Welcome to the UH Law School’s Clinical Program! The clinical program provides instruction in professional skills and offers live-client and other real-life practice experiences that are not available in the traditional law school classroom. In live-client clinics, students “learn and serve” at the same time.

For almost 40 years at our law school, more than a thousand hard-working, committed students have worked with many talented and dedicated faculty members to serve more than ten thousand clients. (I have been with the program for 33 of those years — wow!) Our clinical program started with a humble beginning in portable, temporary classrooms, where we had only one clinic for eight students, one trial practice class, and an externship course. The clinical program has grown through student demand, faculty hiring, and some early federal funding, to where now, each year, we offer 7-10 live-client clinics, 5-7 simulation courses, and Hawaii and Asia-Pacific externships. Annually, there are more than 300 student enrollments in clinical courses (slightly more than 1 per student) and 50 faculty members and lawyers in the community working with our students. Although every student is required to take at least one clinical course, most do not stop there. On average, students take more than 3 clinical courses before they graduate.

The goal of our clinical program is to offer a high-quality clinical experience to a large number of students in small credit, live-client clinics, simulation courses, and externships that teach and model excellent professional skills and stress a reflective method of looking at lawyering behavior. Currently our program offers clinics in criminal prosecution and defense, child welfare law, family law, elder law, environmental law, small business, Native Hawaiian rights and an innocence project. We have simulation courses in lawyering skills, negotiation & ADR, mediation, pretrial litigation, trial practice, estate planning, and environmental litigation. We have also offered tax and immigration clinics in the past. Clinical offerings have varied somewhat over the years to reflect the interests of the students, the needs of the community, and the expertise of our faculty.

Our school has tried to develop a clinical program to fit the unique needs and constraints of our small school, our island environment, and legal issues and resources of our state. We hope that this first issue of the Clinical Legal Education Newsletter will begin to inform you about the many interesting aspects of our program. Come and learn more about what we are doing!
Marking its 20th year at the law school, the Elder Law Clinic continues to further the legacy of Chief Justice Richardson and the law school that bears his name. "CJ reminded us ‘always make sure to take care of the people at the bottom of the hill,’” says Prof. James Pietsch, who teaches the elder law clinic and who is director of the University of Hawaii Elder Law Program ("UHELP"). “Here at the clinic, we often deal with clients who have no one else to help them.”

For both Prof. Pietsch and Dr. Lenora Lee, administrator of the Elder Law Program, the best way to foster this sense of purpose and responsibility among the students who take the clinic is to expose them to the live-client experience. “It allows students to participate in the drama of life,” says Dr. Lee. “The goal of the Elder Law Clinic is to provide students a quality education with ‘real-life’ experiences representing older clients with a variety of Elder Law issues. The clinic combines traditional classroom education with the opportunity to provide direct legal services under the close supervision of a professor.”

Often, the result is that it is not only the knowledge or skills from the course that makes the greatest impact upon the student, but rather the experience of exposing oneself to the real, serious problems of an under-served community in need. As an example, Prof. Pietsch related a recent case undertaken by the clinic:

“An example of how the clinic is involved in life and death decisions occurred when we helped an older person dying of cancer to make his own decision concerning end of life medical treatment. Although he did not want his life prolonged, his wife had demanded that he choose otherwise. As part of the clinic protocol, we had his wife leave the room to give him privacy to make up his own mind. Without his wife present, he adamantly chose to not have life prolonging medical treatment should he no longer be able to communicate his choices. The clinical students experienced first hand how undue influence and a wife’s personal preferences might have robbed the dying man of his autonomy, self-determination and his last wishes. They also learned the importance of having a protocol that keeps the client’s interest private, (Continued on page 5)

Helping Small Businesses, Helping the Community

According to Professor Gregory Kim, the small business and entrepreneurship clinic is not just about equipping students with practical experience, but about satisfying their desire to do more than just make a living: “It’s about making an impact on the community.”

Started with a focus on community outreach, the clinic strives to expose students to a service-oriented environment. “It’s this culture of service that helps clinics thrive,” says Professor Kim. As such, while the clinic seeks students who are motivated by the subject-matter, it is also important for students to be motivated by the need to help people. This is not only because the clinic deals with actual clients, but because the clinic is engaged by clients who have shown a need. “We seek clients that deserve support and provide students with a broad experience,” says Professor Kim. “We represent all sorts of clients, from mom and pops, to high growth companies, to tech companies, to retail.”

As a result, Professor Kim stresses the need for diligence on the part of his students. “There is no exam [you] can cram for … [you] can’t let the work stack up until the end. … The clinic clients require care and attention, because they have ongoing businesses and are depending on you.”

