

Katharine & George Alexander Community Law Center

La Voz del Centro

WINTER 2010



For Victim of Human Trafficking, the American Dream Remains Elusive

My name is Lisa M. I left Mexico 12 years ago, when I was 20. I did not want to continue to live in the domestic violence of my marriage. I wanted to offer something better to my son. So, when Lucio showed up in my little town looking for young girls to work in his chain of restaurants in the United States, I jumped at the chance.

Lucio's reputation was good. Every time he came to recruit, he'd bring presents for the families who would part with their young daughters. People had nothing but glowing comments about him. But even then, my mom asked me if I was sure about my decision, and my answer was "of course, I am sure."

The trip to the U.S. was nothing like Lucio promised. It was hard, and I and the other 12 girls suffered much hunger, thirst, anxiety and fatigue. When we finally arrived to our destination (somewhere in California, we were told), we were greeted by a nasty woman named Marta, who right away told us, "Welcome to your American dream. From now on, I am the boss, not Lucio. Pay attention because I explain things only once." We (about 40 of us) were in a very large room that looked more like a warehouse. We were told that all of us would share that space. I looked around and saw only a few beds. I wondered where we would sleep. Marta must have read my mind because she said that the beds were reserved for her most senior girls. The rest of us would sleep on the floor. First order of the day: pick our work clothes – mini-skirts, high-heel shoes and jewelry. We didn't have to pay then; we would pay later with our work.

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SERGIO LOPEZ

KGACLC Immigration Client, Lisa M.

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La Voz del Centro

Published by the Katharine & George Alexander Community Law Center at Santa Clara Law

A Message from the Director



CHARLES BARRY

Season's Greetings! The past year has been a very successful one for the Katharine & George Alexander Community Law Center, and our mission of training Santa Clara University law students for the practice of law and providing essential legal services to the low-income communities in the region has never been more important.

As we highlight in our latest newsletter, the past year saw a series of legal wins, including successes in immigration applications, a consumer class action litigation and workers' rights cases. The dramatic front-page story of Ms. Lisa M, an immigration client, and the one about Ms. Gonzalez, a class representative whose case was recently settled by our Consumer Rights attorney, Scott Maurer, provide just two examples of our work.

We've also served hundreds of clients through our interviewing and counseling clinics and helped educate community

members about their rights through our educational workshops, which cover key areas of law such as workers' rights, consumer fraud, and landlord-tenant law.

The past year also saw several new additions to the Community Law Center family. Rani Reddy-Gil joined the staff this past summer as an office administrator, focusing on grant administration and program development. Rani previously worked at the Stanford University Graduate School of Education.

James Lindfelt, a 2010 graduate of the law school and a former student at the Center, joined the staff this fall for a one-year fellowship sponsored by the law firm of Pillsbury Winthrop Shaw Pittman LLP. He is focusing on employment and consumer protection cases.

Mariela Rodriguez, the Law Center's receptionist, is on family leave for a few months after giving birth to her daughter Marytzel, who was born in late November. Marytzel joins Oliver Lindfelt, James' son, as the second Community Law Center baby born during the past year.

As always, our students have been our most important asset during the past year, combining their legal training with services to low-income clients. Through the combined work of students, staff, and volunteers, we assist over 1,000 individuals each year, and the Center's work would not be possible without the dedicated students who enroll in our classes each term or who volunteer through our various programs. Some of their cases are featured in this newsletter, as well.

We have been especially fortunate this past year to receive a number of major donations and grants, as well as cy pres awards that will ensure our financial stability during the coming academic year. One of those cy pres cases is highlighted in this newsletter, and we are also thankful to firms such as the Watsonville Law Center, Pearson, Simon, Warsaw & Penny, and Hagens Berman Sobol Shapiro for their efforts in helping steer significant cy pres awards to the KGACLC.

We are, of course, grateful to our ongoing supporters in the county, state, and federal governments; various law firms, individuals, and foundations; and important institutional efforts such as the Silicon Valley Campaign for Legal Services.

The year 2011 marks the Centennial of the Santa Clara University School of Law. As we move forward and enter the School of Law's second century of excellence, there's no doubt that we could not fulfill our mission of serving low-income clients and training students in the practice of law without our many supporters. We cannot thank you enough for this support, and we hope that you will sustain your efforts in the coming year to ensure that the Center remains a strong and vibrant resource for Santa Clara University and our community.

