HAWAII INNOCENCE PROJECT SUCCESS

Alvin Jardine finally freed after almost 20 years.
He saw his adult daughter for the first time last year.

“[The legal system] strives to get to that point where these kinds of errors are prevented, but it will never happen. These things can happen even when you’re acting in good faith. We don’t assume a person is innocent or guilty, but we look at the available information with fresh eyes. If they’re telling the truth, what could prove it?”
— Virginia Hench, Hawaii Innocence Project director

Thanks to the Hawaii Innocence Project, Alvin F. Jardine III was set free last year after serving almost twenty years in prison for a crime he says he didn’t commit. The Hawaii Innocence Project presented new DNA evidence of tests done on a tablecloth that had been covering a “papasan” chair that the victim and her attacker were on during the rape. Those tests excluded Mr. Jardine as a contributor of male DNA detected on three of four stains of blood or bodily fluid, with a comparison unable to be made on the fourth stain.

Finding that these DNA test results constituted newly discovered evidence that could change the result of the trial, Maui Circuit Judge Joel August set aside Jardine’s 1992 convictions and ordered a new trial. Charges were eventually dropped against Mr. Jardine last July.

According to the Honolulu Star-Advertiser, Jardine was convicted on four counts of first-degree sexual assault, three counts of attempted first-degree sexual assault, kidnapping, and first degree burglary and sentenced to 35 years after he was identified by the alleged victim as the person who broke into her home, held her at knifepoint, and repeatedly raped her. This conviction came after two earlier trials resulted in hung juries. Throughout it all, Mr. Jardine maintained his innocence. He even denied himself the possibility of an early parole by refusing to enter a sex-abuse treatment program that would have required him to admit guilt.

The Jardine case is the Hawaii Innocence Project’s first case to have had its conviction set aside. Mr. Jardine’s application was also one of the first reviewed and accepted by the Hawaii Innocence Project, shortly after the project was launched in 2005.

Peter Neufeld, who along with Barry Scheck started the national Innocence Project in 1992, originally contacted the University of Hawaii’s Hawaii Innocence Project.

(Continued on page 4)
Getting into Court – Prosecution Clinic Spotlight

The prosecution clinic is designed to meet the needs of students who have an interest in either criminal or civil litigation, who want to develop their oral advocacy skills, and who want to improve their public speaking. The goal is not to make you a prosecutor. The Prosecution Clinic is an academic course with a very strong practical component. This clinic allows students to have a foot in both the worlds of law practice and law school, from which they can examine practical, ethical, and professional issues relating to litigation while they develop their practical lawyering skills.

Litigation skills are taught through the prosecution of real traffic and misdemeanor criminal cases in court and various in-class simulations including the simulation of a major mock civil trial which includes expert witnesses. The classroom component meets twice a week throughout the semester (except for the last three weeks).

From the student’s perspective, the heart of the Prosecution Clinic is the courtroom experience. Students go to Honolulu District Court every week in this clinic and the course provides more courtroom time than any other clinic in the school. During the first three weeks of the semester, students only observe in court, but by the fourth week, after classroom discussions and simulations, they are in court to try their own real cases under the supervision of members of the Honolulu Prosecuting Attorney’s Office.

Although the majority of civil and criminal cases never go to trial, by the end of the semester most students have had 3 to 4 actual trials and some students have had up to 10 trials. Of course there are always one or two students who never have a case go to trial, and that is part of the reason the clinic does so much simulation.

Students go to court once a week in the morning or afternoon (starting at 8:30 AM or 1:30 PM) every week. After the first three weeks of observations, students go to court on the same schedule every week to try cases. Depending on the court’s calendar for the day, they will be there from 1 to 3 hours. Therefore to take this clinic students must have one half day per week with no classes, work, externships, or other commitments.

In preparation for the actual courtroom cases, early in the semester the Prosecution Clinic and the Defense Clinic try simulated cases against each other one night in the District Court. Each Prosecution Clinic student tries a case against a Defense Clinic student. A deputy prosecuting attorney and a deputy public defender are present in each courtroom to serve as judges and provide feedback after the trial.

The evidence class is a co-requisite for this clinic. In the fall semester, students can take this clinic in the same semester that they are taking the evidence course. Students who have taken the two courses together seem to unanimously agree that taking the courses concurrently has improved their learning in both courses. However, it is not necessary to have taken either trial practice or criminal procedure before taking the prosecution clinic. This clinic covers the fundamentals of trial practice (although not jury work) and criminal procedure issues are almost never critical in the types of cases that are handled in this clinic.

A unique aspect of this clinic is that students may select this clinic for either three or four credits. All the students work at the same pace and schedule during the first

(Continued on page 3)
Prosecution Clinic (cont’d)

(Continued from page 2)

three quarters of the semester, but 3-credit students end the class about 3 weeks before the end of the semester because they make fewer courtroom appearances, they do not participate in the large mock civil trial which is near the end of the semester, and they do not attend 2 to 3 weeks of classes focused on the mock civil trial. This clinic requires no more time than any other 3 or 4-credit course.

The Prosecution Clinic is a great course for students who have the slightest inklings that they might be interested in any type of litigation. It gives you the opportunity to try the litigator’s role. Even if your primary interest is clearly civil litigation, you will have the opportunity to do more witness examination in this criminal clinic than in any civil clinic. If you think you have an interest in being a prosecutor, this gives you the opportunity to walk in a prosecutor’s shoes and see if it might really be for you. If you think you want to be a public defender, this is the perfect opportunity to begin to understand how the prosecutor will think about your case. Every year, 2 to 4 students take both the Prosecution and the Defense Clinics (but they must be taken in separate semesters or else there would be a conflict of interest). And it might surprise you to learn that every year one or two students who never thought they had an interest in doing any criminal litigation before enrolling in this clinic, ultimately decide that they would like to try criminal litigation after they graduate.

