ST. JOHN'S UNIVERSITY

COLLEGE OF PROFESSIONAL STUDIES

THE LEGAL APPRENTICE

Volume 2 Spring 2015 Number 1

THE LEGAL APPRENTICE

ARTICLES

ST. JOHN'S UNIVERSITY

COLLEGE OF PROFESSIONAL STUDIES

OFFICES OF ADMINISTRATION AND FACULTY
2014 – 2015

JEFFREY GROSSMANN, J.D.
DEAN

ELLEN TUFANO, PH.D.
ASSOCIATE DEAN

* * *

ANTOINETTE COLLARINI-SCHLOSSBERG, J.D.
CHAIRPERSON
CRIMINAL JUSTICE, LEGAL STUDIES, HOMELAND SECURITY

BERNARD HELLDORFER, J.D.
DIRECTOR
LEGAL STUDIES

MARY NOE, J.D.
ASSOCIATE PROFESSOR
EDITOR

JAMES CROFT, J.D.
ASSISTANT PROFESSOR
ASSISTANT EDITOR

THE LEGAL APPRENTICE

THE LEGAL SOCIETY

FOREWORD

The College of Professional Studies is pleased to present the second volume of *The Legal Apprentice*. It is a showcase for fine student writing on topics of or pertaining to the law and is open to all students of the University.

Writing is both a skill and an art. As Chief Judge Loretta A. Preska of the United States District Court for the Southern District of New York noted in her introductory remarks to the inaugural issue of *The Legal Apprentice*, "proficiency in writing is not a genetic trait. It is a skill learned over a lifetime. We evolve and improve with practice. More writing begets better writing."

How could a concert pianist ever achieve greatness if there were no audiences to listen to his or her work? An audience inspires an artist to greater effort and accomplishment. In this respect, good writers are no different. Good writers also deserve good audiences and that is where *The Legal Apprentice* comes in to play. This brainchild of Professor Mary Noe strives to achieve two worthy goals. First, it motivates students to concentrate on the skills of critical thinking and competent writing by providing them with a worthy platform to display their works. Second, it generates quality student scholarship that adds to the body of knowledge on important legal topics of the day.

A special thanks to Hon. P. Kevin Castel for supporting the journal and recognizing the importance of showcasing excellence in student's writing.

I applaud our student writers for their fine performances. I encourage all students to read these articles, learn from them and consider contributing their own efforts to a future edition of this publication. Congratulations to all!

Jeffrey P. Grossmann

Jeffrey P. Grossmann J.D.
Interim Dean
College of Professional Studies

Editor's Note: CPS student Jessica Fusco authored an article for the inaugural issue of The Legal Apprentice based upon a case brought by a woman who had been mauled by a pet chimpanzee in an attack that received national attention. Judge John F. Blawie of the Connecticut Superior Court denied a motion to dismiss the claims against the owner of the chimpanzee in a well-reasoned decision, Nash v. Herold, 50 Conn. L. Rptr. 45 (Conn. Super 2010). Judge Blawie, inspired by the undergraduate article, generously contributed this Welcome Note on the importance of quality writing . We express our gratitude to Judge Blawie.

WELCOME NOTE

HON. JOHN F. BLAWIE*

It is a pleasure to write a welcome note to this, the second edition of *The Legal Apprentice.* It is an exciting time to play an active role in the American legal profession. We are a nation of laws, a nation where the law touches so many aspects of our lives. In no other profession does one partake of as much of the astounding variety of life, and bear witness to the constant interplay between our nation's organizing principles and the problems of modern society, problems both capable of resolution and those that are seemingly more intractable. The proper balance between our rights and responsibilities as citizens is always in play (if not always explicitly stated), and one need only recall that virtually every major domestic news story in this century has involved both lawyers and our judicial branches of government in one way or another.

I well recall the solemn honor of taking the oath of admission to the bar as a young attorney. Oliver Wendell Holmes once reflected on that very sense of honor in his remarks at a bar association dinner. Holmes acknowledged the lawyer jokes that were already in circulation, but put them in context. "The world has its fling at lawyers sometimes," he said, "but its very denial is an admission. It feels - what I believe to be the truth - that of all secular professions, this has the highest standards."[1] While

* Judge, Superior Court, State of Connecticut; B.A., The College of the Holy Cross; J.D. University of Connecticut School of Law.

[1] O. Holmes, Suffolk Bar Association Dinner (February 5, 1885), in Collected Legal Papers of Oliver Wendell Holmes, (Harcourt Brace and Company 1952 Ed.).

Holmes is still considered one of the most brilliant Justices to ever serve on the Supreme Court, at times even he expressed feelings of inadequacy for the task at hand. In 1923, after over twenty years of distinguished service on our nation's highest court, Holmes wrote a letter to a young law student and future jurist that contains a key insight. It is a point which should be kept in mind by all aspiring legal writers as they begin to grapple with the law's complexities. Holmes wrote,

Probably you will find as I do, that *ideas are not difficult, that the trouble is in the words in which they are expressed.* Every group, and even almost every individual when he has acquired a definite mode of thought, gets a more or less special terminology, which it takes time for an outsider to live into. Having to listen to arguments, now about railroad business, now about a patent, now about an admiralty case, now about mining law and so on, a thousand times I have thought that I was hopelessly stupid and as many times have found that *when I got hold of the language, there was no such thing as a difficult case*. There are plenty of cases about which one doubts, and may doubt forever, as the premises for reasoning are not exact, but all the cases when you have walked up and seized the lion's skin come uncovered and show the old donkey of a question of law, like all the rest. (Emphasis added.) [2]

Whether or not a degree from St. John's actually leads on to a career in law should not be the entire point of *The Legal Apprentice*. Regardless of their course concentration or declared undergraduate major, any successful career path for St. John's graduates will demand a strong set of written communication skills. Ideally therefore, the art of writing itself is also a focus of this journal, which makes its publication a most worthy exercise for all student authors, future lawyers and non-lawyers alike. For those students who do decide to become attorneys, one law school professor has some sound advice about the unique quality of such an education. "Law is almost entirely dependent on analogies. In my first year of law school, my contracts professor, Gerald Frug, said something brilliant in its simplicity: 'All things are alike in some ways and different in other ways.' It was a warning that for the next three years, we would hear endless arguments that a case must be decided a particular way because a previous case or a statute required it. The two cases, or the case and the statute, would always be alike in some ways and different in others - and law school was really about arguing whether the similarities or the differences

[2] O. Holmes, Letter to John C. H. Wu (May 14, 1923), in The Mind and Faith of Justice Holmes, p. 421 (Max Lerner, ed., Random House 1948 Ed.).

were more important."[3] In my experience as a former trial lawyer and now judge, the ability to persuasively articulate those similarities and differences is a key to success in this field. Moreover, those students who are able to some degree to master the twin arts of dissecting analogies and writing well enjoy the added advantage of becoming more employable. The old saw that there are too many lawyers has some validity, but there are not too many good ones. Over the years I have had occasion to evaluate candidates for many jobs within the legal field, having sat on hiring committees for selections of attorneys, law enforcement officers, administrative assistants, judicial clerks and law student interns. I can attest to the value of a well-drafted writing sample as a critical part of the hiring process. A clear writer is a sign of a clear thinker. Clarity ensures that you'll be better understood by your reader, and therefore more likely to persuade them.

