The Patentability of Human Genes

page 3

Plus:
Conditions in the Offer to Purchase
Giving Female- and Minority-Owned Businesses a Competitive Edge
Must Reads for Paralegals
Paralegal Student Profile: Caren Chaneco
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About the MPA
The Massachusetts Paralegal Association, Inc., is the oldest professional association for paralegals in the Commonwealth of Massachusetts. The MPA was organized in 1975 by paralegals in Massachusetts to promote the development of the paralegal profession. Membership in the MPA includes membership in the National Federation of Paralegal Associations, Inc.

Send Us Your Ideas!
We welcome original submissions from our readers. Please contact VIEWPOINT Editor, Loni Morganelli, by sending email to lmmorganelli@hotmail.com. Articles should be based on your area of expertise, with content pertinent to paralegals and others in the legal profession. Please include your contact information. Material may be edited for clarity and space.

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The Patentability of Human Genes

by Jaclyn Baker

On May 14, 2013, when the New York Times published Angelina Jolie’s op-ed titled “My Medical Choice” wherein she explained her courageous choice to undergo a preventative bilateral mastectomy after learning that she carried a mutated BRCA1 gene, it sent the media into a whirlwind. Every newspaper and magazine from coast to coast covered the story and suddenly the BRCA1 and BRCA2 genes were front and center stage. Their audience: the entire nation.

BRCA1 and BRCA2 are tumor suppressing genes. They repair damaged DNA and ensure the stability of the cell’s genetic material. However, when these genes are altered or mutated, they do not function correctly and are unable to properly repair DNA. In turn, cells are more likely to develop genetic alterations that can lead to cancer. While less than 10 percent of breast cancer cases are caused by mutations in these specific genes, a person carrying a deleterious mutation has up to an 80 percent lifetime risk for breast cancer and up to a 50 percent risk for ovarian cancer. Luckily enough, genetic testing is available to determine whether or not an individual is carrying a faulty copy of the gene. However, while the testing exists, it is not necessarily accessible to the general population due to its high cost (upward of $3,000.00). Myriad Genetics, Inc. (“Myriad”), the Utah-based molecular diagnostic company that discovered the precise location (chromosome 17 and 13, for those of you who are curious) and sequence of the BRCA1 and BRCA2 genes, is responsible for the hefty price tag. Because Myriad controls patents relating to the genes, it is the only entity to offer this type of genetic testing.

Having obtained my undergraduate degree in biology, it always excites me to hear about ground-breaking research. With approximately 232,670 new cases of invasive breast cancer being diagnosed each year, who wouldn’t breathe a sigh of relief that the scientists over at Myriad developed a test that provides individuals with the chance to find out whether they possess a harmful gene and give them a chance to take precautionary measures in an attempt to prolong their lives? But the paralegal in me was a bit perplexed. I wondered, “How could it possibly be legal for a company to own a human gene?”

Shortly after Angelina Jolie’s article was released, the Supreme Court addressed this issue in Association for Molecular Pathology, et al vs. Myriad Genetics, Inc., et al. 133 S.Ct.2107 (2013). The lawsuit was filed by a group of medical organizations, researchers, genetic counselors, and patients seeking to challenge the validity of Myriad’s patents. Most importantly, the case sought to resolve the issue of whether or not naturally occurring segments of DNA are patent eligible under federal statute (35 U.S.C. §101).

In this Issue, we have some enriching articles on Patents, SOMWBA Certification, Conditions of Offer for the Potential Home-Buyer, and some great reviews of new technology websites and articles for the tech-savvy. As we enter spring, we also have many new Paralegals graduating from our sponsor, Boston University’s Paralegal Program and joining us here in the Massachusetts Paralegal Association. Congratulations to all and Welcome!

I hope you enjoy reading this issue of Viewpoint, and I wish you all a very Happy Spring!

— Loni Morganelli

From the Editor

Spring has sprung! And with that I hope each of you are nearing completion of your goals and realizing your full potential. Spring is a time to clean out and de-clutter. Clean out and organize your offices, your files, and your work bag! Spring is also a great time to catch up on valuable continuing legal education opportunities with the MPA, MCLE, and within your own Firms. Being a paralegal should involve a long career in education. We should always be learning and growing in our profession as the law is always changing with new developments and precedents. Remember, to keep ahead, we need to stay ahead!
The Patentability of Human Genes continued

In the 9-0 opinion, delivered by Justice Clarence Thomas, the Court held that “a naturally occurring DNA segment is a product of nature and [is] not patent eligible merely because it has been isolated …” 133 S.Ct. at 2111. Justice Thomas went on to say, “Myriad did not create anything. To be sure, it found an important and useful gene, but separating that gene from its surrounding genetic material is not an act of invention.” Id. at 2117. The Court further held that certain types of synthetically created DNA, also called complementary DNA (cDNA), are patent eligible as they are distinguishable from naturally occurring DNA.

