

# BEFORE the BENCH

by Timothy J. Fox

## Appellate Clinic students address the United States Court of Appeals for the Eighth Circuit.

In April 2005 third-year law students Jennifer Plaster and Jason Smith accepted a rare opportunity to present oral arguments before the United States Court of Appeals for the Eighth Circuit. While both students appreciated this unusual experience, neither was intimidated.

“I was more nervous when we practiced than I was in my actual appearance,” says Plaster, a Duke University graduate and the first to appear before the court. “Our moot court sessions raised all the pertinent issues, so I was aware of any Achilles’ heel in my arguments. The day of my appearance, I was just excited and ready to do it.”

One of the eight students participating last spring in the School of Law’s Appellate Clinic, Plaster was attracted to the program’s intensive focus on written and oral advocacy. “I knew the Appellate Clinic would be a great way to get some experience right away,” she says. “I decided to work on the reply brief that led to the oral argument because I became very interested in the case and wanted to see it through. It presented a fantastic opportunity.”

Plaster’s case, *Ledezma-Rodriguez v. United States of America*, involved prisoner Juan Ledezma-Rodriguez, who had been convicted of “immigration, firearm possession, and drug-related charges,” according to the appellant’s opening brief. He was sentenced to life plus 60 months.

Believing his attorneys had mishandled his plea-bargain agreement, Ledezma-Rodriguez filed a motion in district court for an evidentiary

hearing. When the district court denied his motion, he found himself in the Court of Appeals—with Plaster and fellow students Penny Calhoun, Jon Linas, Lynn Sowards, and Martina Tyreus all working on his behalf.

Plaster says, “We believed his allegations were sufficient to require a hearing.”

In the reply brief, Plaster wrote that “unless the Court ‘can determine from the motion and supporting record that [the petitioner] is not entitled to 2255 relief,’ the district court’s dismissal without a hearing is an abuse of discretion, and the case should be remanded for an evidentiary hearing.”

Her appearance before the court on April 13 was brief, but she says the experience will last a lifetime: “It was 15 minutes of making sure I had the information the judges wanted. I just discussed the case and focused on providing more information in the best possible way. Judges Diana Murphy, David Hansen, and Ray Gruender were gracious and polite, which helped put me at ease.”

Encouraged that the case hasn’t been decided, Plaster says, “The longer it takes, the more likely we are to get a full opinion. We are hoping the court gives our case—and our client—its full consideration.”

The next day, April 14, Smith presented his argument before the court. His extensive experience with the law school’s appellate

moot court team gave him the confidence needed to appear before Judges Roger Wollman, David Hansen, and William Jay Riley.

“I believe in preparation,” says Smith, a graduate of Maryville University and a native of Bolivar, Missouri. “When I’m fully prepared, I’m not nearly as nervous. And my experience in moot court competitions laid the groundwork for going into my argument.”

Smith’s case, *Jacob v. Clarke*, was a prisoner’s civil rights action. Steven M. Jacob, a prisoner in the Nebraska system, challenged a new policy that allowed inmates with HIV/AIDS, hepatitis B, or hepatitis C to work in the prison system’s kitchens. Harold Clarke, director of the Nebraska Department of Corrections, implemented the policy.

“Our client sued the state under the Eighth Amendment of the Constitution,” says Smith. “His theory was that the policy constituted ‘cruel and unusual punishment’ because it put prisoners at heightened risk for contracting one of those diseases.”

When the district court dismissed the prisoner’s case, he filed an appeal. That’s when the School of Law’s Appellate Clinic was appointed to represent him. Smith, Winston Calvert, and Emily Kalmer went to work, gathering legal precedent and evidence to support their client.

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"We found scientific basis for the prisoner's claim, which we included in the brief we filed with the court," says Smith.

The court, however, disagreed, stating in a six-page opinion that it was not likely the diseases would be transmitted through food.

"Another problem was simply that our client had filed his notice of intent to appeal too late, so the court found they didn't have the jurisdiction to

hear a portion of his case," says Smith. "Now our client is back to square one."

Still, Smith is far from dissatisfied: "I feel great about my appearance before the court. Appellate advocacy is something I'd like to focus a portion of my career on. This experience gave me a jump-start over my classmates and

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Professor D. Bruce La Pierre agrees with Smith. He directs the Appellate Clinic, now entering its third year, with the help of Lee Marshall, JD '99, an associate with Bryan Cave LLP and former clerk for the Court of Appeals.

"The clinic provides students the opportunity to put to work some of the legal writing and analysis they've developed in law school," says La Pierre.

The Appellate Clinic benefits the students, the court, and the School of Law, according to Michael Gans, JD '77, clerk of the court. "It is a tremendous service to the court that the Appellate Clinic accepts these cases on a pro bono basis. The clinic offers a wonderful way for students to present

**Clinic students Jason Smith and Jennifer Plaster argued before the Eighth Circuit.**



Mary Burkus

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Plaster and Smith earned the court's respect, "arguing their cases like old pros," continues La Pierre.

The professor also believes these two students helped ensure the clinic's success. "We wanted to get the clinic off on a good footing with the Eighth Circuit," he says. "I believe we are well on our way." ♦