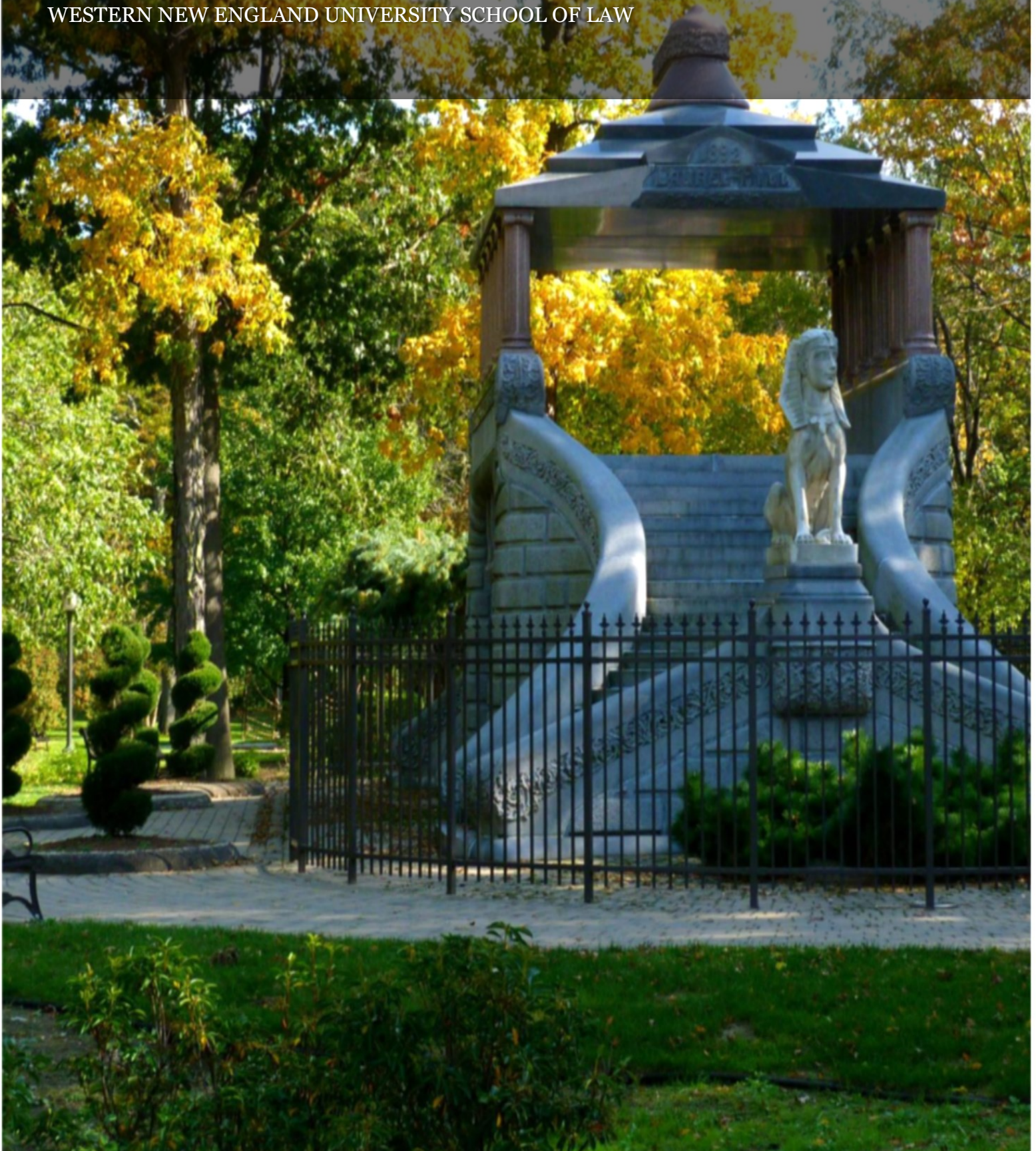


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APRIL 2016 ISSUE 8 VOLUME 43

Barney Mausoleum in Forest Park
By Rusty Clark- Own work, CC BY 2.0

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Alumni Profile

Josh Talcovitz, Esq.

Class of 2014

We, at Lex Brevis, are always looking for ways to improve. We would love to hear feedback so we can work on making next year's issues better. Please email Amara at LexBrevis@gmail.com

Trial Team Competes In Boston



by **RYAN MCLANE**
LEX BREVIS Guest Writer
Ryan.McLane@wne.edu

The members of Western New England Law School's Trial Team competed in the Student Trial Advocacy Competition (STAC), which took place in the Moakley Federal Courthouse and Suffolk County Courthouse in Boston on March 11-13, 2016. The tournament is held annually, and is a national tournament sponsored by the American Association for Justice. Law schools from around the nation compete regionally, with the regional winners competing in New Orleans, Louisiana in early April for a national title.

Each team consists of four students – two as counsel for the plaintiff and two as counsel for the defense. Each party has two witnesses, one of whom is an expert. These witnesses are played by the non-competing party (if plaintiff's counsel is competing, defense counsel plays witnesses, and vice versa). Western New England had one competing team in this year's tournament, assisted by the 2017 competing team as well. Plaintiff's counsel for Western New England was



Mary Simeoli and Amy Russo. Defense counsel was Veronica "Ronnie" Reis and Ryan McLane.

Western New England has been competing in the annual tournament for over 15 years. The unique aspect of the STAC tournament is that students are judged specifically on their trial advocacy skills. The AAJ publishes a yearly fact pattern which is the subject of the competition trials. This fact pattern includes mock pleadings, deposi-

tions, expert opinions, exhibits, and jury instructions. This year, the trial was about bar owner liability for a drunk-driving accident. Outside research is forbidden at the tournament, and students may only use facts from the record provided. During trial, Federal Rules of Evidence and Civil Procedure are followed.

The story for this year's trial was a man/woman (the tournament is gender-fluid, as you don't know who will be playing each role for the



Professor Bruce Miller

competing teams) named Quinn Chase who was hit by a drunk driver leaving Montana Max's Good Time Saloon. Quinn Chase is suing Max Petunia, the owner of the bar. The fact pattern provides a regulation regarding the service of alcohol to visibly intoxicated patrons, in this case a man named Al Overton. Each party has to use the depositions, expert witnesses, exhibits, and regulations provided to frame their case. Mary and Amy framed the case as a greedy bar owner cashing out on young college kids, and asked the jury to hold the bar owner to "the cost of doing business the way that he does." Veronica (Ronnie) and Ryan used "the blame game" as their theme, asking the jury to hold individuals responsible for their own actions. Amy and Veronica delivered opening statements, while Mary and Ryan delivered closing arguments for their parties.

Students are judged on their opening statements, direct examination, cross examination, and closing statement. Within that structure, students are scored on a 1-10 scale based upon knowledge, style, and ability to present or prevent evidence. Judges consist of attorneys and judges from around the Boston area.

Though Western New England did not advance to the finals, it was still a great experience, and the team performed incredibly well. Mary Simeoli and Amy Russo competed against defense teams from UConn and Yale, and Veronica "Ronnie" Reis and Ryan McLane competed against the University of New Hampshire's plaintiff team.

