



VOLUME 2, ISSUE 1—JUN 1, 2016

Minna Kotkin on Public Radio Talks about Sexual Harassment

Prof. Minna Kotkin gave her views about sexual harassment on February 7, 2016 on [NPR](#). Describing the early days of her career as only one of 20 students in her law school class, Prof. Kotkin said “it’s clear that things are better today” than when she was just starting out in her career, in part because there are laws that now protect women from this kind of harassment. But problems persist in a wide range of workplaces.



Contents:

- **Minna Kotkin on Public Radio**
- **BLS/EXI Innocence Clinic Director**
- **HELP Clinic**
- **Corporate and Real Estate Clinic**
- **Justice Delayed, but Justice Prevails**
- **Disability and Civil Rights Clinic**

Clinical Education Program Office

One Boerum Place, 3rd Floor
Brooklyn, NY 11201
T: 718-780-7994
F: 718-780-0367
E: clinics@brooklaw.edu

BLS/EXI Innocence Clinic Director Scores a Big Victory in the Bronx

This spring, [Glenn Garber](#), the adjunct professor who teaches a course in Wrongful Convictions and directs the BLS/EXI Innocence Clinic achieved the remarkable result of vacating the conviction of his client who had served more than [20 years for a on a homicide conviction in the Bronx](#). EXI worked on Richard’s case for the past 5 years and the representation is ongoing. Many of the BLS/EXI clinical students had some involvement in the case over the years.

HELP (Helping Elders Through Law and Policy) Clinic



Above picture shows Adj. Prof. Deirdre Lok, far left, Prof. Natalie Chin, fourth from right, and clinic students and speakers

This semester the HELP clinic students hosted an event during Sex & the Law Week at Brooklyn Law School featuring SAGE, Lamda Legal, and Brooklyn Law School Disability and Civil Rights Clinic to address issues around gender equality among the LGBTQ aging community.

In recognition of National Healthcare Decisions Day on April 19, 2016, the clinic students provided legal services and completed advanced directives with identified LGBTQ older adults at SAGE.

Corporate and Real Estate Clinic Spring Semester 2016 Highlights

Training Session for Ninety Co-op Board Members

Ninety board members from low income co-ops attended a training session at BLS on Thursday April 21 conducted by Advanced Corporate and Real Estate Clinic student, Jonathan Wong ('17), and Professor Debbie Bechtel. The Board members learned about analyzing affordable housing restrictions, obtaining mortgage satisfactions, using the City's on-line building information system and understanding real estate tax exemptions. There are over 1300 of these buildings in New York City which constitute a crucial source of affordable housing. Professor Bechtel's clinic has provided free legal services for these buildings for the past 19 years.



Jonathan Wong '17- in the Classroom.

Unit Sales as a Source of Much-Needed Revenue

When ownership of units in low-income cooperatives is embroiled in estate disputes or maintenance obligations are ignored by shareholders who have moved out of state, the financial implications can be dire for the co-op. Two teams of clinic students tackled these situations for Brooklyn buildings this semester. Chris Saverino ('17) and David Jason ('17) handled one involving negotiations over maintenance arrears, late fees and the cost of repair work which, when combined with the re-sale fees, totaled \$70,000 received by the co-op. Another handled by Dean Focarile ('16) and Jill Bledsoe ('16) involved negotiations over a power of attorney and removal of a violation attributable to the departing shareholder. The co-op obtained \$50,000 for maintenance arrears, re-sale fees and violation costs. In both instances, the students drafted closing documents and conducted the closings, after completing the negotiations.



Christopher Saverino '17 & David Jason '17



Jillian Bledsoe '16 & Dean Focarile '16

Loan Closings to Deal with Tax Arrears

Remaining current in tax payments is another struggle for struggling low-income co-ops. Two student teams worked with Brooklyn buildings whose boards decided to borrow money from a credit union to resolve their problems. A Greenpoint co-op attempting to borrow \$113,000 presented particular challenges for Yisroel Katz ('17) and Jed Russell ('17) because the proposed conversion of a ground floor space from commercial to residential use concerned the lender. The students reviewed architect letters, drafted lease amendments and negotiated loan agreement revisions to cope with the situation. In addition, they drafted an opinion letter and various resolutions as well as obtaining a satisfaction of mortgage and resolving other title issues before conducting the closing in April.

