December 2003 Newsletter

Greetings! The December 2003 edition of our newsletter highlights the richness and variety of the Remington Center's clinical offerings. We begin with reports on two new endeavors. Mike Scott's work in the area of problem-oriented policing rounds out our criminal law offerings, which already include assistance to prison inmates (LAIP, the Wisconsin Innocence Project and the Family Law Project); to victims (the Restorative Justice Project); and to prosecution and defense (the Prosecution Project and Public Defender Project). In the civil law arena, Betsy Abramson's Elder Law Clinic opens up an exciting new opportunity for students.

Also included is an update from the Wisconsin Innocence Project, describing the Project's successes in two recent cases, as well as its work with the Wisconsin legislature to remedy flaws in the state's criminal justice system.

Our reports from students also exemplify the variety of clinical opportunities available to them. Eric Sparr and Sommer Spector outline their experiences representing Mariel Cubans in immigration parole hearings at FCI-Oxford. Paul Bellin describes his conflicted state of mind as he investigated a possible motion to reinstate an appeal for a LAIP client. Sarah Opichka expresses wonder at how a murder victim's family members can find their way to forgiving the offender.

We close with an update on the fundraising activities of the Friends of the Remington Center Endowment (FORCE), the private non-profit corporation which raises funds to supplement summer stipends for Remington Center students. We ask you to consider making a tax-deductible donation to FORCE, so that future law students can continue to have the opportunity to participate in the Remington Center's combination of excellent learning opportunities, assistance to underserved populations, and research on important legal issues.

We hope you enjoy this edition of the newsletter, and that you have a safe and joyful holiday season.

Walter Dickey
Faculty Director, Remington Center

Meredith Ross
Director, Remington Center

New Work in Policing

Newly-appointed Clinical Assistant Professor Mike Scott continues to develop the Center for Problem-Oriented Policing, as well as outreach programs designed to improve policing in Wisconsin, the nation, and overseas.
The problem-oriented policing concept was originally developed here at the UW Law School by Professor Emeritus Herman Goldstein, who worked closely over many years with Frank Remington.

Much of the work associated with the Center for Problem-Oriented Policing can be viewed on-line at [www.popcenter.org](http://www.popcenter.org) The core work of the "POP Center" is to produce concise guidebooks for police and others that summarize the state of research and practice with regard to specific crime and disorder problems, with the goal of improving the ability of police to address these problems. The three latest "POP Guides" have just been published: "The Benefits and Consequences of Police Crackdowns," "Financial Crimes Against the Elderly," and "Check & Card Fraud." Over 25 additional guidebooks are currently in production, including one on "Drunk Driving," on which Nina Emerson of the UW Law School's Center on Impaired Driving will collaborate.

Along with UW Law Professor David Schultz, Mike is also working with the State of Wisconsin Department of Justice to develop a new summer education program for Wisconsin police chiefs and sheriffs. The first offering of the program is scheduled for the summer of 2004. The objective of the program will be to improve the capacity of Wisconsin police executives to guide their agencies toward more effective and equitable control of crime and disorder. Beginning in the fall of 2004, Mike will begin teaching courses in policing at the Law School, including the course titled "The Role of the Police in a Free Society."

With funding from the U.S. Department of Justice, Mike will also be working with the Madison Police Department in its effort to enhance its internal crime analysis function. A separate federal award will enable the POP Center to produce a manual for crime analysts, similar to one recently produced in the United Kingdom.

Finally, Mike continues to promote police reform at the national and international level. He recently conducted seminars for police executives in New Zealand, and in December will speak to European police scholars and officials in Sweden and Norway about problem-oriented policing. He will also be the keynote speaker at the annual International Problem-Oriented Policing Conference in San Diego. Mike and the POP Center will soon assume responsibility for planning and sponsoring this important conference.

For more information, contact Mike Scott at mscott@wisc.edu.

