

Chicago Daily Law Bulletin®

Volume 158, No. 4

Friday, January 6, 2012

John Marshall helps in high court case

By Jerry Crimmins
Law Bulletin staff writer

Students and lawyers at The John Marshall Law School got together to help two suburban attorneys present a case to the Illinois Supreme Court.

The case led to a historic decision.

The Supreme Court's decision in *People v. Marina Kladis*, No. 110920, "is a very significant, tremendous case," said Associate Dean Ralph Ruebner of John Marshall. "It established a brand-new process for discovery in misdemeanor trials."

Students and lawyers from John Marshall's new pro bono program helped prepare the defendant's brief in the case because it was a matter of important public interest, Ruebner said.

Also, the client in the case, Kladis, didn't ask to be represented in any appeal and refused to pay for such representation, said attorney Louis Aaron Berns of Favil, David, Berns & Associates LLC in Northlake.

Berns represented Kladis at the trial court and then along with the team of other lawyers and students on appeal to the Supreme Court.

The case deals with a misdemeanor arrest of Kladis for allegedly driving under the influence of alcohol in 2008. Kladis refused to submit to a Breathalyzer test and her license was suspended.

The case was a fairly routine arrest for a first offense, Berns said. His client would have been eligible to get a "judicial driving permit" and may have been allowed to be placed on court supervision. If so, and if she successfully completed her supervision, the charge would have been dismissed.

But the case went to the Supreme Court, Berns said, because the Northlake Police Department destroyed the videotape of the arrest before the matter was adjudicated.

The judge at the trial level, Cook County Circuit Judge William H. Wise, ordered a sanction on the police and prosecution at Berns' request because the video had been destroyed, Berns said.

The judge forbade the state from using the arresting officer's testimony regarding anything that would have been on the video, including his client's speech and manner and her performance on field sobriety tests.



Louis Aaron Berns



Ralph Ruebner



Katie M. Anderson

The state appealed Wise's ruling to the Illinois Appellate Court. Berns' client did not wish to pay for appellate representation, so there was no brief filed on behalf of the accused, Berns said.

Despite that, the appeals court upheld the trial court in July 2010, Berns said.

Next, the state announced it was appealing to the Illinois Supreme Court. The high court accepted the case.

"Because of the significance of this case and the opportunity to appear before the Supreme Court," Berns said, "I then contacted my former law professor, Dean Ralph Ruebner.

"He's very well known, has written many treatises regarding evidence and criminal procedure and is an expert on criminal appeals."

Berns said he is a trial lawyer and does not typically do appeals.

Ruebner said he decided the case was perfect for John Marshall's new pro bono program. The program is "not limited to indigent situations at all," Ruebner said. "We're serving the public with some assistance in the development of the law that is going to affect a number of people."

A team of lawyers and students helped prepare the defendant's brief for the Supreme Court.

The team included: Ruebner; Katie M. Anderson, coordinator of the school's pro bono program; two John Marshall students, Danielle Berns, daughter of Louis Berns, and Nikki Ashmore; attorney Robert B. Marcus, a recent John Marshall graduate;

and Edward M. Maloney, a John Marshall alum and partner at Ahern, Maloney, Moran & Block LLC in Skokie.

Berns said he brought in Maloney because of Maloney's appellate experience. Maloney wrote the first rough draft of the brief.

The students did substantial research for many weeks. Anderson said she assisted in the research and drafting. She said, "we met many times as a team to discuss arguments and strategies in the brief."

Ruebner's contributions "were really critical as well," Anderson said.

Maloney was chosen to argue the case before the high court in September.

"My favorite part working on this case," said Berns' daughter, Danielle, "was actually going to Springfield and seeing the whole thing come to fruition, seeing the case argued and seeing and hearing the research that I did and the points that I validated through my research argued in court."

Danielle Berns is the third generation of her family to attend John Marshall.

Ruebner and Anderson said the Supreme Court had not revisited the issues of discovery in misdemeanor cases for almost 40 years since *People v. Schmidt*, 56 Ill.2d 572 (1974).

The Supreme Court's wide ranging decision in *Kladis* "established a brand-new process for discovery in misdemeanor trials," Ruebner said.

Efforts to reach the Cook County state's attorney's office for comment on the court's decision were unsuccessful.