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Grateful appreciation and kudos to Kathryn White who conducted interviews and authored most of the articles in this edition of *Clinic Matters*

## Clinic Faculty and Staff

- Martha Mannix  
Elder Law Clinic
- Stella Smetanka  
Health Law Clinic
- Thomas Buchele  
Environmental Law Clinic
- Jane LeHew  
Clinic Administrator
- Nadine Hamlett  
Clinic Administrator

## Two New Clinics are Born

The University of Pittsburgh Law School will add two new clinics to its repertoire in the fall 2004 semester: the Community Economic Development Clinic and the Family Law Clinic.

The CED Clinic, headed by Daniel T. Friedson, will provide an opportunity for students to gain experience in the fields of tax and business law. Prof. Friedson, a 1998 Pitt alumnus, has an impressive and varied background in legal advocacy, community organization, the arts, and education. The Clinic will serve members of the Pittsburgh community who want to start small businesses, but do not have the financial resources to hire legal representation. It will be the first organization of its kind in the Pittsburgh area, and its services are in high demand. Students who enroll in the Clinic will learn a vast array of skills, working on all of the necessary steps to start a business: researching, counseling clients, interviewing, drafting, and more. Additionally, the students will be involved in trans-

actional work; a rare opportunity in clinical internships. The CED Clinic is bound to play an integral role in Pittsburgh's economic development as well as its students' education.

The Family Law Clinic will provide a wide range of practice opportunities for students who will represent selected clients in the Allegheny County Family Court. Over the course of two consecutive semesters, up to 10 students will develop their skills in client interviewing, negotiation, legal research, legal drafting, custody mediation, motions practice and custody and child support litigation. In addition, the students will develop and deliver lectures pertaining to Pennsylvania custody and child support law to various community groups.

The clinic work will be supervised by Professor H. J. Gruener who has practiced law for thirty-three years, twenty-three of which has been in the field of family law. Professor Gruener participated in the drafting of the Pennsylvania Divorce Code, serves on the

statewide Domestic Relations Advisory Committee appointed the legislature to recommend amendments to the Divorce Code, has been Chairman of the Allegheny County and Pennsylvania Bar Associations Family Law Sections, President of the Pennsylvania Chapter of the American Academy of Matrimonial Lawyers and named to "The Best Lawyers In America" in Family Law in every edition of the book since 1989. He continues to develop family law curriculum at the law school and currently teaches Family Law, Advanced Family Law Drafting and Advanced Family Law Advocacy.

While the mission of the clinic is to train future lawyers and to serve clients with difficult family law situations who otherwise might go unrepresented, an additional mission is to expose the law student to the virtues of public service law in this highly personal field so that, following graduation, the student will be eager to provide his or her share of pro bono family law legal services to the community.

## A Journey to the Third Circuit

In March 2004, third-year student Jonathan Will presented oral argument in a case disputing health care coverage before the Third Circuit Court of Appeals. The client had been denied a trial with the grant of a motion for summary judgment. Jonathan's role was to try to persuade the Court that the district court had erred in

finding that the health plan properly denied her health care coverage for surgery to alleviate a TMJ problem.

The District Court dismissed her case, citing insufficient evidence that her health care provider had not followed the guidelines of its plan. ERISA (Employees Retirement and Income Security Act) serves to

protect companies from frivolous lawsuits, but it also prevents individuals from winning valid cases. Under ERISA, corporations are obligated to abide by what is expressly stated in their health care plan. A plan need not give preference to an individual's treating doctor over the plan's physi-

*(Continued on page 3)*

## Medical Students Lend Their Skills to the Health Law Clinic



Five 4th year students at the University of Pittsburgh Medical Center volunteered with the Health Law Clinic during the spring 2004 semester, as part of a UPMC

internship program. The Community Health elective, headed by Dr. Thuy

Bui, focuses on health care for underserved populations. While volunteering at the Health Law Clinic, each student met with clients to explain medical terms, assisted in interviewing clients, and served as an overall resource for medical issues. The students also have the opportunity to attend the clients' hearings.

The medical students are grateful for the chance to work directly with Clinic clients and participate in legal cases.

Through their time here, they learn how to advocate for patients while gaining first-hand experience in medical law. The arrangement is beneficial to both the medical and the law school; the students learn from one another while they work together to serve the Pittsburgh community.



## Environmental Law Students Take On the Turnpike Commission

The Environmental Law Clinic in the Spring Semester, headed by Tom Buchele, consists of only four students—Dana Adipietro, Natalie Kreter, Emily Lewis, and Elaine Wizzard. Despite its small size and moderate resources, the clinic serves a powerful function in the Pittsburgh community, representing the interests of individuals and small organizations in cases pertaining to environmental issues. According to Dana, the clinic “offers its students the unique opportunity of applying the knowledge they’ve obtained in the classroom to actual cases. The Clinic’s role in confronting environmental legal issues includes litigation, but also, and perhaps most importantly, education and many forms of advocacy,” as well as “providing legal representation to those who are unable to obtain access through other ways.”