Best wishes,

Angelo Ancheta
Executive Director

Achieving the American Dream

continued from page 1

My starting balance was \$1,000.

All this was so bizarre. Why would I ever have to pay to dress like that to work in a restaurant? The answer came when Marta asked me and the other girls to get ready because we were going to a bar. My real job, I soon found out, was to drink with the men and then have sex with them in a nearby motel, in their cars, and even right behind the bar. The men were very mean and often beat me while forcing me to do unspeakable acts. I cried and implored Marta to explain

I escape anyway? I could have reported it all to the police. I could have saved myself and my friends so much grief. That's an unfinished chapter in my life, if only because of the things I didn't do.

It has been 11 years since the nightmare ended. Today, I have a job, my kids, and a stable life that is far away from my awful past. I also have a mission. I will look for all those women who shared that horrible experience with me (some of them are still in that life, by the way). I will get them out, somehow.

“I want to thank the Alexander Law Center for assisting me in obtaining a visa for victims of human trafficking. I also want to apologize to all the American people for crossing the border illegally. I recognize that is not the way to be in this country. But I also want people to know that I am not here to do anyone any harm. If I had known what awaited me here, I never would have left my country.”

—LISA M.

to me if I had done something wrong to deserve that. She said no, but that I had to work to pay off my debt.

During one of the first days, to everyone's surprise, she opened the door and said, in an official tone, “If anyone wants to leave, this is the time. Just remember: we know your families and accidents do happen.” She repeated the phrase so often that I was mortified of leaving for fear of bringing harm to my family in Mexico. I soon became very depressed and even suicidal. I was so confused, so ashamed, so lost. Every night, I prayed to the Lord to somehow end the nightmare. And one day, Marta called the warehouse and told us to not show up at the bar. I later found out that the police had raided and closed down the place, and that Marta and Lucio were on the run.

Leaving that place was easy for me; repairing the damage was a different matter. For years I've had to deal with the guilt of being so gutless. Why didn't

My dream is to one day open up a center with doctors, psychologists and resources to help women in similar situations. I am sure that I cannot change the world, nor solve all the problems in my country. But if I can change myself and help others, then for sure I can start to make a difference. Above all, I'll never be silent again.

I want to thank the Alexander Law Center for assisting me in obtaining a visa reserved for victims of human trafficking. I also want to apologize to all the American people for crossing the border illegally. I recognize that is not the way to be in this country. But I also want people to know that I am not here to do anyone any harm. If I had known what awaited me here, I never would have left my country. However, now I am here and, with God's help, I am still standing. I am here to one day help all those women, and then I'll be able to say that I have achieved my American dream.

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About us:

The Katharine & George Alexander Community Law Center (KGACLC) is a civil legal component of Santa Clara University School of Law. Its mission is to educate law students in accordance with the highest professional and ethical standards by serving individuals and communities in need with competence, conscience and compassion through pro bono legal representation and education.

You may learn more about KGACLC at <http://law.scu.edu/kgaclc/>.

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Santa Clara Law, founded in 1911 on the site of Santa Clara University, California's oldest operating higher-education institution, is dedicated to educating lawyers who lead, with a commitment to excellence, ethics, and social justice. One of the nation's most diverse law schools, Santa Clara Law offers its 975 students an academically rigorous program, including graduate degrees in international law and intellectual property law; a combined J.D./MBA degree; a combined J.D./MSIS degree; and certificates in intellectual property law, international law, and public interest and social justice law. Santa Clara Law is located in the world-class business center of Silicon Valley, and is distinguished nationally for its top-ranked program in intellectual property. For more information, see <http://law.scu.edu>.

Recent California Supreme Court Case Clarifies Employer Definition Under Wage Law



NICOLE SEBEK

Ruth Silver Taube, Supervising Attorney, KGACLC Workers' Rights Clinic; SCU Lecturer in Law

In a significant wage and hour decision, *Martinez v. Combs*, (2010) 49 Cal.4th 35, the California Supreme Court clarified the definition of employer. An amicus brief was filed on behalf of the KGACLC and other organizations.

