Welcome to the spring edition of EJI Ink. As I write this, the lilacs are beginning to blossom (that’s right – lilacs!!) and the students are on spring break. They return to a race-to-the-finish of the semester on May 2. The spring semester always seems to fly by so much quicker than the fall semester. This year’s very early spring seems to have jump started other activities around the U.W and EJI, including planning for our full time summer session that begins on May 29.

The Law School is currently engaged in a self-study process in anticipation of the ABA’s reaccreditation process in 2013. I am a member of the clinical committee engaged in the study. We have been asked by Dean Raymond not only to prepare for the ABA site visit, but also to think deeply about the education delivered by the clinical programs and consider what we are doing well and where changes could be made, programs reorganized, or collaborations fostered. It is an interesting process and I am learning much about how the clinics have been structured but more importantly, how the faculty across the Law School views our clinics and our role in delivering a high quality legal education to our students. Our committee hopes to have its report complete by the end of May.

Dear Friend:

Please SAVE THE DATE for the University of Wisconsin Law School’s Economic Justice Institute’s Ten Year Anniversary Celebration and a presentation of the first “Founder’s Award” in honor of Louise Trubek, a major force in developing the Law School’s public interest tradition.

Please join us to celebrate on Friday, June 15, 2012, from 6:00 – 8:00 p.m. in Heritage Hall at Camp Randall located at 1440 Monroe Street in Madison.

You will receive a formal invitation with RSVP card and additional details on registering in a couple of weeks.

If you have any questions on this event, please contact Marsha Mansfield at (608) 262-9142 or by e-mail at mmmansfield@wisc.edu.

Continued on page 4
Unconventional Problem Solving Through Mediation

It’s no surprise to most people that when a dispute is resolved in litigation, in the end there is usually a winner and a loser. The traditional court model is designed for a standardized process, not for creative problem solving. However, when parties work collaboratively, there are infinite solutions to any conflict. Processing conflict through mediation allows for “out of the box” solutions where both parties can have a voice in solving the problem. The goal of mediation is to help the parties to come to a resolution that meets their needs, and to do so in a way that is more efficient and cost-effective than traditional litigation. Mediators can encourage ingenuity by explaining mediation’s potential for creating a solution that is not constrained by the winner/loser framework as well, and that can help resolve conflicts in ways that are often not possible in a courtroom. The success of mediation lies in its ability to bring the parties together to explore creative options and reach a mutually acceptable solution.

Mediation (continued on page 7)

As realistic negotiators do, both came to mediation with monetary figures in mind. The plaintiff wanted an amount of money to repair her damaged vehicle, and the defendant was able to give an amount of money without risking her own financial stability. Namely, the dollar amounts did not match. The mediation played on, each party inching closer to her opponent’s ideal dollar amount. Kelly Blue Books were examined to see if in car values and repair costs were debated. An impasse seemed likely as each woman reluctantly adjusted the offer to the lowest or highest amount for which each was willing to settle.

Sensing the parties’ frustration, the mediators called for individual caucuses. In caucus, the defendant was visibly upset, tears in her eyes. She didn’t dispute her liability for the accident, and wanted to do what she felt was right and pay for the damage. However, because both parties were willing to bend slightly, they created a solution that met their needs, and left mediation with the weight of a solution completely outside of the court, given the defendant’s financial situation, it was likely that any damages would be paid to her in installments, if at all. It could be months or years before she had accumulated enough payments to buy a car. Here, in contrast, she could be driving again within the week. The plaintiff had brought along her teenage daughter as a witness. Perhaps because of her youthful perspective, the plaintiff’s daughter was immediately on board with the car trade solution and encouraged her mother to give it thought. Mother and daughter knew that the defendant’s car wasn’t the newest or nicest car, but it was operational. They agreed was an acceptable replacement for the car they had lost. The plaintiff accepted the offer, and the parties hammered out the logistics of the car trade.

Mediation (continued on page 7)

Reintegration challenges for service members returning from duty. Legal challenges include landlord-tenant matters, family law issues such as child custody disputes, credit and lending problems, and bankruptcy.

The number of veterans confronting such issues will continue to increase in the next year as the U.S. Army reduces the number of service members overseas by 80,000. In the Madison area, a number of veterans’ service providers have recognized a gap in resources available to low-income veterans confronting these challenges. The UW Law School Pro Bono Program, housed in the Economic Justice Institute has begun taking steps to fill this gap.

