The Frank J. Remington Center

University of Wisconsin Law School

December, 2006

Greetings! It is a pleasure to present the December edition of our newsletter to friends and graduates of the Remington Center. As always, this edition is packed with essays by students and clinical faculty, describing the activities in our clinical programs.

Our newsletter includes a couple of essays by clinical faculty members, who describe their involvement in efforts to improve Wisconsin's criminal justice system. Clinical Assistant Professor Byron Lichstein provides an update on the ongoing work of Wisconsin's Criminal Justice Study Commission, while Clinical Associate Professor Ben Kempinen summarizes his observations on criminal justice coordinating committees in counties throughout the state.

In addition, the newsletter includes no fewer than five thoughtful essays by law students enrolled in a variety of Remington Center clinical projects: the Prosecution Project, the Consumer Law Clinic, the Neighborhood Law Project, the LAIP Project, and the Family Law-Restorative Justice Project.

Finally, we want to encourage our readers to consider making an end-of-the year donation to the Friends of the Remington Center Endowment, Inc. (FORCE), a private non-profit corporation that raises funds to supplement summer stipends for Remington Center students. We thank all who have donated so generously to FORCE, and note that FORCE is still happy to accept donations from those interested in giving to support student stipends. All donations will go directly to support stipends for our summer students.

If you would like to make a tax-deductible donation to FORCE, please send a check or money order to FORCE, 975 Bascom Mall, Madison, WI 53706. We thank you for all your support, and wish you a safe and joyous holiday season.

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Wisconsin Criminal Justice Study Commission Examines DNA Backlog and Forensic Sciences

By Byron Lichstein
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The Remington Center's clinical faculty continue to work with the Wisconsin Criminal Justice Study Commission. The Commission was formed by the UW Law School, the Wisconsin Department of Justice, Marquette University School of Law, and the State Bar of Wisconsin in order to study issues affecting the criminal justice system's ability to convict the guilty, and not the innocent.

The Commission is currently examining the DNA backlog at the Wisconsin State Crime Laboratory. Because the Crime Laboratory has had such extraordinary success in solving crimes through DNA testing, requests for testing have greatly increased in the last few years, without an accompanying increase in the Crime Laboratory's resources. The delays in DNA testing raise the risk that dangerous offenders will escape apprehension and remain free to commit more crimes.

The Commission is studying several potential solutions to the backlog, including proposals to hire 15 new DNA analysts, or to outsource the backlog in "no suspect" cases (cases with no known suspect and therefore no imminent court date) to private laboratories. The Commission has drafted a "Position Paper" on the issue that will likely be finalized in the near future.

As part of its review of the DNA issue, the Commission will also examine how problems with forensic science relate to wrongful convictions. As recent DNA exonerations have shown, "junk science" techniques (such as microscopic hair analysis) are a leading cause of wrongful convictions. Moreover, several states have been rocked by recent crime laboratory scandals. Although Wisconsin has avoided any major problems so far, the Commission will study the problems that have occurred nationwide in order to ensure that they do not occur here.

Community Justice in Wisconsin New Approaches to Old Problems: Criminal Justice Coordinating Committees

By Ben Kempinen
Clinical Associate Professor

This article is a summary of part of a report the author submitted to the Supreme Court's Planning and Policy Advisory Committee Alternatives to Incarceration Subcommittee in August of 2006. Readers interested in a complete copy of the report may request one by e-mail, kempinen@wisc.edu. The court's website has additional information regarding innovative programs in Wisconsin: www.courts.state.wi.us/about/organization/programs/alternatives. Other innovations, including treatment courts, deferred prosecution, and restorative justice programs will be surveyed in later issues of this newsletter.

There is a quiet change occurring in many of Wisconsin's local criminal justice systems. Dissatisfied with the expense and shortcomings of traditional approaches to public safety, officials in a growing number of Wisconsin communities are developing new strategies to better serve their citizens. Although specifics vary from community to community, all are motivated by a desire to achieve cost-effective public safety by refining existing case processing systems, developing more effective system responses to addictive behaviors, and creating programs that can address community problems without resort to formal processes.

This past summer I was asked to inventory local criminal justice innovations in seven selected Wisconsin counties: Barron, Dane, Eau Claire, La Crosse, Marathon, Portage, and Waukesha. During the summer, I had the opportunity to spend one or more days in each of the selected counties. I listened and observed how these local systems functioned and how their shareholders worked to make their communities safe. Each community was different-- in its demographics, its size, its resources, and its problems. But each demonstrated strengths which combined to create new partnerships, new ways of thought, and new solutions to pre-existing problems. Perhaps the most promising of these innovations was a growing commitment to col-

laborative decision-making, most often reflected in the creation of "criminal justice coordinating committees."