But suppose you are absolutely sure that you never want to do any litigation, you dreaded doing moot court arguments, and you never volunteer in class. This is the perfect opportunity to enhance your personal and professional skills where your job is not on the line. You must take this class! This is a class where you can really grow. It might even change your career path.

I myself came to law school with a Bachelor’s and Master’s degree in business administration and was sure I was going to be a corporate lawyer. After some summer work and a part-time job with a law firm that did some criminal work, my first job out of law school 40 years ago (yikes!) was as a public defender in Detroit where I successfully defended clients in jury trials on charges of armed robbery, rape, and felony-murder. However, like most academics, at some point I decided I would rather “teach it” then “do it.” Teaching a clinic allows me to have a little bit of both. I taught criminal defense clinics for my first 15 years of law school teaching and I taught my first prosecution clinic when we had to cover a hole in the schedule because an adjunct professor had to withdraw from teaching what was going to be the first Prosecution Clinic at the last moment. At first I was reluctant, but soon I was delighted. Although prosecution clinic students do not get the opportunity to work with their own individual “clients,” I immediately recognized a prosecution clinic could provide students with much more courtroom time than a defense clinic could and ever since that time I have been offering a prosecution clinic.

You can view a syllabus for this course and the current handout materials by visiting http://www2.hawaii.edu/~barkai/L990b.html, or simply googling “John Barkai,” going to my home page, and clicking on the link for “Prosecution Clinic.”

Although almost all of the traffic cases that we work on (Stop sign, Red light, Speeding, etc.) are not very factually complex and do not take a lot of preparation (the officer said, “You did not stop.” but the defendant said, “I did stop”), the advocacy issues can be very challenging especially since every police officer is different, and every defendant is different. Determining factual accuracy and witness credibility is fundamental to all types of advocacy. The foundational facts in many of these cases are very similar to the facts that a personal injury lawyer will encounter in an auto accident cases. Even experienced police officers who have taken the Prosecution Clinic as law students find this course to be challenging, enhancing, and fun. The course is “credit/no-credit” and there is no final exam. What more could you ask for in a course?
Richardson School of Law about starting a local Innocence Project in the late 1990s, but the school lacked the resources at the time. In 2004, the school reached an agreement to collaborate with California Western School of Law faculty and students and the California Innocence Project. Around the same time, Ilima Morrison, an alumnus of Richardson Law School, was contacted by Alvin Jardine’s family for pro bono assistance in filing a motion to preserve evidence. That motion ended up preserving the one piece of evidence that was finally able to be DNA-tested – the tablecloth. Hearing that an Innocence Project was being started at the law school, Ms. Morrison helped Mr. Jardine’s case be in the first package of applications received by the project.

After receiving Jardine’s application, Professor Virginia Hench, director of the Hawaii Innocence Project, flew to see Mr. Jardine in Mississippi, where he was incarcerated. “You have to look somebody in the eye and talk to them and hear their side of it,” she said in an interview with the Maui News. “I came away convinced, although at the time I had no evidence. I found him completely consistent. He offered to take a polygraph. He said, ‘Test the DNA.’ I said, ‘We will if we can find it.’ I told him what I tell everybody. I can’t promise we can get you out. But we’ll investigate.’

The prosecution, however, wouldn’t agree to the DNA testing. As a result, project volunteers worked to get a court hearing. Searching for trial transcripts, they discovered that those from Mr. Jardine’s first and second trials had been sent to archives and that only one person was authorized to search them. The transcripts of his third trial could not be located – a court reporter had to re-create them after she returned from maternity leave.

“You can see why it takes years,” said Prof. Hench in the same interview. “So many people contributed to this case. It was a team effort.”

“By the time people come to us, they’ve exhausted every other avenue,” said Hawaii Innocence Project Attorney William Harrison to the Star-Advertiser. “There’s usually very little evidence and people have already gone over it again and again. It’s very tedious work trying to find that one proverbial straw that will help get a conviction overturned.”

After finally getting its hearing, the Hawaii Innocence Project convinced the court in 2009 to order new DNA testing on the remaining evidence.

Mr. Jardine’s steadfast maintenance of his innocence was essential in convincing the Hawaii Innocence Project to take the case. The Hawaii Innocence Project only considers cases in which the person: (1) is currently incarcerated; (2) is serving a lengthy sentence; (3) was convicted in Hawaii (although they may be incarcerated elsewhere); (4) has a credible claim of actual, factual innocence of the crime(s) for which the person in incarcerated; and (5) evidence potentially exists which could support the claim of factual innocence. For the purposes of applying to the Hawaii Innocence Project, “factual innocence” means that the person did not commit or participate in the crime. It does not include purely legal defenses such as self-defense or insanity, and does not include sentencing, overcharging, or similar legal issues.

Currently, Professor Virginia Hench serves as the director of the Hawaii Innocence Project, with attorneys William Harrison, Brook Hart, and Susan Arnett as its staff. In addition, 12 to 15 second and third year law students assist with hands-on work in a clinical course offered each semester. Students are taken through all steps of a case, from interviewing inmates in prison, speaking to prosecutors, tracking down witnesses, and gathering evidence. “It’s an excellent vehicle for students to learn how to avoid huge mistakes as lawyers,” said Brook Hart in a 2007 interview with the Honolulu Star-Bulletin. “We are looking for actual innocence, but we are also looking for mistakes that may have compromised the fairness of a person’s trial to the extent that they ought to have a new trial.”