The Western New England trial team would like to encourage all students who are interested in trial work to try out for the trial team next fall. The tryouts are open to 2Ls and part-time 3Ls. The course is 1 fall credit and 2 spring credits, with the tournament paid for by the school. Along with the trial experience and learning comes the fun of tournament weekend. For more information, contact the 2017 competing team (Anthony Huntley, Silvina Bejleri, Sara Behuniak, and Lucy Turner), who is sure to head to next year's national tournament.

Three things I wish I knew in law school:

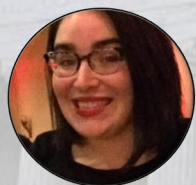
1. For social change lawyers, the most practical subject to study is theory.
2. Courts can be very good at correcting formal inequality. To address unequal structures, you need a social movement.
3. Though the content and method of law are political through and through, there is nevertheless something to the claim that the rule of law is a check on the abuse of power.

Three things I thought were true in law school and still do:

1. To be a happy lawyer, do what you love, not what you're expected to do.
2. To flourish as a lawyer, good mentors and colleagues are essential.
3. There are no inherent limits to what can count as a persuasive legal argument. Mastery of extant legal doctrine and the craft of lawyering greatly increases your chances of making one.

STOP THE SHAM

Why *Whole Woman's Health v. Hellerstedt* is the most serious challenge to abortion rights today, and what the Supreme Court has to say about it.



by **CHELSEA DONALDSON**
LEX BREVIS Staff Writer
Chelsea.Donaldson@wne.edu

I am an (admitted) Supreme Court junkie. When the Court is in session, I eagerly follow SCOTUSBlog and all available sources to discover what the Supreme Court is going to hear next. The interpretation of our Constitution is at stake every single year, and I devour every single word Chief Justice Roberts breathes in order to find out what is coming next. Forget election season. You want a truly stressful life experience that concerns the fate and outcome of our nation's future? Go to a Supreme Court oral argument. It will scare you senseless.

I have been to three oral arguments (*United States v. Windsor*, *Obergefell v. Hodges*, and most recently, *Whole Woman's Health v. Hellerstedt*) and each time, I am struck with the sheer power that the nine (and, most recently, eight)

people that sit on the Bench have. The position of Supreme Court Justice is one of our oldest and most respected bastions of power. While the Congressional powers-that-be seem to have no problem slinging insults at the President or at each other, few have the bravery to wag their tongue at Chief Justice Roberts and his fellow Justices. Their job is to interpret the laws of the land and to defend the Constitution, and that is no easy task. It is why whenever the Court determines what cases to hear, I pay attention. These decisions, from these nine people, shape the future of the law of the land. Even for non-law students, that is important.

This is why when I discovered that the Supreme Court elected to take up *Whole Woman's Health v. Hellerstedt* (then *Whole Woman's*

Health v. Cole), I was equal parts elated and terrified. For one, it was the first abortion case that the Supreme Court had taken up since *Gonzalez v. Carhart* (which upheld a partial-birth abortion ban statute), and the most serious challenge to abortion since *Planned Parenthood v. Casey* (which weakened *Roe v. Wade's* strict scrutiny standard for abortion, and instead replaced it with a vague "undue burden" standard).

This could be excellent news, if the Court stands firm and fights back against abortion restrictions, or it could be terrible news, if the Court all but overturns *Roe v. Wade* and allows a state to impose whatever restrictions it sees fit upon abortion clinics in order to close them for good.

When I realized what was at stake, I decided to pack my bags and head straight to the Court, in order to 1) participate in the rally to support Whole Women's Health's appeal to strike down the restrictions imposed upon them by the state of Texas and 2) witness the oral argument for myself.

In order to understand what the Supreme Court had to say about the current state of affairs regarding abortion restrictions in Texas, though, a quick explanation of *Hellerstedt* is in order.

In 2013, Texas passed a law known as H.B. 2, which required a series of restrictions on abortion clinics throughout the state. These restrictions included that any abortion clinic that was not an "ambulatory surgical center" had to be shut down. Doctors who perform abortions must also have "admitting privileges" at a hospital no less than 30 miles away from their clinic. People who elect to have a medical abortion must take the pill in front of the consulting physician, in the pre-approved ambulatory surgical center. A person who wants to have an abortion must go to a registered nurse or doctor. Finally, H.B. 2 contained a 20-week ban on abortion.¹

The Texas Legislature argued that these restrictions were put into place to protect Texan women from "complications" that arose during abortion. On the surface, it seemed pretty legitimate. No one wants Texans to suffer from abortion complications, right? Despite this seemingly logical reasoning, it was filibustered for eleven straight hours in an effort led by Texan state senator Wendy Davis (D-Ft Worth), who strapped on a pair of bright pink sneakers and a back brace to argue for the stop of the bill. Davis argued that the bill restricted abortion access to Texans, and that H.B. 2 was nothing more than a ploy to cut off abortion access in lieu of banning abortion. During the eleven-hour filibuster, Davis was frequently told she was off topic (when talking about such topics as sonograms and gynecological exams) and eventually, the Congressional building dissolved into spectators screaming "Let her speak!" and Davis winning the stop of H.B. 2.²

Unfortunately, H.B. 2 was eventually passed roughly one week later, and as Davis predicted, it immediately had devastating effects. The Center for Reproductive Rights reported that since the passing of H.B. 2, Texas' 42 abortion clinics were cut down to an alarming 19, as many clinics could not operate in compliance with the new legislation.³ Many critics of H.B. 2 argued that the law was nothing more than a sham to restrict abortion, and that abortion is one of the most low risk medical procedures in the country, leaving the Texas legislature without a significant state interest to stand on. Indeed, according to Justice Ruth Bader Ginsburg, it is "undisputed" that childbirth is more dangerous than an early-term medical abortion.⁴

The Supreme Court, during oral argument, grappled with many serious questions, but certain justices were more vocal than others. Justice Ginsburg voiced her concern about the length of time a person must drive in order to reach abortion clinics across the state. Justice Kagan asked for a justification from the Solicitor General of Texas, who was asking the Supreme Court to impose their extraordinarily strict abortion regulations upon the entire country. Justice Kagan then asked if Texas would be comfortable with the Court doing the same with Massachusetts' standards, to which she heard no substantive response. Justice Breyer asked, repeatedly, why Texas had bothered enacting H.B. 2 at all, given not a single person in Texas had died from complications due to either medical or surgical abortion. And, as a personal aside: there is something awe-inspiring about seeing Justice Sotomayor interrupt the Chief Justice of the United States to demand more time to grill the Solicitor General of Texas about the lack of evidence within the record concerning complications after taking the medicinal abortion pill.

¹RHRC Data Check. March 1, 2016. <http://data.rhrealitycheck.org/law/texas-omnibus-abortion-bill-hb-2-2013/>

²Bassett, Lauren. *Wendy Davis Celebrates 1-Year Filibuster*. The Huffington Post. June 25, 2014.

³*New Research Reveals Devastating Impact Of Clinic Shutdown Laws On Texas Women*. Center for Reproductive Rights. October 5th, 2015.

⁴*Whole Woman's Health v. Hellerstedt*. Oral Argument Transcripts, P. 53. March 2, 2016.

