide much-needed legal assistance to clients in the Allegheny County Court of Common Pleas' Family Division.

Working under the supervision of family law expert and Assistant Professor Kate Norton, 9 student attorneys spent their Wednesdays and Fridays at the court, where they met with and

interviewed income-qualified clients who cannot afford to hire attorneys to help with issues such as child support and child custody, among other areas of law.

The Family Law Clinic has been expanding its work with the assistance of the Allegheny County Court of Common of Pleas – Family Division, pro-se program’s language center, to lend assistance to several new clients with family court needs. Immigration Services and Connections (ISAC) have referred clients needing our services and interpretation assistance with various languages including Burmese and Pashto.

**Federal Litigation Clinic:** The global pandemic has not slowed down the Federal Litigation Clinic’s work on two appeals currently pending in the United States Court of Appeals for the Third Circuit.

The first appeal the Clinic is working on involves issues of immigration law. Students Alexandria Iwanenko and Devyn Lisi have been assigned to work on this client’s case (we will call him “Javier”), with oversight from Adjunct Professors Adrian Roe and Samuel Simon.

In 2018, the United States began removal proceedings against Javier who claimed, that if removed to Honduras, he would be seriously harmed, tortured, or killed by members of the MS-13 gang. In support of these claims, Javier applied for two forms of relief: 1) withholding of removal and 2) the Convention Against Torture (CAT). The Immigration Judge (IJ) in Javier’s case found that he was not credible and that his legal arguments were insufficient; the IJ ordered that Javier be deported. Javier appealed the decision to the Board of Immigration Appeals (BIA) which upheld the IJ’s decision. Javier then appealed to the Third Circuit Court, seeking review of the administrative decisions. The Third Circuit accepted his petition for review and appointed the Clinic to represent Javier. Since our representation began, the Clinic filed a motion to add certain documents to the

administrative record and has been working on our appellate brief, which we will hopefully be able to argue before the Third Circuit this spring. On appeal, the Clinic is arguing that the IJ and BIA erred in concluding Javier did not qualify for withholding of removal and erred in concluding Javier did not have a reasonable possibility of torture under CAT because Javier and his family have been, and will continue to be, targets of gang violence. The clinic is also arguing that the BIA erred when it did not review the IJ’s adverse credibility because the IJ made his credibility determination without considering all of the evidence in the record, and as an issue that was raised on appeal to the BIA, that BIA should have properly and thoroughly considered Javier’s credibility.

The second appeal the Clinic is working on involves prisoner civil rights. Students Kyle Baicker-McKee, Harrison Graydon, and Margaret Potter are assisting Adjunct Professors Adrian Roe and Samuel Simon in this case. The clinic submitted an *amicus* brief in the United States Court of Appeals for the Third Circuit on behalf of a *pro se* prisoner Appellant who is seeking to challenge his sentence.

The Appellant is arguing that he discovered exculpatory evidence that was not given to him by federal prosecutors at trial in violation of their duty to disclose exculpatory evidence, a rule of criminal procedure from the 1963 Supreme Court case of *Brady v. Maryland*. To complicate the matter, a federal statute known as the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) prohibits prisoners from submitting “second or successive” *habeas* petitions for collateral sentencing attacks. The Appellant already unsuccessfully filed a *habeas* petition in 1997 and is now procedurally barred from bringing a second petition with the newly discovered *Brady* evidence. The clinic is arguing that under the current system, prosecutors may withhold potentially exculpatory evidence from defendants until after they have already filed a *habeas* petition and that the current federal statutes unfairly restrict the ability of prisoners to challenge their

convictions after prosecutorial misconduct. If a petitioner has already exhausted their remedies for *habeas* relief, AEDPA requires a higher burden of proof for a petitioner alleging violations of the *Brady* rule. This unfairly results in prisoners sitting behind bars due to a prosecutor's failure to disclose exculpatory evidence until after a petitioner has exhausted his remedies. The clinic anticipates that its participation as *amicus curiae* will persuade the Third Circuit to add an exception to second or successive habeas petitions alleging *Brady* violations and is hoping to participate in oral argument in the case this spring.

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## Daniel Carnevale Released

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**PA Innocence Project and Federal Litigation Clinic:** Daniel Carnevale, who lost 4,967 days for a crime he did not commit, was released from Allegheny County Jail. Fifteen Duquesne University law students played a key role in helping the Pennsylvania Innocence Project, which is housed at the university, exonerate Mr. Carnevale.

In 2007, Mr. Carnevale was convicted and sentenced to three consecutive life sentences after being arrested for a Bloomfield apartment

building fire that killed three people. He has always maintained his innocence since he was first questioned about the 1993 fire.

