



THE MIDDLE GROUND

Federal Bar Association - Middle District of North Carolina Chapter

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President's Message

By Randy Loftis

Constangy, Brooks & Smith, LLP

Professionalism, education, and information: these are three key objectives of our Federal Bar Association chapter, which I learned while attending leadership training last April at the FBA headquarters in Arlington, Virginia.

In my more than 43 years of practice in North Carolina and specifically in the Middle District, I have been fortunate to see a high level of civility and professionalism in the practice of law, not only with my colleagues and other attorneys who, like me, practice primarily on the "defense" side, but also with my legal adversaries. Have I ever worked with attorneys who did not have these values? Unfortunately, yes, I have. Did I enjoy working with those attorneys? Absolutely not.

We do not practice law in a vacuum. We should always keep in mind our individual responsibility to treat other members of the profession with respect.

Another key objective of our Chapter is to "provide quality educational programs to the Federal legal profession and the public" and to "promote professional and social interaction among members of the Federal legal profession." Our Chapter will present two CLE/social events this fiscal year. The value of the CLE probably goes without saying, but the importance of the "professional and social interaction" cannot be overstated. Our Chapter meetings provide an opportunity for us to interact on an informal social basis with other attorneys, Middle District judges, court personnel, and law students. I have been attending Middle District chapter meetings from the beginning, and I always look forward to meeting with attorneys and others whom I do not see on a regular basis, or perhaps have never met before. It is a privilege to be able to sit down for dinner with our outstanding federal judges, and I know that the judges appreciate this, as well. I encourage you to attend our Fall 2014 and Spring 2015 meetings, not only for the CLE credit, but also for the social and professional opportunities they present.

Finally, it is our Chapter's mission to "keep members informed of developments in their respective fields of interest." We will do our best to achieve that objective through our CLE but also through this publication, *The Middle Ground*, which is published each Fall and each Spring, and is included in your FBA membership benefits. Many thanks to those of you who contribute articles, and if you have not contributed before but would like to, please let us know.

As we proceed through the current fiscal year, I will be mindful of our objectives to foster professionalism, education, and information, and vow to do my best to make sure that we are true to these objectives. Thank you for the confidence you have expressed in me to lead the Chapter this year. I will do my best to live up to your expectations. ■

Dispensing Justice While Offering Hope: United States Magistrate Judge Joe L. Webster

By Pedra D. Lee

Law Clerk to the Honorable Joe L. Webster

“Do you know what *injustice* is when you see it?” That was the final question presented to me while interviewing for a law clerk position with the Honorable Joe L. Webster, United States Magistrate Judge for the Middle District of North Carolina. I had no problems answering the question because I had experienced and witnessed *injustice* in my short life. What puzzled my mind, however, was Judge Webster’s purpose and intent for asking the question. Nearly two years later, I now understand that the thought of *injustice* was not just a question, but also a teaching point. On that day Judge Webster wanted to convey a simple message that I and others in the legal profession have a responsibility and obligation to promote justice while offering hope to those in need.

Judge Webster’s compassion for people and justice originated in the Goodwill community near the small town of Madison, North Carolina where he was raised by his parents, the late James and Bettie Webster. He was the fourth of eight children, and lived in a community where most people lacked education and opportunities beyond their reality. Like many others, Judge Webster’s family did not have an indoor bathroom or running water for most of his childhood. Although such necessities were absent, Judge Webster was always surrounded by positive role models, people who worked, persevered and exercised their faith in God to get through the challenges of life. His parents and others constantly encouraged him to work hard and give his best in everything he set his mind to do.

It’s no surprise that Judge Webster desired to return to his hometown one year after graduating from Howard University School of Law in 1979. It was there where he saw a need to help people in a community that he cherished, and the only place he ever called “home.” Sadly, it was also the place where he once saw *injustice* while trying to hang his own shingle in Rockingham County. In 1984, four years after becoming the first African-American attorney in the history of Madison, Judge Webster had to file a lawsuit against the town of Madison. The town’s

Board of Adjustment voted to block him from opening his law office on a street where other businesses had already been established, including another law office, dental office and realtor’s office. This uphill battle did not deter him from his dream of helping those who needed his services. Instead, he leaned on the morals and values embedded in him by his parents and overcame the obstacles before him. In 1985, his efforts to serve others in his hometown were recognized by the North Carolina Bar Association when he received the Pro Bono Service Award, one of his greatest honors in life thus far.