On the flipside, the conservative justices were oddly quiet. The absence of Justice Scalia was certainly felt on that day, as Justice Thomas elected to remain silent (though, every single time he leaned toward his microphone, a hush fell over the courtroom) and Chief Justice Roberts was ready to tame the four liberal justices into something resembling order. The task of grilling Stephanie Toti, lead counsel for Whole Women’s Health, fell to Justice Alito, who repeatedly asked questions about the content of H.B. 2 that had nothing to do with abortion. It was a lackluster day for the conservative wing, who were missing their most vocal advocate. By the end of the oral argument, Chief Justice Roberts seemed to resign himself to the inevitability of Justice Breyer grilling the Solicitor General of Texas over the logic behind the passage of H.B. 2, and the three female Justices of the Court demanding to know how, exactly, this legislation was supposed to protect Texan women.

The real mystery of the day, though, was Justice Kennedy. The illusive swing-voter and co-author of *Casey v. Planned Parenthood*, the ruling legal authority in *Hellerstedt*, was remarkably quiet, given he was the one who could potentially give the liberal wing of the Court the 5-3 victory needed in order to save both *Roe* and *Casey*, and finally declare that abortion needs to be not only legal, but accessible.

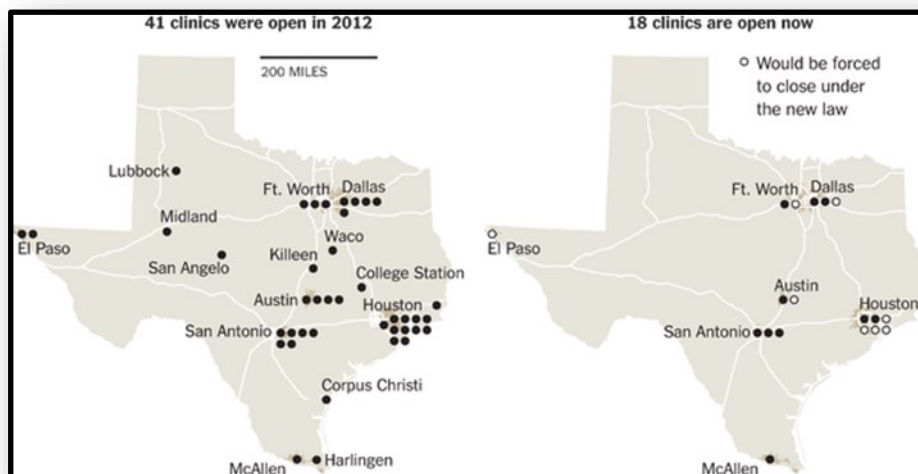
However, Kennedy elected to say the dreaded “r” word: “The --- the State, I think, is going to talk about the capacity of the remaining clinics. Would it be A, proper, and B, helpful, for this Court to remand for further findings on clinic capacity?”⁵

Remand. What a nightmare.

Justice Kennedy was particularly concerned with two facts in the record: 1) did H.B. 2 really close as many clinics as Whole Women’s Health claims, and 2) can the remaining clinics handle the available population of people who require abortions in Texas? Common sense, when looking at the record, says 1) yes and 2) no, but the Supreme Court requires more than common sense in order to alter the law of the land. Let’s examine the statistics.

There is absolutely no question that abortion is less accessible for Texans post-H.B. 2. As cited above, only 19 clinics remain in Texas after the passing of H.B. 2. (The map pictured is one clinic short, due to a clinic re-opening after the Supreme Court stayed the legislation, as they had granted cert and would take up the matter at the Court.) Many people must drive over 200 miles in order to reach the nearest clinic, which is both time consuming and costly. In the entirety of western Texas, there is only one abortion clinic – nestled in the far west corner of El Paso, along the New Mexico border.

⁵*Whole Woman’s Health v. Hellerstedt*. Oral Argument Transcripts, P. 15-6. March 2, 2016.



Sources: Texas Policy Evaluation Project and Whole Woman’s Health. Image used by the New York Times.



To make matters even more complicated, according to H.B. 2, a person who chooses to have a medical abortion (abortion via pill) must take the two-day dose in front of a licensed physician, in one of these ambulatory surgical centers. So say a person in Midland requires an

abortion. They must drive all the way to El Paso (five hours) to take the first dose in front of the physician. They can either drive back to Midland (five hours) or get a hotel room for the night (an additional expense). It is worth noting that the abortion begins approximately four hours after taking the first pill, and side effects can include dizziness, painful cramps, and heavy bleeding – so the odds are that the individual who drove to El Paso to have an abortion will probably not want to drive five hours back home after taking the first dose of medication. However, should they choose to drive back to Midland, they must drive back to El Paso the next day (five hours), take the pill, and then drive back to Midland (five hours). Altogether, a potential *twenty hours* of travel in order to receive a legal medical abortion – one of the safest medical procedures in the book, which results in what amounts to a heavier-than-usual menstruation cycle.

This mind-boggling fact puzzled Justice Sotomayor, in particular, who sounded legitimately shocked when Attorney Toti explained the process to her. Justice Ginsburg went further, asking for an explanation on why

H.B. 2 required abortion clinics to have a doctor with admitting privileges, as, by Texas’ own submitted medical data, people do not immediately fall over of complications from a medical abortion. Justice Ginsburg, too, voiced concerns for the poor, who would have an additional burden thrust upon them with having to find transportation to these clinics that are often over one hundred miles away. “You don’t look to all the women who are getting abortions,” Justice Ginsburg stated, refuting the argument that only 25% of Texan women lived over 200 miles away from an abortion clinic. “You look only to the -- to the -- the women for whom this is a problem. And so the only women we would be looking at is not all of the women who are ---- who live in Austin or in Dallas, but the women who have the problem who don’t live near a clinic.”⁶

As it stands now, abortion is certainly legal in the United States, and every legal challenge to *Roe v. Wade* to outright ban abortion has failed. However, while abortion may be legal, it is not necessarily accessible – and it’s not only Texas. In five states (Mississippi, Missouri, North Dakota, South Dakota, and Wyoming), only one abortion clinic remains after laws were put into place very much like H.B. 2.⁷ More than 200 anti-abortion restrictions have been passed in the United States since 2011 – the first year since the conservative Republican party took control of the House and the Senate. *Id.*



⁶ *Whole Woman’s Health v. Hellerstedt*. Oral Argument Transcripts, P. 72-3. March 2, 2016.

⁷ Deprez, Esmé E. *The Vanishing U.S. Abortion Clinic*. Bloomberg. March 1, 2016.

Access to Justice

Despite these restrictions, abortion still remains one of the safest medical procedures one can undergo. According to the Guttmacher Institute, the rate of serious complications during first-trimester abortions is less than .05%. The risk of actually dying from an abortion (surgical or medical) is .0006%.⁸ And, it turns out, Justice Ginsburg is correct: the risk of dying from childbirth is fourteen times higher than the risk of dying from an abortion.⁹

Whole Women's Health v. Hellerstedt is an opportunity for the Supreme Court to state, once and for all, that it is not enough for abortion to be legal.

It has to be accessible to all people – rich and poor, black and white, cisgender¹⁰ and transgender.