Justice Delayed, but Justice Prevails—A Twenty Year Delay Proves the Criminal Appeals Clinic Got It Right



Twenty years ago, Michelle Flaxman, a student in the Brooklyn Law School Criminal Appeals Clinic, received disappointing news. The Appellate Division, Second Department, in a brief, one-page opinion, affirmed the murder conviction of Andre Hatchett, rejecting the three legal arguments she had raised in her brief. *People v. Hatchett*, 225 A.D.2d 634 (2d Dept. 1996). Michelle wrote a strong letter seeking leave to appeal to the Court of Appeals, but Judge Bellacosa denied the application. Feeling passionate about the client's possible innocence, Michelle referred the case to the Innocence Project, hoping that lawyers there might be able to accomplish what she could not.

Last month, after almost 25 years in prison, [Andre Hatchett was finally set free](#). With the consent of the Brooklyn District Attorney's office, and after extensive investigations by the Innocence Project with pro bono assistance from the Paul, Weiss law firm, the court released Mr. Hatchett, vacating his conviction and dismissing the indictment. Mr. Hatchett had been wrongfully convicted based almost entirely on the questionable testimony of career criminal who claimed to have witnessed the killing (after he had been arrested himself for a burglary). The prosecution had withheld information that this witness first identified someone else as the killer, and defense counsel at trial failed to present evidence of Mr. Hatchett's physical and mental disabilities that would have made it virtually impossible for him to commit the crime.

None of the extensive news coverage of this exoneration has focused on how the appellate process operated in Mr. Hatchett's case. In considering how injustices like this one might be avoided, it may be worthwhile to look at that process. The appellate brief raised three points:

- The conviction for intentional murder was against the weight of the evidence.
- The prosecutor improperly questioned the alibi witness about his failure to come forward with exculpatory information.
- The trial court abused its discretion by not reopening the suppression hearing, at which the defendant was represented by ineffective counsel.

The case against Mr. Hatchett, who had no prior record, depended on the testimony of Jerry Williams, a man with at least 28 prior arrests. Williams claimed that on February 18, 1991, he and a female companion on her way to buy crack had witnessed a man beating the victim (whom Williams knew, as she had served as a look-out for some of his burglaries) in a Brooklyn park. They failed to contact the police about what they had seen, but when Williams was arrested for burglary a week later, he told the detective that he could identify the person who had committed the murder. Although he selected Hatchett from a line-up, the police released him, only to place him in another line-up a month later. The female companion at first either could not identify anyone, or identified one of the fillers, but ultimately picked out Hatchett, who was then arrested and charged.

At pre-trial hearings, defense counsel failed to challenge the first line-up and did not even cross-examine the single police witness. At the first trial, when the prosecution rested its case, defense counsel moved for a mistrial based on his own inadequate representation. He had, among other things, failed to provide alibi notice although Mr. Hatchett, when first interviewed by the police, had stated that he was with Tyrone Thomas at the time of the killing. The lawyer also had trouble hearing, and generally behaved inappropriately throughout the trial. The court declared a mistrial "as a matter of manifest necessity."

At the second trial, when questioned about the line-up, Jerry Williams mentioned "people picked out of the mugshot book," although no notice of any photo identification had been given. His female companion did not testify at either trial.

Andre Hatchett testified that on February 18, 1991, he was using two crutches and had a cast as a result of having been shot in the leg and throat. He had trouble talking. (Williams described the killer as yelling or shouting.) He had spoken to the victim at her home earlier in the day, but did not spend time with her in the evening. Rather, he went with Tyrone Thomas to his girlfriend's house. Thomas confirmed that Hatchett was with him that evening, and that he was using crutches and had his cast in a bag because it was raining. On cross-examination, the prosecutor was permitted, over objection, to question Thomas about whether he had gone to the police with his information about Mr. Hatchett. Thomas explained that Hatchett was "getting locked up back and forth," so that he could not go with him to tell the police about the alibi. He had in fact told Thomas's first attorney in March 1991 that Thomas was with him that night. The jury deliberated overnight, finding

Hatchett guilty after having the testimony about whether Thomas had gone to the police reread. The judge imposed the maximum sentence of 25 years to life, after the prosecutor noted that the defendant expressed no remorse. Defense counsel explained that his client had always maintained his innocence, and when asked whether he had anything to say before being sentenced, Mr. Hatchett said: "I didn't do it."