Judge Webster has embraced many roles on his journey to the federal bench, serving as General Counsel for the Mid-Eastern Athletic Conference, Associate Attorney General for the North Carolina Department of Justice, Deputy Director for Legal Services of North Carolina, Town Attorney, Adjunct Professor of Law at Campbell University School of Law, and Administrative Law Judge with the Office of Administrative Hearings for the State of North Carolina. He has also worked hard to be the best husband to Diane Ramsey Webster for nearly thirty-five years. Together they have three successful children. Despite his opportunities for advancement in his legal career, Judge Webster never lost sight of his reasons for choosing the legal profession: serving the poor and doing everything possible to promote a fair justice system.

Although he now sits on the federal bench and is no longer engaged in the practice of law, Judge Webster still knows what *injustice* is and remains compassionate about his obligation to dispense justice while offering hope to the community. In one of his most recent projects, Judge Webster opened the doors of his courtroom to youth in Durham County Schools through a program he started called CourtCares. Students are introduced to the federal court system, encouraged to stay on the right side of the law, be productive citizens and challenged to maintain respect for adults, as well as their peers.

Whether it’s inspiring youth through CourtCares, or addressing defendants in criminal proceedings, Judge

Webster continues to make an impact on the lives of people by simply being who God called him to be. As a result of my time with Judge Webster, I have a

better understanding of *injustice*, and more importantly, I accept my responsibility to promote justice while offering hope to those in need. ■

Supreme Court and Fourth Circuit Criminal Law Update

By Cassie Cranford

Nelson Mullins Riley & Scarborough LLP

Former law clerk for the Honorable N. Carlton Tilley, Jr.

This article highlights three of the recent federal criminal decisions of note and is intended to dovetail with Kearns Davis' broader and thorough federal criminal law update at the October 20, 2014 CLE.

Fourth Circuit Reaffirms That "Special Context" of a Statute May Rebut the General Presumption that a Specified mens rea applies to All Elements of the Offense.

In *United States v. Washington*, 743 F.3d 938 (4th Cir. 2014), the Fourth Circuit revisited, and reaffirmed, its prior interpretation of 18 U.S.C. § 2423(a)—which prohibits interstate transportation of a minor for prostitution—in light of intervening Supreme Court precedent. Fourteen-year old victim R.C. was a runaway who informed defendant Washington that she was nineteen years old. *Id.* at 940. Washington became R.C.'s pimp and brought her to states throughout the Southeast, advertising her prostitution services on the internet as they travelled. *Id.* Washington was charged with and convicted for violating Section 2423(a), which provides that a "person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce . . . with intent that the individual engage in prostitution . . . shall be fined and imprisoned not less than ten years." *Id.* at 940-41 (emphasis added).

On appeal, Washington contended that the district court erred in instructing the jury that the government did not have to prove that Washington knew R.C. was under the age of 18 when she was transported across state lines. *Id.* at 941. Washington conceded that the district court's instruction conformed to prior Fourth Circuit precedent, but argued that the precedent was called into question by the Supreme Court's decision in *Flores-Figueroa v. United States*, 556 U.S. 646 (2009). *Washington*, 743 F.3d at 941. In *Flores-Figueroa*, the Supreme Court interpreted 18 U.S.C. § 1028A(a)(1), which punishes aggravated identity theft, and held that "[a]s a matter of ordinary English grammar," the word "knowingly" applied to "all the subsequently listed elements" of the crime: the government must prove that the defendant knew that the means of identification belonged to another person. 556 U.S. at 647. Thus, Washington argued that "knowingly" in 18 U.S.C. § 2423(a) likewise applied to the fact that the victim was under the age of 18. 743 F.3d at 942.