Criminal Justice Coordinating Committees

We often refer to the "criminal justice system" as if it were a unitary and coordinated entity. In fact, there are a wide variety of criminal justice shareholders at the federal, state, county and local levels, representing all three branches of government. All have distinct spheres of authority and varying perceptions of their public responsibilities. These shareholders interact on a regular basis, typically as a routinized part of an existing process, such as a police referral to a prosecutor, a court appearance in a pending case, or a response to an immediate problem. Most often these interactions are reactive and narrow in focus. The choices made by individual shareholders usually reflect their own parochial interests rather than fidelity to an overreaching objective shared by all.

Perhaps the most promising of these innovations was a growing commitment to collaborative decision-making, most often reflected in the creation of "criminal justice coordinating committees."

An example demonstrates how traditional approaches can create unintended problems without necessarily improving public safety. In one county, a change in court scheduling practices delayed mailing appearance notices to defendants. This caused an unexpected increase in missed court appearances. The police in the county's largest city responded by aggressively executing warrants for missed court appearances. The program was branded a "success" because a substantial number of persons were arrested in a short period of time. At the same time, in response to declining collection rates, a municipal court in another part of the county decided to order the commitment of offenders with unpaid fines. This program was also declared a "success" because of an increase in the number of offenders forced to satisfy their debts by spending time in jail.

However, these "successes" had unintended consequences. The spike in arrests for missed appearances strained the court system because bail hearings needed to be scheduled for all those arrested on nonappearance warrants. The unanticipated overflow at the county jail caused staffing and space problems for the sheriff. This in turn required the transfer of several prisoners to an adjoining county, increasing transportation and lodging costs for the county. Many, if not most, of those jailed on warrants or commitments were low-risk offenders.

In this example, local agencies responded when a problem became apparent. Their responses were reactive and unilateral; they acted within their spheres of authority without prior notice to or discussion with other system

actors. The agencies viewed their responses as "successful" and were not immediately aware that their actions created unforeseen problems for other agencies in the same community. And so it often is.

Is it possible to anticipate such problems, bring system actors together to plan for alternative futures, and use local resources in a more efficient and effective way? Leaders in a growing number of Wisconsin communities believe it is. They have created mechanisms to encourage community shareholders to integrate planning, analysis, and coordination into their system management.

Groups of community shareholders who seek to influence rather than simply react to public safety problems have been called "criminal justice coordinating committees." Less than two decades ago there were none of these committees in Wisconsin. Today 16 Wisconsin counties have some form of local organization to improve delivery of criminal justice services. Several other counties are starting similar efforts.

In their purest form, criminal justice coordinating committees reflect a significant change in how local systems operate. Within the committees, a collaborative approach to public safety is different from a traditional adversary approach in several ways. System decisions are made collectively, rather than by individual agencies. Policy discussions and planning precede action, and action is empirically based and critically evaluated. Agencies act in concert with each other, rather than in their own spheres of autonomy. The coordinating committee is seen as the problem-solving mechanism of first resort rather than simply another meeting to attend.

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My visits to different Wisconsin communities reflected many of the core features of successful collaborative decision-making. The first of these features is the creation of a group of important community shareholders. In each county I visited, one or more local leaders took the initiative to bring local shareholders together. Most often, the catalyst for collaboration was jail overcrowding or, to a lesser extent, system processing problems. Each county's group included a local circuit court judge, the district attorney, the sheriff, and the local public defender. Other counties included representatives from the county board, local human services agencies, corrections, the university system, and members of the community at large.

The committees varied in structure and staff support. For example, La Crosse County's Criminal Justice Management Council is an official part of the County Board structure. As such, it has the same powers and responsibilities

as other county board committees. In contrast, the groups in Eau Claire, Marathon, Portage, and Waukesha Counties were formally established but created as advisory committees to their county boards. Dane County's Criminal Justice Group has taken a different approach, choosing to remain informal in the belief that separation from county government would protect its independence. Barron County has no formal committee at all, but still approaches system issues in a collaborative fashion; the county's small size and the strong working relationships between system actors allow it to achieve much of what it could with a more formalized structure.

Four of the counties--La Crosse, Marathon, Portage and Waukesha--have dedicated county staff who work closely with their coordinating committees. In the other counties, the administrative tasks that accompany the collaborative process are "add -ons" to the staff of constituent members of the committees. It seemed apparent that the full benefit of collaborative planning and evaluation will require adequate staff support.

A second feature of a successful criminal justice coordinating committee is-not surprisingly--a commitment to collaborative decision-making. Such an approach balances the autonomy of each of the committee's member agencies with the need to achieve consensus regarding goals, program implementation, and evaluation. This can be a difficult task. It requires trust and agreement on change, system objectives, and redefined relationships. It may also involve the relinquishment of some degree of autonomy.