The Court is currently faced with the decision of whether or not driving two hundred miles, staying two nights in a hotel, and taking two pills in front of a doctor is considered an undue burden. This woman, and thousands of other people, gathered in front of the Supreme Court on March 2, 2016 to exclaim: YES. Yes, it is an undue burden to be forced to travel hours at a time to obtain a legal medical service. Yes, it is an undue burden to be forced to take a pill in front of a doctor when science shows that there is little to no risk of death or complications involved in doing so. Yes, it is an undue burden to have only one abortion clinic in Mississippi. Yes, it is an undue burden to travel across state lines in order to receive safe medical care. It is time for the Su-

preme Court to stop the sham of these “safety regulations” and label them for what they are – obstructive legislation passed to restrict access to abortion, because banning it has proven to be too difficult.

My gut feeling after witnessing the oral argument and watching the mayhem first-hand tells me that the Supreme Court will declare H.B. 2 unconstitutional underneath the *Casey* precedent. Whether Justice Kennedy gets his wish to remand back to the Fifth Circuit remains to be seen, but if Justices Sotomayor, Kagan, Breyer, and Ginsburg have anything to say about it? Texas is going to

have to re-analyze how it keeps people seeking abortions “safe.”



⁸Fact Sheet: *Induced Abortion In The United States*. The Guttmacher Institute. March 2016.

⁹Raymond, EG. *The comparative safety of legal induced abortion and childbirth in the United States*. National Center for Biotechnology Information. 2012.

¹⁰“Cisgender” is a term for someone who has a gender identity that aligns with what they were assigned at birth.



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ERP160426 Residential Real Estate Closings: Practice Essentials & An Overview of the New Rules CLE

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Wednesday, April 27, 2016

EYL160427 Achieving Better Custody Outcomes CLE

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On Networking

A few thoughts from the legal community.



Adapted with permission from
UMass Amherst Pre-Law Advising
Office's prelaw@umass.edu

What is networking? In essence, it's being friendly with a purpose. If that sounds crass to you, then, to be blunt, you might want to rethink a career that is based largely on building and maintaining strategic professional relationships. Lawyers can't adequately represent their clients or build their businesses if they haven't forged (or aren't willing to foster) strong networks with the other players in their field or industry: opposing counsel, industry leaders (and middle managers), law enforcement personnel, social workers, court personnel and any number of others. Information and business flow among those who are connected to one another in a series of overlapping networks.

What else do you need to know about networking with lawyers in particular?

As I indicated above, *lawyers are natural networkers*. It's what we do best. Lawyers like feeling like we're



connected and that we can help you make connections as well.

Lawyers are relatively tradition-bound. Even the most liberal of lawyers is still traditional (relative to most of society) when it comes to how to behave in a professional setting. You should match that style. Dress professionally, mind your manners, and observe old-school letter-writing formalities even in email.

Lawyers have long memories. As you begin your career exploration,

remember that lawyers have particularly long memories. If you act like a jerk (or even merely inappropriately), they will first share the incident with various colleagues ("You won't believe what this kid said to me!") and then the anecdote will take on a life of its own. You do not want to be sitting in an interview years from now as the very same attorney suddenly recalls: "Hey wait, aren't you the one who...." (if you get that interview in the first place). So from here on out, be professional and courteous. It's a strangely small law world.



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PROPERTY LAW**

Partition	Abandon	Adverse	Habitability
Landlord	Divest	Quiet Enjoyment	Future Interest
Remainder	Easement	Fee Simple	Servitude
Ameliorative Waste	Tenant	Sublease	Nuisance
Misland	Tacking	Leasehold	Zoning

5		8			3		6	
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EASY

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HARD

SUDOKU

Complete each 3x3 grid so that each row, column and box includes the numbers 1-9, without repeats!

SOLVED PAGE 8

Answer Key on page 20

PUBLIC INTEREST LAW ASSOCIATION



The American Bar Association defines public interest law as work on behalf of individuals or causes that might otherwise lack effective representation within the legal system. This public service practice takes place in various legal services and law reform organizations, as well as government agencies at all levels. The types of public service offices include, but are not limited to: nonprofit and legal services organizations, public defenders, local, state and federal government, courts, labor unions, foundations, private public interest law firms and many more.

The Public Interest Law Association (PILA) is a student-run non-profit organization dedicated to promoting legal work that serves the public, and improves the quality of life for individuals in our community and elsewhere. Each year, PILA holds an annual auction to help law students who wish to practice in the area of public interest law. The goal of the auction is to raise funds for scholarships that

will assist several students participating in summer pro-bono internships. The auction has been successful each year, and has afforded students the opportunity to do the work they are passionate about and serve communities in need, while receiving a stipend for their hard work.

On Tuesday, April 12th, between 4:00 pm-7:00 pm, PILA will be holding its Annual Auction in the Law School Commons. The event will begin with a silent auction giving students, faculty, administrators, alumni and all other guests the opportunity to bid on items donated from vendors throughout the Massachusetts area, faculty, and various Bar Prep Courses. During the intermission period after the silent auction, there will be a talent show where students will perform their talents to the community. Immediately after, the live auction will commence, hosted by our very own, Professor Bruce Miller!

The event is free and open to the community. Come support your colleagues and the law school community. We hope to see you there!

For more information/ donations, please email Michelle Tsang at pilaatwneu@gmail.com.

United States v. Texas

A Vast Oversimplification of What's Really at Stake

(Spoiler Alert: It's Standing)



by **CHRIS MUTCHLER**
LEX BREVIS Guest Writer

Christopher.Mutchler@wne.edu

Most everyone has by now heard of *United States v. Texas*, the case headed to the Supreme Court that challenges President Barack Obama's Deferred Action for Parents of Americans Act ("DAPA"). The case has garnered a fair amount of media attention, probably because the challenged act involves immigration policy and it just wouldn't be a Presidential election without a good debate about immigration. Despite its portrayal in popular culture however, the issue currently before the Supreme Court is far more pedantic and much less interesting than even the most factually accurate of immigration debates.

DAPA was enacted by Obama in late 2014 through his executive powers shortly after a similar bill was rejected by Congress. As DAPA's substantive content is not relevant to this discussion, suffice it to say that DAPA was intended to make it easier for otherwise illegal aliens to obtain the benefit of several United States federal programs. As immigration reform is a politically divisive issue, and because a predomi-



nantly Republican Congress had so recently rejected DAPA's substantive changes to federal law, several traditionally conservative States joined together in challenging the President's power to enact DAPA.

Though tangentially related to immigration reform, the true issue of the case is best summarized in the complaint itself: "This lawsuit is not about immigration. It is about the rule of law, presidential power, and the structural limits of the U.S. Constitution." Amended Complaint for

Declaratory and Injunctive Relief, No. 1:14-cv-254 at para. 2. In other words, the disagreement here is not whether – in practice – DAPA has the intended effect (at least not directly), but rather what the President can and can't do.

Despite its generally perceived mundanity, procedure is important to the suit, as it establishes context. To oversimplify, Texas moved to preliminarily enjoin DAPA, alleging that the President violated federal law governing how administrative

agencies are allowed to act, and that the President violated his duty to enforce existing federal law. In its defense, the Government alleged that Texas did not have standing to bring suit, among many other things. The district court found that Texas did have standing based on the substantial economic loss it would suffer in having to issue driver's licenses as a result of DAPA. Alternatively, the district court found that Texas had what it deemed "abdication standing," as the United States has exclusive authority over immigration and refused to act to enforce pertinent legislation.