The Fourth Circuit rejected this argument, finding that statutory interpretation is context-dependent: "special context" in a given statute can foreclose the application of the general rule. *Id.* at 942 (citing *Flores-Figueroa*, 556 U.S. at 652). Moreover, Justice Alito's concurrence in *Flores-Figueroa* identified Section 2423(a) as a statute that provided this additional context, and circuit courts have "universally concluded" even after *Flores-Figueroa* that the knowledge requirement in the statute does not apply to the victim's age. *Id.* at 943. Rather, Congress intended to offer "special protection" to minors, and it has not amended the statute even after courts declined to require proof that a defendant knew the victim's age. *Id.* Accordingly, the panel held that *Flores-Figueroa* did not "undermine" its prior decisions, because the "special context" of Section 2423(a) demonstrated that Congress did not intend for "knowingly" to apply to all elements of the offense. *Washington*, 743 F.3d at 943.

Supreme Court Expands Role of Anonymous 911 Informants in Determination of Reasonable Suspicion for Investigative Traffic Stops.

In *Navarette v. California*, 134 S. Ct. 1683 (2014) (Thomas, J.), the Supreme Court held, in a 5-4 ruling, that an anonymous 911 call bore sufficient indicia of reliability to provide reasonable suspicion to conduct an investigative

traffic stop. During the call in question, a woman reported that a driver in a silver Ford F-150 bearing license number 8D94925 "ran her off the road" around mile marker 88 of a southbound highway. *Id.* at 1686-87. An officer travelling northbound saw the truck in question and followed the truck for five minutes before pulling it over. *Id.* at 1687. Upon approaching the truck, the officer smelled marijuana, searched the vehicle, and discovered 30 pounds of marijuana. *Id.* Petitioners' motion to suppress this evidence on the grounds that the officer lacked reasonable suspicion for the initial stop was denied. *Id.*

The Court found that the 911 call in this case "bore adequate indicia of reliability" and therefore justified the officer's suspicion of criminal activity, basing its finding on three key factors. *Id.* at 1688. First, the caller provided specific detail about the vehicle and claimed eyewitness knowledge of the dangerous driving. *Id.* at 1689. Second, based on the timeline in the case, the majority concluded that the caller reported the incident soon after it occurred, and that such a "contemporaneous report" was likely to be reliable. *Id.* Third, the tipster's veracity was bolstered by her use of the 911 system, due to recent advances in technology that safeguard against false reports. *Id.* at 1689-90.

Next, the Court considered whether—whatever the reliability of the tip—the officer had reasonable suspicion of an *ongoing* crime versus an isolated episode of recklessness, even though he did not witness any further driving infractions while following the truck. *Id.* at 1690. The Court concluded that running another car off a roadway "bears too great a resemblance to paradigmatic manifestations of drunk driving to be dismissed as an isolated example of recklessness." *Id.* at 1691. The majority then rejected that this reasonable suspicion was undermined once the officer witnessed no further illegal behavior, commenting that the officer was not required to conduct lengthy surveillance in order to confirm or dispel his reasonable suspicion of drunk driving. *Id.* In closing, the majority emphasized that the case was a "close" one, but that the tip bore sufficient indicia of reliability in order to provide the officer with reasonable suspicion of drunk or reckless driving, thus justifying the investigative stop. *Id.* at 1692.

The dissenting opinion (Scalia, J.) challenged the majority as to both the reliability of the tip and the reasonableness of the stop following surveillance. First, because "everyone in the world who saw the car would have [the] knowledge" of the car's make, model, license, and direction of travel, this case diverged from prior precedent involving corroborated predictions of behavior that indicated special, non-public knowledge of criminal activity. *Id.* at 1693. The dissent also commented that the call here was not made in the immediate heat of the moment: the tipster had "plenty of time to dissemble or embellish." *Id.* at 1694. Finally, the dissent emphasized that, whatever safeguards are in place to trace 911 calls, that fact had no bearing on the tipster's veracity because "[t]here is no reason to believe that your average . . . tipster is aware that 911 callers are readily identifiable." *Id.*

The dissent next argued that the action reported by the tipster would at most create reasonable suspicion of a "discrete instance of irregular or hazardous driving," not ongoing intoxicated driving. *Id.* at 1695. And because the officer observed no other behavior indicative of drunk driving, "the tip's suggestion . . . not only went uncorroborated, it was affirmatively undermined." *Id.* at 1696. The dissent also rejected the Court's assumption that a drunk driver would obey traffic rules while followed by a patrol car, arguing that "[w]hether a drunk driver drives drunkenly" is not "up to him." *Id.* at 1697.