The Dane County Legal Assistance Clinic for Veterans will serve low-income veterans and their families on a walk-in basis at Madison’s City-County Building. Staff from the Dane County Veterans Service Office will also provide information about non-legal resources available from veterans. The clinic’s format is being modeled after the successful Marquette Volunteer Legal Clinic for Veterans.

With the help of a $5,000 grant from the State Bar of Wisconsin’s Pro Bono Initiative, the Pro Bono Program plans to launch the clinic in October 2012 with a special event held in conjunction with Veterans’ Day. Leading up to the clinic’s opening day, the Pro

Veterans (continued on page 4)
Clinical law students in the Domestic Violence Immigration Clinic (DVIC) provide pro bono legal services to undocumented immigrant victims of domestic abuse, and other violent crimes, seeking a path to citizenship. At DVIC, our clients not only struggle with victimization, but they often have a variety of needs and concerns that may or may not directly relate to their legal representation. Many of our clients struggle with issues associated with poverty and the lack of community resources available to undocumented persons.

Lawyers perform various roles when representing clients, including advisor, advocate, and counselor. Lawyers must ensure that clients have an informed understanding of their legal rights and obligations.

Due to the nature of the legal services we provide at DVIC, many of our clients suffer from trauma associated with abuse. This is because a person must be a victim of a qualifying crime and suffer substantial harm in order to qualify for U Visas or VAWA remedies under immigration law. Therefore, it is especially important to establish rapport with clients, showing empathy and sensitivity during interviews, to further understand our clients’ stories.

In June 2011, I was assigned a case where my client, an 18-year-old teen mom (“Maria”), was severely abused and neglected by her biological mother (“Angela”) when she was seven years old. After Maria missed the school bus one day, Angela’s boyfriend punched her in the face, giving Maria a black eye. Angela stopped sending Maria to school and she and her boyfriend began treating Maria like a slave. Angela’s boyfriend regularly beat Maria with a belt, causing her to bleed. Maria’s body was often covered with cuts, welts, bruising and other marks. When law enforcement finally rescued Maria, she was happy they took her away from an abusive situation. Child welfare placed Maria in foster care and sought mental health services for her. Angela and her boyfriend were convicted of child abuse and sentenced to prison.

United States Citizenship and Immigration Services (USCIS) requires that U Visa and VAWA petitioners submit affidavits concerning their victimization. This requires that clients recall painful events (which they often would rather forget and write about these events, knowing that other people will read what they wrote. Maria found it impossible to write an affidavit due to the emotional flashbacks concerning her traumatic childhood. As a social worker, I primarily worked with victims of child abuse and their families, so I am not only familiar with interviewing clients, but I also understand the importance of rapport-building and developing trust. Additionally, I am familiar with a variety of family support services available in the community. Therefore, I relied on these skills to build a trusting relationship with Maria.

When Maria told me she could not write her affidavit due to the flashbacks she was experiencing, I offered to assist her by tape-recording her statements and transcribing what she told me. Maria was visibly upset throughout our meetings and several times she broke down crying as she told me about the horrific abuse she endured. Here, my understanding of Maria seemed more like psychotherapy than legal counseling.

Due to Maria’s young age and minimal life skills, I provided additional assistance and support in order to further our representation. Through my work with her, I learned the importance of setting boundaries with our clients. My social work background allowed me to set boundaries and develop rapport, help clients access these services. There were several times when Maria asked for assistance with a variety of issues, such as securing housing, employment, education, and child care. Due to the broad scope of representation, I could not allocate my time to these non-legal tasks. This taught me that I must be able to divide my limited availability among several clients who often have similar needs. Although I listened to Maria’s concerns and made referrals when necessary, when she asked for assistance with non-legal matters, I set boundaries by reminding her of DVIC’s limited representation for U visa purposes, and suggested issues she might discuss with her social worker regarding her concerns.

Inevitably, some clients will be needier than others and I am learning the importance of setting boundaries with our clients by reinforcing the scope of our representation and referring our clients to community resources when appropriate. I understand that high caseloads in public interest law demand that we set sufficient boundaries that all of our clients are served to the best of our ability with the limited resources we have at our disposal.

Jennifer Miller (2L)

Collaborative Efforts Underway in the Neighborhood Law Clinic

In addition to the typical rental housing, employment, and benefits cases handled by the Neighborhood Law Clinic (NLC), this semester students have engaged in several collaborative projects involving legislative advocacy, utility regulation, and organizing cooperative manufactured home communities.