Left to their own efforts, local attempts to create a coordinating committee will almost certainly bring some measure of positive change, but may not achieve their full potential simply because of a lack of expertise and resources.

Transition to a collaborative model also requires a level of expertise lacking in most local justice shareholders. Few trial judges, prosecutors, police executives, probation agents or human service officials are trained to facilitate, develop, or manage such an enterprise in its most advanced form. Left to their own efforts, local attempts to create a coordinating committee will almost certainly bring some measure of positive change, but may not achieve their full potential simply because of a lack of expertise and resources. For this reason, all of the counties visited sought external guidance, often from the National Institute of Corrections, to assist in the beginning stages of the process.

In every county, an assessment of the local criminal justice system was among the first tasks undertaken. This involved defining the local offender population, as well as mapping out the entire system, from citizen complaint to the police through conviction and

sentencing. Several shareholders found this exercise to be of great value, noting that it gave them a new appreciation for the interdependence and complexity of their local systems.

Each county visited was at a different point in the process toward a collaborative model. In some counties, the coordinating committees had been in existence for more than a decade; in others they were but a few months old. In some counties, the inevitable disagreements that occur between shareholders with conflicting interests led to compromise and creative solutions no one thought possible. In others, disagreements compromised the committee's ability to move forward. Yet even in moments of dysfunction, a shared belief in the value of collaboration was evident among the committee members. New alliances developed, with the most creative ideas often emerging from shareholders who had never worked together before.

Change requires both a belief in the value of collaboration and sufficient resources to upgrade local information systems.

A third core feature of successful collaborative decision-making is the effective use of information in planning and evaluation. Perhaps the greatest practical challenge to this new approach has been the lack of adequate data and analytic capacity at the local level. Existing information systems have typically been designed to serve each agency's own parochial needs. Often, important information has not been available at all; or if available, it has been difficult to retrieve and often impossible to share with other agencies in the same community.

These shortcomings are not surprising. It has not been the historical practice of police, prosecutors, or courts to be guided by empirically supported policy choices. Change requires both a belief in the value of collaboration and sufficient resources to upgrade local information systems.

Several counties have begun to address the problem of inadequate information. For example, Portage County's data system is capable of producing system and offender information not available in most other counties. Waukesha County is in the process of creating a Criminal Justice Data Warehouse which would allow for information sharing between the courts, the sheriff, and the district attorney. Waukesha County is also studying increasing access to treatment and assessment information. In other counties, individual agency data systems have been modified to increase their capacity to provide information to system decision-makers.

The final feature of successful collaboration stresses evidence-based practices and ongoing evaluation. Decisions in criminal cases are frequently made with little idea of their impact, and without the means or commitment to evaluate their effect. They are often based on the statute violated rather than a particular offend-

er's unique characteristics. A body of research literature is emerging in the corrections field which seeks to remedy this gap. Risk assessment tools are increasingly available to more accurately match offenders with appropriate interventions. Several counties showed evidence of these practices, in identifying mental health issues, making bail or treatment decisions, and imposing sentences. Increasing the use of such interventions and the means to evaluate their efficacy can only lead to a more effective allocation of sanctions.

Conclusion

The energy, cooperative spirt, and good will I observed in cataloguing local justice innovations were heartening. At a time of extraordinary partisanship at state and federal levels of government, local shareholders in many of our communities are working cooperatively to create a shared vision of how best to serve their constituents. Although the transition from traditional processes to collaborative decision-making is not without difficultly, these initial efforts suggest a promising future in which communities can do more with less, try new ways of addressing old and vexing problems, and to seek to make their communities safer.

The Prosecution Project: I Know What I Want to Do

By Megan Williamson

Third Year Law Student

I applied for law school, a long time ago it seems, not knowing what I wanted to "do" with that degree. In fact, I had no idea what I wanted to do when I "grew up," besides putting off the awful day I would have to decide. What I did know was that law school would provide me with an invaluable education and that a law degree would open the door to a variety of opportunities. While I had a hazy idea about working for the government with an interest in law enforcement, I was convinced of one thing: I never wanted to be a litigator. The courtroom was not the place for me.

I know what I want to do. I want to use my law degree to help the community, even if it is in a small way.

Two summers later, just a few months ago, I found myself precisely where I did not believe I would ever be-not only in a courtroom, but examining witnesses, making legal arguments to a judge, and arguing the facts of guilt and innocence to a jury.

Now, six months until graduation, I know what I want to do. I want to use my law degree to help the community, even if it is in a small way. I want to be in court to litigate. I want to be a prosecutor.