Supreme Court Holds that Defendants May Not Relitigate Grand Jury's Determination of Probable Cause in Hearing Challenging Pre-Trial Asset Forfeiture.

In *Kaley v. United States*, 134 S. Ct. 1090 (2014) (Kagan, J.), the Supreme Court addressed whether a criminal defendant challenging the legality of a pre-trial asset seizure may contest a grand jury's determination of probable cause that the defendant committed the crime. The Kaleys, a married couple, were indicted on charges of transporting stolen medical devices across state lines and laundering the profits. *Id.* at 1095. Pursuant to 21 U.S.C. § 853(a), the Government obtained a court order freezing the Kaleys' assets, including a \$500,000 certificate of deposit they had set aside for legal fees. *Id.* at 1095-96. The Kaleys moved to vacate the asset restraint and requested an evidentiary hearing. *Id.* at 1096.

The Supreme Court had previously upheld pre-trial asset freezes so long as the order was based on a finding of probable cause to believe that the property would ultimately be forfeitable. *Id.* This finding is twofold: there must be probable cause both that the defendant has committed an offense, and that the assets at issue are traceable to or involved in the alleged offense. *Id.* at 1095. The district court ruled that it would only hold an evidentiary hearing as to the latter finding. *Id.* at 1096. The Kaleys, upon appeal, did not contest that the assets were traceable to the offense: the sole question before the Court was whether “an indicted defendant has a constitutional right to contest the grand jury’s prior determination” of probable cause that the defendant committed a criminal offense. *Id.* at 1095-96.

The Court rejected that the Kaleys were entitled to relitigate the issue, relying upon the grand jury's "singular" and "inviolable" role in determining probable cause. *Id.* at 1097-98. Grand jury findings routinely support arrest warrants and may lead to the rebuttable presumption that a defendant is ineligible for bail. *Id.* at 1098. As such, "[t]he grand jury that is good enough . . . to inflict those other grave consequences through its probable cause findings must be adequate to impose this one too," and "subjecting an asset freeze to any stricter requirements than apply to an arrest or ensuing detention" would lead to "incongruity." *Id.* The Court also expressed concern that allowing defendants a "do-over" with respect to probable cause would lead to inconsistent findings: probable cause could exist to bring the defendants to trial, and yet not to restrain their assets. *Id.* at 1099. This, the Court argued, would create "legal dissonance" that would undermine the "grand jury's integral, constitutionally prescribed role." *Id.* In sum, the Court found that its holding was mandated by the principle that a defendant has no right to judicial review of a grand jury's determination of probable cause, whether in the pre-trial asset forfeiture context or otherwise. *Id.* at 1100.

The Court also addressed the Kaleys' alternative argument that the Court's procedural due process precedents required a "constitutionally sufficient opportunity to challenge" the seizure. *Id.* The Court declined to address whether the balancing test set forward in *Mathews v. Eldridge*, 424 U.S. 319 (1976), applied in a proceeding collateral to a federal criminal prosecution, instead finding that even *if* the test were to apply, the Kaleys would not be entitled to an evidentiary hearing as to probable cause a crime had been committed, because the value of requiring any additional safeguards here would be "too slight" to support a constitutional requirement of an evidentiary hearing. *Id.* at 1101-04.

In dissent, Chief Justice Roberts argued that the Court's ruling would allow a prosecutor to "hamstring his target by preventing him from paying the counsel of his choice," *id.* at 1107, and that preventing defendants from having an opportunity to be heard regarding probable cause a crime has been committed was "fundamentally at odds with our constitutional tradition and basic notions of fair play." *Id.* at 1100. The dissent also challenged the Court's conclusion that the chance of an erroneous probable cause determination was "too slight" to support additional safeguards, arguing that while a grand jury's probable cause determination with respect to a criminal act can be tested and ultimately vitiated by the adversarial process, the deprivation here—chosen counsel *during* that process—is irreversible. *Id.* 1114. ■

Clerk’s Corner: An Update from the Clerk of Court for the United States District Court for the Middle District of North Carolina

By John S. Brubaker

Accessing Documents Under Seal. There has been some recent confusion regarding how to view sealed documents from a Notice of Electronic Filing (NEF). If you receive an NEF for a sealed document and you have been given access to the sealed document in CM/ECF, you are permitted one “free look” at the document by clicking on the associated hyperlink document number. To access the document, you must first enter your CM/ECF login and password **not** the PACER login and password. Your CM/ECF login is required to authenticate your access to the document.