The first project involved analyzing, writing summaries, and testifying before the legislature about proposed changes to Wisconsin’s landlord tenant law. Both the State Senate and Assembly introduced bills (SB406 and AB501) that sought to make dozens of changes to long-standing housing protections. The Senate Bill (which was eventually passed) was introduced on February 8, 2012, and with its introduction came notice that the only public hearing would be held 48 hours later. The NLC worked collaboratively with other advocates including the Tenant Resource Center, Legal Action of Wisconsin, The State Bar of Wisconsin’s Public Interest Law Section, the Wisconsin Coalition Against Domestic Violence and private attorneys. In just over a day, there was an incredible flurry of emails circulating among the advocates. Analyses of the bill text were generated, letters drafted, oral testimony outlined and then presented during a lengthy hearing that began in the morning and did not conclude until the evening.

The bill was clearly rushed and not well thought through as even the bill’s sponsors admitted that multiple changes to the legislation were unnecessary. Unfortunately, rather than study the issues or even consult with housing experts, the bill’s sponsors made several amendments and then quickly brought the legislation back up for a vote in the Assembly. The vote in the Assembly was so close that it passed on a party-line vote. The new law makes many changes from the current statute including allowing landlords to throw away or sell for a profit, any property a tenant leaves behind if the landlord could not have to notify a tenant before disposing of or selling any property a tenant left behind and if the property went unclaimed and was later sold, then the landlord could deduct their expenses but had to donate any profits to the state’s affordable housing fund. Under the new law, if a tenant leaves their car behind on the last day of their lease because they are driving a moving truck that day, then the landlord can sell that vehicle, pocketing the profits for his own financial gain. The law even explicitly allows sales without respect for other lien holders. While our quick collaborative response was unable to stop all of the negative aspects of this legislation, it did lead to many amendments that blunted some of the initial legislation’s worst provisions.

The second collaborative effort grew out of a listening session with area rental housing providers and private attorneys. The providers expressed the need for low-income families to lose their homes which often occurs when a park is closed or sold to a developer. The NLC worked with NLC, local attorney David Streger, and the UW Center for Cooperatives in researching, reviewing, drafting, and revising more than a dozen key legal documents that will allow NCF to introduce the resident ownership model as an option to MHCs throughout Wisconsin.

Students in the NLC are always working on individual client cases; however, this semester’s collaborative efforts have provided the students with a broader range of valuable legal experiences than usual, while still providing services to the our client community.

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New Names, New Clinic, and Revised Mission Statement

This year the Family Court Assistance Project and the Neighborhood Law Project both changed their names to be more consistent with EJI’s other clinical programs. We are now called the “Family Court Clinic” and the “Neighborhood Law Clinic.” Both clinics, as well as our other EJI clinics, are still dedicated to serving low income and other underrepresented clients in a variety of civil matters, with the goals of enhancing access to justice and promoting economic security.

Last year EJI was fortunate to obtain funding to initiate a Mediation Clinic. Due to the hard work by the Clinic’s Director, Donna Erez-Navot, the Clinic received a Morgridge Match Grant. The Law School agreed to match the funds received through the grant, thereby ensuring continuation of the Clinic for another year. Donna has succeeded in establishing a successful small claims mediation program at the Dane County Courthouse and has worked across the University to collaborate on ways to instill mediation as an option to reach successful resolution of disputes between tenants, students, and others around campus. She is seeking ways to collaborate with others in our community as well. We are pleased that we can continue to offer such a relevant educational experience to our students.

At the March 13 EJI, Inc. Board meeting, the Board unanimously adopted the following mission statement for EJI:

The Economic Justice Institute’s mission is to educate law students by providing them with real world experience in the legal system while they, in turn, provide information, advocacy, and methods of alternative dispute resolution to their clients and to the community, thus empowering them to resolve conflict.

We hope that our clinics fulfill this mission so our students have the tools to successfully develop their legal careers when they complete their legal education.

Arbitration (continued from page 5)

Bono Program will recruit volunteer attorneys and law students to staff the clinic. Recruitment efforts among both groups have proven promising thus far. For example, the Pro Bono Program has reached out specifically to student veterans at the law school to initiate student recruitment. Many have expressed interest in supporting the project. Some of these students have similarly expressed an interest in forming a student organization at the law school for student veterans and veteran supporters. This early enthusiasm from students will be an asset to the Dane County Legal Clinic for Veterans over the next several years.