Clear writing is invaluable in the context of our adversary system of litigation, where sparks are often created by the clash of opposing ideas. The courtroom is not the place for the faint of heart to attempt to earn a living, and as a judge I pray for sparks of light that will better illuminate, rather than obfuscate, the case or controversy at hand. Students should recognize that not every significant legal issue or high stakes case is necessarily won in open court on an advocate's feet with an effective oral argument before a tribunal. The upper hand - if not victory itself - may often be first achieved by the more persuasively written brief, one submitted days beforehand and read in chambers. The clearer your writing, the better you will structure and state your legal arguments, and the application of the law to the facts. The added benefit of clarity is that it also proves harder for your opponent to mischaracterize your position. For that reason, beware of any legal arguments that devolve into abstractions, or those that are heavily laden with jargon. The real world implications of a law or regulation are best illustrated by the use of concrete examples and analogies. While legal briefs may necessarily reference abstract legal concepts, the law does not originate in the ether, but laws are promulgated and applied in the context of the ordinary affairs of people's lives.

George Plimpton once gave some advice to aspiring public speakers that is just as valid for aspiring writers. "An audience makes up its mind very quickly," Plimpton said. "Once the mood of an audience is set, it is difficult to change it, which is why introductions are important." [4] While

[3] A. Cohen, "An SAT Without Analogies Is Like: (A) A Confused Citizenry...," N.Y. Times, March 13, 2005.

[4] Malcolm Forbes, How to Use the Power of the Printed Word (Anchor 1985 Ed.).

digital platforms such as Twitter are not the primary or exclusive means of communication these days, Twitter's pithy popularity illustrates the point that today's readers are also apt to make up their minds quickly, and need to be persuaded to accept an author's point of view. If you do not know the topic you are writing about, you must first learn it before you have earned the right to take your reader's time, and if you can ever dare hope that your words will hold your reader's attention. The best books and articles emerge from the strongest convictions, and are written by those most fully informed. As a writer, you assume an obligation toward your reader to write as well as you are able, with the college years being an ideal time to study the masters of English prose writing to improve your own proficiency. Beginners learn how to write, but whether your work is 140 or 140,000 characters long or more, becoming a writer is a different proposition. Therefore, before you ever pick up a pen or sit down at a keyboard to compose, you must first answer for yourself the threshold question of what your purpose is in writing at all. Knowing your intended audience and keeping your readers in mind are critical to success as an author in any field. Establish a goal. Are you seeking to persuade, or to inform, or to instruct or induce inquiry, or to inspire and reinforce existing beliefs, to write a work of fiction, or perhaps simply to entertain or amuse your readers? These goals are not necessarily mutually exclusive. A single well written work may in fact achieve several purposes, but different considerations come into play for each desired end.

A law degree is neither a guarantee of common sense, nor is it necessarily the mark of a great writer. However, in the hands of a skillful writer, abstractions become less abstract and more readily explicable, and a law review article, legal brief, or even a brief op-ed piece is thereby made more readable. Anything made more readable by the author is by definition more interesting to the reader. MAKE IT INTERESTING – that is your job as 21st Century writers, at least if you hope to ever be able to gain traction through your writing towards any discernable goal in the law or elsewhere. We may well be living in the information age, an era of rapid and transformative change wrought by modern technology, but any student who aspires to write well must raise their standards, and continuously strive to improve their craft if he or she hopes to be heard and understood above the constant flow of information from competing sources. Get a firm hold on the language, and you will find that not only are ideas not difficult, but that the old donkey of a question of law at the bottom of it all is still alive and kicking, if not always self-evident. Success and the rewards of success in the law go to those who can accurately pin the tail on it. Good luck!

WHAT HAPPENED TO THE 9/11 CROSS

ANDRES SANTAMARIA[†]

INTRODUCTION

The First Amendment guarantees the free exercise of any religion, or none at all, without anyone interfering. The right also includes separation of church and state. These rights are embedded in the fabric of our country and are the building blocks of our great society. This article will provide a summary of the case dealing with one of the most riveting memories of 9/11, the cross on the pile of rubble that was once the World Trade Center and another case that challenges a boy scout's right to the free exercise of religion and my opinion.

Samuel Li
http://commons.wikimedia.org/wiki/File:911site_cross.jpg#mediaviewer/File:911site_cross.jpg

[†]Andres Santamaria is a Legal Studies major at St. John's University, College of Professional Studies. He is currently interning for Hon. John G. Koeltl, United States District Court, Southern District of New York.

Case Summary

In the case of *American Atheist, Inc. v. Port Authority of New York and New Jersey*[1] the facts of the case are as follows: the New York Port Authority, a bi-state agency between New York and New Jersey owned and operated the World Trade Center (WTC). On July 16, 2001 however, the WTC was leased to private parties, who then created a public charity foundation (hereinafter Foundation) in 2005.

In 2006, the Foundation, after reaching an agreement with the Port Authority, became responsible for developing, and operating the National September 11 Memorial and Museum. In return for assuming this responsibility, the Port Authority would fund the construction of the National September 11 Memorial on its property. The Foundations' fifteen members were originally appointed by the New York Governor and the New York City Mayor. As of January 2007, the New York Governor and the New York City Mayor appointed one member and the remaining Directors were elected. The Foundation has received a substantial amount of money from the Federal and State governments, including a $10 surcharge per National Medal, which commemorates the tenth anniversary of the September 11 attacks, to be paid to the National September 11 Memorial and Museum at the WTC.

