Freeing Walter Arvinger: How a group of faculty and students took on a real case, gave a man his life back, and invigorated the classroom in the process.

BY ANNE R. GRANT
It was 2002, and two professors were looking for new ways to teach students to “think like a lawyer.” Michael Millemann, the Jacob A. France Professor of Public Interest Law, told Steven Schwinn, assistant professor and associate director of the Legal Writing Program, “We teach our students to apply the law, but we ought to be teaching our students how to create the law.”

And Millemann found the perfect case for the program to use.

Walter Arvinger was a fifty-five-year-old Baltimore man serving a life sentence for murder; he had been in jail for thirty-six years. In December 2002, Arvinger had sent Millemann a handwritten note asserting his innocence. When the murder occurred, he explained, he had already left his friends and came back on the scene only after four other young
Arvinger’s appeal, drafted by a fellow inmate who was not a lawyer, had already been turned down, and the governor had similarly turned down a recommendation from the Maryland Parole Commission that he be given clemency, since he was the only one of the five remaining in prison.

“I read his transcript, and I was appalled,” Millemann said.

It was a case made to order for a new approach to the curriculum. The two professors decided that they would integrate class work for an appellate advocacy research course with the Post-Conviction Clinic. The twist: The students would deal with a real case. Usually, faculty who create the hypotheticals for writing courses know how the cases are supposed to turn out—it’s theirs to decide.

In this case, the faculty would struggle along with the students to define the issues, just as lawyers do in real life. “There are basic skills that lawyers use,” Millemann says. “The legal writing program teaches some of them, the clinic others. The programs are natural partners.”

Millemann and Schwinn began by reconstructing the Arvinger record from archives. They identified seven issues and organized the students in teams of two, assigning each team to one side of an issue, as is done regularly in the Post-Conviction Clinic. When Renee Hutchins, assistant professor of law, began teaching that clinic, she integrated the work already done for Arvinger in the legal writing course into the clinic’s work.

Each week, Hutchins gave all the students a session on the theories underlying post-conviction cases, and every week she and Millemann met with each issue group to help them translate theory into practice. “Midway through the semester, they identified better theories and tossed out weaker ones—as practicing lawyers must do,” Millemann says.

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Student Elisabeth Carmichael (’05) agrees: “It’s not normal in a legal writing class to not know where you’re going to end up. The students didn’t believe the faculty didn’t know where we were going to come out; the ground was shifting a lot for them. That’s life in the law.”

The issues ranged from substantive bases for relief, like ineffective assistance of counsel, to procedural questions. But the Maryland Post-Conviction Act also has a catch-all exception for “the interests of justice” for otherwise unforeseen circumstances.

“The problem,” Schwinn said, “was that nobody knew what the phrase meant. There was no case law and practically no legislative history.” But, he said, the students looked at other jurisdictions and crafted policy arguments based on the facts in Arvinger’s case: for example, that a fellow prisoner, not a lawyer, had prepared the earlier post-conviction pleading, and inadvertently failed to assert strong legal claims that Arvinger had no “tactical” reason to withhold. And that there were new legal principles that applied to Arvinger’s case that could not have been raised in the initial proceeding. In these circumstances, the students argued, it was “in the interests of justice” to reopen the prior proceeding. In short, says Schwinn, “They created the law.”

Together, faculty and students found the right approach. The student work, reformulated as a clemency petition, convinced Gov. Ehrlich that Walter Arvinger should be freed. He came home in December 2004.

The result, Millemann says, was “a great success for everybody, including the institution. The whole law school community rallied round,” even holding a reception for the entire Arvinger family, attended by many faculty and students.

From a teaching point of view, “It turned into a group problem-solving exercise,” Millemann says. “The students learned to accomplish the client’s goals—not read the professor’s mind.”

Schwinn adds, “They supported the decision by the governor to re-establish the tradition of executive clemency in the state of Maryland. In the future, this will protect the liberty of others who should not be incarcerated.”


