



Washburn Law Clinic
WASHBURN UNIVERSITY SCHOOL OF LAW™

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FALL 2013

May it Please the Court

PETITIONER APPEARS IN PERSON AND THROUGH COUNSEL

By Sara Ehret, '14

Enrolling in the Law Clinic was the best decision I made during my law school career.

Enrolling in the Law Clinic was the best decision I made during my law school career. In fact, one of the reasons I chose to attend Washburn Law was the Clinic opportunity. I will graduate in May 2014 and needed to acquire the ever-desirable practical experience so many employers seek in graduates. During the summer, I practiced in the family law and immigration areas, where I represented clients in divorces with minor children of the marriage, an immigration matter, and a stepparent adoption. The adoption case quickly turned into one of my favorite cases even though it was challenging at times. In the end, it was definitely the most rewarding.

The adoption process started in late June and the final hearing was held at the end of August. (I was granted permission to enroll as a Directed Intern during the fall 2013 semester). More than half the 200 hours I worked in Clinic over the summer was spent on this one case. My client came to the Law Clinic seeking to adopt her stepson. I began the process thinking

it would be a simple case. However, like many cases, it became much more complicated as it progressed.

One of the first issues I faced was interpreting the statutes. The statute was clearly written for a stepfather adoption, not a stepmother adoption. I spent many hours reconciling the language of the statute with the issues and making sure my arguments made sense.

In addition, I had to interpret the stepparent statute to determine when an adoption can be granted without parental consent. If the biological parents were married, attempted to marry, or their marriage was voided for some other reason, an adoption can only be granted if the mother has failed to assume the duties of a parent for the last two years. However, if paternity was established through genetic testing, open acknowledgment, or rape, the factors for determining unfitness are much broader. Recent case law helped me to understand

Please the Court - cont. on page 2



Judge Jean M. Schmidt, '82, presents Sara Ehret, '14, with a Rule 719 certificate.



Please the Court - cont. from page 1

what I needed to prove since the biological mother refused to give consent.

During this case, I learned how to serve notice on a person without any idea of where to locate them. For an adoption, all interested parties must have notice, including both biological parents. We had very little knowledge of how to find the biological mother, as she had not been in the child's life for many years. I was unsuccessful in my attempts to serve her through mail so I served her through publication in the newspaper. Service by publication requires permission from the judge, but first I had to provide proof that both the biological father and I exercised as much effort as reasonable to locate the biological mother.

In this case, we were ultimately able to find the mother through Facebook. After passing this information on to the mother's court appointed lawyer, she actually got in touch with the biological mother. The statute does not accept Facebook as a legally acceptable alternative to mailing notice, at least not yet. But Facebook did lead to actual notice through more traditional methods of service.

Not knowing if the biological mother would attend the hearing, I had to prepare for two different hearing scenarios:

In the first scenario, the biological mother appears and refuses to consent to the adoption. I was prepared to examine the biological father, his mother, his sister, and my client to obtain evidence of the biological mother's history with the child. I also prepared cross-examination questions for the biological mother, exhibits,

"I wanted to do an additional semester of clinic because I knew how useful the additional experience would be for me. I also wanted to be there for my clients whose cases were coming to a close so they would have the same intern from start to finish."

Sara Ehret, '14

and a closing statement. In essence, I prepared for a full hearing. In this scenario, if the judge determines the biological mother is fit and has rights to the child, he dismisses the adoption.

In the second scenario, and the one that played out that day in court, the biological mother does not appear and it is not necessary to call witnesses, submit exhibits, or give a closing statement. Instead, I only have to prove that it is in the best interest of the child for my client to be his mother. I did have to call my client to the stand to establish she qualified as a fit parent. The best part of the hearing was the presence of the child in the courtroom and hearing him cheer on his soon-to-be official mom as she

gave her testimony. Ultimately, the adoption was granted.

I saw the good, the bad, and the ugly while working on this case. I encountered a few bumps in the road while handling this case start to finish, but the joy I experienced while helping bring a family together made the efforts well worth it.