In *Martinez*, the plaintiffs were agricultural workers who picked strawberries for Munoz & Sons ("Munoz"). Munoz sold the strawberries through produce merchants, Apio and Combs, who would routinely enter the strawberry fields to instruct Munoz' foremen and workers on how to package the strawberries and to check the quality of the strawberries. After the price of strawberries declined, Munoz failed to pay the strawberry pickers.

Plaintiffs sued the employer (who was discharged in bankruptcy), Apio, Combs, and Combs' field inspector, Ruiz, for minimum wage violations, liquidated damages, failure to pay contract wages,

and waiting time penalties. The plaintiffs argued that the court must apply the broad definition of "employer" set forth in the Industrial Welfare Commission's (IWC) wage orders, that Apio and Combs were "employers" as defined by IWC Wage Order 14, and, that they are, therefore, liable under Labor Code § 1994. The court below had applied federal law to define employer and, in an earlier case, *Reynolds v. Bement*, (2005) 36 Cal.4th 1075, the Supreme Court had applied common law.

After analyzing section 1994 and its legislative history, the Court adopted the broad definition of employer set forth in the IWC wage order which contains three alternative definitions: (1) to exercise control over wages, hours, or working conditions, or (2) to suffer or permit to work, or (3) to engage. The court stated that the definition is broad enough to read through straw men or sham arrangements and to reach multiple entities which control different aspects of the employment relationship. The Court concluded, however, that, even under this broad definition, the managers were not employers because (1) they did not "suffer or permit" plaintiffs to work since they did not have the right to hire, fire, set wages and hours, and prevent plaintiffs from working; (2) they did not "exercise control over" the plaintiffs' wage and hours since Munoz alone controlled the wages and hours; and (3) the plaintiffs knew they owed obedience to Munoz and not the merchants.

This decision is significant because it increases the risk of liability in co-employment situations with multiple entities or leased employees. An employer who hires a misclassified independent contractor also risks liability for wage

claims asserted by the contractor's employees. The case is also significant because it gives the IWC plenary power to define employment relationships, and courts will likely extend this authority to other Labor Code provisions.

"This decision is significant because it increases the risk of liability in co-employment situations with multiple entities or leased employees. An employer who hires a misclassified independent contractor also risks liability for wage claims asserted by the contractor's employees. The case is also significant because it gives the IWC plenary power to define employment relationships, and the courts will likely extend this authority to other Labor Code provisions."

—RUTH SILVER TAUBE

Law Students Deliver for Valley Worker

Mr. Peña attended a Workers' Rights Clinic at the Alexander Community Law Center in September, 2009. He had been working for three months at a bakery, earning \$6 per hour – less than the required minimum wage. Initially, he was hired as a janitor, but his boss promised him that if he learned how to bake, then his salary would increase to \$8 per hour within a few weeks. An eager learner, Mr. Peña finished his regular work quickly so he could have time to learn by watching the baker. He did learn how to bake, but his raise never came.

The KGACLC students handling the case determined that the employer owed Mr. Peña \$3,800 for minimum wage deficiencies and for meal and rest

break violations. Initially, he felt ambivalent about his claim because he felt that he “was taking money away from the boss.” But the more he “thought about it, the more [he] understood that it was really [his] money” because he had worked for it. Among the students who worked on the case over three consecutive semesters were Daniel Garcia, Jennifer Ryan and Justin Gilbert – all recent law graduates. But it was Meredith Bronson ('11) who saw the recent conclusion of the case. When asked about her work on the case, Bronson saw it as “one of the most rewarding experiences” of her law school career. “I just loved working with Mr. Peña. He was always on top of things, and he was very organized.”

As for Mr. Peña, his praise for Bron-



Meredith Bronson and Mr. Peña

son is the same as for the students before her: “I was amazed at how meticulous they all were. They all looked at every piece of evidence with the utmost attention and care. I am so thankful to the Law Center for its help on my case. I really had no other place to go, but the Law Center came through in every single aspect.”