The district court agreed with Texas and granted a temporary injunction against DAPA, pending further litigation. The Fifth Circuit affirmed in a lengthy opinion. The Government petitioned for writ of cert, claiming that the Fifth Circuit's justiciability ruling was incorrect, and pretty much that everything Texas argued is wrong. Certiorari was granted, and the case will be heard by the Supreme Court this term.

What is interesting about *United States v. Texas* is not what the Court thinks about the substance of DAPA, but the potential impact on a state's power to interfere with the executive branch. Historically, courts have been hesitant to say much about these issues, and usually take any excuse not to directly address them. Here, the Court is faced with precisely the issue it likes to avoid.

As every law student is shocked to learn in Constitutional Law, not every dispute can be heard by the courts. Among other requirements, a plaintiff must have standing to sue under Article III of the Constitution. If a plaintiff is found not to have standing, the court cannot hear the case, and it is dismissed on procedure. While there seems to be no greater victory than a procedural one in federal litigation, it is quite troubling to the judicial activist to think that nothing can be done if a President starts changing the law to comport with his/her own political views (think Trump's "immigration policy," or Bernie's "economic policy").

While the mere issuance of the challenge admittedly implies otherwise, there is no claim in *United States v. Texas* that the above concern has in fact occurred. As the merits of the case have not yet been litigated, the biggest change likely to come from this decision is to justiciability. Though affirming the decision of the lower court may indeed broaden the scope of justiciability (depending on who you ask), the impact of a finding that

Texas does not have standing may have the effect of drastically increasing the power of the executive.

In a democratic system founded on the theory of separation of powers, it would not be good if the President could change federal law based on a procedural "loophole." As this entire case is about a *preliminary injunction* and no decision has to be reached on the merits (based on the structure of the appeal), there is a good chance that nothing too crazy is going to happen. In a perfect world, all that would come out of *United States v. Texas* this time around is a more concrete rule on standing, but with the current state of politics, all that is certain is death and taxes.



BRIDGE TO PRACTICE

Warrantless Searches – False Arrests – Injured Pet!

The Law Library is pleased to offer its Bridge to Practice Workshop for 2016.

Bridge to Practice will feature short lectures and hands-on print and online research as the Law Librarians guide you through a fact pattern involving police, citizens, and a loyal dog who finds himself in the wrong place at the wrong time.

Get acquainted with practitioner resources like *Massachusetts Practice* and the Law Library's large collection of *Massachusetts Continuing Legal Education (MCLE)* material, and brush up on your online search skills before heading off to your summer jobs and internships. There will be time for questions throughout the program and bagels will be provided. Sign up today!

Questions? Contact Renee Rastorfer at 413-782-1459

DATE: Sunday, April 10, 2016

TIME: 10:00 a.m. - 1:00 p.m.

PLACE: Library Conference Room 330

Debunking Historic Preservation



by **ANGEL GOMEZ**
LEX BREVIS Guest Writer

Angel.Gomez@wne.edu

Some people wake up to news that their neighborhood is being considered for historic designation. Perhaps, some are thrilled with the honor, while some are simply a bit skeptical. Those skeptics may ask: What does a historic preservation district do? What does it entail? This skepticism is often followed by Google searches or conversations with neighboring friends, to find out what impact an historic designation will have.

There is no clear consensus among experts as to the impact of historical designations. It is conceivable that there may never be a clear consensus as to whether historical designation will negatively or positively affect any given home. Nevertheless, upon careful consideration, it is important to note that the top three claims, by preservation critics, are mere myths.

1. Historic designation will negatively affect my property value

This is the most common myth. Certainly, property value is of great concern to all. The myth is derived from the idea that because a home receives a historic designation, it will be restricted as far as property rights. For example, such restrictions may include the color of paint or materials that may be used on the property. Nevertheless, the presumption is that the common home buyer does not want to be burdened with such restrictions; thus they will less likely be interested in homes with these restrictions. Consequently, the lack of demand will, ultimately, de-value such property. Moreover, these restrictions will deter the potential for an increase in property value.

The truth is, homes in historic dis-

tricts are not necessarily decreasing in property value. As Terry Sheridan writes, “Even if your home’s price doesn’t rise, it’s less likely to fall if your neighborhood is in a historic district.”¹ This is because historic designation preserves the aesthetic components of homes that buyers deem appealing.

Dr. Jonathan Mabry, a Historic Preservation Officer, demonstrates statistical evidence in his historic-designation research document. Dr. Mabry surveyed a few local governments with historic-districts, and noted that there was an appreciation in the value of these properties as compared to other non-historic districts.² These properties increased approximately 5 - 35% in worth within a 10 year span.³ Moreover, studies indicate that nationally-recognized historic designated properties are more likely to increase in property value.

¹Terry Sheridan, Neighborhood Historic Designation Can Raise Property Values, Houselogic (March 27th, 2016) <http://www.houselogic.com/home-advice/home-thoughts/neighborhood-historic-designation-can-raise-property-values/>

²Dr. Jonathan Mabry, Benefits of Residential Historic District Designation for Property Owners, Department of Urban Planning and Design City of Tuscan, (March 27th, 2016) http://www.preservationnj.org/site/ExpEng/images/images/pdfs/Historic%20District%20benefits_Mabry_%206-7-07.pdf

³Dr. Jonathan Mabry, Benefits of Residential Historic District Designation for Property Owners, Department of Urban Planning and Design City of Tuscan, (March 27th, 2016) http://www.preservationnj.org/site/ExpEng/images/images/pdfs/Historic%20District%20benefits_Mabry_%206-7-07.pdf

Tourism is one of the benefits of a historic designation.⁴ People are often enticed with visiting places that preserve historic values. In addition, this brings business into that historic district. Historic districts also differentiate themselves from neighboring districts properties; which creates a market for these unique homes.⁵ All these factors prove beneficial in increasing the value of historic-designated homes.

These statistics do not necessarily guarantee that a historic designation will increase a person's property value, but they do demonstrate an inclination. These statistics show that there is a strong, positive relationship between property value and a property being zoned in a historic area.

2. I will not have any ability to change my property at all.

For reasons easily apparent, this is the most worrisome of all the myths. *Norton v. City of Danville*, 602 S.E.2d (Va.2004) represents a case where a property owner was restricted to how he can change his property.⁶ In this case, the plaintiff received opposition from the City of Danville for changing his wooden doors to glass

doors; to prevent a continuing burglary problem to his home.⁷ After a long application process and court dates, the Court held that the plaintiff met his burden of proof and allowed the change.⁸

The truth is, that it does not always get as bad as it did in *Norton v City of Danville*. Usually, preservation committees are just focused on keeping the character of the home and permit changes that do not conflict with that objective.

