

October 17, 2013

Western New England
University
School of Law

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Lex Brevis

WLA Kicks Off Domestic Violence Awareness Month

By Karen Adamski, 4L

The Women’s Law Association kicked off Domestic Violence Awareness Month with “Bringing

Awareness to Domestic Violence,” an information-filled domestic violence awareness campaign held on Wednesday, October 9, from 10 a.m. to 6:30 p.m., on the main floor of the Blake Law Center.



(L to R) Katy Trogdon (Secretary), Lenore Montanaro (President), Nadia Viscusi (Corresponding Secretary), Kristen John (Treasurer). Not pictured: Shushana Tracey (Vice President)

More than 250 purple cupcakes were donated for the event as well as balloons, and other supplies. The SBA also helped fund the purchase of purple metal ribbon “Domestic Violence” pins which were offered to

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Housing Clinic Offers Valuable Practical Experience

By Shannon Walsh, 3L

Aside from classroom studies at WNE Law, the school offers a lot of opportunities that can give a student practical skills before

she graduates. I should know; I have had numerous internships, an externship, and participated in the Housing Clinic in the two and a half years I have been here. I am the student, like many others, who learns most from practical experiences. Some experiences have been more beneficial than others, and it was these less rewarding ones which gave me the perspective that the WNE Housing Clinic is one of the most valuable experiences of my law school career.

The WNE Housing Clinic teaches students about the housing rights afforded to the people of Massachusetts through the legislature and common law. Specifically this clinic focuses on the rights of low income tenants who are being evicted from their apartments or homes. The clinic is substantively different

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Thank You for Contributing

Lenore Montanaro, 2L

Shannon Walsh, 3L

Colleen Monroe, 3L

Kaley Lentini, 3L

Transgender Youth: Fighting for Their Identity

By Kaley Lentini, 3L

“Is it a boy or a girl?” Inevitably, this question is asked every time a pregnancy is revealed. Family members and friends pick out feminine or masculine clothes and toys, and parents paint nurseries blue or pink depending on the answer. But what happens when the baby we’ve socialized to be a girl or a boy grows into a child who wants to be the opposite sex? This is an issue parents and communities are experiencing more frequently, and the obstacles transgender children face have recently been at the forefront of lesbian, gay, bisexual, and transgender legal advocacy.

Transgender people are those “whose gender identity or expression does not, in some way, match stereotypical expectations based on the sex they were assigned at birth,” according to *Transgender Family Law: A Guide to Effective Advocacy*, a 2012 book edited by our own Professor Jennifer Levi. Thus, transgender youth often wish to look, behave, feel, and live like the opposite sex. Treatment for “persons who experience ‘gender dysphoria,’ the clinically significant distress associated with the incongruences of assigned birth sex, physical body, and gender identity,” is dependent on each individual’s situation. Transgender people may live their lives in the gender with which they identify, undergo hormone therapy, and/or have gender reassignment surgery, among other things.

Youth experiencing gender dysphoria are increasingly developing their gender identity in these ways, as well. Research finds that children, even those who are very young, may realize that they are transgender. Though they may not use that word to describe it,

children do display behavior of the opposite sex, prefer to wear clothing generally believed to be appropriate for the opposite sex, and make statements that they are or want to be the opposite sex. Parents who are supportive of their transgender child may allow them to wear the clothing of their choosing to school, refer to them by the name and pronouns they prefer, and work with their child’s daycare or school to facilitate an inclusive and welcoming atmosphere for their child.

Even when parents are supportive, however, transgender youth often face discrimination and harassment in their educational environments. There are many lawsuits alleging this type of discrimination across the country. Issues with using restrooms and participating on sports teams are often at the center of the cases.

Western New England University School of Law Professor Jennifer Levi is representing a 15-year-old Maine transgender girl in a lawsuit regarding her use of school restrooms. Nicole Maines, who was

born male and receives male-hormone suppressors, lives as a girl. She was originally allowed to use the girls’ restroom at her school. In fifth grade, however, the school began requiring her to use a separate, gender-neutral staff bathroom. The lawsuit, which Professor Levi argued in the Maine Supreme Judicial Court in June 2013, claims Nicole faces discrimination in her school on the basis of sex or sexual orientation.

While the Maine Supreme Court makes its decision, the LGBT community celebrates a win for transgender youth in Colorado. A Colorado court found in June that six-year-old Coy Mathis, a transgender girl, was discriminated against by her school when she was not allowed to use the girls’ restroom. Many other lawsuits will be fought on behalf of transgender youth across the country in the coming years. Discrimination will continue, but the LGBT legal community will be ready to fight back to protect transgender youth.