The appellate court rejected the weight of the evidence claim in two sentences: "Although the witness who claimed to have seen the defendant beating the victim in a park had an extensive criminal record, resolution of issues of credibility, as well as the weight to be accorded to the evidence presented, are primarily questions for the jury, which saw and heard the witnesses. Its determination should be accorded great weight on appeal and should not be disturbed unless clearly unsupported by the record." (citations omitted)

The court asserted that the claim regarding questioning of the alibi witness had not been preserved, despite several objections raised by defense counsel. The court added: "In any event, there is no merit to the defendant's claim (*see People v. Dawson*, 50 N.Y.2d 311)." *Dawson*, of course, is the case in which the Court of Appeals established the rule that, without a good faith basis and proper foundation, a prosecutor may *not* question an alibi witness about his failure to come forward with exculpatory knowledge. The court gave no reason for its conclusion that this claim had "no merit."

Here, the prosecutor had been present at the first trial when a mistrial was declared, in part, because defense counsel failed to provide the required alibi notice, despite Mr. Thomas having come forward with information that Hatchett was with him the evening of the killing. Yet the prosecutor questioned Thomas as though his current testimony were a recent fabrication.

The court dismissed appellant's third claim in a similarly cavalier fashion: "The defendant's claim that the court should have reopened the *Wade* hearing is also unpreserved for appellate review and, in any event, without merit." (citation omitted) While this claim was indeed unpreserved as a matter of law, it presented a particularly appropriate case for the exercise of the court's interests of justice jurisdiction. The lawyer who handled the first trial, in which the court was forced to declare a mistrial due to his incompetent performance, was the same lawyer who represented the defendant at the *Wade* hearing. The court was well aware of that fact, and even without a motion by the new defense attorney, the interests of justice required that the *Wade* hearing should be reopened so that competent counsel could explore the key question of the reliability of Williams's identification.

New York law guarantees to criminal defendants a single appeal as of right to the appellate divisions. After that appeal, defendants must rely on volunteer assistance to try to rectify any injustices. It should therefore be incumbent on the appellate courts to look particularly carefully at cases that suggest, or indeed strongly signal, that the defendant might be innocent. If that had occurred in Mr. Hatchett's case, he could have been saved 20 years of wrongful imprisonment

Disability and Civil Rights Clinic (formerly known as Advocates for Adults with Intellectual Disabilities Clinic)

If you've ever attended a training at 83 Maiden Lane (who hasn't?) then you may be familiar with Offices Services Clerk Alfred Ha. But did you know that Alfred volunteers at [Brooklyn Law School \(BLS\)](#) teaching law students to assist people with disabilities?

Alfred and I met Natalie Chin, Assistant Professor at BLS during the [2014 Self-Advocacy Association of New York State \(SANYS\)](#) annual conference. Natalie is also the *Director* of BLS's Advocates for Adults with Intellectual Disabilities Clinic (AAIDD). The AAIDD provides a wide range of legal services for people with intellectual and developmental disabilities.

In January 2015, I accompanied Alfred to BLS offices where we met with Natalie and attorney Michael F. Higgins, the program's Clinical Instructor of Law. *Of the program Michael said, "In class we prepare to handle real life cases that support the independence and self-*



Left to right: Steve Williams, Employee Relations Manager, Organizational and Employee Development; Natalie Chin, Asst. Professor/ Director Advocates for Adults with Intellectual Disabilities Clinic, Brooklyn Law School; Alfred Ha, Offices Services Clerk, AHRC NYC Headquarters; and Michael Higgins, Clinical Instructor of Law, Brooklyn Law School

determination of individuals with disabilities. Every semester the Clinic hires at least one self-advocate to help run an interview simulation. The simulation allows the students to work on interviewing skills such as building rapport, information gathering, identifying legal issues and professionalism." Alfred performed so well in the simulations that he was invited back for the Spring 2016 semester.

There is some preparation for Alfred, who has to memorize details about the character he is going to play." That character is different than Alfred and has challenges that Alfred may not have faced," Michael states. Alfred has no idea what questions he will be asked during the simulation so he has to be on his toes when in character. Michael added, "This was Alfred's second time serving as an interviewee and he was fantastic! Because he can imagine himself as the person with the legal problem he is able to answer questions that are not included in his memorized facts. He can also imagine how his character feels to give new and unexpected answers. Alfred's skill makes the interview seem real and important, and helps prepare students for the real thing!"

As for Alfred, he enjoys playing a part in helping the AAIDD students "meet the needs of people with disabilities and make sure they're prepared when they meet people with disabilities." --via Steve Williams, *Employee Relations Manager*, Organizational and Employee Development, AHRC, an org. that provides supports and services for people with ID/DD.

WWW.BROOKLAW.EDU