Mr. Carnevale's release marks the 18th exoneration of the Pennsylvania Innocence Project. "Thanks to the generosity of so many individuals and the sheer force of will of Mr. Carnevale himself, he will be home with his family and begin the process of re-building." said Attorney Elizabeth DeLosa who manages the Pittsburgh office of the Pennsylvania Innocence Project and represented Mr. Carnevale. "This case is somewhat unique, I think, in that it was actually worked on by two of Duquesne law school's clinical programs: the Federal Litigation Clinic and the Pennsylvania Innocence Project." Lawyers and paralegals from Duane Morris, PNC and Potomac Law Group partnered with the Project, giving countless pro-bono hours, to draft a post-conviction relief act petition and eventually litigate on behalf of Mr. Carnevale.

"Our Partnership with Duquesne School of Law is the life-blood of our organization," DeLosa said. "We simply could not do this work without Duquesne's help."

**Unemployment Compensation Clinic:** With the onset of the pandemic, the Unemployment Compensation Clinic ("UCC") has been in the forefront, addressing the needs of the many Pennsylvanians seeking desperately needed unemployment benefits. Beginning with the lockdown in Pennsylvania last March, the UCC went to a remote only mode that continues to this day but still handling an extremely large volume of persons needing help with their claims, hearings before the Referees and appeals to the Board of Review and Commonwealth Court.

In the spring semester of 2020, "in-person" hearings were cancelled and replaced with telephone hearings and the students adjusted quickly to the change and excelled. In addition, because of the tsunami of claims submitted to the Department of Labor, the filing system literally broke down from the overload and claimants were unable to establish telephone contact with

the Department to file and process claims. Up to this point, the telephone was widely used as the initial point to file claims as were the public computers at the libraries and Careerlink offices. When the system crashed, all of this shut down. Many people, not having access to a computer, or smart phone, or without the requisite skill sets were literally unable to file for benefits.

Our students jumped at the chance to participate in a cooperative venture with a sister clinic at Widener University and Philadelphia Legal Assistance to staff a remote statewide call center that linked our computers directly to the Department of Labor to file claims for those that were without the means or ability to do so and staffed shifts throughout the spring semester in 2020, serving a dire and exigent need for Pennsylvanians.

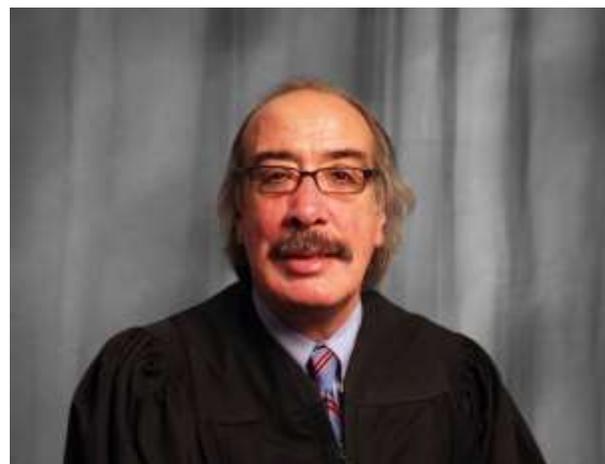
The UCC functioned all through the summer handling claims, working the call center and with the fall, 2020 semester, another five students enrolled and again took case after case to hearings before the Referees, appeals to the Board of Review and also wrote a brief in Commonwealth Court for a case set for argument in two weeks.

With the spring 2021 semester, three of the students from the previous semester stayed on and welcomed an additional four new students and again, we are already taking cases to hearing, and writing briefs for appeals. Additionally, because of the inability to pass the most recent stimulus bill until benefits were literally exhausted, the system again became overloaded and crashed, this time with people needing technical assistance with their claims, in addition to our steady diet of litigation. Again, the students are meeting the challenge and are fielding the many calls that come to our clinic, and providing much needed advice on navigating the system to the public.

**Veterans Clinic:** Under the supervision of attorneys, Professors Daniel Kunz and John Rago, the Veterans Clinic provided assistance to veterans accepted into the Veterans Court of the Allegheny County Court of Common Pleas as well as assisted several Veteran clients on the magisterial level.

This clinic trained law students in a holistic approach to the law focusing on the problem-solving philosophy and recidivism-reducing techniques. Many of the clients served suffer from Post-Traumatic Stress Disorder (PTSD), traumatic brain injuries and other mental health disorders and/or addictions. The students prepared and presented cases for disposition and stayed in touch with the clients to ensure that the veterans are following court-ordered treatment plans offered as alternatives to incarceration.

Supervising Attorney, Daniel Kunz, used a simulation, called "Hearing Voices Training," to help students understand specific challenges faced by people with psychiatric disabilities.



Our Duquesne University family was sad to learn of Allegheny County **Judge John A. Zottola's** passing on October 13, 2020. Judge Zottola oversaw Mental Health Court beginning in 2006 before participating in the team that created the Veterans Court program in 2010. Our Veterans Clinic works with this program on a regular basis and Judge Zottola will surely be missed.