Before applying to the law school's Prosecution Project, criminal law intrigued me. I had taken several criminal law courses in addition to the requisite first year substantive and procedural criminal law classes, and the Prosecution Project seemed the perfect opportunity to explore my interest. I was selected for an internship with the Dane County District Attorney's office under the supervision of District Attorney Brian Blanchard and his staff. When I arrived at work the first day, I was worried. Would I like it? Would I be good at it? Did I actually have the ability to stand before a judge, or even more frightening, a jury, and represent the State of Wisconsin? It turns out that I could do it and, even more importantly, that I enjoyed doing it.

I began to appreciate the prosecutor's role: not to "convict" as a goal in itself, but to help ensure a fair and just result.

My first week of work, I still did not have the student attorney certification allowing me to appear in court under the Wisconsin Supreme Court's student practice rule. I remember being almost relieved that I could not be "forced" into court. By the end of the summer, however, court was the place I wanted most to be. I appeared in court on behalf of the state for initial appearances, numerous preliminary hearings, several suppression hearings, and a jury trial on a felony theft of identity charge. Yet my summer experience was much more than just being in court-there were long hours and hard work outside the courtroom. I learned to appreciate the unique role of the prosecutor and the impact that Wisconsin's district attorneys have on the community. I also learned about the interaction between the prosecutor and the other participants within the criminal justice system including the police, the defendant and the defense attorney, the judge, and-sometimes overlooked-the victim.

One of my most memorable contacts with a defendant-and one of the most important learning experiences about the criminal justice process-took place during a final pre-trial conference. The defendant was unrepresented and seemed to have little understanding of the system. I told the defendant that he had the constitutional right to an attorney, that I represented the state and could not advise him. I gave him directions to the public defender's office. The defendant decided to proceed without an attorney. I offered him the plea agreement and he looked at me and said, "So, what should I do?" It was a difficult moment, and a reminder of the trust that the law places in the women and men who represent the state. It was also a good reminder of the importance of fairness to each individual, regardless of case load or other pressures.

When I dealt with unrepresented defendants, I was concerned at times that they would agree to a disposition simply because they wanted to end the case or that

they did not really understand their constitutional rights. I began to appreciate the prosecutor's role: not to "convict" as a goal in itself, but to help ensure a fair and just result.

I also learned that, while I represented the state in criminal proceedings, each case involved real people, including real victims. For example, I was given the case file for my first preliminary hearing five minutes before it was scheduled to begin. I read the police report on the elevator. My stomach was knotted with butterflies. After all, it was my first time before a judge for something other than an initial appearance or plea agreement. Then I met the victim and realized the importance of what I was about to do. No matter how nervous I was, she was even more nervous. She was about to face a man who had threatened to strike her with a baseball bat if she tried to call the police. And I was determined to help her tell her story. My first preliminary hearing was not just about showing probable cause, it was about fighting for a brave victim and, even if only in a small way, knowing that I could make a difference in someone's life.

My first jury trial resulted in a conviction, but the feelings of success that accompanied it were much more complex than just being able to tell my classmates that I had "won" (even before tossing my cane over the goal post). On a personal level, I was pleased that I could stand before twelve people, all strangers and all looking at me, and prove the state's case beyond a reasonable doubt. More importantly, I believed that the defendant was guilty. The jury, representing the community, agreed and found the defendant's conduct criminal.

I came to understand that effective prosecutors need to know as much as possible about the human consequences of their decisions and that in an adversary system, each side invariably experiences only part of the whole picture.

The defendant in the trial had been charged with felony misappropriation of personal identifying information, in order to avoid criminal penalty. The victim was the defendant's brother. When I first met the victim, he told me that his brother had used his personal identifying information before and, while he loved his brother, it just had to stop. Again, I faced the human aspect of the criminal justice system and saw what this trial meant for the victim and his family. When the jury found the defendant guilty, I felt that justice had been done-the defendant would be punished and his brother would, in some way, have peace of mind.

During the summer, I came to understand that effective prosecutors need to know as much as possible about the human consequences of their decisions and that in an adversary system, each side invariably experiences only part of the whole picture. For

that reason, I chose to participate in the law school's in-house public defender clinic, the Legal Defense Program, during my third year of law school. The program has broadened my understanding of our system, reinforcing the principle that an effective prosecutor understands not only her powers and responsibilities, but also the impact on of all the others in the community.