**The Elder Law Clinic Begins Operations**

The Remington Center's Economic Justice Institute will be launching its newest civil clinical offering, the Elder Law Clinic, in January 2004. Both law students and graduate nursing students will participate in the clinic. The students will work in offices sited in medical clinics, and will concentrate on issues of concern to seniors, including advance directives for health care and financial decision-making, long-term care financing, eligibility for and coverage under public benefits, and guardianship and protective services.
Given the demographics in the U.S., providing student clinical opportunities in elder law is an important goal for the Law School. Elder law is a dynamic, interdisciplinary field that combines issues of aging, health, social work, law, and public policy. Legal issues affecting older people generally fall into four broad areas: (1) access to and quality of health and long-term care services, such as acute care, home care, assisted living, nursing home, and hospice; (2) income and health care financing, including public and private benefits for income (Social Security, SSI, Food Stamps, Fuel Assistance, private pensions, home equity reverse mortgages) and health care (Medicare, Medicaid, Community Options Program, prescription drug assistance, private Medigap insurance); (3) substitute decision-making, including advance directives such as health care and financial powers of attorney or living wills, along with guardianship and protective services; and (4) autonomy, rights, and elder abuse.

The students will be placed in one of two medical clinics in Madison, and will assist both walk-in and health care provider-referred clients. Although administrative details are still being worked out, it is likely that clients will be seen at Dean-East and/or the UW's Geriatric Clinic.

All of the Elder Law Clinic's students will have direct client casework on a variety of civil issues. We anticipate that most will fall in the areas of completing an advance health care directive or simple financial power of attorney, determining eligibility for various public benefits, challenging denials of eligibility or coverage under various public benefits, and/or explaining the impact of and procedures for guardianship and protective services.

In addition to direct casework, all students will be assigned a consumer or professional legal education project, such as presenting an in-service to physicians on eligibility for prescription drug assistance, or teaching a group of seniors and/or their families about Medicaid's spousal impoverishment provisions when one spouse enters a nursing home.

Finally, all students will work on a public policy initiative, such as researching an unresolved question in the law, developing a consumer brochure on a topic, proposing a change to an administrative rule or Wisconsin statute, or conducting a consumer survey.

Clinical Assistant Professor Betsy Abramson is the director of the Elder Law Clinic. A 1981 graduate of the UW Law School, Betsy has spent more than 20 years as a public interest lawyer for the elderly. From 1983 to 1991, she directed the Elderly Team at the Center for Public Representation. In 1991, she founded the Elder Law Center at the Coalition of Wisconsin Aging Groups and served as its director until 2000. She has taught (or co-taught) Law and the Elderly here at the UW Law School seven times. From 2000 to 2003, she developed and ran an elder law consulting practice.

For more information, contact Betsy Abramson at bjabramson@wisc.edu.

Victories for the Wisconsin Innocence Project
The Wisconsin Innocence Project has won significant victories in recent months. Most notably, the Project was successful in exonerating Steven Avery, after he spent 18 years in Wisconsin prison for a rape and attempted murder he did not commit. In addition, the Project won reversal of Evan Zimmerman's conviction for first degree intentional homicide in the Wisconsin Court of Appeals. In the wake of Avery's exoneration, the Project has also been busy working with the legislature on reform efforts.

**Project Exonerates Steven Avery**

On September 11, 2003, Innocence Project faculty and students had the privilege of walking Steven Avery out of the Stanley Correctional Institution, after obtaining DNA tests that proved Avery was innocent of the 1985 rape and attempted murder of a Manitowoc County woman.

Avery had been convicted primarily on the eyewitness testimony of the victim, who was brutally attacked and raped. The jury returned a guilty verdict despite 16 alibi witnesses who placed Avery elsewhere at the time of the attack.

In April of 2002, the Innocence Project obtained a court order, over the state's objection, under Wisconsin's postconviction DNA testing statute. This statute allows for new testing under newer, more powerful DNA technology. The Wisconsin Crime Laboratory succeeded in developing a PCR/STR profile from a pubic hair retrieved immediately after the assault from the victim's pubic hair combings. On September 10, 2003, the lab results were released, proving that Avery and his witnesses were telling the truth—that he was not at that beach on July 29, 1985; that he had nothing to do with the crime; and that the eyewitness was simply mistaken, as eyewitnesses often are. The DNA test conclusively excluded Avery as the source of the pubic hair, and also identified the true perpetrator of this crime, by matching the DNA profile in this case through a search of the state and national DNA databases. The true perpetrator is currently serving a 60-year prison sentence for sexual assaults he committed after the 1985 attack.