In the aftermath of the September 11 terrorist attack, recovery workers found steel beams in the shape of a cross that stands at about 17 feet tall. Many people saw the cross as a sign of relief and comfort. Public Christian worship services were held in front of the cross and in these ceremonies, the cross was blessed. In 2006, the cross was moved to Saint Peter's Church, where it stayed until 2011 when it was moved to the WTC site, at which time a ceremony was held with a short prayer. The Foundation's plans were to include the cross in the Museum with the mission to "document the history of the 1993 and 2001 events by including physical artifacts to tell its story." Apart from the cross, the Museum will also include over 1,000 artifacts including photographs, a fire truck, an ambulance, oral histories, video presentations, and objects found in the debris. The Museum will incorporate three different exhibits: an Introductory Exhibition, a Memorial Exhibition, and a Historical Exhibition. The cross will be included in the Historical Exhibition, in a section called "Finding Meaning at Ground Zero." This section will explain how some people coped with the horrific events that occurred by

[1] *American Atheist, Inc. v. Port Authority of New York and New Jersey*, 936 F.Supp.2d 321 (S.D.N.Y. 2013).

turning to religion, patriotism, or forging relationships with relatives of victims. Surrounding the cross, the Foundation plans to have plates to describe the artifact and its significance.

The American Atheist, Inc. filed action against The Port Authority of NY and NJ and the National September 11 Memorial and Museum at the World Trade Center Foundation (Museum) for a violation of the First Amendment Establishment Clause, which prohibits the government from making any law "respecting an establishment of religion." The American Atheist, Inc is a non-profit organization with the goal of absolute separation between church and state.

The Defendants' position was that the state did not violate the First Amendment because, despite the government funding of the Museum on government property, it was not the state's decision to include the cross.

Defendants also argue that the inclusion of the cross is permissible under the *Lemon* test.[2]

Editor's Note:

The Supreme Court in Lemon v. Kurtzman provided a three-part examination of challenges to the Establishment Clause. First, is the government interacting with religion for secular purposes? Second, does the government appear to be endorsing or opposing the religion of a citizen? Third, would a reasonable person conclude that, in the context of the government's actions, the government is endorsing or opposing a religion?

The Plaintiffs assert that because the cross has been a part of several religious ceremonies and has been blessed, it is different from the other objects that will be displayed in the Museum. Furthermore, the mere size of the cross should be considered an endorsement to Christianity because it will be much bigger than any other object in the Museum.

The first issue for the court to decide was whether the inclusion of a cross in the Museum violated the Establishment Clause of the First Amendment by endorsing Christianity.

The second issue for the court to decide was whether the inclusion of the cross in the Museum violated the Equal Protection Clause of the Fourteenth Amendment by promoting Christianity over all other religions.

The court concluded that the inclusion of a cross does not violate the Establishment Clause of the First Amendment.

[2] *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

The court reasoned that in reviewing a challenge to the Establishment Clause, the Supreme Court has provided the *Lemon* test to determine "when a government action interacts with religion."[3] First, plaintiffs agree that the inclusion of the cross has a secular and historical purpose in the museum. Because the cross will be surrounded by plates explaining its historical significance and why it's included in the Historical Exhibit, the cross cannot be considered an endorsement of Christianity. Furthermore, the plaintiffs' argument that the mere size of the cross should be considered an endorsement to Christianity fails because the cross was not created to be 17 feet tall, instead it was found in the wreckage that way and its size is one of the reasons many people found it to be meaningful. Finally, there is no excessive entanglement because the display of the cross solely benefits the Museum. The Foundation made the decision to include the cross not for religious reasons.

The Equal Protection Clause prohibits the government from biased treatment of an individual based on religion. In a previous case it was determined that in order to prove a violation of the Equal Protection Clause, the claimant must prove that the government acted intentionally.[4] In this case, the plaintiffs do not claim any form of intentional discrimination and therefore their argument fails.

RESEARCH

Editor's Note:

This author's research is another case about a challenge to the Equal Protection Clause based on the rights of atheists. The plaintiffs, two boyscouts brought an action against the Boy Scouts of America's decision to exclude them because they were atheists.

The plaintiffs, Michael and William Randall, joined the Boy Scouts of America (BSA) and they advanced through the ranks of "Tiger Cub," "Bobcat," and "Wolf." When it came time for them to advance to the "Bear" rank, however, they were denied promotion because they failed to say a pledge that read "I promise to do my best to do my duty to God and my country."[5] The plaintiffs notified the Boy Scout leaders that they did not feel comfortable saying the pledge because they did not believe in God.

[3] *Bronx Household of Faith v. Bd. of Educ. of City of New York*, 650 F.3d 30, 40 (2d Cir. 2011).

[4] *Congregation Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 915 F.Supp.2d 574, 615 (S.D.N.Y. 2013).

[5] *Randall v. Orange County Council*, 17 Cal.4th 736, 952 P.2d 261 (Calif. Sup. Ct. 1998).

Editor's Note:

The scout leader stated that belief in God was necessary in order to complete the religious requirement of the BSA. The BSA would not allow the Randall brothers to participate and be active members in the BSA.

The Randall brothers sued BSA claiming that the BSA violatied California's public accommodation statute, known as the Unruh Civil Rights Act,[6] which prohibits business organizations from discriminating on the basis of religion.

The issue was whether the BSA was a business organization and would then be covered by the Act.

The California Superior Court ruled in favor of the BSA.

Editor's Note:

The lower court found the BSA to be a charitable organization not a business. The BSA's primary purpose is to offer its members a social program that is not consistent with a public place of accommodation. There is limited interaction with the public and membership in the BSA is not purchased. The case was overruled by the California Appellate Court. This court found that the Unruh Civil Rights Act applied to the BSA and they could not discriminate based on lack of religious beliefs.[7]

OPINION

I agree with the decision in *American Atheist, Inc. v. Port Authority of New York and New Jersey* because it is clear that the cross was not used by the museum to promote Christianity. The plaintiffs were not damaged by the inclusion of the cross and their suit was filed mainly because they felt the state was promoting religion. They cited several laws, yet they failed to realize that the state laws do not apply to the Port Authority or to the plaintiffs because the laws mainly covered equal access to public facilities.

In the California case of *Randall v. Orange County Council Boy Scouts of America*, I disagree with the lower court's decision. The court determined that the BSA was not subject to the Unruh Civil Rights Act because it was not a business organization since it does not sell the right to participate in the activities it offers to its members. Although this is true, they do use these activities as a selling point of their organization. This is to

[6] West's Ann.Cal.Civ.Code §51.

[7] *Randall v. Oragen County Council*, 42 Cal. App.4th 1367 (Calif. Ct. of Appeals 4th Dist. 1994).

say, they do not sell these rights to its members directly, but they do use them to bring in its members.

In both cases the courts ruled similarly, although for different reasons. In *American Atheist, Inc. v. Port Authority of New York and New Jersey* the main reason was that the cross had a secular meaning. In *Randall v. Orange County Council Boy Scouts of America* the BSA did not deny the fact they were discriminating on the basis of religion, but rather they explained that since they were not a business organization they were not violating California law.