Academic Calendar Fall 2013

| | |
|---------------------------------------|---|
| Friday, November 1..... | Last Day to Apply for February Degrees |
| Tuesday, November 26..... | Friday Classes Meet |
| Wednesday-Friday, November 27-29..... | Thanksgiving Recess |
| Thursday, December 5..... | Last Day to Withdraw - Last Day of Classes |
| December 6-9..... | Study Period |
| December 10-19..... | Final Examinations |

Breathalyzers: Do They Violate the Confrontation Clause?

By Colleen Monroe, 3L

It's Friday night and you just left your friend's house after having some good laughs and a couple of beers. You're confident you're okay to drive. But, once you hit the road, the next thing you know you're being pulled over and arrested for operating a motor vehicle while under the influence of alcohol after a breathalyzer machine said your blood alcohol content was above the legal limit.

As many people know, when you blow into a breathalyzer machine, the machine will produce a printout receipt providing a number which is your purported blood alcohol content. No matter what state you're in, if that number is 0.08 percent or greater, you are over the legal limit and may be arrested for drunk driving. In Massachusetts, evidence of your 0.08, or greater, blood alcohol content alone is enough to convict you of OUI. Despite criminal defense attorneys' regular efforts to suppress breath test results on reliability grounds, these tests are

presumed accurate and reliable, and are almost always admitted as evidence at trial. But isn't this a violation of the defendant's constitutional right to confront the witnesses against him?

When breath tests are administered, the machine measures the amount of alcohol in a known amount of deep-lung (alveolar) breath, converts that figure to reflect the amount of alcohol in the subject's blood based on scientific equations, and then produces a new figure which states presume to be an accurate indication of the defendant's blood alcohol level.

For the conversion equation to be precisely applied, one would have to account for several variable factors (i.e. temperature and atmospheric pressure) in the calculations in order to determine the concentration of alcohol in blood from the amount that escapes the breath. In an effort to do this, the percentage of alcohol in the breath is multiplied by 2100, which produces the number believed to be the percentage of alcohol in the person's blood. However, it has been shown that a number of factors, such as body temperature, hematocrit level, and the time at which alcohol was consumed may affect the 2100 to 1 ratio between blood-alcohol levels and breath-alcohol levels.

State v. McCarty, 767 N.W.2d 67, 68-69 (S.D. 1988). As a result, the 2100 to 1 ratio is not constant among the population at large and is "contrary to the laws of physics in its artificial rigidity." *McCarty*, 767 N.W.2d at 68.

In *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), the United States Supreme Court held that the Sixth Amendment's Confrontation Clause required that, in order to admit into evidence a forensic laboratory report stating that a suspect substance was cocaine, the prosecution must offer a live witness competent to testify to the truth of the analyst's statements in that report. Similarly, the holding in *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011), suggested the same is true for a forensic laboratory report certifying a person's blood alcohol content. But don't breathalyzer machines essentially do the same thing as the forensic analysts in *Melendez-Diaz* and *Bullcoming*?

Like in *Melendez-Diaz* and *Bullcoming*, scientific testing is required to produce the evidence necessary to establish the defendant's guilt of the offense charged. In OUI cases, it is necessary for the prosecution to present evidence of the defendant's blood alcohol content before a conviction may be obtained. When a person blows into a breathalyzer machine, he produces only breath. If the breathalyzer machine merely

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Housing Clinic, Continued from Page 1

from an externship because the supervising attorneys are also the classroom professors. Right away the classes give you the substantive law, both common law and Massachusetts statutes, that you will need to be able to effectively help tenants who are being evicted. This combination causes the classroom component to emphasize the legal theory in a way that reflects issues your clients are currently dealing with.

Clinic students work in the Springfield Housing Court on “Summary Process” (eviction) day every Thursday. The atmosphere of Summary Process day is busy to say the least. What feels like hundreds of people are funneled up to the second floor of the

courthouse and the tenants proceed to form a line outside the “resource room” where you will work. Students are assigned to work on individual cases that qualify as “low income” and begin assessing their cases immediately. Most of the time clinic students help tenants who are facing an eviction trial on the very same day. Law students offer a wide array of services, spanning from simply giving advice, assisting in mediation, filing answer and discovery documents, arguing motions, or even representing a client in a full trial. This work can be overwhelming at times, however, I would emphasize that you get to truly test yourself; including your knowledge and skills as an aspiring attorney. That truly is one of the most valuable aspects of this clinic.

In the beginning, the thought of having to litigate a trial terrified me. However, when you meet a family that has been living in conditions that are far below what the Commonwealth has deemed “habitable living standards,” you overcome that selfish fear quickly. This clinic equips you with the legal knowledge and the skills to effectively produce a favorable outcome to a tenant in need.

In my opinion, there are few internships that give a student the feeling of being a real practicing attorney. The Housing Clinic is the type of experience that every law student should have at least once in their career at WNEU.