On September 10, 2003, the very afternoon that the final results were in from the lab, the Manitowoc County District Attorney stipulated that Avery was innocent and that he should be freed and the case dismissed. Later that same afternoon, the circuit court signed an order officially exonerating Avery and ordering his immediate release. Shortly before 9:00 a.m. the next morning, September 11, 2003, Avery walked out of the Stanley Correctional Institution. He had served over 18 years in prison.

After Avery was sent to prison he lost virtually everything. When he was arrested he had a wife and five children, a job, and a supportive extended family. His wife divorced him while he was in prison. When he walked out of prison, his children were all grown. Two of his children—twins—were less than a week old when he was imprisoned; when he was released, they were 18. He never had a chance to know those children.

The Innocence Project worked on the case for nearly three years. During that time, law students Rob Steinmetz, Tina Dahle, Lisa Skrzechkosky, Murali Jasti, Josh Dalley, Jim

**Project wins reversal of Evan Zimmerman's murder conviction**

The Innocence Project also won a major victory in August when the Wisconsin Court of Appeals granted a new trial for Evan Zimmerman, an Eau Claire man who had been convicted of first degree intentional homicide. The Innocence Project successfully argued that, given the very thin evidence against Zimmerman, trial counsel's failure to investigate and present significant evidence favorable to the defense constituted ineffective assistance of counsel. The state has petitioned the Wisconsin Supreme Court to review that decision.

Innocence Project students and faculty spent countless hours investigating the case in Eau Claire, researching the law, and writing the briefs that won the case. Students working on the case included Neil Byl, Lou Ann Bohn, Megan Morrissey, Sheila Sullivan, Mary Delaney, Lakeisha Fields, and Jenny Thimmesch. The lead attorney on the case was Keith Findley.

**Legislative Action**

After Steven Avery's exoneration, the Wisconsin Innocence Project called for governmental inquiries into the case, to examine what went wrong, and to consider systemic reforms to minimize the risks of such errors in the future. The Manitowoc County District Attorney's Office also requested such an inquiry, and the Attorney General's Office agreed to investigate whether the case was handled improperly. The Attorney General's report is expected shortly.

In addition, the legislature has responded. Representative Mark Gundrum, chair of the Assembly Judiciary Committee, is creating a legislative task force to examine some of the flaws that might have contributed to wrongful convictions such Avery's, and to consider legislative remedies. The Wisconsin Innocence Project has worked with Representative Gundrum on creating this task force.

**Thanks to Innocence Project Volunteers**

The Innocence Project could not function without the valuable assistance provided by a group of dedicated volunteers. We extend a heartfelt thank you to those volunteers, who include Attorney Ruth Downs, Attorney Ann Roedel, Attorney Douglas Jeschke, Dianne Molvig, Neil Chopra, Kim Marshall, Investigator Charlie Fox, and Investigator Michael Branks. Special credit is also due to Administrative Assistant Barb Zahn, who has coordinated the volunteers' efforts.

**Representing Mariel Cubans in Immigration Parole Hearings**
Background: The Hearing Process (Eric and Sommer)

From April 15, 1980 to October 31, 1980, a wave of about 125,000 Cuban immigrants came to the U.S. (particularly to Southern Florida) in what is known as the Mariel Cuban Boatlift. The Immigration and Naturalization Services (INS) initially detained these Cuban immigrants because they were excludable aliens under the Federal Code of Regulations § 212.12. These immigrants cannot be deported back to Cuba. Many of them were facing criminal charges in Cuba when they left, some were deemed mentally ill, while others were political dissidents for their anti-Castro stance. After an initial determination, many of the Mariel Cubans were released from custody and granted "INS parole," to live in the community in the United States.

However, if a non-naturalized Mariel Cuban committed a criminal offense, this parole could be revoked and the Cuban could be placed back into INS custody for an indeterminate amount of time. The Cubans who remain in custody are given an annual parole hearing before agents from the Bureau of Immigration and Customs Enforcement (BICE, which is a successor of the INS). Since the 1980s, a number of Mariel Cubans have been held in immigration detention at FCI-Oxford, and LAIP students have represented them at their annual parole hearings.

