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

Professors Michael Millemann (above and middle at left) and Stephen Schwinn (in the red tie) are joined by Dean Rothenberg (in red) and the celebratory students. Family members came along with Walter Arvinger (seated, and being interviewed, above).
men had already beat another man to death with a baseball bat. He was still in jail, even though the one who wielded the bat had been paroled years earlier. One of the others had testified at trial that Arvinger was not there during the mugging.

When he wrote to Millemann, 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 and writing 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.

Schwinn adds, “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 around,” 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.”

The Impact on Students
Student Elisabeth Carmichael (’05) agrees: “It was such a refreshing change of pace from canned cases. I felt vested. It made me evaluate, dig deeper. It got me past the tendency to skim. Getting students vested in real cases makes for a better learning experience.” The students were in fact vest-
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-
sen (’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-
ibility—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 consider-
able 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 ready-
made-for-class case, the faculty is con-
tinuing 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 inter-
est organization trying to expand the
right to counsel in civil cases.

“The students responded just as well
as they did to the Arvinger case,” Mille-
mann 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 writ-
ing and research (the appellate advocacy
sequence) with a number of cases dealing
with police brutality, and with a public inter-
est organization trying to expand the
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The faculty members believe their
model can be used throughout the country.
“This 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 serv-
cices delivery system.”

Not to mention saving a man’s life.

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

IN MEMORIAM:
A Lawyer
with Promise

Fellow student Marc DeSimone (’05)
spoke at the memorial service held at
the law school.

Tragically, soon after the appellate
advocacy team celebrated the
effects of its work, one member of the
team died in a car accident. Ryan
Easley was killed with his wife,
Melanie, in Greenbelt, Md., on
December 13, 2004. The twenty-
four-year-old had graduated from
the law school near the top of his class in
May 2004, and was working as a
research associate at the school’s Thur-
good Marshall Law Library.

“Ryan led by his example and the
high quality of his work,” Professor
Michael Millemann says. “We all val-
ued his quiet and modest decency and
integrity, as well as his intelligence. He
cared deeply about justice and fair-
ness, and worked hard and creatively
to achieve both in the Arvinger case.”

“He was on his way to making a
better life for himself and for others,”
says Professor Donald G. Gifford.
“One had the sense that the more he
went on in life, the more he would
have emerged as a really brilliant
lawyer or legal scholar.” —A.G.