CONCLUSION

The case of *American Atheist, Inc. v. Port Authority of New York and New Jersey* was very important in determining the rights of religious freedom for individuals and the state. The *Randall* case focused on the rights of the BSA, a private organization and whether in California the BSA has the right to impose its religious beliefs on its members. When the state is involved, the Constitution requires that state and church be separate. However, the fact that some non-business organizations can discriminate against some of its members on the basis of religion is troubling to me and can lead to more serious threats to religious freedom.

DIAMONDS ARE A GIRL'S BEST FRIEND

GABRIELLA LABITA[†]

INTRODUCTION

From the time they are in elementary schools, most girls dream about the day they will get engaged. They expect a picture perfect marriage to the perfect person just like the fairytale. They fantasize about the elegant gowns, beautiful flowers, and most importantly, the gorgeous diamond ring that will be sitting on their finger for the rest of their life. What they do not think about is the possibility of it all crashing down and whether or not they have to return that stunning ring to the person that they were once supposed to marry.

Should an ex-fiancee be able to take back an engagement ring if the marriage is no longer going to occur? If an engagement is broken off should an ex-fiancee be legally allowed to keep possession of the engagement ring? If a ring is given as a gift that is not dependent on marriage, would it change the whole situation? This paper will examine a case in which a man is suing his former fiancee to get the engagement ring back since he has broken off the engagement. It will also include my opinion about the case and research about the largest blue diamond known to man, the coveted Hope Diamond.

CASE SUMMARY

In the case of *Billittier v. Clark*, plaintiff proposed marriage to defendant in April, 2011 and presented her with 2.97 ct. engagement ring, which she accepted.[1] In July 2012, plaintiff sent a text message to the defendant ending the engagement. In the text message the plaintiff said he would compensate the defendant and her family for all of their wedding expenses. Plaintiff also said that the defendant should keep the engagement ring as a parting ring. Defendant accepted and kept the ring in her

[†] Gabriella Labita is a senior at St. John's University, College of Professional Studies, majoring in Legal Studies. She will be entering St. John's University School of Law in September 2015.

[1] *Billittier v. Clark*, 43 Misc.3d 1223(A), 992 N.Y.S.2d 157, (Sup. Ct. Erie County, 2014).

possession. On July 20, 2012 plaintiff once again texted the defendant saying that if she didn't stop taking "personal shots" at him and scheming with his and her families that she would have to return the ring to him. Finally, plaintiff sent another text message to the defendant asking her to return the ring to him because of the debts he owed due to reimbursing her for wedding expenses. Plaintiff stated that he changed his mind and that she must return the ring to him. The defendant refused.

The Plaintiff brought a lawsuit against the defendant for the diamond engagement ring or the market value of the ring $53,000. Plaintiff claims that the ring was only given in contemplation of marriage to the defendant. The defendant claims that the status of the ring changed to an ordinary gift after the engagement ended.

The issue for the court to decide was whether the defendant was entitled to keep the ring even though her engagement to the plaintiff ended. The second issue was whether the ring that was originally an engagement ring has changed to a parting ring.

The court awarded the ring to the defendant. The court decided that the status of the ring had changed.

There is a New York State law which states that fiancees can recover chattel given in contemplation of marriage regardless of fault if there is no marriage and also allows a fiancee to recover real property.[2]

Editor's Note:

The court cited a 1975 case, Friedman v. Geller.[3] *In that case, the defendant agreed to marry the plaintiff and accepted the ring. When the plaintiff ended the engagement, the defendant refused to return the ring because she stated that the "consideration for the giving of the gift was not the marriage alone, but involved love and affection." The court noted that the New York Civil Rights Law provides that gifts given during an engagement period are presumbly given solely in consideration of marriage. If there is no marriage, the gifts must be returned, regardless of fault. However, if the defendant could show by clear and convincing evidence that the gifts were given for a reason other than the impending marriage, the gifts need not be returned.*

In the present case defendant's conduct makes it clear that he intended to give her the ring even after the engagement ended.

[2] New York Civil Rights Law § 80–b.

[3] *Friedman v. Geller*, 82 Misc.2d 291 368 N.Y.S.2d 980, (Civil Court NYC. Kings County 1975).

"If a once conditional gift is transformed into an ordinary gift, the donor cannot retract the gift."[4] The engagement ring changed from a conditional gift to an ordinary gift when plaintiff told defendant that she was receiving the ring as a parting gift. The status of the ring changed because plaintiff's conversations with defendant display a clear intent to give defendant the ring even though the engagement ceased. The donor must have intent to give the gift and the donee must accept in order to have a valid ordinary gift.[5] Plaintiff displayed intent to give the ring to defendant after the engagement ended. Defendant accepted this gift and does not have to return it.

RESEARCH

There is a sense of mystery that surrounds the famous blue diamond that glows a bright orange-red color, which is known by many as the Hope Diamond. The Hope Diamond has been one of the largest exhibits at the Smithsonian Museum of Natural History for over fifty years, drawing in six million viewers per year.[6] Although there is no clear evidence about the Hope Diamond's origin, experts suspect that it was once the French Blue diamond that belonged to King Louis XIV, which disappeared during the French Revolution.[7]

A blue diamond, which many believed to be the French Blue, was seen at a shop in London twenty years after disappearing.[8] The Hope family gained possession of the diamond, and it has been known as the famous Hope Diamond ever since. The diamond had several other owners, until it was donated to the Smithsonian in 1958 by a jeweler named Harry Winston.[9]

According to geologists, the Hope Diamond, which is 45.52 carats, is so coveted because it is the largest blue diamond. Geologists say that this extraordinary diamond was formed over a billion years ago a hundred miles under earth's crust and brought forth by the force of a volcanic eruption. It

[4] 62 N.Y. Jur 2d §54 (2014).

[5] *Gruen v. Gruen*, 68 N.Y.2d 48, 505 N.Y.S. 2d 849 (1986).

[6] Lawrence M. Small. *The Hope Diamond*, Smithsonian Magazine. April 2000.

[7] Casselman, Anne. *The Hope In History*, 26 Discover 6, p.13 (June 2005).

[8] http://www.pbs.org/treasuresoftheworld/a_nav/hope_nav/hnav_level_2/level2_past_provenance _hopfrm.html.

[9] http://www.si.edu/Encyclopedia_SI/nmnh/hope.htm.

is likely that the Hope Diamond was formed at a mining area in India that was known for producing these rare colored diamonds.[10]

After experiments, geologists found that the main reason for the blue color of the Hope Diamond is the existence of the element boron and defects in the crystal lattice of the gem.[11] The blue color of the diamond is the outcome of light transmitting through the boron atoms in the gem. Not many diamonds contain this defect, which is what makes the Hope Diamond so exceptional.

