



SHAPING future advocates

**NEW PROFESSOR
WORKS TO PRESERVE
INTENT OF LAWS,
INCLUDING ADA**

BY JANET WALDMAN PHOTO STEPHEN BARRETT

KEVIN BARRY CAN POINT TO one case that changed the direction of his career.

Barry, a new assistant professor of law, was working at a large firm in Boston doing real estate work in 2002 when an organization called the Political Asylum/Immigration Representation Project put out a call for pro bono counsel. Barry was intrigued. He received an email with a list of people who needed help and came across the asylum case of a young man we'll call John.

Barry could see that John was facing a

life or death situation, unlike his large-scale corporate clients. He took the case. Working with John made Barry realize that he missed using his legal skills to make a difference in people's lives. Indirectly, it led him to his current role as an educator of future lawyers.

Barry, who comes to Quinnipiac University School of Law from Georgetown University Law Center, will teach students in QU's Civil Law Clinic. While earning his LLM at Georgetown this past year, part of his degree work involved serving as a supervising attorney and

teaching fellow at that university's Federal Legislation Clinic.

John's case also reminded Barry of his undergraduate days at Boston College (he earned a BA in history and philosophy in 1997 and his JD from BC Law School in 2000). Barry was a member of the Pulse program, which combined philosophy, theology and community service. "The motto of that program," Barry remembers, "was 'serving to learn and learning to serve.' That's been my mantra ever since."

As a student in BC Law School's Legal Assistance Bureau, Barry represented people with disabilities seeking supplemental security income or assistance with housing. In taking on John's asylum case two years later, Barry felt as if he'd picked up where he'd left off.

ON SAFE GROUND

John, then a 22-year-old resident of Kenya, was being pressured to join the Mungiki, a religious and political sect. The sect was known for gruesome initiation ceremonies, female genital mutilation and other forms of violence.

"John wanted no part of the sect, but sect members saw his refusal to join as dishonorable," Barry says. The Mungiki had killed John's brother, and John himself was stabbed in the thigh and threatened with death for his refusal to join. Instead, John fled to Ethiopia and then to the United States, where Barry helped him file for asylum. Today, John works in the security field in New England, and the two men keep in touch.

In 2003, Barry followed his passion for human and civil rights to Amnesty International USA in Washington, D.C., briefing congressional staff and State Department officials on foreign policy and human rights developments in Asia. At Amnesty, Barry sometimes found himself "missing the intricacies of the law."

After a summer stint with Americans

United for Separation of Church and State, Barry took a position in 2004 as a law clerk to the Hon. William E. Smith on the U.S. District Court for the District of Rhode Island, followed by another clerkship in 2005, this time with the Hon. Kermit V. Lipez on the U.S. Court of Appeals for the First Circuit. "The judges with whom I worked are among the most dedicated public servants I know—tremendous thinkers with tremendous hearts," Barry says.

In 2006, Barry accepted the position at the Georgetown clinic. He and students provided pro bono legal services to the Epilepsy Foundation in support of its efforts to advance the ADA Restoration Act of 2007, a bill intended to restore the civil rights protections guaranteed by the Americans with Disabilities Act of 1990.

"As a result of Supreme Court decisions narrowly interpreting the ADA in 1999 and 2002," Barry explains, "courts construe the ADA's definition of disability 'strictly to create a demanding standard for qualifying as disabled,' and consider the effects of medication and other devices in making that determination." The result is that plaintiffs lose 97 percent of ADA employment discrimination claims on appeal, mostly on the grounds that they do not meet the definition of "disability."

"This is not at all what Congress intended," Barry says. "Congress borrowed the ADA's definition of disability from the Rehabilitation Act of 1973, where it had always been interpreted broadly by the courts to include people with a wide range of impairments."

In the ADA's legislative history, Congress mentions that the use of medication and other devices should not be taken into account when determining whether an individual has a disability. "But the Supreme Court ignored that, and the impact of its decisions has been devastating," Barry says.

"Based on the court's reading of the law," Barry says, "a person may now be considered too disabled by an employer to get a job, but not disabled enough by the courts to be protected by the ADA from discrimination."

TOO ABLE FOR ADA?

Barry points to the case of Carey McClure, an electrician from Georgia with muscular dystrophy whose job offer was revoked by General Motors when its doctor discovered that McClure could not raise his arms above his head. The fact that McClure had been doing overhead work as an electrician for 20 years by supporting his arms on nearby objects or using hydraulic lifts (like most other electricians) did not matter. The court ruled that GM did not violate the ADA reasoning because McClure had overcome the limitations of his muscular dystrophy and was not "disabled" under the ADA.

Barry and the Georgetown students helped McClure prepare his testimony for a hearing on the ADA Restoration Act before the House Education and Labor Committee. McClure put a human face on the courts' restrictive reading of the ADA, saying: "Well, you can't have it both ways—am I disabled or not? If I am, then the ADA should have been there to protect me. If I'm not, then I should be working at GM."

On June 24, the U.S. House of Representatives approved the "ADA Amendments Act of 2008," H.R. 3195 (formerly known as the ADA Restoration Act). It is now before the Senate.

Meanwhile, Barry looks forward to continuing his work with future lawyers. "Students gain a lot working closely with clients—learning to be great lawyers by being lawyers—and it's difficult to get that experience outside the clinical setting," he says.