Prior to enrolling in Clinic, I had taken the adoption class and struggled. I was fully prepared to not incorporate adoptions into my practice after graduation. I felt defeated.

Now that I have successfully completed an adoption, I am confident that if I do not immediately know the answer, I now know where to find the answers, and I am not intimidated at the thought of representing another client in a similar matter.

Enrolling in Clinic was the best decision I made during my law school career. I feel the experience and confidence I gained through my Clinic experience has helped to turn me into a "ready to practice" lawyer. I look forward to bringing more families together in the future.



Professor Lynette Petty was the supervising attorney for this case.

EXPERIENCING CLINIC ON THE FAST TRACK

by Clay Kuhns, '14

One of the reasons I chose Washburn Law was the Fast Track program and the ability to graduate in two years.



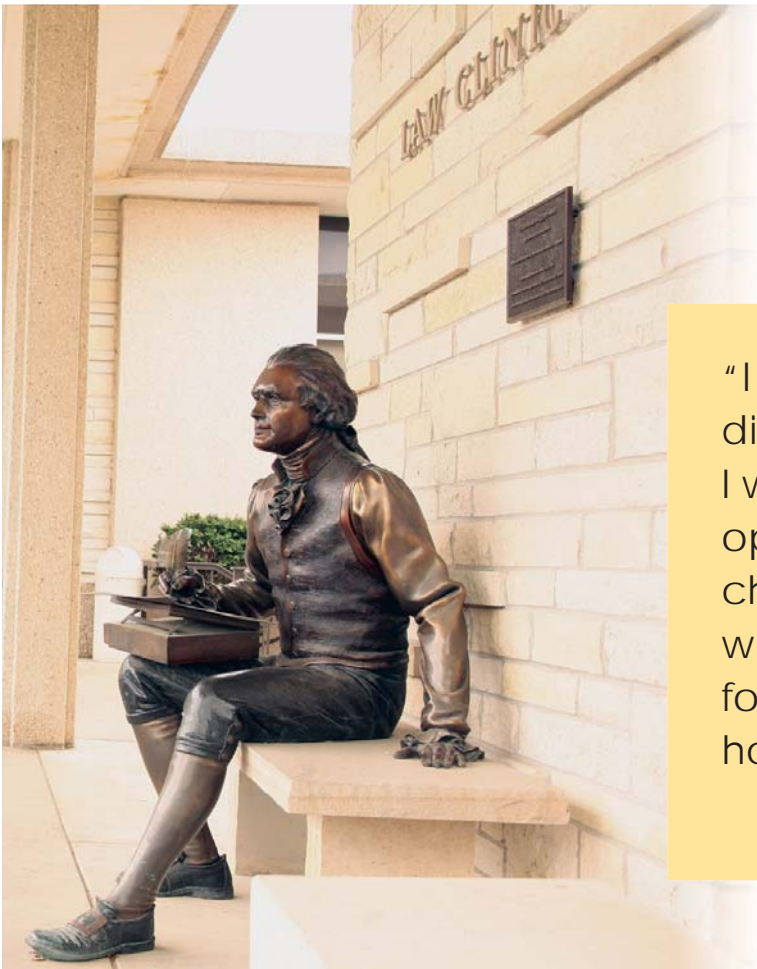
The Fast Track program offered a great opportunity to get through law school quickly and into practice a year earlier. While I knew that the quality of the classes I chose would not suffer by joining

the Fast Track, I was concerned that I would miss out on valuable legal experience. That is why I enrolled in the Washburn Law Clinic.

The Washburn Law Clinic provides many students their first chance to handle real cases, real issues, and real people. You're in the driver's seat as you and your supervisor discuss interview strategies, case theories, trial

tactics, and much more. You begin to learn the practice of law with a staff that is truly dedicated to seeing you succeed. Most importantly, the Washburn Law Clinic provides an incredible amount of legal experience.