Although rules may vary from district to district, some districts give reasonable options. For example, the Hendersonville Historic Preservation Commission allows replacement of window glass, caulking and weatherstripping, minor landscaping, among other things, without a certificate of appropriation.⁹ The Hendersonville Commission does not impose, for example, strict painting rules thereby allowing owners some autonomy.¹⁰

The City of Houston, Texas, makes a certificate of appropriation necessary when property owners, in extreme situations, want to compromise the character of their home.¹¹ These include, but are not limited to demolition, relocation, and new construction. But how likely

⁴Washington Trust for Historic Designation, Preserve WA (March 27th, 2016) <http://preservewa.org/Benefits-Historic-Preservation.aspx>

⁵Washington Trust for Historic Designation, Preserve WA (March 27th, 2016) <http://preservewa.org/Benefits-Historic-Preservation.aspx>

⁶*Norton v. Danville*, 268 Va. 402, 602 S.E.2d 126 (2004)

⁷*Norton v. Danville*, 268 Va. 402, 602 S.E.2d 126 (2004)

⁸*Norton v. Danville*, 268 Va. 402, 602 S.E.2d 126 (2004)

⁹Hendersonville Historic Preservation Commission, hendersonvilleh PC, (March 27th, 2016) <http://www.hendersonvillehpc.org/coa-process>

¹⁰Hendersonville Historic Preservation Commission, hendersonvilleh PC, (March 27th, 2016) <http://www.hendersonvillehpc.org/coa-process>

¹¹City of Houston Planning and Development Department, Historical Preservation Manual (March 27th, 2016) <http://www.houstontx.gov/planning/HistoricPres/HistoricPreservationManual/index.html>

Housing Law

Similar to the City of Houston, many local governments provide an efficient process to allow land owners the ability to do minor repairs to their homes. Houston, for example, reviews and responds to applications for home fixtures within days.¹²

While there may be some restrictions on what changes the property may endure, owners will most-likely have the ability to change their property in a historic district. Inevitably, in some instances, owner's desired-changes will be reviewed by a commission but that does not mean that a response will not be given expeditiously and with rational consideration. Nevertheless, the owner still retains his right to try to effectuate changes to his home, contrary to what this myth implies.

3. It's extremely expensive to live in a Historic District.

This myth is, perhaps, the most arbitrary. It is easy to presume that every property owner is well off financially. But, this is sometimes not a correct presumption. The reason this becomes a myth is because many municipalities and state governments are mindful of land owner's financial capabilities. And because they are mindful, they provide tax breaks, or impose less-expensive alternatives to owner-desired or municipality-desired property changes; to ease financial constraints.

The State of Connecticut provides a tax break for maintenance to historic-designated properties. This is

called the, Historic Homes Rehabilitation Tax Credit, and it allows up to a 30,000 tax credit for qualified changes.¹³ Historic home owners have the ability to fix their homes and then write it off with their tax obligations.

Moreover, states like Arizona provide a special tax break for simply owning and maintaining a historic home. Arizona's Historic Property Tax program, is designated to reduce property tax obligations between 35-45%, so long as the property owner maintains his property as required by this program, during a 15 years span.¹⁴

In a report prepared for the Historic Preservation Office of the City of Columbus, Ohio, the city recognized a need to create more financially-tolerable alternatives to home products. The problem is that, through passage of time, older materials become harder to obtain, and thus become less cost-effective. In its report, the City of Columbus recognized other forms of material and product that may be used to maintain historic homes while also being sensitive to the attendant cost.¹⁵

Although some changes or maintenances may cause financial strains, local governments are cognizant of this. State governments are using their taxing power to ease these financial strains. They are also recognizing and allowing affordable alternatives to repair requirements.

¹²City of Houston Planning and Development Department, Historical Preservation Manual (March 27th, 2016) <http://www.houstontx.gov/planning/HistoricPres/HistoricPreservationManual/index.html>

¹³Department of Economic and Community Development, Historic Homes Rehabilitation Tax Credit (March 27th, 2016) <http://www.ct.gov/cct/cwp/view.asp?a=3933&q=302270>

¹⁴State Historic Property Tax Reclassification (SPT) for Owner-Occupied Homes, Arizona State Parks (March 27th, 2016) <http://azstateparks.com/SHPO/propertytax.html>

¹⁵Alternative Materials and Their Use in Historic Districts, City of Columbus (March 27th, 2016) https://www.columbus.gov/uploadedFiles/Columbus/Departments/Development/Planning_Division/Document_Library/Library_Documents/PDFs/Alternate%20Materials%20and%20Their%20Use%20in%20Historic%20Districts.pdf

LEX RELAX Answer Key

When a property is going to be marked as historic, it is easy to believe these top three myths as true. In extreme situations, they may be true, but often times they are not. Because there is a high probability that these myths are false, just debunk them. The chances of your property value losing significant value are minimal. Your ability to change your property is highly likely. And finally, it is more likely that you will be able to keep your pockets happy and healthy, while owning a historic-designated property.

ANSWER KEY

5	1	8	4	2	3	9	6	7
2	9	3	6	5	7	8	1	4
6	7	4	9	8	1	3	2	5
4	8	6	7	9	5	1	3	2
9	3	1	2	4	8	5	7	6
7	2	5	3	1	6	4	8	9
3	4	7	8	6	9	2	5	1
8	5	9	1	7	2	6	4	3
1	6	2	5	3	4	7	9	8

EASY

ANSWER KEY

2	9	5	3	8	7	4	6	1
8	6	3	5	4	1	7	2	9
7	1	4	9	6	2	8	5	3
5	4	7	2	1	8	3	9	6
6	2	9	4	3	5	1	8	7
3	8	1	7	9	6	5	4	2
1	3	2	6	5	4	9	7	8
9	5	6	8	7	3	2	1	4
4	7	8	1	2	9	6	3	5