This summer provided me with an experience I could have never received inside the classroom. The attorneys at the Dane County DA's office took time to teach me about how and why decisions are made and provided me with techniques and advice on how to improve my skills. They challenged and encouraged me to do things outside of my own comfort zone. And lastly, they inspired me to pursue prosecution as a profession. I now know what I want to "do" when I graduate. I also know that I can make a difference in the community. I am indebted to the Prosecution Project for giving me this opportunity, and I cannot adequately thank everyone-the entire staff at the Dane County District Attorney's office, the defense attorneys, the county's judges and court commissioners, the law enforcement officers, the defendants, the victims and the jurors-who provided me with this invaluable life experience.

Consumer Clinic Promotes Consumer Protection and Financial Independence on Several Fronts

By Travis Weller

Second Year Law Student

In the Consumer Law Clinic, UW law students represent lower-income Wisconsin residents experiencing a wide range of consumer problems, from abusive debt collection practices to credit scams. We provide free legal services to consumers who have nowhere else to turn, and get first-hand litigation experience in the process. However, our work doesn't stop at the courtroom door. We take a proactive approach combining education, research, and legislative and administrative advocacy to address the root causes of consumer problems.

At the CLC, we believe that community education is essential. We work with local nonprofit agencies such as the Financial Education Center, Centro Hispano, and the Catholic Multicultural Center to share information with Madison residents about their consumer rights.

As part of our expanded community outreach efforts this fall, we participated in Money Smart Week, a statewide effort spearheaded by the Wisconsin Department of Financial Institutions to educate the community about financial responsibility. I worked with other students to develop and give presentations on abusive debt collection practices, fraud and misrepresentation, and recent changes in the state repossession law. In the process, we translated statutes into language everyone can understand. By interacting with community members, we developed a deeper understanding of the challenges that our clients face.

CLC students have taken a leading role in response to the extraordinary explosion of predatory lending in the state. We began by exploring the way payday loan and auto title loan companies target low-income neighborhoods. We researched strategies that other states have used to limit predatory lending. Now, we are working with various organizations to develop low cost, community-based alternatives to payday loans.

CLC students have also expanded the Clinic's involvement in the community by advocating on behalf of Wisconsin consumers in front of the state legislature and administrative agencies. For example, the state recently passed legislation that would allow consumers to freeze their credit reports. I worked with the Wisconsin Department of Agriculture, Trade and Consumer Protection to make sure that the credit freeze process is not used to collect even more information about Wisconsin consumers. I was able to testify at a code hearing and provide written comments that will influence the way the credit freeze process is implemented. My work in the CLC taught me the research and advocacy skills necessary to advocate effectively.

CLC students are working to protect Wisconsin consumers, whether that means education and advocacy before problems arise, or responding through litigation if necessary. In the process, we learn valuable legal skills and provide an important service to the Madison community.

Survival and the Snowball Effect

By Julie Vaughn

Second Year Law Student

"For practically every family, then, the ingredients of poverty are part financial and part psychological, part personal and part societal, part past and part present. Every problem magnifies the impact of the others, and all are so tightly interlocked that one reversal can produce a chain reaction with results far distant from the original cause."

David K. Shipler, The Working Poor

The Neighborhood Law Project (NLP) provides free legal services to low-income individuals in three main areas of law: unpaid wages, landlord/tenant disputes, and public benefit denials and terminations. Working in NLP, I was frustrated and saddened by the "snowball" effect that David Shipler describes above. If a family is just getting by and a wrench is thrown into its precarious financial machine, it is nearly impossible for the family to stay afloat. I will describe my experience with a client, Ms. X, that illustrates this situation and proves that, despite your best intentions, you sometimes cannot save a family from falling off a precipice. One incident that for many of us would be an annoyance or inconvenience can, for a low-income family, snowball into a situation that makes survival difficult.

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Ms. X is a single, 23-year-old mother of two. She works part-time and is also slowly working to finish her Associate Degree in Criminal Justice. Ms. X depends upon Section 8 to pay the rent for her apartment.

Section 8 is a federally funded housing program which mandates that participants not pay more than 30% of their income for rent. This program makes it possible for Ms. X to live in a two-bedroom townhouse in a safe neighborhood. One of Ms. X's sons goes to the neighborhood school and Ms. X has become a vital and contributing member of the community. In Madison, the Community Development Authority ("CDA") runs the voucher program. These vouchers are extremely valuable and difficult to get. In fact, the wait list for getting vouchers is now closed.

Section 8 participants must fulfill certain obligations in order to retain their Section 8 voucher. Participants can be terminated from the program if they, their guests, or anyone in their family participates in violent criminal or drug-related activity.

Ms. X came to NLP because she received a termination notice from CDA. She was being terminated for engaging in violent criminal activity. Ms. X was involved in an altercation over a year ago. This altercation resulted in her being charged with and pleading guilty to a Class B misdemeanor.