Breathalyzer, Continued from Page 3

generated a number representing the defendant’s *breath* alcohol content, this argument may not be as strong because, in *Bullcoming*, the Supreme Court has implied that perhaps machine-generated numbers would not require live witness testimony. However, breathalyzer machines do more than just process a person’s breath alcohol content and produce a number representing that amount. Like the forensic tests in *Melendez-Diaz* and *Bullcoming*, breathalyzer machines must conduct scientific conversions before it can produce the defendant’s purported *blood* alcohol content. The only distinction between the forensic laboratory reports in *Melendez-Diaz* and *Bullcoming* and the reports

from breathalyzer machines are that in *Melendez-Diaz* and *Bullcoming* the tests are administered by a human whereas it is the machine itself that conducts the scientific testing when breathalyzers are used.

Why is it permissible to admit the results of a breathalyzer machine without presenting a live witness competent to testify about how the breathalyzer machine takes a person’s breath alcohol content and converts it to a number representing the person’s blood alcohol content? Doesn’t the admission of this evidence without a live witness effectively deny a defendant an opportunity to challenge the veracity of his accuser—the machine itself?

Legal Briefs

Clason Lecture Series

The fall theme is "Current Issues in Environmental Law"

New Directions in State Public Trust Doctrines in a Climate Change Era

Thursday, November 14; Noon
Law School Common
Robin Kundis Craig, Professor of Law, S. J. Quinney College of Law, University of Utah

Professor Craig will give a quick overview of the basics of the public trust doctrine and discuss the U.S. Supreme Court's apparently final—but still problematic—abdication of public trust doctrine authority to the states in *PPL Montana v. Montana*. She will then look at the different directions states are going with their public trust doctrines, including the ecological public trust doctrines and the very new atmospheric public trust doctrines, and end with a brief look at how these new and expanded public trust doctrines might help us cope with climate change.

Center for Innovation and Entrepreneurship

Tuesday, Oct. 22, 5-7 p.m.,
Classroom 4
123's of Financial Literacy for Small Businesses

Jay O'Brien, President,
JM O'Brien & Company PC

Accounting Basics-
Understanding Financial Statements

Tuesday, Oct. 29, 2013, 5-6:30 p.m.,
Law School Common

Speaker Series

Mr. Jeff Birnn, Co-president
Birnn Chocolates of Vermont

Tuesday, Nov. 5, 2013, Noon-1p.m.,
Law School Common

Speaker Series

Larry Hott, Co-founder,
Florentine Films/Hott Productions,
Inc.

Tuesday, Nov. 19, 2013, 5-7 p.m.,
Classroom 4

123's of Financial Literacy for Small Businesses

Paul Mancinone, CPA, JD
Dean Gouvin

Introduction to Tax Issues
for Small Business

Career Services

Careers in Small/Solo Practice

Wednesday, October 23; Noon-1 p.m.,
Room D

Many WNE Law grads go on to work in many different areas in small and solo practice. Join Law School alumni Chris Todd, Rachel Rothman and Karina Schrengohst to discuss their practices, how they landed in their current work, their quality of life and day to day routines. Pizza will be served.

Careers with the FBI

Tuesday, October 29; Noon-1p.m.,
Room D

Come join us to learn about careers in the FBI. Presented by an FBI Special Agent.

Gaining Legal Experience While in Law School

Thursday, November 7: Noon-1 p.m.,
Room D

Learn how you can incorporate experiential learning into your law school experience. Clinics, externships, simulation courses, and moot court teams are great ways to gain experience valued by employers while earning academic credit.

LLM Online Open House

Thursday, November 14;
Estate Planning at 7 p.m.
Closely-Held Businesses at 8 p.m.

During our Online LL.M. Program Open Houses you will: get an insider's view of our live, online classrooms; see a demonstration of how a live, interactive classroom works; learn about the unique educational characteristics and features of our LL.M. Programs; and explore the benefits of live, real-time online programs. Register now, call us at 413-782-1426, or email at calexander@law.wne.edu.

Phi Alpha Delta

If you are interested in joining PAD, please sign up at www.pad.org, or email padmiddletonwne@gmail.com for more information.

The Fall initiation will be held at the UCONN Law School starting at 7p.m. on October 25, 2013.

A reception will follow at McKinnons Irish Pub in Hartford with drink specials and FREE FOOD!

All PAD members are welcome to attend.

Please indicate on a sign up sheet located on the TWEN site (if you no longer have access to TWEN you can email to rsvp) if you plan to attend.