At the annual hearings, the BICE agents, in consultation with other authorities in their headquarters, decide whether or not to parole each individual Cuban detainee based on the particular detainee's criminal and prison record (while also taking into account a history of violence and whether the detainee has worked toward self-improvement while incarcerated). From our experience, if BICE's decision is for continued detention, then a few months after the hearing the detainee will get a form letter with a very general reason stating why BICE decided not to grant parole this year. A few common reasons given for denial of parole have been statements like "detainee's answers were not credible" or "detainee still presents a risk to society."

In September, 2003, we represented Mariel Cubans at FCI-Oxford at their annual parole hearings. Contrary to our expectations (and some clients' prior experiences), the BICE agents were incredibly friendly and very agreeable. Young and dressed in business casual clothes, these were not the INS agents of the past that we had heard about. Though the agents did ask our clients about their criminal histories, their questions were not as accusatory as we had expected. Also, throughout their examination of our clients, they deferred to us as their legal representatives. In each client's hearing, after the client answered the agents' questions, the agents then asked us if we had anything to add.

We feel that this was a very good experience for us in our legal education. We learned how to make a cogent argument even when we didn't know the exact issue against which we were arguing. We learned a lot of investigative techniques, since the nature of the information in our clients' records left a lot of gaps that we needed to fill, in order to determine what might be holding our clients back from parole. We also learned the
beauty of improvisation when we had to disregard our rehearsed arguments the day of the hearing and just make our points in a more conversational manner, when we discovered that the atmosphere of the hearing was much less formal than we had expected.

We initially believed, from many of vague reasons given for denial of parole, that the hearing examiners were not making any specific findings for individual detainees, but just deciding on balance that they should not be released and offering the given reasons as justifications. However, we were able to see our clients' BICE files before the hearings, and they contained more detailed reasons regarding why our clients had been denied parole each time. If the Mariel Cubans were given this information when they were denied parole, they probably would not feel so helpless and might be better able to understand why they continue to be detained.

Our clients will learn of the final parole decision from BICE in about three months. There is no appeals process for those denied parole. They will just have to wait for next year's hearing and the opportunity to be heard again.

**Preparing for a Hearing (Sommer)**

When our Oxford group accepted the invitation to represent Mariel Cubans at their annual parole hearings, all five of us were excited, nervous and a little frightened. It seems that although the Cubans do get a parole hearing once a year, they have been denied many times throughout their detention. By the time I met my client, he had been denied parole six times throughout his ten-year detention period, and each time he was given a generic reason for the denial. Neither my client nor I knew the exact reason why he had been returned to detention after his initial release from custody, or why his parole has been denied since then. Thus, I had to delve deep into my client's criminal record, work history, and personal life (some of which he was very unwilling to share) throughout our two months of preparation for the hearing.

From the beginning, my client expressed feelings of frustration at the seemingly futile situation, and his scepticism at ever getting paroled often hindered his full cooperation with me in figuring out how and what we could argue before the panel this year. This resulted in my own frustration. Not only was I up against a system that had already denied my client parole many times before (and I wondered, as did my client, what would make the difference this year), and not only was there a significant (though not absolute) language barrier between me and my client, but my client also had a certain mistrust of the American legal system which sometimes spilled over into a mistrust of me as a representative of that system. Despite this mistrust, however, my client and I were able to develop a rapport by August, and I had done enough research to begin constructing some form of a kitchen-sink argument that I hoped would mitigate whatever and whichever part of my client's history that held him back from release.

My client was normally a confident, boisterous and friendly man with a very passionate way of expressing himself. Whenever we were finished with our meetings at Oxford, he would socialize with the prison employees and other inmates and he seemed to be friends
with many of the men around us. However, the day of the BICE hearing, my client sat quiet and still in the corner while waiting for his case to be called. He barely answered salutations from people pasing us in the hall. I could see that my client was incredibly nervous at the thought that this hour-long interview could affect the next year of his life.

As noted above, the hearing itself was surprisingly polite and informal. I feel I did a good job for my client, and he appreciated it. It's now a waiting game, to see whether or not BICE decides to parole my client from federal custody.

The Thin Line

By Paul Bellin, 2L

Reaching for the phone, I was hoping that my next call would lead me somewhere, because it was really my last option. A number, an address, anything would have been better than what I had. You see, I was investigating. No, really, I was.