In addition to developing this important resource for Dane County veterans, the Pro Bono Program continues its partnerships with non-profit organizations, law firms, and law student organizations providing pro bono services to individuals in need. By connecting law students with such pro bono opportunities, the program provides much-needed legal services in the community while instilling the importance of pro bono work in participating student volunteers. For more information about the Pro Bono Program or the Dane County Legal Assistance Clinic for Veterans, contact probonoprogram@law.wisc.edu.

The Consumer Law Clinic Defeats Mandatory Binding Arbitration

The CLC recently blocked the attempted enforcement of a mandatory binding arbitration clause in Gubrud v. StoresOnline, Inc. (Case No. 11-CV-376, U. S. District Court for the Western District of Wisconsin). Headquartered in Utah, StoresOnline sells e-commerce products and services around the country principally through seminars held at hotels and other venues. Mr. Gubrud attended a StoresOnline seminar after receiving a personal invitation and signed a finance agreement to purchase a website development software package for $5,998.00.

Represented by the CLC, Mr. Gubrud filed suit based on violations of the Truth in Lending Act, the Electronic Funds Transfer Act, the Wisconsin Consumer Act and the Wisconsin deceptive trade practices statute.

StoresOnline filed a motion to require arbitration on the grounds that the Federal Arbitration Act preempted Mr. Gubrud’s claims and defenses to the contract and thereby dictated arbitration.

One feature of the StoresOnline arbitration clause was that it required the arbitrator to “exclusively apply Utah law to the dispute, regardless of or without giving any consideration to choice of law principles.” The Wisconsin Consumer Act (WCA) declares that all contractual choice-of-law provisions invalid with respect to transactions covered by the WCA. The WCA further provides that a customer cannot waive or forego any rights or benefits under the WCA. CLC students Paul Borovay and Blythe Kennedy helped write the brief in opposition to StoresOnline’s motion. Among other points, the CLC argued that the choice-of-law provision rendered the arbitration clause unenforceable. Magistrate Judge Steven Crocker agreed. The court denied StoresOnline’s motion to compel arbitration, finding that the arbitration clause in the agreement contained an unlawful choice-of-law provision that contravenes Wisconsin law and stripped Mr. Gubrud of his ability to vindicate his statutory rights under the WCA.” The WCA applied and it prohibited the choice-of-law provision.

The Court’s decision is significant in light of the powerful current trends in favor of mandatory arbitration of consumer disputes, including the U.S. Supreme Court’s recent opinion in AT&T Mobility v. Concepcion. The District Court’s decision also highlights the continuing importance and importance in protecting Wisconsin consumers like Mr. Gubrud.

This case is important to the CLC because it provided the students with a tremendous clinical experience as they learned how the process and procedures in federal court are different than in state court, they grappled with the complicat ed and timely issue of consumers’ rights to resist mandatory arbitration, and they advanced compelling arguments to support Mr. Gubrud’s behalf. I’m sure it’s an experience they won’t soon forget.

Arbitration (continued on page 4)

Foreclosure Answer Clinic Update

In our last newsletter, we told you how the Foreclosure Answer Clinic is making a difference in the lives of Dane County residents. The Clinic is a free, drop-in legal clinic designed to assist homeowners respond to the foreclosure lawsuit and access additional resources such as mediation and financial counseling services. Volunteer attorneys from the community along with CLC students have staffed the clinic since it opened in July 2010. Homeowners who do file an Answer can participate in the legal process and thereby have an opportunity to inform the judges and the plaintiffs about their situations.

We want to share with you some of the updated data obtained by CLC student, Blythe Kennedy.

Since the clinic opened in July 2010, 199 homeowners have accessed the clinic. Over 100 attended in 2011, showing a slight increase in attendance. The 2011 data from CCAP reflects that in 68 of those cases, there was a pending foreclosure action. In 23 of the 68 cases where a homeowner filed an answer, the judgment was vacated and/or the case was dismissed. Since the number of foreclosures continued to mount in 2011, we are encouraged that a small number of homeowners have benefited from assistance provided by the Answer Clinic. Our goal is to get more homeowners to access this terrific service so that they too will be able to protect themselves from the consequences of losing their homes.