The small business and entrepreneurship clinic is comprised of two components: client assignment and client outreach. For the client assignment component, students form teams of two to three individuals and undertake two to three different assignments during the term. Prospective clients are asked to propose projects relating to the single most important thing they need help with. This usually entails document drafting – either relating to a contract for services or forming (Continued on page 5)
In 1819, Queen Kaahumanu banished the aikapu (traditional societal structure & religion), sending her warriors to each of the islands to destroy the heiau (religious temples) by fire. Landing upon the shores of Ualapue, they were resisted by the people of Moloka'i. As the skirmish took place, the kahuna (priests) of the Pāku'i heiau gathered the temple’s sacred religious artifacts and took them up into the mountains of Ōhi'a, placing them in a cave and sealing it. The kahuna returned just as Kaahumanu’s men broke through the line of defense and began approaching the temple. Reaching the foot of the Pāku'i heiau, they were met by the priests, standing upon the walls of the temple. The priests began to chant, prophesying of events that would befall Hawai'i after the destruction of the heiau: “The day shall fall/ The night shall fall/ All the high-born shall fall/ All them that branch out in the heavens shall fall. ... The time will come when the maka ai'ina [people of the land] shall rise up like a great wave! They shall rise up like a great wave that shall branch out into the sky as the ali'i (leaders).

Since that time, the first half of the prophecy has been fulfilled. The other half is unfolding now as the people of this land rise up to defend their interests.

In the documentary “A Mau A Mau: To Continue Forever,” the late John Ka imikaua, Kumu Hula and authority on Moloka'i traditions, explained: “All of us as Hawaiians, as we restore our language, restore things of our kūpuna, and try to search out the knowledge of our kūpuna -- that's all part of our evolution as descendants of the first people that came upon the Hawaiian Islands over 2,000 years ago. It's all part of our evolution, and all part of the fulfilling of that prophecy that was chanted on this heiau, Pāku'i.”

This year, the Environmental Law and Native Hawaiian Rights Clinics will journey to this place, to help the people of Moloka'i. With a quiet title action pending on Maui, the clinics’ goal is to ensure that those who have an interest in the property at issue in East Ōhi'a, Moloka'i -- roughly 250 individuals -- have an opportunity to put forth their claim and preserve their interests in this sacred land.

Because many of these parties are representing themselves pro se, a significant motivation behind the clinics’ efforts is a desire to try to level the playing field while at the same time providing invaluable training for our students.

“There are many interested parties, but the majority of the pro se defendants don’t have legal training or any prior experience with the legal system,” says Professor Kapua Sproat. “This is really an access to justice issue. ... The affected community members’ opportunity to learn about and effectively defend their interests in this complex case would be extremely limited without the clinics’ assistance. That was CJ’s vision for our law school: to help those with the greatest need for the law’s protection. If we don’t kōkua (help), the community will be left at a significant disadvantage.”

Native Hawaiian Rights

The Native Hawaiian Rights Clinic is in a period of transition. In the past, the clinic was offered once a year, often partnering with Native Hawaiian Legal Corporation to work on cases that introduced students to some of the issues that often arise when litigating a case dealing with Native Hawaiian rights. This past spring, however, the Native Hawaiian Rights clinic turned its focus to developing advocacy skills through an analysis of prior Native Hawaiian rights cases and statutes with Honolulu attorney Bill Meheula.

“This was an ‘experiment’ to see how students received this type of course offering,” says Professor Melody MacKenzie. “In litigating claims involving Native Hawaiian rights, it is helpful to possess knowledge of Hawaiian history, an understanding of past attempts to litigate similar claims, civil litigation skills -- including good judgment on whether potential claims are likely to be successful, and political skills. ... This [course] ... attempt[s] to improve knowledge and skills in these areas by examining selected cases, class discussion on the readings, and written and oral argument assignments.” The class ended the semester with students developing and presenting strategies to advance Native Hawaiian federal recognition should Congress fail to pass the pending federal recognition bill.

This new format was received favorably by the students and will be offered again this fall. Eventually, this new format may be developed into a separate course, titled the Native Hawaiian Litigation Seminar, which would focus upon advocacy skills. This would be a companion course to the
Giving Victims a Voice – Family Law Clinic

“... The process is just as important as the result.” If you have ever heard Professor Jennifer Rose lecture or provide a presentation on legal advocacy on behalf of victims and survivors of domestic violence, you have likely heard her share this principle of advocacy work. For the Family Law Clinic, which emphasizes “domestic violence lawyering and advocacy”, this means preparing students to do more than represent victims and survivors of domestic violence seeking civil protection (restraining) orders in Family Court; it means that the students learn that each interaction with a client is critical to building trust and often an opportunity to educate and raise awareness about the nature of domestic violence. It means that the relationship-building, the range of advocacy skills utilized to help identify client goals and move towards safety and justice, and the validation and respect given to clients may be more important to the client as getting a positive legal outcome in court.