During the spring 2004 semester, the students collaborated on a major project with a local activist group, Citizens for Alternatives to New Toll Roads (CANTR). CANTR approached the clinic students for legal aid in protesting the Turnpike Commission’s plan to build a new highway, the Mon-Fayette Toll Road. The proposed toll road would cut through residential neighborhoods and riverfront property along the north shore of the Monongahela River. The group has many concerns about the plan—the cost to taxpayers could be high, and hundreds of residents would be displaced by the road’s construction. The road would also cause major destruction to the surrounding area’s environment, polluting the air and water with the increased traffic flow; effectively, ruining the area’s livability.

The Turnpike Commission has issued an Environmental Impact Statement, which details their plans for the building of the toll road. In response, the clinic students have worked with CANTR to evaluate and critique the EIS, compiling a statement of their concerns and proposed alternatives. Each student worked on a different aspect of CANTR’s environmental concerns—environmental justice; air pollution; water pollution; and an analysis of alternatives, such as improving existing roads and systems of public transportation. After spending months researching the case and compiling data, the students recently sent CANTR’s comments to the Commission. The Commission is likely to respond with a Record of Decision in the fall of 2004. More information on the issue can be found at CANTR’s website, [www.stopthetollroad.org](http://www.stopthetollroad.org).

## Students Work in Elder Law

In between study sessions for the bar exam, two third-year students, Stephanie Gallo and Holly Wilkinson, worked on several cases for Prof. Martha Mannix’s Elder Law Clinic. Primarily, their work involved authorizing powers of attorney for the elderly, as well as a guardianship hearing for a physically and mentally disabled young man.

Most of the clients for whom they have authorized power of attorney were elderly Russian women from the Community Life Center in Homestead, PA. Stephanie and Holly worked with a translator to describe the legal process to their clients. In these cases, the client must authorize another individual,

typically a friend or family member, to make decisions regarding the client’s health and funeral decisions in case the client becomes ill or incapacitated. In addition to the language barrier, the process is sometimes made more difficult by cultural differences. The students found that Russian women are generally reluctant to discuss the subject of their own mortality, making it challenging for them to discuss end-of-life legal decisions. Despite such obstacles, the students successfully authorized power of attorney decisions for multiple clients throughout the semester.

Stephanie and Holly also represented the parents of a young man with mental and physical disabilities at a guardianship hearing. The 20-year old male is afflicted with cerebral palsy and severe mental retardation, and his parents have always been responsible for decisions regarding his health and welfare. However, once he turned 21, his parents were no longer his legal guardians in the eyes of the state. The young man’s parents enlisted the Clinic students’ help to obtain legal guardianship of their son. The students advocated for their clients at a hearing in mid-May, along with testimonies from the parents and from the young man’s doctor. They were successful in authorizing guardianship for their clients.

## A Successful Appeal for a Sick Child

Second-year student Monica Costlow, with assistance from fellow student Austin Evans, recently filed a successful appeal regarding health care coverage for a twelve-year old girl with chronic physical developmental problems at the Health Law Clinic. Since birth, the client has been afflicted with a heart condition and severe growth impairment. Her medical and financial needs, including growth hormones at a cost of \$20,000 a year and an additional monthly allotment of around \$500, had been covered by Supplementary Security Income (SSI), a government-funded financial assistance program for people with disabilities. However, after a slight weight gain, SSI determined that she was no longer eligible for disability benefits, as she was now in the fifth percentile of size for her age, while only those below the third percentile qualified. Because of this arbitrary cut-off, SSI elected to discontinue her cov-

erage, despite her continuing health problems. Her parents were afraid that they would be unable to pay the exorbitant costs of her medical bills, and were concerned that she would no longer be able to get the treatment that she needed.

Recent medical tests determined that the child was afflicted with Turner's Syndrome. This disease is a chromosomal disorder that affects one out of every 2,500 females. Characteristics include small stature, webbed skin around the neck, the inability to reproduce, and chronic heart, kidney, and thyroid problems. The disease is currently incurable, but treatments such as growth hormone and estrogen replacement therapy can be effective in minimizing the severity of the condition, and helping those afflicted to lead normal lives.

Following the child's new diagnosis, the

family, assisted by the law students, appealed the government's decision to discontinue medical coverage. They used the child's medical records and the National Institute of Health's report on Turner's Syndrome to argue that she should continue to be covered by SSI, in light of her new diagnosis. Rather than presenting the case in a courtroom, the judge decided to hear the appeal off the record. He looked over the students' report of the findings, and questioned them for about twenty minutes. Although it is customary to question the client's family as well, this was unnecessary because the students' brief was so convincing. He quickly decided in their favor, reinstating the child's medical coverage. Thanks to the clinical students' hard work, the child will be able to get the continuing medical treatment and financial assistance that she needs to live a long and healthy life.

## A Journey to the Third Circuit (cont.)

*(Continued from page 1)*

cians, even if they have had no personal contact with the patient. The United States Supreme Court issued an opinion setting forth this principle as this appeal was pending. This unfortunate turn of events makes it even more difficult to argue against a company's denial of benefits.