HARD

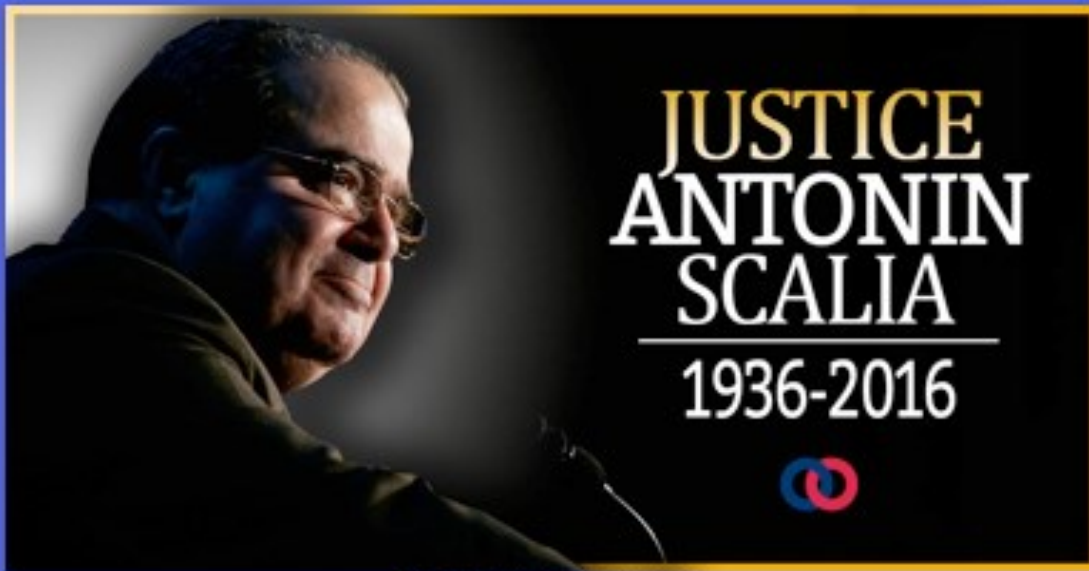


Image courtesy of ReformSource.com

Replacing Justice Scalia

A Public Forum

**Monday, April 11 - Law Common, 12 Noon
Lunch will be served**

**PRESENTED BY PROFESSORS
BRUCE MILLER, SUDHA SETTY,
JIM GORDON (Invited Speaker), AND ART WOLF**

Ten days before Justice Scalia died, Chief Justice Roberts, speaking at New England Law School, stated that the Senate should "ensure that nominees are qualified and leave politics out of it." The panel will address a variety of issues relating to filling the Supreme Court vacancy. Please join us for a lively discussion of "replacement politics," historically and currently. The event is free and open to the community!

**Presented by: the Institute for Legislative and Governmental Affairs
Professor Art Wolf, Director**

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HOW TO START AND RUN A SUCCESSFUL SOLO OR SMALL FIRM PRACTICE

FRIDAY, APRIL 8, 9 A.M.–3 P.M.
WESTERN NEW ENGLAND UNIVERSITY SCHOOL OF
LAW, 1215 WILBRAHAM ROAD, SPRINGFIELD

Continental breakfast and lunch included.



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How To Start And Run A Successful Solo or Small Firm Practice

Friday, April 8, 2016
8:00 AM - 3:30 PM

Participants will learn the mechanics of setting up a small firm or solo practice, the logistics of running it, and the best practices to successfully market it. Register at:
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Roving Reporter

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What inspires you to pursue a law degree:

This opportunity gives me the ability to help a wide range of people, especially those who may have shared similar backgrounds and life experiences. A law degree also allows me to be a mentor to an overwhelmingly underrepresented group in the law, while being a voice for those who otherwise go unheard.

What changes do you hope to see in the law:

There are particular classes of people being deprived equal and impartial justice under the law. This runs contrary to the societal ideals of equality. It shouldn't be such an arduous task to bring elected officials and officers of the law to justice. Ex. Rick Snyder, Police Departments, etc.

What is your favorite/least favorite thing about law school:

Favorite thing about law school is being able to work alongside like-minded individuals, both faculty and students; least favorite thing about law school is the amount of work that is required and the balancing of different obligations; extreme time management skills are a must and that is something I'm still learning to balance.

What do you hope to accomplish when you become an attorney:

Honestly, I want my 90-year-old grandmother to watch me light my competition up in the courtroom at least once. Then we'll go from there.

What do you hope to accomplish in Law School?

Learning as much as I can in my areas of interest to be an effective and zealous advocate for my clients.



Western New
England
University School
of Law

and

Public Interest
Law Association

Presents



2016 PILA AUCTION

What is **PILA**?

PILA is a student-run non-profit organization dedicated to promoting legal work that serves the public, and improves the quality of life for individuals in our community and elsewhere.

APRIL 12, 2016 - Law Common, 4:00-7:00pm

Come support our students and bid on some amazing items that include: deals at area restaurants, getaways, theme baskets, artwork, faculty donated items and much more! Silent and Live auctions are a major sources of support for our summer funding goals. **THE EVENT IS FREE AND OPEN TO THE COMMUNITY.**

Silent Auction from 4:00-5:00pm

Intermission: Talent Show from 5:00pm-5:30pm

Live Auction immediately following and hosted by our beloved and semi-pro auctioneer PROFESSOR Bruce Miller!

See the PILA webpage for a full list of items...

For more information/donations please email Michelle Tsang at: pilaatwneu@gmail.com

Student Activity Fees

Netflix v. This Law School, Court of How My Bank Account Is Set Up (2016)

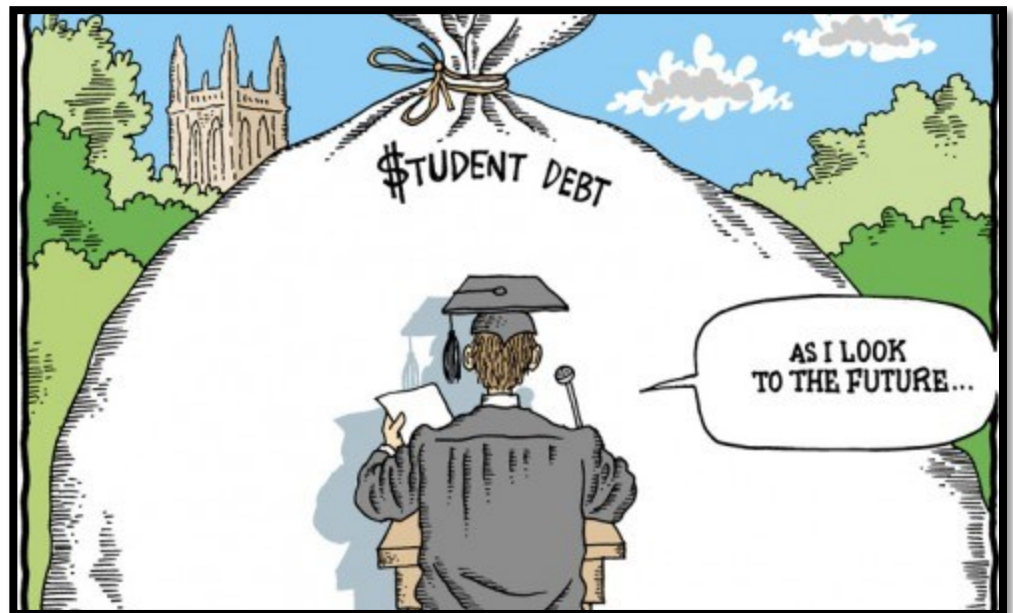


by **PHILIP MCPHERSON**
LEX BREVIS Staff Writer

Philip.McPherson@wne.edu

Netflix isn't the only company increasing fees. Western New England University's School of Law is also looking to raise its student activity fees by \$40. Do you remember when Netflix was just \$7.99, and in your mind, all you saw was the 7 and forgot about the other .99 cents that made it virtually \$8? They've previously raised their fees by \$1 and are doing so again in mid-2016, raising their subscription fees from \$8.99 to \$9.99 per month; making it not 9, but virtually \$10 monthly.¹

It seems that the relatively small, incremental increases have been low enough for Netflix to retain their client base, but frequent enough to make what once was a \$1 increase, as of mid-year 2016, a \$24 per-year, per-customer gain for Netflix. With 65 million customers, this year's \$1 subscription fee increase will generate an extra \$750 million per year for Netflix.²



To compare WNE Law's price increase with Netflix's; Netflix has grown over the years and currently provides a lot more programming that its customers like to watch. It has also, since becoming a household name, began making its own highly-rated programming with shows such as House of Cards, Orange is the New Black, Daredevil, and a long list of other shows binge

watched by millions.