I tried to keep an open mind about my LAIP experience; mostly I just tried not to think I was going to save the world or even free an inmate. The faculty explained pretty well the difficulties we would run into and helped to keep expectations at a reasonable level. So I did. I really just thought, if I could answer all the questions my clients asked me, that would be enough. Anymore than that would be gravy.

So I was investigating, doing the work any attorney would most likely have to do, if he represented a person completely isolated from his practically nonexistent family and relations, not to mention the rest of the world. Since Ken entered prison over a year ago, he had probably corresponded with his friends and one family member no more than a handful of times.

Ken was hoping to get his appeal back. He said he told his attorney he wanted an appeal and the attorney screwed up. I listened with an open mind to what he had to say. Or I tried to, but somewhere in the back of my head a battle was mounting. To support his side of the story, Ken produced an unsigned affidavit from his girlfriend and then gave me about five phone numbers and names of people who he said could verify this story. I thanked him for these leads and told him I would look into it and get back to him.

I met Ken on a Thursday and began investigating the next day, Friday. I took the numbers he gave me and started with the first one I thought would work, his "best friend." I dialed the number and got "do-do-di, we're sorry, the number you have reached..." So I tried the next number. Nothing. In fact every number Ken gave me was an eventual dead end. I was going to have talk to my client about this little mishap.

A week later Ken gave me different numbers, but I had my doubts. And of course, I wasn't able to get a hold of anyone on the second round of numbers either. But there was one number… his ex-parents-in-law, a bit attenuated, but worth a shot. It was still a live
link; that is, I didn't know if it was a bad one just yet because no one ever answered my call.

After about two weeks of looking for people on the Internet and trying the one number I had, the battle in my head was marching to the fields. Was this guy feeding me a bunch of bologna? Working late, I decided to try the ex-in-laws again, hoping that the retired couple would be home from work, or wherever. Then a miracle happened! Now I don't mean to put this on par with Noah's Ark or even the '84 Olympics, but it gave me some hope. A man answered and I explained who I was and my situation. The Red Sea parted. He gave me a number that led to another number and eventually a case.

Still, when I finally began putting the case together, the battle sides in my head had lined up and were taking aim, and I found myself toeing the dividing line, trying not to choose sides.

What they don't teach you in your first year in law school is that you will be dealing with people. People's character equations are filled with variables to the nth degree. And Ken was proof of that. At times I thought he was conning me. I struggled with inconsistencies between his story and others', not sure where to draw lines. Not sure what actually happened to him. Not sure it mattered, only that I struggled at times feeling like I was walking a thin line. Any step to the side might expose a fault, a lie on my client's part that would run too deep and bury any pursuit of a case.

This became a struggle at times from going too deep, digging until I proved him to be a liar, or found the truth. And what was the truth? In this case, maybe the reasons for not getting an appeal shouldn't be based on whether he really did ask for an appeal within 20 days after his sentencing hearing. Maybe there are so many factors that should have been on his side but would not appear in any official court transcript and therefore were never said. Maybe there are so many things in our society that have been slanted against Keith from the very day he was born that he never really seemed to get the leg up a person needs in a purportedly "fair" society. Or maybe Keith just didn't deserve the sentence he received. Then again, what did I know, and who was I to be questioning and doubting my client from the get-go?

I didn't know the answer to those questions, but I am not sure, in the end I needed to. After all my investigations, I felt I could corroborate Ken's story and put together a fair legal and factual case to support our request for reinstating his appeal. Still, what law school doesn't teach you is how do you deal the emotions you may feel when you may have to justify something not according to a legal rule, but just because. They don't teach you in law school how to walk that thin line.

Victim-Offender Conferencing

Sarah Opichka, 2L
Imagine your father or grandfather stabbed to death by an acquaintance in the middle of the night, while sleeping in bed, for no apparent reason. Could you bring yourself to face and potentially forgive the offender who committed this act of severe violence?

This was the situation I was confronted with when I began work in the Restorative Justice Project. The offense actually occurred over 15 years ago, and the murder victim had four family members who were interested in meeting with the offender at the maximum security prison in which he is incarcerated. The offender is a man from the victim's community, with whom all family members had been acquainted since he was a young child. The offender had also expressed an interest in participating in a victim-offender conference.