Recipients of the 2010 Community, Commitment & Courage Awards

The Community, Commitment & Courage Celebration took place on October 28, 2010, at the Adobe Lodge, on the SCU campus. In recognition of their dedication, winners of the awards received standing ovations from a full house – an enthusiastic crowd that braved the cold weather to support their friends and colleagues during this annual event.

The recipients' plaques read as follows:

Community Award: Niall P. McCarthy. “His dedication to protecting the legal rights of individuals throughout California and the nation. This dedication has extended to important support for the Katharine & George Alexander Community Law Center, and your exceptional leadership has enhanced the ability of our programs to provide legal services to communities in need.”

Commitment Award: Katherine Dunn. “For her demonstrated commitment to advancing the legal rights of low-income



Commitment Award Recipient Katherine Dunn converses with Santa Clara President Michael Engh, S.J., during the Celebration reception.

clients. As a law student at the Center, you provided truly exemplary services to your clients. Even before graduating from law school, you volunteered at the Mental Health Advocacy Project, and you have performed outstanding services for your clients there as a staff attorney since 2007.”

Courage Award: Maria Rivera. “For your courage as a live-in caregiver who stood up against your employer to demand your rights under the state’s wage and hour laws; who reported the employer’s staffing violations to the governmental oversight agency in the face of likely termination from your employment; and who, with the legal assistance of the KGACLC, persevered in a course of litigation over two years, which forced a change in the employer’s business practices....”

Eric & Nancy Wright Award: Margarita Prado Alvarez. “In appreciation of your five years of dedicated service to the Community Law Center; your thirty-plus year commitment of public service to low income, multi-ethnic clients as an attorney specializing in employment law; your willingness to go the extra mile for your students and to be a caring role model for their future legal careers; and your unique combination of professional discipline, continuous hard work and upbeat spirit....”

The Community Law Center's Influence Extends Beyond Its Own Clientele

The Alexander Law Center recently helped channel over \$900,000 in cy pres awards to various consumer protection agencies, including \$150,000 to the Watsonville Law Center, founded by Rose Inda ('00), a SCU alum and former KGACLC student. "We are extremely grateful and excited that this donation will support our consumer advocacy work on behalf of the most vulnerable consumers in the Pajaro Valley and the surrounding region," said Inda about the award.

The awards stemmed from a class action settlement reached by the KGACLC and its co-counsel, Anderson, Ogilvie & Brewer, against Fireside Bank. The action resulted in a \$4.5 million settlement. Because many of the class members could not be located, their share of settlement was distributed to the non-profit agencies.

The case began in 2002, when Sandra Gonzalez, a San José resident, sought the assistance of the KGACLC because her car had been repossessed. Fireside Bank



Scott Maurer, KGACLC Consumer Rights Attorney

CHARLES BARRY

of Pleasanton sent her a letter stating she could only get her car back by paying thousands more than she actually owed, in violation of California law. During the litigation it became apparent that Fireside tried to overcharge thousands of other consumers.

As the class representative, Ms. Gonzalez endured the many years of

litigation and resisted very tempting financial offers from the bank to drop the case. In the end, thanks to her resolve and to the efforts of KGACLC, Andersen, Ogilvie & Brewer and KGACLC alum Balam Letona, the bank agreed to the settlement, which also required it to stop attempting to collect \$75 million still pending on other auto loans.

"I am proud of the work the Center did and also of the bravery Ms. Gonzalez showed in fighting this case for so long" said attorney Scott Maurer. "I thank all the students who worked on this case which wound up helping so many California consumers."

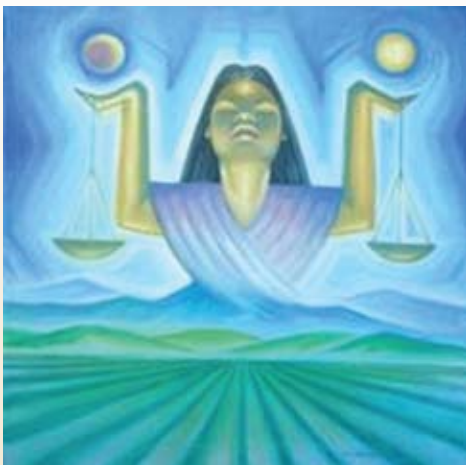
In this regard, Angelo Ancheta, KGACLC Director says: "Our Community Law Center also has been a recipient of cy pres awards, so we do appreciate this much-needed source of revenue. We're happy to help provide benefits to organizations such as the Watsonville Law Center, an organization that is close to our heart for many reasons."