A great legal education necessarily includes legal experience. Even if you plan on joining the Fast Track and graduating in two years, don't forget to gain valuable legal experience by enrolling in the Washburn Law Clinic. The pathway to practice begins at the Washburn Law Clinic; don't miss out on your opportunity to become "practice ready."



"I wanted to stay on for a directed internship because I was given the unique opportunity to work on children's cases, an experience which is helping to prepare me for the exact kind of work that I hope to do after I graduate."

Lindsee Acton, '14

Clinic Swearing-in Ceremonies

JOHNSON AND SCHMIDT PRESIDE



Justice Lee A. Johnson administers the Oath to the fall interns.

In his opening statement to the fall Washburn Law Clinic interns, Justice Lee A. Johnson commended them for being clever enough to take Law Clinic.

Although **Justice Johnson**, '80, did not participate in Clinic during his time at Washburn Law, he extolled the benefits of doing so.

Justice Johnson presided over the Fall Swearing-in Ceremony for Washburn Law Clinic interns on August 29. Justice Johnson graduated from Washburn University School of Law *summa cum laude* with the class of 1980 and practiced law in Caldwell, Kansas, upon graduation. He was appointed to the Kansas Supreme Court effective January 8, 2007, following his tenure on the Kansas Court Appeals from 2001 to 2007.

Justice Johnson advised the students that as interns they have responsibilities to their professors; Washburn Law; the Supreme Court, which includes him personally; future students; and the profession. He also told the interns to conduct themselves

in a manner suiting the profession; interns should not only know the Rules of Professional Conduct, but they should live the rules, study them, and refer to them often.

Recalling an acquaintance he knew in his early days as an attorney, he warned the interns to not become a



Samuel Clevenger, '14, receives his Rule 719 certificate from Justice Lee A. Johnson.

“law merchant.” His definition of a “law merchant” was an attorney who sells legal services for money and is mostly interested in making money. Justice Johnson told the interns to strive to be a “professional attorney,” which is something bigger, someone who works as hard for an indigent client as they would an affluent client.

He closed his statements with the reminder that full performance from all participants in the legal process — law enforcement, prosecutors, defense attorneys, and judges — is necessary to make the system work. And, whatever your role is in the system, do it to the best of your ability and be professional.

The Law Clinic is greatly appreciative of Justice Johnson and other prominent alumni who generously share their experience and time with our law students.

“Know the Rules of Professional Conduct and live the rules — study them and refer to them often.”

Justice Lee A. Johnson



Christopher Lyon, Booten Carr, Joshua Conway, Lindsee Acton, Judge Schmidt, Clay Kuhns, Sara Ehret, Jane Peiffer-Salladay, and Adam Brinley.

Judge Jean M. Schmidt began her remarks by telling the interns, “I can’t think of a better way to see the constitution in action than by representing people in family law cases and cases dealing with children.”

She explained that these types of cases required thoughtful reflection by everyone involved.

Clinic interns enrolled in the summer semester were sworn into student practice by **Judge Schmidt, ’82**, in her courtroom in the Shawnee County District Courthouse on May 22.

Judge Schmidt was appointed to the bench in 2003. She received

her law degree from Washburn University School of Law in 1982 and practiced law for 21 years with governmental agencies, primarily as a prosecutor. Throughout her career she has remained active in providing continuing legal education in the fields of domestic, child advocacy, and criminal law.

She advised the interns that the skills they learn while in Clinic will

be valuable to their careers and appreciated by the judges they appear before. The judge noted that she likes to see Clinic interns file their appearances in her court because their pleadings are always perfect.

In closing, Judge Schmidt reminded the interns to treat everyone they come into contact with throughout their careers with dignity and respect; the roles of the participants in a court proceeding must be treated with respect as each role has value.

The Law Clinic is greatly appreciative of Judge Schmidt and other prominent alumni who generously share their experience and time with our law students.



Washburn Law Clinic summer interns are sworn-in by Judge Jean M. Schmidt.