If a Section 8 participant is issued a termination notice, he or she can request an informal review before a neutral hearing examiner. An informal review is an opportunity for the participant to present his or her side of the story and convince the hearing examiner that he or she deserves to keep the voucher. The participant has a right to have an attorney or other representative at the hearing.

I was the student attorney assigned to Ms. X's case, and I prepared for the hearing by gathering evidence that Ms. X should not be terminated from the program. The evidence consisted of letters from her landlord, friends, classmates, and community members vouching for Ms. X's character and contributions to the community. At the hearing, Ms. X testified in her own defense and I presented evidence that I thought would definitely convince the hearing examiner that Ms. X is not a danger to anyone and should be allowed to keep her voucher. I truly believed that Ms. X deserved to keep her housing assistance.

It was a shock to receive the hearing examiner's stating that Ms. X's termination was upheld. Ms. X and her two young children would stop receiving Section 8 assistance on November 30th, 2006. Her only recourse would be to file suit against CDA. If Ms. X did sue CDA, and if she was able to convince a trial court judge that CDA administered the hearing improperly or did not consider the mitigating circumstances, the case would be sent back to CDA for a new hearing. Ms. X would, once again, be at the mercy of a hearing examiner's discretion.

After getting to know Ms. X, her situation, and her responsibilities, I can safely predict how this one incident of criminal activity may snowball and affect Ms. X for the rest of her life. Ms. X was arrested for engaging in criminal activity and so she was terminated from Section 8. She no longer receives housing assistance so she will be unable to pay her rent in full. She will have to move (and still be responsible for the remainder of the lease) or she will be evicted. The eviction will hurt her credit and will make it more difficult for her to rent again in the future. Additionally, housing instability will affect her children's education and likely hurt her own chances of finishing school. Without a degree, it will be difficult for her to get a job that pays a living wage and make it even more difficult for her to climb out of poverty. The arrest for a middle-class individual would be a bad incident, perhaps a mistake that the individual could learn from and move on with his or her life. For Ms. X, the same arrest will affect the rest of her life.

She served her time and is successfully completing the conditions of her community supervision. The question is how many times and in how many ways should Ms. X have to pay back society for what she did?

The criminal activity that Ms. X engaged certainly demonstrated poor judgment. She fully admits that she should not have behaved in the manner that she did. She served her time and is successfully completing the conditions of her community supervision. The question is how many times and in how many ways should Ms. X have to pay back society for what she did?

I hope, however, that Ms. X will defy the odds. She is bright, hard-working, and--up until this point--has not let her circumstances define her existence. It may be possible for Ms. X to prevent the snowball effect through ingenuity and a fighting spirit. But, unfortunately, for low-income individuals, it is an uphill battle.

How I Became a Friend of the Court

By Andy DeClercq

Second Year Law Student

For me, the primary appeal of the clinical programs at the University of Wisconsin Law School is that they offer something that is impossible to achieve in the classroom: the experience of actually practicing law. In search of such an experience, I enrolled in the Legal Assistance to Institutionalized Persons Project (LAIP) during the summer after my 1L year. As an LAIP student, I expected that working directly for clients would expose me to a variety of new experiences. I was right. Over the summer, I conducted numerous client interviews, researched factual, legal, and (for one case) cutting edge scientific issues, wrote legal memos, and filed motions in court. There was one experience, however, that I never anticipated: the opportunity to help draft an amicus curiae ("friend of the court") brief for the Wisconsin Supreme Court in State v. Parent.

The Parent case involved a criminal defendant whose appellate attorney had concluded there were no viable issues on which to base an appeal. When an appellate attorney makes such a determination, the client can request that the attorney file a "no merit report" detailing exactly why he or she believes there are no viable legal issues to raise on appeal. The court of appeals then reviews the report and rules on whether the attorney's conclusion is correct. As part of the no merit process, the client has a right to file a brief with the court of appeals challenging the lawyer's conclusion.

Mr. Parent elected to pursue this option. In order to do so, he requested a copy of his presentence investigation report (PSI). The PSI is prepared in most felony cases to aid the judge in sentencing, and details the defendant's personal history as well as the facts of the crime. The trial judge denied Mr. Parent's request, and the appellate lawyer appealed, initiating a dispute that ended up in the Wisconsin Supreme Court. The Remington Center received the Supreme Court's permission to file an amicus brief in the case, and I was asked to help draft the brief.

As I was working on the amicus brief, I was also responsible for eleven individual LAIP clients, most of whom would have to begin their search for legal

redress in a circuit court. I found that each venue required a different type of lawyering. In the individual cases, my primary focus was to solve my client's specific problem. My interest in the Parent case, however, was different. Like my individual clients, Mr. Parent had a specific problem--he was denied access to his PSI--but he also had an attorney who would advocate for him on this issue. Thus, the Remington Center could serve a different role. While our brief supported Mr. Parent's position, it was also aimed at addressing broader issues-particularly the lack of a clear process for providing defendants with access to, and the opportunity to correct, PSIs--that Remington Center clients frequently encounter.