About the Watsonville Community Law Center

The Watsonville Law Center (WLC) provides free legal services to low-income individuals. Serving a predominantly agricultural community, WLC focuses on addressing issues related to worker rights, consumer protection and barriers to employment. WLC delivers services through advice clinics, one-on-one consultations, and direct representation.

Through its five projects (the Agricultural Workers' Access to Health, Barriers to Employment, Economic Justice, Language Access to the Court, and the Consumer Protection Projects), WLC has assisted thousands of community members.

For additional information, visit <http://www.watsonvillelawcenter.org/index.php>



Bankruptcy Case Teaches KGACLC Students About the Non-legal Needs of Clients

Work by law students Amy Walls ('11), Marie Sobieski ('11) and Jagdeep Hansra ('11) resulted in the dismissal of a lawsuit for approximately \$8,000 against a Salinas mother of four whose husband recently became permanently disabled and unable to support the family because of a serious heart condition.

For many months after the onset of the husband's heart condition, the couple believed that he would recover and be able to return to work. With that expectation, the couple charged approximately \$8,000 on a credit card for purchases to sustain the family. The couple filed bankruptcy when it became clear to them that the husband would be unable to return to work and the couple would be unable to repay their debts, including the debt on the credit card.

The issuer of the credit card then sued the mother in bankruptcy court claiming that her use of the credit card constituted fraud if she used it in contemplation of filing bankruptcy and with no intention of repaying the debt. Had it been able to demonstrate fraud, the bankruptcy court would have ruled that the \$8,000 could not be discharged in the bankruptcy. The client would then continue to be liable to pay it. Many credit card issuers file such lawsuits in the bankruptcy cases of their debtors, frequently obtaining a default judgment because the debtor either doesn't appreciate the significance of the lawsuit (thinking that the bankruptcy filing had resolved matters) or because the debtor cannot afford legal representation to defend the lawsuit. Such default judgments put debtors' future wages at risk of garnishment and, to that extent, undermine the fresh start function of the

bankruptcy. Several years ago, to mitigate the risk of such defaults, the San Jose Division of the federal bankruptcy court and KGACLC agreed that the bankruptcy court would notify debtors sued in such cases that KGACLC would be available for advice and possible representation.

In response to notice from the bankruptcy court, the Salinas mother turned to the KGACLC's Consumer Protection Clinic for advice in 2009. The students, under the supervision of Professor Gary Neustadter, interviewed the client, conducted a significant amount of informal investigation about the nature of the charges to the credit card, researched the relevant law, filed an answer to the complaint denying liability, responded to discovery requests made by opposing counsel, and prepared and served discovery requests upon opposing counsel. After evaluating the case following this initial round of discovery, the credit card issuer dismissed the case with prejudice, meaning that the debt to the credit card issuer has been discharged by the bankruptcy.

Although the client was extremely pleased and grateful for this result, and although the students and Professor Neustadter took satisfaction in achieving the client's objectives, the result is bittersweet because it does not end or resolve the client's ongoing and extreme financial difficulties. The family's previous debt has been discharged, but the husband cannot support the family, the client has limited income earning potential and must devote a significant portion of her time to caring for her husband and her children, and, except for food stamps, the family does not appear to qualify for any federal, state, or local assistance.



Amy Walls

For Walls, "getting to work with Professor Neustadter and Mrs. Gonzalez showed me that serving a client can require more than just legal work. Sometimes people have problems that are even more pressing than their legal issue, and you have to be willing and open to address those needs so that your client then has the strength to deal with the legal problem. Everyone at the KGACLC is so compassionate. I really enjoyed being in that kind of environment where I was encouraged to be compassionate as well and was allowed to try to help the client with more than just her legal problems. Working at the Community Law Center has confirmed to me that no matter what type of job I find myself in after law school, I want to be helping people."

Our sincere thanks to all of our supporters.

Thanks to you, the KGACLC is able to educate law students with competence, conscience, and compassion while assisting the most vulnerable members of our community with their legal issues.

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