Much research has been conducted to try to determine why the Hope Diamond gives off an orange-red glow under UV light. Scientists have found that the color the diamond glows depends on the intensity of each phosphorescence peak of the diamond.[12] Boron impurities within the diamond also play a part in the color of the glow.[13] Only a few other blue diamonds have shown a similar glow; however, none are known to have the same intensity of red-orange as the Hope Diamond, which adds to the mystery of this exquisite gem.

OPINION

I agree with the judgment and the final outcome of the *Billitier v. Clark* case. I believe that the innocent ex-fiancee should keep the ring and

[10] *The Science of Diamonds* http://www.pbs.org/treasuresoftheworld/a_nav/hope_nav/hnav_level_2/level2_pitch_science_hopfrm.html.

[11] Caputo, Joseph, *Night At The Museum*, 41 Smithsonian 7 p.30 (Nov. 2010).

[12] Griffiths, Jennifer, *Why Does the Hope Diamond Glow Red?* 80 Analytical Chemistry 80 Issue 7 p.2295-2296 (Apr. 2008).

[13] Eaton-Magaña, Sally, et al. *Luminescence Of The Hope Diamond And Other Blue Diamonds.* 42 Gems & Gemology 3 p.95-96 (Nov. 2006).

was justified based on the plaintiff's actions. Plaintiff specifically stated that the ring was no longer a commitment to marriage, but a parting gift instead.

However, I do not believe that a fiancee who is no longer in a commitment to get married should be able to keep an engagement ring. I agree with the New York law, which allows fiancees to recover gifts given in contemplation of marriage regardless of fault if there is no marriage and also allows a fiancee to recover real property.[14]

I feel that a fiancee should be able to take back a ring that he gave in contemplation of marriage if that ring was given solely for the purpose of marriage and the engagement has ended. However, in my opinion, there must be proof that the ring was given only if a marriage was to follow the engagement. If a ring is given purely as a gift then it should not have to be returned. When a gift is given, there is no intention that one day that gift must be returned.

CONCLUSION

It is clear that the courts will continue to determine the status of an engagement ring in order to decide whether it must be returned to the buyer of the ring if no marriage is going to ensue. It is a good thing that there is a law regarding whether an engagement ring must be given back if there is no marriage because it allows an outside party to analyze the facts and make an ultimate decision. Without the law, things could get out of control between ex-fiancees arguing over who should have possession of an engagement ring. The law provides a way of terminating the feud between the parties who are dealing with the painful and emotional experience of a breakup. Ladies beware: if a ring is conditioned upon marriage and no marriage occurs, it generally has to be returned. Perhaps "Thanks for the birthday gift" is a more fitting response to receiving an engagement ring!

[14] New York Civil Rights Law § 80–b.

HAIR TODAY, GONE FROM THE TEAM

BRIAN STEVENS†

INTRODUCTION

Facial hair regulations exist in almost every profession in the United States. There are two drastically different opinions pertaining to hair regulations. Some people believe these regulations infringe on citizens' constitutional rights and other believe it does not. This paper will provide a summary about a school policy on sports and the length of a student's hair, *Haydens v. Greensburg Community School Corporation*; my research on major league baseball regulations on facial hair and my opinion about this topic.

CASE SUMMARY

Patrick and Melissa Hayden's son, A.H., attended the Greensburg Junior High School in Indianapolis, Indiana.[1] The school district established a student athlete code of conduct which prohibits the following types of hair styles: hair styles that create problems of health and sanitation, obstruct vision, or call unnecessary attention to the athlete. At the time, A.H. was seventeen years old and a junior in high school. He wanted to play basketball but he also liked to wear his hair longer than the hair policy permits. When A.H. was in seventh grade he complied with the prior school's hair policy in sports so he could play but "he didn't feel like himself." The following year he refused to cut his hair and his parents claimed that the hair length policy was unconstitutional on two grounds. First, the policy interferes with the student's right to due process, arguing that the choice of hairstyle is an element of liberty protected by the Fourteenth Amendment. The Fourteenth Amendment states that no state shall deny any person the right to life, liberty and property without the due process of law. The Amendment also has an Equal Protection Clause which grants all persons within a jurisdiction the equal protection of laws. The

† Brian Stevens is a Legal Studies major at St. John's University College of Professional Studies.

[1] *A.H. v. Greensburg Community School Corporation,* No. 13–1757, WL 685529 (7th Cir. Feb. 24, 2014).

Haydens argued that because the policy only applies to boys and not girls playing basketball, the policy constitutes sexual discrimination under the equal protection clause and Title IX of the 14th Amendment.

The court focused on the folloiwng issues: whether the school's policy violates the plaintiff's right of due process and does the school's policy constitute sexual discrimination because the policy only affects boy basketball players.

The Eighth Circuit agreed with the district court on the ruling of the Hayden's due process claim. The judgment on the Hayden's claim of equal protection and Title IX was reversed and the case remanded to the district court.

The court relied on prior court decisions on both issues. As to the substantive due process clause, claiming hair length is an aspect of personal liberty, the court examined the case *Washington v. Glucksberg*.[2] The decision of the *Glucksberg* case found that hair length is a fundamental freedom protected by the Bill of Rights and is deeply rooted to the nation's history and tradition. The *Glucksberg* case relates to the present case because it deals with the same type of issue concerning an outside authority limiting the rights of citizens.

Editor's Note:

The court was now faced with whether public school students playing interscholastic sports were afforded the same constitutional protection as the public. In prior cases, public schools were able to have policies on dress and grooming codes.[3] *Additionally schools may impose more conditions on students who want to participate in sports.*[4] *The district court found that the high school basketball season lasts approximate four months. Four months is too short a period for the plaintiff's claims to be fully litigated. After bringing the lawsuit, the student left the school and therefore the action was moot. The appeals court relied on prior cases which determined that a public school can lawfully enact and enforce dress and grooming policies. The appeals court found that the student A.H. must comply with the coach's hair length policy if he wanted to play on the basketball team.*

As to the sexual discrimination claim and the Equal Protection Clause the court examined the case C*arroll v. Talman Fed. Savings and Loan*

[2] *Washington* v. *Glucksberg*, 521 U.S. 702,720 (1997).
[3] *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 394 (6th Cir. 2005).
[4] *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 657 (1995).

Ass'n.[5] In this case, it was determined that discrimination based on sex violates the Equal Protection Clause. The court points out there is a line of authority which addresses differing grooming standards for men and women in the workplace. From this line of authority a rule emerges that to be considered discrimination they must be comparable. The standards are comparable if they find some justification in commonly accepted norms or are generally accepted community standards. In the *Carroll* case, the court upheld that enforcing a dress code was sexual discrimination.