While our brief supported Mr. Parent's position, it was also aimed at addressing broader issues that Remington Center clients frequently encounter.

Our particular interest in the issues raised by the Parent case affected our approach in drafting the amicus brief. Instead of focusing on the facts of the case, we framed our argument broadly so that it not only attended to the specific PSI issue in Parent, but also addressed the entire spectrum of PSI problems encountered by Remington Center clients.

We began our work by reviewing all the Wisconsin appellate and Supreme Court cases, as well as a few federal cases, dealing with PSIs (over forty cases in total, dating back to 1970). From this research we identified three major arguments that we would put forth in our brief: (1) there is a compelling need for access to, and correction of, PSIs; (2) there is currently no adequate procedure in place to meet this need; and (3) the Wisconsin Supreme Court can and should use its supervisory power to create such a procedure. We also decided that we would complete a survey of the PSI procedures followed in other states, in order to provide the Supreme Court with some basis of comparison. I took initial responsibility for the first two arguments, and my supervising attorney, William Rosales, worked on the third argument and the 50-state survey.

The arguments I crafted for my portion of the brief differed from the types of arguments I was used to making, either in my classes or for my individual LAIP clients. In class and for my clients, I typically made arguments based on precedent (the court did this before and therefore it should do so again). If the precedent was unclear, I might argue that my side had a better policy justification for its position. My arguments for the amicus brief, however, were different. Instead of claiming that precedent revealed how the court should act in the current case, I was pointing to precedent and declaring that it simply revealed a mess. The Wisconsin courts, I argued, had been dealing with PSI issues for over 30 years, and in that time had failed to define a coherent or

effective policy regarding access to, and correction of, these reports. Thus, I was calling for the court to act based on fairness, not precedent.

My writing for this project also differed from the legal writing I had done in the past. I understood that I was working on a first draft of our brief, and that our final draft would have to be heavily edited to fit the Supreme Court's page limit. I also saw that our approach to the brief was evolving as we became more familiar with the issue. Therefore, I decided to overwrite my draft by presenting every possible argument in support of the two sections on which I was working. I approached the draft in this way to ensure that during the final editing process we could sift through all the available arguments to craft the most persuasive final draft possible. In the end, my initial draft of twelve pages was winnowed down to six.

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We submitted our final brief on August 30, 2006. The amicus brief was done, but my unexpected experience with the Parent case was not. In October, I visited the Wisconsin Supreme Court to hear the oral arguments, in which Meredith Ross represented the Remington Center. While it had been over a month since I had finished my work on the brief, the arguments I had helped craft still seemed fresh in my head. It was rewarding to have the justices ask questions based on these arguments, and it was invigorating to sit in the gallery and formulate answers to their questions in my head. I look forward reading the Parent decision, which will be handed down in the coming months, to discover whether the Court agrees with my unspoken replies.

A SUCCESS STORY

By Carena Crowell

Second Year Law Student

As a student in the Family Law-Restorative Justice Project, I have learned that, for the most part, incarcerated parents are seen as failures. When dealing with custodial parents, judges, family court commissioners and county child support agencies, our clients are frequently told that they are not good parents because by committing crimes they have "chosen" to deprive their children of their everyday presence and financial support.

However, what I know to be true is that one of the greatest needs a child has is to feel loved. Even an incarcerated parent can

give his child that invaluable gift.

I came to really understand this about a month ago, when my client "Gerald" saw his son for the first time in over six years. Gerald is in the federal penitentiary in Terre Haute, Indiana. He is serving multiple consecutive life sentences for bank robbery. The Remington Center first began representing Gerald in his divorce in 2000, when he was completing his state sentence in a Wisconsin prison.

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As a part of the divorce agreement, Gerald was supposed to have phone calls and visits with his son, "Cory." However, it was difficult for Gerald and Cory to stay in contact over the years, primarily because "Linda," Gerald's ex-wife, was extremely ill; she simply could not do very much to facilitate contact between father and son. In addition, soon after the divorce, Gerald was shipped to Indiana. While this was not a case where the custodial parent was intentionally denying contact between the incarcerated parent and the child, the result was the same for both of them.

In January of this year, Gerald learned that Linda's health had deteriorated to the point that she was receiving hospice care at home. Between January and April, when Linda passed away, Gerald made numerous calls to her home and cell phone numbers, trying to talk with Cory, and with Linda about her plans for their son's care. Only once was Gerald able to connect with Linda, but she could not talk. Gerald spoke with Cory for about two minutes, but the boy obviously was uncomfortable talking to him with other people in the room.