Student Bar AssociationExecutive Board

President: Megan Mackenzie

Vice-President, Day:

AJ VanHeyst

Vice-President, Evening:

VACANT

Secretary: Ashley Sears

Treasurer:

Brandon Cryderman

2L Day Representatives

Kenneth Bush

Joe Errico

Lynn Pucciarelli

2L Day JAB

Pat Benneft

2L Evening Representative

VACANT

2L Evening JAB

VACANT

3L Day Representatives

Joe Plukas

Josh Talcovitz

Justin Blain

3L Day JAB

Kel Thomas

3L Evening Representative

Steve Schindler

3L Evening JAB

Michelle Fredericks

4L Evening Representatives

Milena Ponomareva-

Schettler

Stacy Solomon

4L Evening JAB

Karen Adamski

SBA Meetings**Every Other Wednesday****9:55 p.m.****Room C****Library Schedule****Fall Semester*****Regular Hours******October 18, 2013—November 26, 2013***

Monday through Thursday: 8 a.m. to Midnight

Friday: 8 a.m. to 10 p.m.

Saturday: 9 a.m. to 9 p.m.

Sunday 10 a.m. to 11 p.m.

The library will be open regular hours on
Veterans Day (observed), November 11th

Thanksgiving Recess***November 27-November 30, 2013***

Wednesday through Thursday: CLOSED

Friday: 8 a.m. to 5 p.m.

Saturday: 9 a.m. to 9 p.m.

Pre-Exam and Exam Schedule***December 1-December 19, 2013***

Sunday, December 1: 9 a.m. to midnight

Monday through Friday, December 2-6: 8 a.m. to midnight

Saturday, December 7: 8 a.m. to midnight

Sunday, December 8: 9 a.m. to midnight

Monday, December 9: 8 a.m. to midnight

Tuesday through Friday, December 10-13: 7:30 a.m. to 1 a.m.

Saturday, December 14: 7:30 a.m. to midnight

Sunday, December 15: 9 a.m. to midnight

Monday through Wednesday, December 16-18: 7:30 a.m. to 1 a.m.

Thursday, December 19: 8 a.m. to midnight

*For more information, call the Library at 413-782-1457
or visit the Library page on the
Western New England School of Law website.*

Writers Needed

Lex Brevis is looking for students to write articles for its January edition.

Please contact
Karen Adamski at lexbrevis@gmail.com for more information.



Domestic Violence Awareness, Continued from Page 1

everyone who came by to visit. “It is our hope that people wear the pins and engage in conversations about domestic violence issues,” said Lenore Montanaro, president of the Women’s Law Association.

Along with the goodies, the Women’s Law Association also crafted a document of pertinent legal facts and case law for the campus community and distributed it with other pamphlets and brochures. They also maintained a donation jar with all donations going to a local Domestic Violence shelter.

“Although Domestic Violence Awareness month is over at the close of October, the many domestic violence issues remain,” Montanaro said. “As a student leader, it is my hope that the members of the Women’s Law Association are empowered so that we may one day ‘do the right thing’ for our local and global communities.”

Montanaro added, “I am inspired by the Women’s Law Association members as we all worked together in solidarity for this important cause. In addition, we are really grateful to the law school community, especially Miss Barb and the SBA, for all of their guidance and support.”

If you missed the “Bringing Awareness to Domestic Violence,” event, please look for other events that the Women’s Law Association will sponsor throughout the coming year.

All interested students, faculty and staff members are encouraged to join Women's Law Association of Western New England University School of Law.



Our Mission

The mission of the Women’s Law Association of Western New England University School of Law is to promote a recognition and understanding of gender issues facing women in law and society in the United States and around the world. We value the role that the female voice and perspective holds in influencing change. We believe that the female voice and perspective is essential to issues of gender discrimination, domestic and sexual violence, international women’s rights, the administration of justice, and the empowerment of peace. In accordance with our mission and values, the Women’s Law Association organizes community service initiatives, speaker and panel discussions with female community and government leaders, and film festivals that allow students the opportunity to openly discuss current issues facing women.



DAKIN PIONEER VALLEY HUMANE SOCIETY

Compassion. Education. Action.

**GOT OLD BLANKETS AND TOWELS HANGING AROUND THE HOUSE?
HERE'S YOUR CHANCE TO CLEAN HOUSE AND HELP THE COMMUNITY!!**

**WNE'S ANIMAL LAW ASSOCIATION
IS HOLDING A
BLANKET & PET FOOD DRIVE TO BENEFIT
THE
DAKIN PIONEER VALLEY HUMANE SOCIETY**

**A DONATION BOX WILL BE LOCATED ON THE 2ND FLOOR
OUTSIDE OF THE LIBRARY
UNTIL THANKSGIVING!**

In 2011 the Dakin Pioneer Valley Humane Society distributed over 44,000 pounds of food throughout the Pioneer Valley through programs like Meals on Wheels, as well as survival centers, senior centers, and food pantries.



The Dakin Pioneer Valley Humane Society has adoption centers in both Springfield and Leverett.