Editor's Note:

For a plaintiff to prevail on a violation of the Equal Protection Clause he must prove that the defendant's motivation was to discriminate and in fact that the defendant's actions discriminated against the plaintiff.[6] *Plaintiff failed to show the coach had any discriminatory intent to treat him differently than other teammates.*

RESEARCH

The New York Yankees have had a strict policy on facial hair since the early 1970's. In 1973 George Steinbrenner took over as General Manager for the Yankees. He was watching the beginning of a game when the team was standing for the national anthem and realized that the team's appearance was less than he expected. After this occurrence he put a policy into place pertaining to facial hair and the hairstyles that are permitted during the baseball season. The policy read, "no male player, coach, or executive may wear any facial hair except for a mustache, sideburns or muttonchops."[7] Mr. Steinbrenner also added to the policy that all players' hair must be off of the collar.[8] There have been many stories of how this policy has influenced potential players' decisions on whether to play for the New York Yankees.

An example of this influence would be Brian Wilson. Brian Wilson who is a record breaking pitcher for the LA Dodgers is well known for his brown thick beard. The Yankees were looking for a pitcher just like Wilson to make their bullpen better. Eventually Yankees General Manager stated: "We could use bullpen help, but you can cross him off the list, Cashman

[5] *Carroll v. Talman Fed. Savings and Loan Ass'n of Chicago*., 604 F.2d 1028,1032 (7Cir. 1979).

[6] *Chavez v. Illinois State Police*, 251 F.3d 612, 635–36 (7th Cir. 2001).

[7] Rozell, Kevin. *Steinbrenner's Facial Hair Policy and Those Famous Stache's*. www.bleacherreport.com/articles/164919. (April, 29 2009).

[8] *Id.*

said. I was told, 'Don't even bother.'"[9] This is a great example that many baseball critics have said could potentially hurt the Yankees. Another story of how this policy has affected the decision to join the Yankees ballclub is the case of David Price. David Price currently plays for the Tampa Bay Rays and mentioned in an interview with the New York Daily News that the Yankees should not even bother looking his way.[10] He has three years before he is up for free agency and has no plan of shaving to join the Yankees.[11]

On the other hand there are also some players that do not mind simply shaving their face in order to accept a 12 million dollar contract. A great example would be Kevin Youkillis. Kevin was a well known player for the Boston Red Sox prior to joining the Yankees.[12] Kevin often sported a mangy looking goatee at varied lengths.[13] In an interview with the Wall Street Journal Youkillis stated "I think I'm not the type of person who kept it well-groomed at all times, anyway—the length varied all the time. I'm not all that picky about my looks,"[14].

The Yankees' policy is a very unique policy compared to that of other major league baseball teams. There are only two teams total in the major league that have this type policy. These teams include the Yankees and the Cincinnati Reds.[15] The Cincinnati Reds policy states "beards and moustaches are permitted but they must be tamed. No duck dynasty."[16] The New York Mets welcomes the idea of letting the players express themselves through their facial hair and hair styles.[17]

Robinson Cano is a former Yankee second baseman who was traded in 2012 to the Seattle mariners. The USA Today newspaper wrote an entire article about how he happily came over to the team sporting a beard as well as his new uniform.[18] Cano played for the Yankees for nine seasons.[19]

---

[9] Hoch, Bryan, *No Beard in the Bronx: Wilson Won't Shave for Yanks:* www.yankees.mlb.com/news/article/63902080 (Nov. 13, 2013).

[10] Feinsand, Mark, *Tampa Bay Rays ace David Price calls the Yankees the "best organization in all of sports" one day after beard-gate.* www.nydailynews.com/sports/baseball/shaving-face-rays-ace-fall-praise-yanks-article-1.1269757 (Feb. 21, 2013).

[11] *Id.*

[12] Barbarisi, Daniel, *No Beards and That's Final,* www.wsj.com/articles/SB10001424127887324048904578320741510151474 (Feb. 23, 2013).

[13] *Id.*

[14] *Id.*

[15] Baer, Bill. *Taking a page out of the Yankees' playbook, the Reds will enact a facial hair policy*, www.hardballtalk.nbcsports.com/2014/02/14 (Feb. 14, 2014).

[16] *Id.*

[17] Diamond, Jared, *The New York Lumberjacks,* www.wsj.com/articles/SB10001424127887323478304578338660388084762 (Feb. 27, 2013).

[18] Berg, Ted, *Take that Yankees: Robinson Cano now has beard to go with his money,*

OPINION

The New York Yankees are one of two teams within the major league baseball league to have a strict facial hair policy. I feel that every team in the major league should have hair policies. If the players are earning large sums of money for playing a simple game then the players should have to be compliant with these rules. Since the baseball players are referred to as "professionals" they should also look professional. I also feel these regulations should begin with student athletes. The policy should begin within the later high school years and into the colleges. Not only will this begin getting the students into a routine of looking professional but it shows they are taking the sport seriously and shows a commitment to the sport. I feel these policies, much like the Yankees' policy, should only be enforced during the season.

If the average American professional should have to follow grooming standards to look professional, why are baseball players different? Many of these famous players serve as idols to young children. If the idols of these impressionable children have unkempt hair, is this an appropriate role model? The reality is that the typical professional American follows facial hair norms. When was the last time you walked down Wall Street in Manhattan and saw a typical corporate person dressed in a suit, with some kind of crazy hair style or un-groomed facial hair?

CONCLUSION

Many professionals require their employees to follow guidelines pertaining to a professional look. Student athletes as well as professional athletes should be permitted to follow these guidelines. It will get the student athlete ready for the real world and the professional athletes should serve as role models for the younger generation.

ftw.usatoday.com/2013/13/robinson-cano-mariners-beard-yankees-facial-hair-policy (Dec. 12, 2013).

[19] *Id.*

STAGE DIVING

JENANE JEANTY[†]

INTRODUCTION

Yet again, another reckless male lead singer jumping into mid-air and landing on the audience that might just catch him. The outcome of the situation is completely beyond anyone's control. The rock music community would agree that the first leap off that stage is the most important part of any band's performance. The event is original, breathtaking and dangerous. The high risks associated with this bold act need to be avoided for the safety of the audience.

In the case of *Myers v. Moore*[1] a member of the concert audience sued the music group "Fishbone" after she was injured in a stage diving accident caused by the lead singer.

CASE SUMMARY

The issue for the court to decide was whether the lead singer and bassist were negligent in failing to warn the audience of possible dangers when they stage dived into the crowd. The court also had to consider whether they were liable for battery, and civil conspiracy.

