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## Law students go up against big firm — and win

Mike McKee/The Recorder

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Sarah Beard was under extraordinary pressure in December 2003 while handling a wage-and-hour case for a Bay Area man in San Francisco Superior Court.

Not yet a lawyer, she was dealing with the stress of a trial for the first time while simultaneously prepping for final exams at San Francisco's Hastings College of the Law.

The second-year student got some relief by getting her test in evidence class postponed until after the trial. And one of her teachers, Donna Ryu, covered redirect examination in court one morning to give Beard time to study.

"But," Ryu recalled earlier this month, "she came back that afternoon to do the closings."

Beard's work, alongside two other students, paid off.

San Francisco Superior Court Judge Anne Bouliane ruled in their favor after a six-day trial, and their success set the groundwork for a [major wage-and-hour ruling](#) by the California Supreme Court just two months ago.

The students were assigned the case as part of the Hastings Civil Justice Clinic, a division of the law school that gives students experience by letting them represent clients -- most of them low income -- in actual cases.

Beard was lead counsel, handling direct examinations and closing arguments. Co-counsel Suzanne Delgin did the cross-examination of witnesses, and co-counsel Monica Hernandez conducted opening statements and some direct and cross-examinations.

"There was a lot of preparation," said Beard, 31, who now practices plaintiff-side employment law at Oakland, Calif.'s Siegel & LeWitter. "We all worked on it. We knew we had to go out strong."

### **UP AGAINST SEYFARTH SHAW**

The victory wasn't just a big deal for Beard, Delgin and Hernandez but also for the reputation of the Hastings Civil Justice Clinic.

*Murphy v. Kenneth Cole Productions Inc.*, 40 Cal.4th 1094, was the 14-year-old clinic's first case to go all the way to the California Supreme Court. By winning at trial and building a good record, the students -- who bested attorneys from [Am Law 100](#) firm Seyfarth Shaw -- lent credence to the clinic's self-stated goal of letting students "learn from real practice, develop confidence in performing lawyering skills and articulate their own visions of effective lawyering."

In *Murphy*, the California high court -- to employer-side lawyers' horror -- extended the statute of limitations for employees wishing to sue over unpaid wages.

"We knew that these were issues of first impression," Ryu, who handled the appellate work, said. "So our students had to be very careful to establish a proper record for the appeals."

The clinic's six faculty members -- all public interest lawyers -- provide support and backup in their students' cases, but try to stay in the background as much as possible.

"If we need to step in," she said, "we will. But it's rare."

The clinic takes only about 16 students at a time, and each student is given one or two cases that have to be completed within the four-month semester. Most cases settle.

The clinic keeps no track record of victories and defeats.

"We try to teach our students it's not about a won-loss record," Ryu said. "It's about excellent lawyering. But, informally, I can say that we do exceptionally well."

Miye Goishi, one of the clinic's first attorneys, said a clinical education gives students a way "to connect their [classroom] learning to the way the law actually affects real people."

Ryu agreed. "If they get even one chance to get it right from start to finish," she said, "they are going to have a way better chance when they enter the real world."

The Hastings Civil Justice Clinic is located on the third floor of the 28-story McAllister Tower, a former hotel built in 1929. Once billed as the tallest hotel in the West, the modern Gothic building is now mostly used for student housing.

The clinic's offices are fairly sparse, with a few cubicles for students, small offices for faculty, a seminar room, a lounge area that doubles as a library and an office where students can meet with clients. Those meetings are often videotaped so teachers can critique the sessions.

"Our main goal is for the clients to look to the students as their lawyers," said Ryu, who joined the staff in 2002. "They are the advocates, and we are there for their support."

To be precise, students handling cases are working through the Individual Representation Clinic -- a subdivision of the overall clinic -- must be in at least their second year of studies and have to have taken, or be taking, the evidence class.

Students undergo four or five hours of classroom instruction per week, in addition to putting in up to 16 hours each week in case preparation. When in trial, students can work as much as 40 hours a week, not counting their studies in other classes.

"When you're doing a trial," Ryu said, "you're here as long as it takes."

### **IMPRESSING A WARY CLIENT**

Clinical education isn't uncommon. Most California law schools have clinics emphasizing various types of law. There are clinics for prison law, death penalty cases, immigrant rights, environmental law, Supreme Court litigation, criminal prosecution and even cyberlaw.

One big fan of clinical education is California Chief Justice Ronald George. He said earlier this month that clinics not only provide the students with practical experience but broaden their consciousness in terms of pro bono opportunities and obligations: "The problem with unrepresented individuals, I think, is going to be the greatest challenge for the legal system for years."

The Hastings Civil Justice Clinic focuses on wage-and-hour cases, Social Security disability appeals and landlord-tenant disputes.

"We draw a lot of our clients from either the Tenderloin or the greater Bay Area," Goishi said.

In the *Murphy* case, the students represented plaintiff John Murphy, a former manager of a Kenneth Cole shoe store in San Francisco who sued for unpaid overtime, including money for missed meal and rest breaks.

Bouliane awarded Murphy more than \$64,000, but San Francisco's 1st District Court of Appeal dismissed the meal and rest break claims in 2005, saying the payments for those were not wages but penalties subject to a shorter, one-year statute of limitations.

The California Supreme Court reversed that ruling on April 16, holding that "statutes regulating conditions of employment are to be liberally construed with an eye to protecting employees."

Murphy said Thursday he wasn't sure at first about having students handle his case. But he said they made a great first impression and really showed their skills at trial.

"They came off way more prepared and way more knowledgeable about the law than the opposition," he said. "I mean, they put on a much stronger presentation and a much stronger case."

Robert Tollen, the San Francisco-based Seyfarth Shaw partner who represented Kenneth Cole, probably wouldn't go that far. But he said Beard, Delgin and Hernandez did a good job.

"Some were better than others," he said. "But overall, they were excellent, and I think what showed up in their performance is that the faculty staff prepared them very well."

Beard, Delgin and Hernandez admitted to a case of the nerves when trial began, but they tried not to show it.

"It's the poker face," said Delgin, 30, who recently started work as a Los Angeles County deputy district attorney. "You've got the cool, calm demeanor on the outside, and on the inside your stomach is doing flips."

Hernandez, 28, who just moved to Idaho and is looking for work, said winning a case against a law firm with better resources "gave us a greater sense of self-confidence as beginning attorneys."

Beard said the experience persuaded her to go into employment law. "I'm now practicing the kind of law I want to be practicing," she said. "I don't know where I'd be without the clinic."

Ryu said that in some cases, the clinic's students are underestimated by lawyer "bullies" who regard their opponents as nothing more than kids.

"Oftentimes," she said, "the bullies have to wake up to the reality that they've been outlawyered by students."