Jonathan worked to seek a reversal in the Third Circuit Court of Appeals in Philadelphia. He had spent months researching the legal briefs and affidavits from her case. The court date was announced only a week beforehand. On

March 8th, during Spring Break, he, Prof. Stella Smetanka, and the client traveled to Philadelphia to appear before a three judge panel. He was allotted fifteen minutes to argue the merits of the case, requiring him to condense information amounting to over thirty pages of legal briefs into a short argument. Jonathan stated that because the health plan's physicians had neglected to study Melanie's personal medical history in making their decision, they had ignored the regulations of their plan. Also, because the health care plan was funded directly from the budget of the corporation, their decisions should

be more carefully scrutinized, as they were likely to guard their own financial interests. He argued that the case should be decided under a sliding scale of review, and that a trial should be held.

Jonathan's opposing counsel was an adjunct law professor at the University of Pennsylvania and an in-house lawyer for the corporation. He argued that the issue was merely a difference of medical opinion between the client's physician and the plan's doctors, rather than a case of negligence on the part of the plan's adminis-

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## The Hearing that Never Happened



At 8:30 am on Wednesday, April 14th, Julie Lee and Joshua Knepp, two Health Clinic students were scheduled for a one-hour hearing before a judge at the office of Hearings and Appeals of the Social Security Administration. They were representing a man who was both schizophrenic and mentally retarded, who could not work and was applying for disability benefits. The students had prepared a list of questions to ask the client, as well as opening and closing statements. Before the hearing, they had submitted a memorandum detailing the case, as well as an expert testimony

from a psychiatrist who had examined the client. They were well prepared for the hearing, but it never happened. Upon entering the courtroom, the judge stated that she had looked over the students' memorandum, and agreed that the client was disabled and entitled to benefits. The verdict was announced before the students had even said a word. Professor Smetanka reminded the students that their advocacy in the written hearing memorandum contained the most important words uttered for their client that day.



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## Alumni News

- Heather Lynne Alexander, '03, and Hoyt Shay Hooks, '03, will be married on June 26, 2004, in Myrtle Beach, SC
- Michael Parker, '03, is serving with the National Guard in Iraq (His address is SSG Parker, Michael A., HHC 458th En Bn, APO AE 09344)
- Neysha Sanders, '03, is in private practice with her father, Alix Sanders, in the family firm, Sanders & Associates in Greenwood, MS, and also is Public Defender for the city of Greenwood, city attorney for the towns of Sidon and Doodsville, MS, legal counsel for the HUD Fair Housing and Lending Project
- Glenys Spence, '03, clerks for the Hon. John F. Wagner, Fayette County, PA
- Michael L. Studd, '03, is practicing law with Thomas A. Will & Assoc., 2 Gateway Center, Pittsburgh, PA
- Megan (Schardt) Vozila, '03, practices in Sydney, Australia
- Jessica Ellel, '02, is the Social Security Law Clerk for the US District Court for the Western District of PA
- These grads are sole practitioners: Eli J. Guiterman, '02, Suite 1080, 1825 K Street, N.W., Washington, DC 20006
- Charles J. Yates, '02, 2660 Monroeville, PA 15146
- Tom Cook, '98, 245 Fort Pitt Boulevard, Pittsburgh, PA 15222

## Lauren Alder is Recognized



Lauren Alder '04

This year the CLEA (Clinical Legal Education Association) Outstanding Clinical Student Award was given to Lauren Alder, who graduated in May 2004. She participated in the work of the Health Law Clinic in the summer of her first year, and during her entire third year of law school, working on a variety of cases. She exhibited a patience, compassion and persistence in her dedication to her client work. Congratulations, Lauren!

## A Journey to the Third Circuit (cont.)

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trators. If the judges agreed with his opinion, there would be no legal basis for a new trial.

Several weeks later, the court's opinion in favor of the defendant/appellee was released. It carefully reviewed the facts of the case, but found that, even under a heightened standard of review, because "plan administrators are not obliged to defer to the treating physician's opinion, the District Court did not err in upholding the decision of the plan administrators". They agreed with the opposing counsel's statement that the dispute was a difference of medical opinion, rather than a misdiagnosis of the plan. The judges were sympathetic to the client's ordeal, but based on legal precedents, they did not feel that they could rule in her favor.

In spite of the Court's decision, the case was an invaluable experience for the Health Law Clinic. Since the Fall of 2001, students worked at all stages of the case, culminating in the Third Circuit argument. The client was grateful for legal representation, which would have otherwise been unavailable to her for financial reasons. Thanks to the

Clinic, she had the opportunity to fight for justice within the legal system. For Jonathan, the chance to prepare and present

the appeal was the ultimate "hands-on" legal educational experience.

**WRITE AND TELL US ABOUT YOU!**

We would love to know how you are doing — significant and not-so-significant events, job changes, pro bono activities, etc.

Email us at [cpc@law.pitt.edu](mailto:cpc@law.pitt.edu)