AN OPPORTUNITY TO GAIN REAL EXPERIENCE - A BLOG POSTING



By Jenni Howsman, '14

This semester I'm in two clinics: the criminal defense litigation clinic and appellate advocacy.

I'm currently working on two cases in the criminal defense litigation clinic, and the first of two appeals for appellate advocacy. The cases for criminal defense clinic involve a domestic battery and a DUI. I'm in the beginning stages of my appeal – so I'm not sure what issues I'm raising yet, but it is an appeal from a felony drug case.

I recently argued two motions for the domestic battery case in front of a judge for the first time. It was a great first court experience! Having Professor Francis there was extremely helpful – as interns we're in control of arguments in the courtroom; Professor Francis was there to ensure that all the important aspects of the arguments came out. As supervising attorney, Professor Francis spent a lot of time helping me prepare for the motion arguments by going over case strategy, and really figuring out the best way to present our side of the case to the court.

One of my favorite aspects of Clinic is getting a feel for what it's like in the real world of practicing

attorneys. The Clinic is in fact a real law firm, working for actual people in the community and helping them with their legal issues. I really enjoy the fact that clinic provides me the opportunity and ability to help people in the community and make a difference, while I'm still in law school.

The courtroom isn't like class where you can skim a reading before class and pray you don't get called on; the judge is going to ask questions and you're going to have rebuttal arguments. I'm thankful to be learning all these lessons in the environment of the clinic and with Professor Francis being there for each stage of the case.

I believe that clinic is a great opportunity that every student should try to take advantage of before graduation. Clinic gets you out of the law student mindset — in class you read and discuss why there's a certain policy or how the court looked at certain legal issues in deciding a particular way. In clinic – you're the one that's going to be arguing policies to a judge and how those policies apply to the facts of your case. You're the lawyer making tactical decisions that can affect the outcome of the case.

Clinic has also reminded me that our legal system isn't perfect, but it's also great to know that law is always evolving. I think it's really important for law students to remember that as lawyers, they can help shape – and even change the law.

JOSHUA GARRETT EARNS SPRING 2013 UNGERMAN AWARD

By Professor John J. Francis



Joshua Garrett, '13

I had the great honor and privilege of supervising a group of outstanding interns in the criminal practice area of the Litigation Clinic during the spring semester. The interns represented clients in a wide range of criminal cases, involving DUI, minor drug possession, theft, domestic battery, unlawful discharge of a firearm, along with various and sundry, often complex, issues — including those involving issues of drug addiction and mental illness. All of these interns did a great job in discharging their duties of representation to their clients admirably, skillfully, and effectively.

But there was one intern in particular whose clinic work, in the Clinic faculty's judgment, best exemplifies the spirit of the Ungerman Award — Joshua Garrett. For most of the semester, he represented one client in several cases. Soon after the semester started, Garrett was confronted with a motion to revoke a diversion in a prior case involving possession of alcohol and drug paraphernalia, based on a new DUI charge. In preparing for the hearing on the motion to

revoke, Garrett discovered that the stipulated facts underlying the diversion agreement were insufficient to establish one of the charges beyond a reasonable doubt. At the hearing, he exercised great judgment, initiative and skillful advocacy in presenting and arguing this legal defect to the court, and thus precluded his client from being found guilty on that charge.

Garrett then represented his client in a Department of Revenue administrative hearing that arose in conjunction with the DUI charge. He did a masterful job in examining the arresting officer to set the stage for the defense of his client on the DUI. That defense included the filing of a motion, and a hearing, to suppress the evidence against the client due to a lack of probable cause to arrest.

Garrett's careful preparation and research was evident in his performance at the hearing, and he exhibited great skill in cross-examining the State's witnesses and presenting his closing argument to the court. The court granted the motion to suppress in part, which then set the stage, not only for a jury trial, but for a potential appellate issue arguing that the evidence remaining after the court's suppression order is insufficient to establish probable cause for the arrest. Garrett exhibited the highest level of professional skill, judgment and advocacy during each stage of his Clinic representation, and he deserves special recognition.