Pro Bono Appointment List. Pursuant to Standing Order 6, the District Judges would like to offer all attorneys who practice in federal court the opportunity to participate in a pro bono activity representing pro se litigants in appropriate cases. A volunteer attorney would generally be appointed only after summary judgment is denied and the case is set for trial. For further information, please refer to the Court's website.

Filings Around Midnight. There have been some questions about what determines a transaction's filed date and entered date in the CM/ECF application. The filed date is when the CM/ECF transaction begins, and the entered date is when the transaction has been accepted. Normally, these dates are the same, but they can be different. When a docketing event is commenced before midnight and completed after midnight, the dates will be different. If the intent is to file a document just after midnight, it is suggested that the docketing process be initiated after midnight. Conversely, when the intent is to file a document prior to midnight, it is recommended that the docketing process begin well enough in advance to insure completion of the entry and creation of the NEF prior to midnight.

Please do not hesitate to call the Clerk's Office for assistance if you have a question about accessing documents or filing documents in CM/ECF. We want to help you! ■

The Pitfalls of Filing Materials Under Seal

By Rebecca Fleishman

Tharrington Smith, LLP

Former staff attorney for the Fourth Circuit and law clerk for the Honorable Catherine C. Eagles

You have finally finished your summary judgment brief in a high stakes, high pressure business dispute. As you prepare to file, you realize you have included information that your client considers confidential. Fortunately, you remember a conversation with a senior partner about filing everything under seal in high-value litigation. "That's how we always do it," he said; so you file the brief and all the supporting exhibits under seal and leave the office believing you have protected your client's business secrets. The next day, however, you are surprised by a call from the clerk's office telling you that you have violated Local Rule 5.4 and that, without an order, the briefs and exhibits face being unsealed.

There is no need to panic; you can avoid this. This spring, the Middle District updated the Local Rules to more clearly prescribe how and when documents may be filed under seal. The changes reflect an increasing focus throughout the Fourth Circuit on the public's right of access to court documents. No longer can parties expect to indiscriminately file documents under seal as a matter of course. A party seeking to file under seal should be prepared to carry its substantial burden to show that the interests in sealing outweigh the public's long-recognized common law and First Amendment rights to inspect and copy judicial documents.

Most recently, the Fourth Circuit in *Company Doe v. Public Citizen*, 749 F.3d 246 (4th Cir. 2014), reversed a sweeping district court order sealing almost the entire litigation over the objections of three consumer advocacy groups. The court recognized the long-standing First Amendment right of access to summary judgment briefs and exhibits, extended that right to the district court's own summary judgment order and docket sheet, and concluded that the defendant's competing interests did not outweigh the right of access. *Id.* at 267-70. The court also found error in the district court's failure to make specific findings based on credible evidence of a compelling interest. *Id.* at 270 ("This Court has never permitted wholesale sealing of documents based upon unsubstantiated or speculative claims of harm.").

Indeed, it is a lack of evidentiary support that often causes the federal district courts in this state to reject motions to seal. In *Cochran v. Volvo Grp. N. Am., LLC*, 931 F. Supp. 2d 725, 729-31 (M.D.N.C. 2013), for example, the court declined to seal entire briefs and exhibits filed in support of the plaintiffs' motion for class certification supported only by counsel's representations and the parties' stipulation. *See also Sisk v. Abbott Labs.*, No. 1:11-cv-00159-MR-DLH, 2014 WL 1874976, at *1-2 (W.D.N.C. May 9, 2014) (denying motion to seal without prejudice where

movant offered only conclusory assertions of confidentiality); *Gorham v. Massey*, No. 5:10-CT-3058-FL, 2012 WL 828153, at *4 (E.D.N.C. Mar. 9, 2012) (denying motion to seal where movant did not meet its burden or comply with local sealing rules).

While it may be difficult if not impossible to file entire briefs under seal, courts usually allow parties to protect confidential business information and personal information if they meet their evidentiary burdens and if the redactions are not overbroad. See, e.g., *Bayer Cropscience Inc. v. Syngenta Crop Protection, LLC*, No. 1:13-CV-316, 2013 WL 5703212, at *3 (M.D.N.C. Oct. 17, 2013). It remains the case that information exchanged during discovery is usually not subject to public access. See, e.g., *Ohio Valley Envtl.*

Coal. v. Elk Run Coal Co., Inc., 291 F.R.D. 114, 123-24 (S.D.W. Va. 2013).