When I was assigned to work on Gerald's case in late May, the situation looked grim. Cory had been sent to live with his maternal grandmother, who had never liked Gerald. The grandmother would not allow Gerald to speak with Cory after his mother's death, nor would she give Cory the many letters Gerald had been sending. Our hope was that if we gave the grandmother a chance to grieve her daughter's loss, she would eventually see that Cory needed his father and then allow contact. If that failed, we would file an action to ask the court for an order permitting, at a minimum, phone calls. Although Gerald was obviously frustrated and concerned for Cory, he was very patient with us. I realize now that he had resigned himself to waiting until Cory, then 12, turned 18 and could contact Gerald on his own, if he chose to.

Fortunately, Linda had left father and son with a guardian angel. Linda had arranged for her good friend "Anne" to act as the guardian of Cory's estate, which included life insurance and monthly survivor's benefits. She knew that Anne would spend the money wisely and in Cory's best interest. Before her death, Linda had made it clear to Anne that

she wanted Cory to maintain a relationship with his father. In late June 2006, Anne contacted us to discuss her desire to reunite Cory and Gerald.

Anne said that after his mother's death, Cory told her that he felt like an orphan. Anne pledged to take Cory to visit Gerald in Indiana before the summer was over. When I heard that, I felt very encouraged because it seemed that finally, Gerald would be able to reach his goal of having a relationship with his son.

This case, which had been slow moving until that point, went into high gear.

Unfortunately, there were many obstacles: Anne had to have surgery, which pushed the trip into the fall; Anne wanted Cory's grandmother to sign a paper giving her legal authority to take Cory out of the state, so we had to draft an authorization for the grandmother to sign; and we had to get Anne approved as Gerald's visitor by the Federal Bureau of Prisons.

I cannot think of a more frustrating task that I have undertaken as a student in this project than trying to talk to a human being at the U.S. Penitentiary in Terre Haute. It was nearly impossible to even set up a phone call with Gerald. Furthermore, Gerald's social worker was extremely uncooperative in helping us add Anne and Cory to Gerald's visitor list. First, the social worker gave Gerald an outdated form to send to Anne. Then, when Anne signed and returned the form, the social worker denied receiving it. Like Gerald, I felt helpless and resigned to failure.

While the visit lasted only about four hours, the impact will be long lasting.

When we called Anne on a Monday in late October to report the problems we were experiencing, she was surprised to hear that the prison had not received her completed form. She said she had been planning a special trip to visit Gerald as a "present" to Cory on his 13th birthday, which was the following Saturday. My supervising attorney, Leslie Shear, and I agreed that, no matter what, that visit had to occur.

This case, which had been slow moving until that point, went into high gear. We consulted with Judy Olingy to better understand federal prison policies. Through her, we found a contact at the prison to help us expedite adding Anne and Cory to Gerald's visitor list. I studied the prison's visiting policies to make sure that Anne and Cory complied and that the prison would have no reason to deny them. We found a current visitor's form online and faxed it to Anne. She signed it and faxed it back right away. We made countless phone calls to our prison contact as well as to Anne, giving her up-to-the-minute reports on whether or not she should plan to leave for Indiana on Friday. Within the week, the visit was approved, and Anne and Cory were busy packing.

While the visit lasted only about four hours, the impact will be long lasting. Afterward, Anne wrote us to say that she decided to purchase a cell phone for Cory so that he can talk with his dad whenever Gerald can afford to put minutes on his prison calling card. Gerald will send his letters to Cory through Anne. Cory wrote to his father for the first time in many years to tell him that he loved and missed him. Cory will soon meet his grandfather in Milwaukee, as well as other relatives, such as a half-brother and uncle. Most importantly, Cory knows and feels that he is not an orphan.

When I read Anne's email, it became clear that Gerald's efforts to reach out to him from prison were a godsend to Cory. Cory realizes that even though his father is in prison, he is a better parent than many; he told Anne about some of his friends whose fathers are not in prison but who don't seem to care enough to keep in touch their children. Cory now knows that he can rely on regular letters and phone calls from his dad. He knows that his father worked hard to stay in touch with him, and that his father is always thinking about him. He knows that no matter what, his father loves him. Anne and Cory are already planning their next trip to Indiana.

EDITOR'S NOTE: following the visit from Cory, Gerald sent a hand-drawn thank-you note to Carena Crowell and Leslie Shear. The note addressed Carena and Leslie, and all the previous students who had worked on Gerald's case, as "My Heroes." The cover of that note is reproduced in this newsletter.