At the World Café Live a popular music group named "Fishbone" performed a concert on February 20, 2012. Prior to the concert, one of band's members met with the World Café's security staff to discuss the safety and security of the concert. No one provided the audience or the security staff with a warning that there would be stage diving during the concert. Mid-show, the lead singer, Moore, intentionally dived into the crowd. He landed on Kimberly Myers, a 46 year old mother causing her to hit her head on the ground and lose consciousness. The singer and bassist continued the show as if nothing happened.

Myers was rushed to the hospital and diagnosed with a skull fracture at the temporal bone a ruptured eardrum, a fractured rib, shoulder related orthopedic injuries, traumatic brain injuries, auditory injuries, and post-traumatic autoimmune disorders. The injuries were serious and would have

[†] Jenane Jeanty is a Legal Studies major at St. John's University College of Professional Studies.

[1] *Myers v. Moore*, No. 12-597, 2014WL550866 (E.D.Pa., Dec. 22, 2014).

permanent effects. Due to the injuries she had three surgeries with limited results. She was likely to have permanent restrictive movements of her shoulders. Additionally, she was diagnosed with lupus, and suffers permanent hearing loss, tinnitus, headaches. Her productivity in her workplace and at home as a mother of two children was greatly affected. The plaintiff paid $15,845.97 for the treatment of injuries.

The plaintiff sued many defendants, including the band, the lead singer, Moore, Fishbone's bass player, Fisher, the band's manager, Silverback and the production company, Real Entertainment for negligence and failure to warn of the stage diving. She requested monetary damages to address her injuries and punitive damages.

Editor's Note:

Plaintiff brought the first suit against all the defendants for negligence, a failure to warn of the danger of stage diving, and assault and battery against Moore and Fisher. Silverback, the band's manager and Real Entertainment, the production company, asked the court to dismiss the case against them. Silverback argued that they did not injure the plaintiff nor did they sign a contract with World Café. The court concluded that Silverback knew of a prior injury that occurred during a Fishbine stage diving event and that an issue existed as to Silverback's control of Fishbine's stage diving. Therefore, whether Silverback has a duty to keep the audience safe or notify them of the possible danger was a question for a jury. The court determined that whether Real Entertainment was liable for the plaintiff's injuries was also questions of fact for the jury. There were also genuine issues of material fact as to whether Silverback and Real Entertainment consciously disregarded the risk to plaintiff of stage diving. Ultimately, Silverback and Real Entertainment settled with the plaintiff out of court. The plaintiff withdrew her claims against the other defendants.[2]

Plaintiff brought a second action against Moore and Fisher. They failed to respond to the complaint and the court entered a default judgment against them.

The court held a hearing to determine damages against Moore and Fisher. "If the damages are not for a 'sum certain or for a sum which can by computation be made certain,' the 'court may conduct such hearings or order such references as it deems necessary and proper.' "[3] The court found

[2] *Myers v. Moore*, No. 12-597, 2014 WL 3700162 (E.D. Pa., July 24, 2014).
[3] *Comdyne I, Inc. v. Corbin*, 908 F.2d 1142, 1149 (3d Cir. 1990).

both Moore and Fisher jointly and severally liable to Myers in the amount of $1,117,145.93.

Editor's Note:

Both Moore and Fisher claimed they were never served with the summons and complaint and requested the court vacate the default judgment. After a hearing, the court concluded the parties were not properly served pursuant to Federal Rule of Civil Procedure 4(e).

RESEARCH

Stage diving is a dangerous activity. The reckless disregard of the audience by band members in a concert environment raises risks to the audience. There have been several instances of stage diving that resulted in serious injuries to individuals. Today, "crowd surfing" injuries at concerts has become a reoccurring event that must be addressed.

"Crowd surfing," "moshing," "head banging," and "thrashing" are all common terms to represent the violent dancing that originated with the heavy metal or punk rock genre of music. Stage diving is the act of an individual on the stage diving directly into the crowd. This act may sound fun at first but it actually poses a huge health risk. The risk however does not always stop people from stage diving. At times, the injured parties sport their broken limbs and scars as a badge of honor to portray themselves as tough.

Why exactly do the entertainers stage dive? One author claims it is because stage divers have no fear of falling. They trust that the crowd will catch them. There is also the influence of alcohol or drugs that impact their decision and encourage "superhuman" like perceptions or blank misconception. Therefore, the elimination of drugs and alcohol is one step to decrease the risk.[4]

The reported concert injury and death rates per ten years are at their highest levels. In 1999, deaths increased from eight to seventy deaths due to concert accidents. Those statistics do not account for undocumented injuries that occur. In the past there were no restictions on concerts such as Woodstock, Altamont and Cleveland disc jockey's rock-n-roll riot. Since then concert injury are the basis for many lawsuits. Most lawsuits never go to trial, the cases settle.[5]

[4] Commons Lee, Steve Baldwin, and Matthew Dunsire, *Drinking and Diving: Public Health Concerns.* Australian and New Zealand Journal of Public Health 23.4 p.434-435 (Aug 1999).

[5] Ellis, Luke, *Talking about My Generation: Assumption of Risk and the Rights of Injured Concert Fans in the Twenty-First Century*. 80 Texas Law Review 607, 16320 (2002).

In addition to crowd surfing there is also another activity known as "moshing." Crowd surfing and moshing are similar dangers. Moshing is a type of dance to rock music that includes jumping up and down and smashing into other dancers. At one concert, security placed warning signs against moshing and crowd surfing. They also had maximum security among the audience that immediately stopped such activities.[6]

There have been incidents of concert attendees dying due to both moshing and stage diving.

OPINION

Since the negligence case against Fishbone in 2010, the media and the public are becoming more aware of the risk of harm with stage-diving.

Questions are now being raised regarding safety in any music event. It has always been an issue at concerts and crowded music festivals. The dangers of crowd surfing or any other crowd interaction stunt is a serious issue that must be properly handled.

One reason why this issue is not resolved is because there are no regulations as to concert safety. Courts are addressing the cases of negligence and whether it is intentional or accidental. Then the courts apply the doctrine of assumption of risk by the concert goers.

Crowd safety is an issue that needs to be addressed. I propose enacting public health regulation for concert type environments that promote the minimization of harm. States can write policies that limit interaction between the bands to the audience. There should be a limit on the number of people attending the concerts. Limiting the number of seats and standing tickets would reduce the crowd populations. An enforcement of the current drug laws at the concerts would minimize this activity.

CONCLUSION

Capturing the true rocker experience at a concert with the chilling bass vibration poured through the fifty feet speakers as the crowd's excitement roars is an unbelievable sensation that everyone should experience. But trading that opportunity and the possibility of injury for one that will allow a person to remain healthy and unharmed seems appealing. Stage diving must be controlled and regulated within concert areas nationwide. The laws and regulations should look to minimize public harm so that regular concert goers can go to a music festival in a safe environment and not have to ever again worry about leaving injured from their favorite concert.