Wills Clinic Students **Giulia Straub** and **Morgan Miller** work online

### **Wills and Healthcare Directives Clinic:**

Under the supervision of Professor Grace Orsatti, this clinic focused on assisting low-income clients with Wills, Living Wills, Advance Directives, Memoranda regarding Conduct of Funeral and Burial or Cremation, and Durable Power of Attorney matters. The clinic was able to serve 16 clients this past semester.



Wills Clinic students (l-r) **Matthew Minard**, **Giulia Straub**, and **Stephon Burton** meeting with a client at the Tribone Building during COVID-19

**Youth Advocacy Clinic:** The Youth Advocacy Clinic provided a unique opportunity for students to represent children in both delinquency and education matters. We are delighted to have been able to open up this clinic to 16 students this academic year. Students interviewed, advised, and represented clients from the inception of the case.

In delinquency matters, the clinic handled: traditional delinquency cases, juvenile record expungement matters, and Protection From Abuse matters in which minors were defendants.

In education matters, the clinic handled: both informal and formal school discipline matters and special education matters including, but not limited to: identification, evaluation, placement, and discipline in the context of students with disabilities.

The clinic operated as a holistic representation model, with the overall goal of the representation being to meet as many of the client's needs as possible, not solely the single legal issue that brings them to the clinic. The clinic features an ongoing partnership with masters-level social work students from the University of Pittsburgh and doctorate-level school psychology students from Duquesne's School of Education. Students from all disciplines worked in interdisciplinary teams on most cases in order to implement the holistic model.

The clinic seeks to keep kids in school and out of detention centers, juvenile justice placements, and jail. To that end, the clinic engages in policy and advocacy work around issues pertinent to our clients' cases.



On Monday, January 25, 2021, **Professor Tiffany Sizemore** participated in the panel for **Alliance for Police Accountability** on the campaign to **Stop Solitary Confinement** and **Pass "Breonna's Law"** (prohibiting no-knock warrants). The panel consisted of faculty from the University of Pittsburgh and Duquesne University. [Solitary Confinement And Mental Health: Torture At The Allegheny County Jail](#)

**Criminal Prosecution Program:** The Criminal Prosecution Program provided students with an on-site externship at the Allegheny County District Attorney's Office and classroom instruction in criminal law under the supervision of Professors David Spurgeon and Jennifer DiGiovanni. The weekly classroom seminar covers all facets of criminal law from a suspect's arrest through the trial and post-trial stages. Students rotated through the DA's office in accordance with the topics being covered in the classroom

**Public Defender Program:** This yearlong externship program provided students with an understanding of the process of criminal defense while offering practical, hands-on experiences with actual persons accused of a crime.

Students learned the stages of a criminal case involving an adult, specifically, the impact that the criminal justice system has on the accused.

This knowledge and exposure to real cases allowed students to interactively participate in the criminal courts with the prerogative of assisting clients and limiting potential consequences, both direct and collateral. To that end, under the supervision of Professors Elliot Howsie and Stacey Steiner students had the unique opportunity to prepare, file and argue various motions, handle preliminary hearings before district justices and participated in diverse interactions in the Court of Common Pleas of Allegheny County.

**Urban Development Practicum:** The Urban Development Practicum provided a broad range of legal services related to real estate and economic development in distressed communities in the region this year. Students in the practicum gained practical experience by working on both real and simulated projects and cases.

Services provided by student attorneys included general real estate matters, title searches, negotiation and drafting of development agreements, preparation of land use cases, appellate land use practice, and students attended and participated in public meetings and hearings. Some of the unique topics addressed through the work with clinic clients include conservation easements, land acquisition, zoning issues, and "greening initiatives."

While providing pro bono legal assistance to neighborhood and regional urban renewal organizations, student lawyers are acquired and sharpened fundamental lawyering skills critical to addressing community needs and professional responsibilities.

**Externships:** The Clinical Legal Education program provided dozens of externship opportunities offering educational and practical legal experience and professional mentorship. Yearlong externships featured on-site placement combined with classroom instruction and classroom credit. Students work with Professor Grace Orsatti to obtain externship placements and attend bi-weekly seminars.

Through the Duquesne University School of Law Externship Program, students earned academic credit in areas of government, judicial, non-profit and the new private-sector placements.

**NEW Private-Sector Externship Program:**

Duquesne University School of Law launched a new Private Sector Externship Program this academic year. The externship program permits students to earn academic credit while working at a law firm or in-house counsel legal department. We were excited to partner with our alumni to offer this unique program to develop the next generation of well-rounded lawyers. This new externship offering enhanced our strong academic tradition by incorporating real-world experiential learning into the curriculum and cultivated skilled and knowledgeable students ready to join the workforce with the competencies, learning, and professionalism to excel.

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**Tribone Center for Clinical Legal Education**

Office Address: 912-914 Fifth Avenue  
600 Forbes Avenue  
Pittsburgh, PA 15282  
512-396-4704  
[duq.edu/law/clinics](http://duq.edu/law/clinics)

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