These cases and revised Local Rule 5.4 offer excellent direction for properly filing documents under seal. The Clerk's Office also has additional guidance on the website under "Court Business." Regardless of whether the material has been designated confidential pursuant to a protective order, a party seeking to file materials containing confidential information would be wise to consider the issue before it comes time to file and to comply with the requirements in the first instance. As these recent cases make clear, the Fourth Circuit and North Carolina federal district courts will hold parties claiming confidentiality to their burdens. ■

Focus on Federal Practice: An Interview with Mireille P. Clough

By Ira Knight

Federal Public Defender's Office

Focus on Federal Practice is a column that focuses on a member of the M.D.N.C. Bar in each newsletter. This issue provides insight into the practice of Assistant Federal Public Defender (AFPD) Mireille P. Clough. AFPD Clough is a graduate of Duke University (B.A.), Wake Forest University School of Law (J.D.), and Temple University (LL.M. in Trial Advocacy).

Q: Where did you get your start in the M.D.N.C.?

A: I started working with Grace, Holton, Tisdale, and Clifton, P.A., a general practice law firm that focuses on criminal defense, right out of law school. Under the guidance of the attorneys there, I was exposed to federal work. Thanks to the attorneys there, I really became interested in federal court – I admired the formality, the level of legal sophistication, and the judges I encountered in federal courts across North Carolina.

Q: You presently teach at Wake Forest University School of Law. How does that opportunity impact the way you see the M.D.N.C.?

A: I have an opportunity to work with other professors at Wake Forest, to work with future lawyers that will practice in the Middle District and beyond, and to serve as a guide for the level of professionalism expected in our bar. The Middle District has a very collegial and professional bar with excellent lawyers who take their work very seriously. We want that legacy to continue.

We have an opportunity to see our bar grow with growing number of Wake students staying local. Wake graduates are very well prepared. They have a desire to do the best for their clients, whether in civil or criminal practice.

Q: Was there advice that someone gave you about practicing in the M.D.N.C. that has paid off?

A: I have received very good advice along the way. But the best lessons came from watching other lawyers in court. I have been very lucky to practice with and observe some of the best our state has to offer. Good lawyers are always polite, regardless of who they are and where they come from. They are always well prepared, and they are always patient. In court, they command respect, exude credibility, and are always professional. That dovetails with what a judge once explained to me about appearing before a jury. He said your arguments and your presentation must always be credible; credibility in the courtroom is extremely important. Credibility comes from familiarity with your case and knowledge of the rules of evidence.

Q: What are some qualities that you respect in your M.D.N.C. peers?

A: When you observe our lawyers in court or read documents that our lawyers file, it is evident that they are conscientious, careful, and deliberate in any work they present. It shows they are going the extra mile. I have had the opportunity to go to other federal districts. One positive aspect of our district is that across the aisle, prosecutors and defense attorneys are very collegial, respectful, and professional with each other. I have not found that to always be true in other districts.

Q: Do you have an M.D.N.C. professional development related experience you would like to share?

A: Inns of Court. It gives me the chance to meet attorneys from the civil bar with whom I do not interact on a daily basis, a chance to interact socially with our judges, and a chance to further interact with students at Wake Forest.

Also, this year, I represented our office in Venezuela (my home country). I was appointed to represent three United States citizens who were seeking to transfer their Venezuelan prison sentences to the United States. I traveled to Venezuela, met the clients, and assisted them with their transfers.

Q: You are bilingual. How valuable is speaking a second language in the M.D.N.C.?