“The clinic teaches students a range of client skills as well as substantive knowledge of the field of domestic violence,” says Professor Jennifer Rose. “One of our goals is to give students the tools they need to engage with domestic violence victims/survivors as they utilize assessment, critical thinking, and problem-solving skills that we help to hone, all of which are utilized in real cases involving clients who are often in crisis, experience emotional and physical trauma, and who are in danger of further trauma, coercion, and violence.”

Co-taught by Legal Aid attorney Tara Shibuya, the clinic offers students an opportunity to get into court and gain practical, real world experience by representing survivors of abuse on the (civil) Family Court domestic violence calendar. Because the clinic works on cases from the domestic violence calendar, students are able to get into court relatively quickly -- after a restraining order is filed, a hearing must take place within fifteen days.

The clinic also offers a unique opportunity to develop a better understanding of the expectations of a lawyer representing a client in an extreme stress situation. Students observe family court restraining order hearings for four hours and work directly with the client throughout the legal process. The instructors take a hands-off approach, allowing the students to conduct the intake interviews and decide appropriate legal strategy while representing their clients in court. Students will commute to two off-campus locations throughout the clinic: 1) the Legal Aid Society of Hawai‘i, which is located in downtown Honolulu and with which the clinic is currently partnered, to meet and interview the client; and 2) the Kapolei family court, where the hearings will be held.

Although the demands on the students’ schedules are high, “students have felt that [the clinic] has been a rewarding experience.” According to a former student of the clinic, “The clinic prepared me for litigating from start to finish a restraining (protection) order [case] and also prepared me for domestic violence advocacy work. Even if a student is not interested in family law, I would still persuade her/him to take the clinic as you [have the opportunity] to learn all the basics of a trial, client interviewing, and professional responsibility. After taking the Family Law Clinic, I felt for the first time that I could actually be a lawyer.”

Professor Jennifer Rose

Child Welfare Clinic – A Holistic Approach

The Child Welfare Clinic is not your normal law school clinic. Acknowledging that “[t]he needs of youth entangled in the child welfare system cross many disciplinary boundaries,” and that “their educational, medical, legal, psychological, and social work needs must all be competently assessed and addressed,” the Child Welfare Clinic was developed as a multidisciplinary course in collaboration with the University of Hawaii - Manoa School of Nursing, Social Work, and Education. Its goal: to work on a comprehensive approach to improving the delivery of child welfare services in Honolulu. As such, the clinic strives to help students gain an understanding of the child welfare system in Hawaii, by both developing the practical skills necessary to navigate the system, as well as increasing their ability to analyze and improve the imperfections of the child welfare system.

Over the course of the semester, multidisciplinary teams made up of students from the schools of law, nursing, social work, and education partner with community organizations to develop projects that will provide tangible benefits to their partner organizations. In the past, the clinic has partnered with organizations that include Youth Outreach, the Teen Center at Farrington High School, Susannah Wesley Community Center, Kapiolani Child Protection Center, the ACLU, and Hawaii Foster Youth Coalition, among others.

Working closely with their partner organizations, the student groups conceive projects and see them through to completion over the course of a semester, culminating in a final presentation in which students discuss multiple aspects of their projects. Examples of projects from the Spring 2011 clinic include assisting in the preparation of legislative testimony on issues relating to foster youth, establishing a LGBTQ teen group at Farrington High School, and drafting a grant proposal to assist the Teen Center’s work. Students spend eight to twelve hours a week, on average, working on clinic matters, with a significant portion of this time spent meeting as a team or working at the community site.

Because the Child Welfare Clinic does not work on active cases like other live-client clinics, the community project serves as one of the clinic’s main teaching tools. Through the project, students are encouraged to develop (Continued on page 5)
Elder Law Clinic (cont’d)

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personal and confidential.”

Upon completing the didactic elder law course (currently titled “Law, Aging, and Medicine”), students are eligible to participate in the Elder Law Clinic. Students are divided into groups of two to three, with each group assigned roughly eight clients over the semester. Students are exposed to some of the practice areas of law that affect older persons and to some of the ethical and other practical issues involved in providing legal services to older persons and their caregivers. The clinic allows students to serve socially and economically needy older persons on Oahu with problems involving public entitlements, guardianship / conservatorship and their alternatives, landlord-tenant, elder abuse, age discrimination, planning for incapacity and death, consumer protection, health care, and medical treatment decisions.

