

Teaching a Clinic on the Supreme Court

The Yale Law School Supreme Court Advocacy Clinic was launched in fall 2006 under the direction of partner Andrew Pincus and counsel Charles Rothfeld from Mayer, Brown, Rowe & Maw's Supreme Court and Appellate Advocacy practice in Washington, D.C. The clinic gives students the opportunity to learn Supreme Court advocacy from renowned practitioners while ensuring quality client representation in pro bono cases.



Members of The Yale Law School Supreme Court Advocacy Clinic's 2006-2007 inaugural class. Charles Rothfeld, left; Andrew Pincus, right.

Pincus and Rothfeld, each of whom has been involved in more than 100 cases before the Supreme Court, first considered establishing the clinic in late 2005. They presented the idea to Dan Kahan, the Elizabeth K. Dollard Professor of Law at Yale Law School and a former associate with the firm, who received it with enthusiasm. A formal proposal was submitted and approved, and the clinic's inaugural class of 12 students was then selected from a pool of applicants for the 2006-2007 school year.

Teaching the Court

Following the formation of Stanford University's Supreme Court clinic in 2003, a number of other university law schools, including Texas, Virginia, Northwestern and Harvard, launched or announced the intent to roll out similar clinics. According to Rothfeld, the Yale clinic has a number of characteristics that make it unique. "Our clinic has an instructional component, giving students some classroom teaching about practicing in the Supreme Court," he said. "And we're bringing in people who are noted experts on various aspects of the Supreme Court to talk to the students over the course of the year." Pincus emphasized that the Yale clinic is a yearlong program and that the students worked on a greater number of filings than those at some other clinics, with most students working on two or three cases.

"Teaching has certainly been very energizing for me and forced me to think a lot about what I do," Pincus commented. "When you've been practicing for a while, some things almost become instinctive. So I've been forced at times to figure out exactly what I'm doing in terms of framing an argument or writing a brief." He also acknowledged that observing the Yale faculty who assist with the teaching of the course in action in front of the class has also been very helpful to him as a first-time university instructor.

"My sense is that the students are finding it to be a rewarding part of their education," Rothfeld shared, discussing the enthusiasm of the clinic participants. "A number of them have said that they are spending much more time on this class than they are on any of their other classes, or even all of their other classes put together."

Turning Theory into Practice Before the Court

In its first year, the clinic is undertaking a variety of work on cases before the Supreme Court, drafting petitions for writs of *certiorari*, writing a merits brief for a case argued before the court and representing *amici curiae* in a number of other cases. "Charles and I are known in the civil rights community, so people have reached out to us with cases for the clinic to consider taking on," Pincus noted. The clinic has also received a number of inquiries

on possible matters involving civil liberties, criminal justice and other public interest causes.

In late February 2007, eight students from the clinic visited the Supreme Court to observe Pincus's oral argument in *Hein v. Freedom from Religion Foundation*, a case that marked the first instance in which the clinic represented one of the named parties before the Supreme Court. In *Hein*, the Freedom from Religion Foundation alleged that certain expenditures made by several federal agencies in connection with the Bush administration's faith-based initiatives program violated the First Amendment's Establishment Clause regarding the separation of church and state.

After the arguments concluded, the students were able to spend some time speaking with Solicitor General Paul Clement, who acted as counsel for the petitioner.

The clinic also filed petitions for certiorari for two cases. The first, *Brooks v. Vassar*, challenges the constitutionality of the State of Virginia's limitations on the importation of wine for personal use. The second, *Golphin v. State*, examines whether police retention of an individual's identification amounts to an investigative detention or seizure requiring reasonable suspicion,

and whether evidence found as a result of the search should be suppressed. Should a writ of *certiorari* be issued for either of these cases, the case work will be performed by a future group of clinic participants. Additionally, the clinic expects to file at least eight *amicus* briefs by the end of its first year.

"It's a great experience for us," Rothfeld summarized. "Yale in particular has a reputation as being a highly academic institution...although they do have a pretty substantial clinical program. What I think makes our clinic interesting and unusual to students is that it really is a bridge to the academic side. I think that the Supreme Court is the most academic court in the country, making for a pretty intense writing experience. But they're doing real cases, [making for] a practical education."

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Charles Rothfeld