Leadership in Diversity

Each year, the University of Maryland Baltimore honors two campus individuals or groups with the Dr. Martin Luther King, Jr. Diversity Recognition Awards for modeling the personal qualities and commitment needed to achieve equality, justice, and opportunity for all people. This year’s awards, presented on February 2, went to the law school faculty and the student teams who worked on the Arvinger case.

Faculty members Michael Millemann, JD, Renee Hutchins, JD, and Steven Schwinn, JD, guided the students. In the process, said Dean Karen Rothenberg in nominating them for the awards, “They supported the decision by the governor to re-establish the tradition of executive clemency in the state of Maryland. In the future, this will protect the liberty of others who should not be incarcerated.”

ed enough to keep working on the clemen-
cy petition for eighteen months, long after the class had ended.

Carmichael was one of several students interviewed about the case last year for National Public Radio's "All Things Con-
sidered." On the program, Brendan Hur-
son ('05) said the work reinforced in his mind "the awesome responsibility of prose-
cutors and defense attorneys: You are the client's only hope. If it's not getting taken care of at the trial level, you're in such a deep hole that it may take thirty-six years to climb out of it."

Brian Furlong ('05) added, "It's not about how much we're getting paid and how many hours we think we have, but that we're someone's representative and we're the only voice." He notes, "This was a human being, not just a file."

"This case has given us all the oppor-
tunity to see the wide variety of errors that can exist," Julia Roddick ('05) said. Carmichael added, "If you have the opportunity to take a shortcut and breeze through, your role is to not take the shortcut. These are people's lives."

Millemann was pleased that the course avoided the false competition that can arise in any class. The students "became helpers to each other, so there was more information on the table, and we got better results."

The course, he says, demonstrated "a very important theory of clinical teaching: if you give students responsibility for a client, they will perform better."

Though unlike the usual clinic, where students take full responsibility for a small case, "They didn't have the whole responsi-
bility—they had responsibility for one-
quarter of one issue," he says, "but it worked anyway. A little responsibility goes a long way."

The faculty agreed that, by the first semester of the second year, students "are hungry for this." Carmichael mentions that most students come to the school of law as idealists: "And then suddenly, you're dealing with fox-hunting cases in seven-
teenth-century England. It's a shock." The Arvinger case reinvigorated their consid-
erable amount of dormant idealism.

It was also a learning experience for faculty. "We had to make the adjustment to being co-teachers," Schwinn says, "and not only did we not know the answers, as we would have if we'd written the hypothetical, we didn't know the arguments. We weren't even sure how to approach the questions."

**In Search of Real Life Cases**

But what comes next for UM law stu-
dents? As Schwinn says, "The commit-
ment will be hard to replicate without a real case." It's not for want of trying: Students like Carmichael and Furlong search through the hundreds of requests for help that flood into the law school every week in the aftermath of Arvinger ("Basically, we do triage," Carmichael says) until they discover another readymade-for-class case, the faculty is continuing to experiment.

Last spring, Professors Millemann and Schwinn used actual legal work to teach the second course in the Legal Writing and Research sequence, which focuses on the pre-trial process. They worked with a law school alumnus who had a number of cases dealing with police brutality, and with a public interest organization trying to expand the right to counsel in civil cases.

"The students responded just as well as they did to the Arvinger case," Millemann says. "Indeed, they had more responsibility, meeting with and inter-
viewing clients and witnesses—it was closer to the clinic experience." Next fall, Professors Hutchins and Millemann are combining the third course in legal writing and research (the appellate advocacy team) with a year-long clinic that handles actual criminal appeals and post-conviction cases, selected from the hundreds and hundreds that are brought to the attention of the law school faculty every year, mostly through letters from inmates.

The faculty members believe their model can be used throughout the country. "Think of the resources represented by all the first- and second-year law school stu-
dents around the country," Millemann says. "If we can match the needs with those resources, law school students could become an important part of the legal servic-
es delivery system."

Not to mention saving a man's life.

Anne Grant writes on legal issues from her home in Alexandria, Va.