A: It has been very valuable. Clients are always very relieved to be able to speak to their lawyer in their native language, as are their family members. It brings a different level of trust to the attorney-client relationship. However, more important than Spanish speaking, all criminal defense attorneys must strive to know about immigration law so that they can intelligently advise their clients about the immigration consequences of criminal convictions. We have a growing population that needs that advice and must take this into consideration before we act on their cases.■

Elon Law's Humanitarian Immigration Clinic: Representing the Persecuted

By Heather Scavone, Assistant Professor of Law and Director of the Humanitarian Immigration Law Clinic and Karizxa Mendoza, Second-Year Student at Elon University School of Law

Introduction

The Humanitarian Immigration Law Clinic (HILC) is one of four clinics at Elon University School of Law. The clinic represents approximately 300 individuals each year with matters pending in the federal immigration courts, with the Board of Immigration Appeals, and before the Department of Homeland Security's U.S. Citizenship and Immigration Services agency. Second and third year law students who participate in the clinic have the opportunity to represent clients from all over the world with protection-related immigration benefits. Among the most common types of cases undertaken by HILC are asylum, humanitarian parole, refugee family reunification and United States citizenship. Case selection is generally limited to individuals who have suffered or will suffer from persecution in their home

countries because of their race, religion, nationality, political opinion, or membership in a particular social group. This includes individuals who have worked on behalf of the U.S. armed forces in Iraq and Afghanistan. Law students enrolled in the clinic have the opportunity to represent clients in federal administrative hearings that take place in Charlotte, Durham and, in some cases, Arlington, Virginia.

Cultivating Global Citizens

A central reason for the university's decision to create the clinic in 2010 was Elon's strong commitment to diversity and global engagement. To date, Elon students have represented individuals from 47 different countries and spanning four different continents. The largest representative nationalities are Vietnam, Burma, Bhutan and the Democratic

Republic of the Congo. The languages predominantly spoken by HILC clients include numerous Montagnard dialects, Nepali, Burmese, Karen and French. Although the linguistic and national origin profiles of the clinic's clients may seem surprising, there is a reason that such cultural diversity is present in Central North Carolina. During federal fiscal year 2013 the federal Office of Refugee Resettlement reports that 628 refugees were resettled in Guilford County, more than any other county in the state. Furthermore, as a state, North Carolina ranks ninth in the nation for receiving arriving refugees, receiving a total of 2,419 refugees during FFY 2013. In view of this, it should come as no surprise that there is a compelling need for the immigration legal representation services that Elon students are able to provide through their work in the clinic.

An Innovative Model for Clinical Pedagogy

If the changing landscape of legal education has made one thing clear, it is that legal employers of all variety—big firm, small firm, government and nonprofit—expect newly minted attorneys to be skill-savvy and client-ready by the time they finish law school. Experiential legal education opportunities such as HILC ensure that skills-acquisition will supplement the theoretical training that has long been the cornerstone of legal education. Like all clinical programs, HILC gives law students the chance to put their legal training into practice during law school. The program is singular, however, in the breadth of its impact in the community on both regional and statewide levels.

Instead of limiting HILC's caseload to only complex and nuanced cases, HILC accepts cases that range from very simple to very complicated. As a result, students will typically manage a number of, simple cases and one or two complex cases. This model prepares students for realities that they will encounter in practice. HILC's high volume service model improves on the conventional clinical format by emphasizing community benefit as a central goal of clinical education rather than as a peripheral byproduct. This model is consistent with Elon's university-wide emphasis on service learning, and it illustrates the fact that the professional development of new attorneys is more fully realized when they are able to see the tangible results of their advocacy through visible service outcomes in their communities.

The Student Perspective

Karizza Mendoza is a second-year law student at Elon University School of Law. She is also a first generation American of Filipina descent. She completed an internship with HILC during the summer of 2014, and is currently enrolled in HILC as a 4 credit course. Below, she offers her reflections on the impact that the clinic has had on her legal education experience.

I have been involved with HILC since June of 2014, when I undertook a summer internship there. At the conclusion of my summer internship, I enrolled in the clinic for the fall semester for course credit. During the five months that I have been involved with the clinic, I have worked on more than a dozen cases involving naturalization, adjustment of status, and family reunification. I also had the opportunity to represent two clients during their federal naturalization hearings in the Charlotte USCIS office and in the Raleigh-Durham USCIS office. Currently, I am working on an asylum case as my in-class semester-long case with HILC.

My summer internship experience at HILC was an intense, 30-hour per week immersion into immigration law practice. In addition to learning about refugee and asylum law, it provided me with many opportunities to actually do the real world lawyering that we read about in casebooks, but that was not entirely concrete in my mind until I had the opportunity to do it myself. The experience also gave me the chance to enhance my legal writing skills. Knowing that my legal writing was a means to achieve family reunification for my client gave me a sense of motivation that had not been present before when I approached legal writing projects.