[6] Schmitt, Brad, *Moshing, Crowd Surfing? Guards Spoil the Fun.* The Tennessean (May 3, 2004).

LAW STUDENTS AND UNDERGRADUATES LEARNING TOGETHER AT THE SECURITIES ARBITRATION CLINIC

CHRISTINE LAZARO[†]

In the Securities Arbitration Clinic (the "Clinic") at St. John's University School of Law, we handle legal cases on behalf of small investors. Some of our clients are elderly and have had their retirement savings depleted by poor investment advice. Some of our clients are younger, and have had brokers who have defrauded them. But this article is not about our clients. It is about the Clinic itself and the skills students learn in the Clinic.

At St. John's, law students may participate in a clinic after they have completed their first year of law school. In some ways, clinics resemble other classes; students earn credit for participating in the clinics during the semester and a student is graded for his or her work. Yet a clinic involves much more than any other class. A clinic offers a student the oppotunity to practice law while still a law student—to try on the role of an attorney.

In New York, practicing law without a license is deemed the unauthorized practice of law. It may even be a felony in some instances.[1] There are some exceptions that allow certain groups to practice law without a license. In the Clinic's case, the Second Department of the Appellate Division of the New York State Court has issued a Student Practice Order. It grants students the ability to work with clients and represent them in FINRA arbitrations, much the same way an attorney would, under the supervision of experienced attorneys.

[†] Christine Lazaro is an Associate Professor of Clinical Legal Education and the Director of the Securities Arbitration Clinic at St. John's University School of Law.

[1] *See* N.Y. JUD. § 485-a:

Any person who violates the provisions of sections four hundred seventy-eight, four hundred eighty-four, four hundred eighty-six or four hundred ninety-five of this article is guilty of a class E felony when he or she: (1) falsely holds himself or herself out as a person licensed to practice law in this state, a person otherwise permitted to practice law in this state, or a person who can provide services that only attorneys are authorized to provide; and (2) causes another person to suffer monetary loss or damages exceeding one thousand dollars or other material damage resulting from impairment of a legal right to which he or she is entitled.

The Clinic is a significant commitment. Clinic students spend at least fourteen hours a week working on their cases. They work in teams, with three law students working together on each case. Students engage in every stage of the representation. They interview the clients initially; gather facts about potential cases; research the facts and the law to determine the clients' options; counsel the clients on their options; draft legal complaints; conduct discovery; conduct hearings; and negotiate with opposing counsel.

Throughout this process, the law students focus on developing essential lawyering skills. They learn how to interview and counsel clients; how to evaluate claims; how to research effectively and write in the legal context; how to develop case strategy; how to negotiate; and how to advocate. In addition, the law students in the Clinic learn a skill that far too often goes untaught—they learn how to delegate work to another person and how to supervise that person.

In the Clinic, students learn delegation skills because law students work alongside undergraduate students from the Legal Studies Program in the College of Professional Studies. The undergraduate students intern each semester in the Clinic as paralegals. The undergraduate students perform many of the same tasks a paralegal would perform in a law firm. They assist the student lawyers with research; they assist with discovery by indexing documents and preparing documents for production; they contribute to case strategy; they review pleadings and prepare them for filing; and they perform data analysis. The student lawyers are responsible for determining which tasks are appropriate to delegate and for supervising the task once it has been delegated.

Understanding the importance of delegation and supervision is essential for a lawyer. The Rules of Professional Conduct in New York explicitly provide for responsibility over non-lawyers. Rule 5.3(a), Lawyer's Responsibility for Conduct of Nonlawyers, provides in relevant part: "A lawyer with direct supervisory authority over a nonlawyer shall adequately supervise the work of the nonlawyer, as appropriate." Serious consequences may result from a lawyer inadequately delegating tasks or supervising a paralegal.[2]

[2] *See* ABA MODEL GUIDELINES FOR THE UTILIZATION OF PARALEGAL SERVICES (2004), Comment to Guideline 2, p.5 ("For example, the Supreme Court of Virginia upheld a malpractice verdict against a lawyer based in part on negligent actions of a paralegal in performing tasks that evidently were properly delegable. Musselman v. Willoughby Corp., 230 Va. 337, 337 S.E. 2d 724 (1985). See also C. Wolfram, Modern Legal Ethics (1986), at 236, 896. Disbarment and suspension from the practice of law have resulted from a lawyer's failure to properly supervise the work performed by paralegals. See Matter of Disciplinary Action Against Nassif, 547 N.W.2d 541 (N.D. 1996) (disbarment for failure to supervise which resulted in the unauthorized

Increasingly, law schools are focused on producing practice-ready graduates.[3] Unfortunately, many novice lawyers may not understand how to adequately supervise the work of a nonlawyer. Giving students the opportunity to focus on developing supervision and delegation in a clinic setting is one additional way to accomplish the goal of ensuring students leave law school ready to practice.

In addition, the undergraduate students are exposed to the workings of a law firm earlier in their careers in a lower stress environment. Many of the students interning in the Clinic want to attend law school once they complete their undergraduate studies. Having been in the paralegal role, they will have had the perspective of the one to whom assignments had been delegated. This should give them greater perspective when the roles are reversed and they are the ones delegating assignments later in their career. They are also able to meaningfully contribute to cases in a pro bono setting and assist the law students in their representation of their clients.

The partnership between the Clinic and the Legal Studies Program has created an enriched learning environment within the Law School. Law students learn essential lawyering skills while still in school – delegation and supervision. Undergraduate students learn paralegal skills in a setting that fosters learning. This partnership produces true benefits for the Clinic's clients as well. They receive additional attention from students dedicated to their cases.

practice of law by office paralegals); Attorney Grievance Comm'n of Maryland v. Hallmon, 681 A.2d 510 (M.D. 1996) (90-day suspension for, among other things, abdicating responsibility for a case to paralegal without supervising or reviewing the paralegal's work). Lawyers have also been subject to monetary and other sanctions in federal and state courts for failing to properly utilize and supervise paralegals. See In re Hessinger & Associates, 192 B.R. 211 (N.D. Cal. 1996) (bankruptcy court directed to reevaluate its $100,000 sanction but district court finds that law firm violated Rule 3-110(A) of the California Rules of Professional Conduct by permitting bankruptcy paralegals to undertake initial interviews, fill out forms and complete schedules without attorney supervision)."). Available at http://apps.americanbar.org/legalservices/paralegals/downloads/modelguidelines.pdf.

[3] *See e.g.*, Karen Sloan, *ABA: Law schools getting the message on practical skills*, THE NATIONAL L. J., July 5, 2012.