Garrett passed the Missouri bar in July and graduated in August.

MCPEAK NAMED ELLIS & JUDD OUTSTANDING DIRECTED INTERN

By Professor Lynette Petty



Carly McPeak, '13

Carly McPeak is the recipient of the spring 2013 Ellis & Judd Outstanding Directed Intern Award. At the beginning of the semester, McPeak was handed a hotly contested divorce case which was complicated by a protection from stalking case and two criminal matters stemming from the actions of our client's abusive husband. After negotiating a settlement of the case and preparing to present the terms at pretrial, McPeak was advised moments before the hearing that the settlement was off. Trial was set with less than three weeks to prepare.

McPeak did a masterful job preparing for the hearing. She dealt with multiple issues at trial, including debt and property division, child support, distribution of tax refunds, and parenting time. McPeak poured through mounds of evidence to determine which documents should be introduced into evidence. Her direct required a skillful telling of a complicated story over emotional details of the events that had transpired. While our client's income was limited, McPeak worked with

the facts she had to show the Court that our client could cash flow the mortgage on the house and pay the debts to cover her husband's equity.

To add to McPeak's challenges, the Respondent was represented by a very experienced attorney known for his trial work and ability to effectively cross examine witnesses. McPeak more than held her own. Her preparation paid off for her client who ultimately prevailed on every issue.

The Ellis & Judd Outstanding Directed Intern Award is given to the directed intern who has distinguished herself by combining competent, vigorous representation with the compassion necessary to become a truly effective lawyer. McPeak has definitely earned her award.

McPeak graduated in May and passed the Kansas bar in July.



"Clinic has given me exposure to the courtroom and has helped me to understand the commitment necessary to serve clients."

Jennifer Ouellette, '14

Law Clinic Interns - FALL 2013



BreAnne Hendricks, Jennifer Ouellette,
and Hazel Gauthier

Family law and immigration matters are the areas of concentration for Professor Lynette Petty's interns. These students are representing individuals in cases such as divorce with minor children of the marriage, adoption, and paternity as well as representing the best interest of children in Child in Need of Care matters which are heard in Juvenile Court. They are also representing foreign born individuals in VAWA, U-Visa and Deferred Action for Childhood Arrival cases.

Under the supervision of Professor John Francis, these interns are concentrating on criminal defense matters. They are currently representing individuals with charges such as felony theft, burglary, obstruction of justice, possession of drugs and paraphernalia, DUI, criminal trespass, driving while suspended, domestic battery, and destruction of property. They have appeared in Topeka Municipal Court, Shawnee County District Court, and Prairie Band Potawatomi Nation Tribal District Court.



Gerald Jackson, Michael Duenes,
Christopher Rohr, and Jenni Howsman
(not pictured: Christopher Ray)



Matthew Sullard, Tucker Stewart,
Juliann Burton, Hiwot Berihun, Joseph
Astrab, Samuel Clevenger, Jesse Haller,
and Christopher Gunn

Small Business and Nonprofit Transactional Law Clinic interns represent entities in transactional matters such as business planning, counseling on choice of entity, business start-up, applying for federal tax exempt status, merging of nonprofits, nonprofit board governance, contract drafting, trademark and copyright issues, and lease negotiation. Professor Janet Thompson Jackson is the supervising attorney for this clinic.

Interns work collaboratively with the Washburn Small Business Development Center as a part of the SBDC's business workshop series. Each semester, students give presentations to about 30 entrepreneurs on topics such as, ethical and legal foundations for businesses, choice of entity, intellectual property, contract formation and enforcement, e-commerce, employees vs. independent contractors, and taxation for small businesses.

Interns concentrating on general civil matters are doing so under the supervision of Professor Curtis Waugh. They are representing individuals in landlord/tenant matters, title issues, consumer issues, and debtor-creditor matters along with estate planning such as wills, power of attorney documents, and advance directives.



Adam Brillhart, Nhu Nguyen,
Jason Eslinger, Kelsy Allison,
and Maurice Brewer