So, on that note, one relevant question from a student who took a survey on whether the student activity fees should be raised was "what has been done with the money that's currently been spent" and further what will be done in the future with the extra \$40 per student, per year?

¹BGR, Netflix is about to get more expensive again, bgr.com, <http://bgr.com/2016/01/20/netflix-subscription-cost-increase/>, (last visited March 27, 2016).

²BGR, Netflix raises subscription prices – streaming will now cost \$9.99, bgr.com, <http://bgr.com/2015/10/08/netflix-streaming-price-increase-9-99-per-month/>, (last visited March 27, 2016).

The major difference between Netflix and WNE Law is with Netflix, you can stop paying if you feel the fees are too high. In Law school, I doubt many of us will decide to leave if charged an extra \$40 in student activity fees. However, we can voice our opinion on the increase and decide whether fees are raised, by informing our elected class representatives about our concerns.

Student activity fees are reserved for student groups like Lex Brevis, The Christian Legal Society, The Black Law Student Association or any other student group as needed and requested in a budget meeting at the start of each semester and/or as necessary throughout the semester.

The increase in student activity fees will be voted and decided upon by two consecutive SBA student councils, i.e., if approved this year, then next year's student council will also have to approve the increase for it to take effect during the 2017-2018 year.

Although applications to law schools nationwide have been on the decline, rising student activity fees have become a trend among law schools. Here representatives vote on behalf of their electing class on the increase in a Wednesday night, SBA meeting where the outcome will be decided.

If you're a member of a student group, the increase in student-activity fees will undoubtedly aid your group in the number of activities you can afford in the future, provided your student group requests funds for its events. That goes without being said.

However, what if you're not a member of any group that the Law School offers? Why should you have

to pay an extra forty dollars on top of the loans you're already incurring for every semester you spend in law school? It's worth weighing the pros and cons of the increase and some students have done so on both fronts in a survey circulated by the 1L student representatives.

Per the student survey, a number of students in support of the increase simply said "It's only 40 dollars." Others stated that they had "no strong opinion on it" but perhaps the additional fee should have "a restriction" placed on it.

In opposition to the forty dollar increase, others have suggested that the activity fee increase "should be incremental (i.e. \$10 per semester for the first year or two than raise it another \$10 after time has elapsed.)" This is Netflix's approach, just with a different dollar amount.

Whether you're in the "it's just 40 dollars" camp, you're opposed to the increase, or you support raising fees incrementally, your input is important so that the SBA can act on your suggestions. Perhaps your reasoning would bring something novel to the discussion. However, the vote will be back this time next year on the same topic, and again until it has finally been decided upon.

The caveat is that only the current 1L's, the class of 2018, will be affected by the student increase if this year's SBA council decides to approve it. If voted against, then the vote won't affect the student activity fees for the class of 2018, but will be passed down for a vote to affect the following year's class of 2019, next year's incoming 1L's.

ALUMNI PROFILE

Your name: Josh Talcovitz, Esq.

Graduation Year: 2014

Where do you work: Bronx County District Attorney's Office

The area of law you practice in: Criminal Law

1. What is the most fulfilling part of your work?

The most fulfilling part of my work is easily the ability to give back to this community. The Bronx is the forgotten borough in New York City and yet, with the exception of Brooklyn, we are the most inundated prosecutor's office in New York State, let alone New York City. My job allows me to connect with victims of crimes and the people of the Bronx and provide them, with above all else, a voice and an avenue to achieve justice.

2. During law school, what kind of work did you do that helped enhance your skills?

During law school I was lucky enough to have some great professors in the area of criminal law and trial advocacy. Specifically, the criminal law clinic run by Professor Tina Cafaro was the best work experience I could have ever asked for. Through this clinic I was able to try cases in front of a jury, as well as conduct suppression hearings and arraignments. The most important thing in my line of work is experience and I don't think I could ever feel as comfortable in a courtroom as I do had it not been for my time at the Hampden County DA's office.

3. What was the most difficult aspect of school and how did you overcome that obstacle/experience?

The most difficult aspect of law school, for me, was simply going back to school itself. I had taken 2 years off from college prior to coming to WNE and the transition back to the life of a student (a law student, at that) was a trying experience. I was able to overcome it with the help of my fellow students who have become lifelong friends.

4. Are there any specific programs, committees, clubs that you suggest current students to join?

Without a doubt I recommend that every student join one of the clinics at WNE. The classroom experience may give you the knowledge you need but cannot prepare you whatsoever for working as an actual attorney. The only thing that can really prepare an attorney to be an attorney is hands on experience and the only way to achieve that while in school is to join a clinic. Further, I participated on the schools Trial Advocacy Moot Court team and that experience I gained from that only further helped hone my skills, plus it's the most fun you can have while in school.

5. How did you network or if you didn't how do you wish you had? How can students benefit from meeting other attorneys and others within the legal profession?

I was never really big into the networking. I think for some it's a valuable tool but I cannot really speak to it.

6. What is something you did or advice you were given that has helped you now?

The best advice I was ever given was to just be yourself and be comfortable in your own skin. As a trial attorney that is the number one trait to have. You are an advocate and your job is to convince someone of your position. You simply cannot achieve that without being comfortable and confident in yourself.



7. Was there a class or area of law you studied that has proven particularly helpful now?

As I've said already, the criminal law clinic through the Hampden County DA's office was the most helpful "class" the school had to offer.

8. What classes if you recall, helped you the most on the Bar exam and what states' Bars did you sit for? And do you have any advice for those about to take the Bar?

Evidence and Advanced Evidence, no question. The MBE is the most important part of the bar exam (don't let anyone tell you differently) and these classes prepared me to such an extent that studying the topic for the bar was more of a review than anything else. I sat for, and passed, both the NY and NJ bar exams. My advice to everyone about to take the bar is FOCUS ON THE MBE and do not let it become an afterthought.

9. What was your favorite part of attending Western New England University School of Law?

The favorite part was the friends I made and the ability to get as much courtroom experience as possible.

10. How did the skills you learned in law school transition into the legal profession?

Repetition is the key to success. The courtroom and advocacy skills I obtained in law school helped me to, as seamlessly as possible, go from a student to prosecutor in a job that doesn't leave much in the way of a learning curve.

11. What surprised you most about practicing?

A lot of what we learn in law school really doesn't translate to practicing. We spend 3 years learning what the law is. We then start practicing and realize how the law. What I mean by that is that practicing law is largely dependent on the custom and practice of where you are working. It doesn't always matter what the rule of evidence should be or what the black letter law of a criminal procedure issue is. What matters is what the Judge says matters and the actual process of the jurisdiction you are in.

12. What have you enjoyed most in being an attorney?

I've most enjoyed the ability to get up in court and advo-

cate for the People of New York and knowing what I do really matters.

13. What advice would you give current students to prepare them for practice?

Be yourself and be comfortable. Take as many clinic classes as you can. Always be prepared for the task at hand. If you can follow those three things you will become an effective advocate and successful attorney.

Thank you for your willingness to give back.

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Congrats and Good Luck to our Graduating Student Reps!

A big thanks go out to **Jordan Freeman, Mat Kelly** and **Paul Johnson** for all their help and support of the WNEU Law School for the past two years!