Before I was assigned to this case, two previous students had met with some of the family members and with the offender. Along with Pete DeWind, director of the Restorative Justice Project, I met the offender several times before the actual conference. When the offender had first been sentenced to life, back in the late 1980s, one member of the family had expressed forgiveness to the offender. The offender remembered this expression clearly; and he hoped, but didn't expect, to hear those words again.

We also met in person with the four interested family members, in order to better understand what they wanted and expected to accomplish by meeting with the offender. The family members expressed interest in actually seeing and listening to the offender and learning more about his version of the offense, the prison, and what plans he had for the future.

As the day of the conference drew near, I was kept busy making final preparations with the prison, and talking several times by phone with the offender and the victim's family members. I also spoke with the prison's chaplain, whom the offender had chosen to attend the conference with him.

Pete, Phil (one of the previous students who had worked on this case) and I arrived early at the prison the day of the conference. The meeting lasted about 3-1/2 hours, with short rest breaks. The victims had a lot of questions for the offender concerning the murder, including what exactly had occurred before and after the offense (such as whether the offender had been taking drugs or drinking that day), and whether anyone else had been involved in the murder. They especially wanted to know how the offender was changing his life and his plans for the future, and why he had decided to participate in a victim/offender conference. Some of the victims also relayed to the offender the fact that they had forgiven him in the past and continued to feel the same way. It was an emotional meeting at times, yet the victims and offender always treated each other respectfully, and made some connections.

After the conference was complete, we met separately with the offender and the victims to discuss the experience. I was pleasantly surprised at how satisfied everyone was with the meeting. The victims expressed relief that many of their questions had been answered. They also expressed interest in another conference, or at least communicating
with the offender via letter. I spoke by phone with the offender several days later, and he too continued to express satisfaction with this meeting, along with appreciation that the family members had told him they were glad they had decided to meet with him. The offender had consistently expressed regret over what he had done, along with stating an interest in helping troubled teens in the future. It appears that this meeting has only reinforced his intention to help others.

As for myself, I was, and still am, amazed at how forgiving some people can be. To witness firsthand members of a victim's family informing the man who killed their father/grandfather that they have forgiven him for his violent act is something I will not easily forget. It is often too easy to lose sight of the fact that there are actual victims behind each of the inmates we are assisting at the Remington Center. Other victims may or may not have forgiven their offenders, but many of them may have lingering questions that could be asked and answered through a victim-offender conference. I am glad the Remington Center has a project available to provide this service that offers the opportunity for so many benefits for both victims and offenders.

FORCE Supports Summer Students at the Remington Center
Meredith Ross

The Friends of the Remington Center Endowment, Inc. (FORCE) is a private nonprofit corporation, created to provide funds to supplement the stipends earned by students in the Remington Center's summer clinical projects.

Unfortunately, the majority of students at the Law School take on large amounts of debt to pay for their education. Many already have substantial debt from their undergraduate work when they enter law school. Rising tuition costs, in light of the state budget crisis, only exacerbate the situation.

This debt affects the students in a variety of ways. Some are not able to participate in programs such as the Remington Center because they need to earn more money during the summer than we can provide. Some are channeled into jobs while in school and after graduation that are not necessarily in their fields of interests. Our goal is lessen these burdens and try to give the students as many options as possible during and after law school.

The FORCE fund will supplement the stipends of students who participate in the summer program, in order to make it possible for all students who want to be in the program to participate. The stipend, approximately $2,500 before taxes and University fees, does allow for a remission of summer tuition, which is a great help. Still, $2,500 is only a fraction of what the students could earn in other jobs over the course of the summer.

This year is the last of our three-year fundraising cycle, and many donors have fulfilled their original pledges to FORCE. We've raised nearly $28,000 in 2003, bringing our total fund to just under $200,000. The money we have raised so far is conservatively invested
and we hope will grow both by wise investment decisions and through the generosity of our graduates and supporters.

We thank all those who have donated so generously, 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:

Friends of the Remington Center Endowment
975 Bascom Mall
Madison, WI 53706

Thank you for your thoughts and for your generous support.