I was also excited by the fact that I encountered practice areas other than immigration while working on my cases. Although I expected to encounter tricky issues involving domestic immigration law in HILC, I was surprised by how much my 1L courses intermingled with immigration law. For instance, criminal law came up frequently when I represented my clients with applications for U.S. citizenship. Eligibility for citizenship often hinged on whether my client could demonstrate good moral character, and whether past criminal charges could have an adverse impact on moral character. For one case in particular, I spent a great deal of time reviewing North Carolina's worthless check statute and was surprised

to find that something as simple as bouncing a check might be considered a “crime involving moral turpitude” and could prevent someone from their dreams of achieving U.S. citizenship.

One of the experiences that benefited my development as an attorney the most at HILC was the nearly daily occurrence of directing client meetings. I was surprised by the amount of time I spent with each of my clients during appointments. My initial perceptions about how quickly and efficiently I could get through a client meeting had to be adjusted once I realized how factors like limited English proficiency of clients, use of an interpreter, and cultural differences affected my ability to elicit relevant information from them. In some instances when I had planned on a one hour client meeting, it would take three or more hours to complete the meeting. Based on these experiences, I think I have been able to develop skills that will serve me well with my first employer after graduation.

I also had multiple opportunities to write affidavits in support of the federal benefits that I was seeking for my clients. These were frequently necessary for family reunification cases because my clients often didn’t have access to sources of primary documentation like birth and marriage certificates.

I had one family reunification case that was particularly memorable and required a significant investment of time and research. The case was extremely urgent because it was approaching a statute of limitations that would have prevented my client from filing for reunification benefits with his children. The client was from the Democratic Republic of

Congo (DRC). He and his family were displaced from the DRC after suffering serious physical abuse at the hands of government-backed militia from Rwanda. His violent displacement ultimately resulted in separation from his children and the loss of documents that would prove his relationship to them. In order to help my client become reunified with his son and daughter, I needed to write several affidavits: one from my client and two from his sisters, whom I contacted all the way in the DRC. I also gathered several supporting documents that may help prove my client’s relationship with his wife and children. These supporting documents could also provide evidence that my client and his children have continued to have a bona-fide parent-child relationship even throughout their separation. The supporting documents that I gathered consisted of school records, financial records, communication records, consular records, and even an Algerian police report that chronicled the destruction by fire of the house where my client had lived when he sought refuge in Algeria.

I worked very hard on this case, and I am very thankful for the help that my supervising attorneys, HILC’s paralegal, and volunteer interpreters provided me. My experience in the clinic was filled with invaluable legal experience, but I also benefitted from developing a new perspective. My clients taught me to always be humble through my advocacy efforts and to always keep an open mind. My clients thank me for helping them, but I also thank them for allowing me to be part of their lives here in the United States.■

This newsletter was produced by the Younger Lawyers Committee and edited by Laura J. Dildine. Articles are being accepted for upcoming issues. The editorial staff also welcomes letters and suggestions from readers. Inquiries should be directed to laura_dildine@ncmd.uscourts.gov.

Federal Bar Association

Middle District of North Carolina Chapter

cordially invites you to attend its

FALL 2014 CLE PROGRAM AND BANQUET
October 20, 2014

CLE: 2:00-5:30 p.m.

W.R. “Randy” Loftis, *Constangy, Brooks & Smith, LLP*
Welcome, Chapter President

Kearns Davis, *Brooks, Pierce, McLendon, Humphrey & Leonard, LLP*
Criminal Law Update

James “Jamie” Dean, *Womble Carlyle Sandridge & Rice, LLP*
Rule 30(b)(6)

The Honorable Joe L. Webster, *Unites States Magistrate Judge*
Saving Our Profession: What is Required of Us?

Reception: 5:30 p.m.

Banquet: 6:30 p.m.

Honoring The Honorable James A. Beaty, Jr.

Greensboro
Embassy Suites Hotel
204 Centreport Drive
Greensboro, NC 27409

To register, go to
<http://www.fedbar.org/Image-Library/Chapters/MDNC-Chapter/2014banquet.aspx>.