In addition to exposing students to a wide variety of legal topics relating to elder law, students are given the opportunity to develop a number of practical skills, ranging from interviewing clients and providing advice and counsel to drafting and executing legal documents for their clients. Students also provide education and training in the community, and are given the opportunity to participate in court cases involving guardianship or conservatorship.

Everything about the clinic, however, reflects the fact that students are dealing with real clients. When asked about the use of simulation in other clinics and about the live-client structure of the clinic, Prof. Pietsch noted that he is fortunate in that UHELP services roughly 500 clients a year and that it is not difficult to carefully select clients for the clinic to provide a range of legal, ethical, and practical experiences for law students. Cases range from very simple to somewhat complex and thus give the students the ability to gradually expand their legal skills and experiences. The potential clients are apprised of the need for experiential opportunities for law students and that their cases are only shared with students with their permission. If clients feel uncomfortable in having students work on their cases, the clients can opt out at any time and the UHELP staff will take over their cases. Usually potential clients are thrilled to help and, in effect, really become part of the “teaching team.” “Besides,” he added, smiling, “real life is so much more interesting.”

Small Business Clinic (cont’d)

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a company.

For the client outreach component, consultations are arranged with the public to answer basic legal questions that they might have. Again in small groups, students meet with clients for 45 minutes, supervised by Prof. Kim. In the past, the clinic has partnered with the Small Business Development Center and the Manoa Innovation Center, and has plans to expand this outreach.

All in all, students are expected to dedicate at least eight to ten hours a week working on client matters. This includes working within their team to draft various documents, as well as meeting with clients – in both the assignment and outreach components. Because students must coordinate with their own teammates as well as their clients, their schedules must possess a certain amount of flexibility. In addition, students are also expected to keep up with the required weekly reading and assignments, which are designed to not only expose them to the many areas of law business attorneys need to be conversant with, but also assist them in dealing with potential issues that may arise in dealing with clients at the clinic.

However, “there will invariably be occasions where clients ask questions or have needs that are not covered in class.” In those instances, “students must take initiative to tackle these problems for the client.” The hope is that the responsibility of working with clients -- with the students positioned as “associates” under Professor Kim as supervising “partner” – introduces students to the realities of private practice. “An advantage for students,” notes Professor Kim, “is that they receive this introduction to the ‘real world’ experience in a classroom environment.”

Child Welfare Clinic – A Holistic Approach (cont’d)

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creative solutions to the needs of the child welfare system. In addition, the importance -- and difficulty -- of collaboration is stressed. “The students should know that collaboration within a team, within a multidisciplinary group, and with a community organization is not usually easy,” says Professor Faye Kimura, one of the six faculty members from the four participating schools that teach the course. “Successful collaboration may involve a great deal of initial relationship and trust building that may create what appears to be prolonged periods of minimal progress; however, the eventual rewards can be profound for the practitioner and the people we are trying to serve.”

Multidisciplinary collaboration also entails understanding the unique analytical lenses with which each profession approaches a particular situation. The clinic attempts to raise awareness among the students regarding how assumptions based upon one’s respective profession can sometimes interfere with serving a client’s needs.

Eventually, the clinic hopes to add psychology students to its teams, as well as expand its multidisciplinary teaching group to include faculty from the Department of Psychology. The clinic is also considering the use of multidisciplinary collaboration on real cases. In the meantime, however, students are given a taste of child welfare court proceedings through a mock trial. Through the mock trial -- and the clinic in general -- students are exposed to the complex challenges faced by at-risk children and their families. Ultimately, it is hoped that this unique clinic will yield bold students, unafraid to think outside the box when dealing with the problems that face foster and at-risk children in Hawaii.
not engage in litigation. One reason for this is the fact that the clinic does not operate year-round, but is limited to the Fall and Spring semesters. Instead, the clinic provides other forms of legal assistance; for example, legal research and drafting, preparing permit applications, and reviewing and commenting on Draft Environmental Impact Statements.

This year, however, the clinic’s project will differ. In an effort to aid the community of ʻŌhiʻa on Molokaʻi, the Environmental Law Clinic will take on more of a teaching role by helping prepare over 200 pro se defendants to represent themselves in a pending quiet title action, including preparing pro se answers to preserve litigants’ opportunity to participate in the lawsuit. In the Spring semester, the Native Hawaiian Rights Clinic expects to continue with the project by helping the pro se defendants prepare for trial.

The Environmental Law Clinic is held three out of every four semesters, replaced with the simulated Environmental Litigation Seminar every other year. Because the litigation seminar was offered last Fall, the Environmental Law Clinic will be offered during both the Fall semester 2011 and Spring semester 2012.

And the travel? “We usually try to concentrate our travel to two weekends; one early on in the semester and a second towards the end so that students can present their final work product to clients.” But of course, that is not why students should consider taking this clinic.