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Boyd Law's Thomas & Mack Clinic Scores Important Ninth Circuit Victory

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“The student attorneys discovered that effective advocates must sometimes challenge orthodoxy.”

BY GUEST WRITER, ASSOCIATE PROFESSOR OF LAW ANNE R. TRAUM

BOYD LAW'S THOMAS & MACK CLINIC SCORES IMPORTANT NINTH CIRCUIT VICTORY

By the third year of law school, most students have read hundreds of appellate opinions and competed in a moot court. In these cases, the facts are presented as fixed and students focus on articulating and applying rules of law. Few law students, in Nevada or elsewhere, have the chance to engage in appellate advocacy in a real case. The Appellate Clinic, part of the Thomas and Mack Legal Clinic, offers students a unique, live-client appellate advocacy experience in which students must grapple with serving the interests of a real client, understanding and shaping a factual record, spotting appealable issues and briefing and arguing the case in the United States Court of Appeals for the Ninth Circuit or the Nevada Supreme Court.

The Boyd School of Law launched the Appellate Clinic in the fall of 2009 with 10 students and four cases. In November 2010, the clinic scored a major victory with a published Ninth Circuit opinion in *Dent v. Holder*, No. 09-71987, --- F.3d --- (9th Cir. 2010). This case has already garnered national attention for establishing a significant new right to information for immigrants facing deportation. Just as important, it showcases the creative and excellent work by appellate clinic student attorneys, especially the three students primarily responsible for handling the case: Holly Cheong, Corina Rocha Pandelli and Kris Zeppenfeld (all from Boyd's Class of 2010).

The Appellate Clinic's client, Dent, appealed a 2005 decision by the immigration court to deport him from the United States. The students' work on the case began with an initial review of the record from the immigration court. Their research indicated that Dent had a strong claim

that the immigration court erred by ordering his deportation based on a relatively minor criminal conviction. Their first task then was to convince the appellate judges that the minor conviction was a legally insufficient basis to deport Dent.

It is received wisdom in appellate practice that the court's review is limited to the record developed in proceedings below. The student attorneys discovered that effective advocates must sometimes challenge orthodoxy. Throughout his proceedings, Dent had firmly maintained that he was a naturalized citizen. A native of Honduras, he was adopted by a United States citizen in 1981. If he is a citizen, the United States cannot legally deport Dent.

This second, high-stakes claim would provide the best relief to Dent, but there was little in the record to support the claim. The documents in the record merely established that his adoptive mother was a United States citizen. And, the immigration court said Dent had failed to prove citizenship.

Undeterred, the students kept digging and discovered some startling facts. Looking for information related to his citizenship claim, the students contacted Dent's appointed counsel from an immigration-related criminal case that had been brought and then dismissed in 2008. They learned that in 2008 the federal agency that adjudicates citizenship denied a petition for naturalization filed on behalf of Dent by his adoptive mother. That petition had been filed in 1982, within one year of his adoption, and had been pending for nearly 27 years!



Standing left to right are Professor Anne Traum, Kris Zeppent and Corina Rocha Pandelli. Seated is Holly Cheong.

The students were perplexed: Why had Dent allegedly failed to naturalize? Why did the agency sit on his application for over two decades? Why didn't this naturalization petition come to light in his 2005 removal proceedings?

With the opening brief deadline fast approaching, the students were convinced that there was more to Dent's citizenship claim than the immigration court recognized. But they also had a problem: the most compelling facts about Dent's long-pending naturalization petition were not in the record before the court.

That's when the students got creative. They moved the appellate court to take judicial notice of the 2008 decision denying the 1982 naturalization petition. This move was not without risk; what if the court deemed conclusive the denial of the naturalization petition? The students argued that the immigration court could not have considered fully the citizenship claim without these documents, which the government had in its file all along, but never disclosed. It violated due process, they argued, to deport Dent without giving him a full and fair opportunity to present his citizenship claim.

In April 2010, after the team filed more than 100 pages of briefs and logged more than 1,000 hours of work, Holly Cheong argued the case before a three-judge panel in San Francisco.

In November, the court granted Dent relief, agreeing that the government violated his right to due process. The court held that persons in removal proceedings are entitled to a copy of documents in their alien file. This simple rule is likely to impact thousands of immigration cases

in the Ninth Circuit. Meanwhile, Dent will finally have a chance to prove his citizenship in federal district court.

No casebook can teach the lessons drawn from litigating a case this rich and challenging. Students discovered the rewards of creative and zealous advocacy. They turned a problem, namely, the lack of record documentation regarding Dent's citizenship, into an opportunity to challenge the basic fairness of the proceedings. And they saw how their tenacious pursuit of justice for one client ultimately led to a published decision announcing a rule of law from which thousands might benefit. Few lawyers experience such success on appeal, especially in their very first case. ■

ANNE TRAUM is Associate Professor of Law at the William S. Boyd School of Law, UNLV, where she teaches criminal procedure and directs the Appellate Clinic, which she founded. Traum serves as an appellate lawyer representative to the Ninth Circuit Court of Appeals. Before joining the faculty in 2008, Traum practiced law in Las Vegas for eight years with the Department of Justice at the United States Attorney's Office and the Federal Public Defender.

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