While initially it was thought that this benchmark decision would open up the floodgates for other companies to provide BRCA testing — thereby lowering the cost of the test and making it more accessible to patients — Myriad made it clear that this notion would be short lived. When Ambry Genetics announced that they will be offering BRCA testing, merely one day after the Supreme Court’s ruling, Myriad was quick to file an infringement suit against them. Myriad protested that Ambry’s testing will utilize methods and cDNA to which they have exclusive patent rights and emphasized that the Supreme Court’s decision only impacted 5 of the 520 BRAC patent claims they control.

Although I understand that medical, pharmaceutical, and biotech companies must leverage the patent rights they control in order to increase their revenue, it’s alarming to think that any entity would be allowed rights to a human gene. While the Supreme Court’s ruling was a relief to many, in the respect that they held that naturally occurring sequences of DNA are not patent eligible, it is disappointing that the law (for the time being) still supports method-of-use patents which prohibit other companies from providing similar testing, in turn reducing the cost and making the test more accessible to patients. Unfortunately, this issue (in particular) continues to be a double-edged sword. On one hand, you want companies like Myriad to continue to prosper and make ground-breaking discoveries. On the other hand, it diminishes the chances of lower-income patients being able to take advantage of these life-saving diagnostic tests. With Myriad’s lawsuit against Ambry concerning the issue of method-of-use patents still pending, I hope that future litigation will pave the way for all patients — regardless of their economic standing — to access this innovative medical technology.

Jaclyn Baker is the Firm Administrator and Paralegal Manager with the personal injury firm of Rawson Merrigan & Litner, LLP in Boston, Massachusetts. She received her B.A. in Biology from Regis College and her Paralegal Certificate from Boston University.

President’s Message

Hello to all of our awesome members! Spring has been making its appearance, albeit slowly!

We are very excited to be bringing a great social networking event — “A Season for Change” — on Thursday, May 29th, beginning at 5:30 p.m., at the Marriott Long Wharf in Boston. It will be an amazing evening! Please check our website for details and information, as well as to reserve your space.

The MPA will be attending the NFPA’s Region meeting in May, and we will be sharing information regarding any upcoming issues happening nationally.

We will be joining forces again with Western Massachusetts Paralegal Association, Central Massachusetts Paralegal Association, and the Massachusetts Continuing Legal Education (MCLE) for the 15th Annual Paralegal Conference in June. The information is currently up on the MCLE’s calendar, and we are thrilled to be part of the event.

Thank you for allowing us to serve you. We are so grateful for you!

— Lynne-Marie Reveliotis, President

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Members: Invite a colleague to join the MPA! For more info, see our website.
Conditions in the Offer to Purchase

by DeBorah Sonnenschein, Esq.

I attempt to disseminate knowledge to new home buyers when I present the legal sections in various First-Time Home Buyer Certificate programs throughout the state. In doing so, I have found that the Offer to Purchase (Offer) is the contract which, with its conditions, leaves the perspective buyer not appreciating the pitfalls lying in wait for those who do not have an attorney assisting them.

The Offer not only specifies price, but all the terms and conditions of the purchase which must be in the form of a written offer as well as transferred to the final completed contract, known as the Purchase and Sale Agreement. Without this, the Buyer will not have grounds for acting on the terms and conditions later. Usually the Buyer is represented by a real estate agent who drafts the Offer and incorporates all standard or reasonable requests that become conditions of the Offer. The Offer must also be drawn up so that it conforms to state and local laws with certain provisions required in the town or county in which the property is located.

The typical Offer contains several conditions; some expressed, others implied, that must be met or waived for the sale to close. Conditions are essentially substitutes for information; such as, information about important aspects of the home buying process like the home finance market, the condition of title, conditions of the premises, and local government regulations.

Finance conditions to the Offer state conditions for financing the property purchase and can be in the form of a minimum amount to be financed, minimum loan-to-value

continued on page 7
ratio, maximum interest rate, maximum discount points or maximum origination fees.

**Conditions of title** involve removing title defects that are unresolved claims against the ownership of property that prevent the existence of marketable title. Common claims on the title arise from failure of the owner’s spouse or former part owner to sign a deed, current liens against the property, or an interruption in the chain of title records to the property.

**Conditions associated with the premises** are determined by the inspection. This clause in the Offer allows the Buyer to inspect the property. If repairs are needed, the seller may be allowed to perform the repairs up to a dollar limitation or choose not to sell. The Buyer may require the seller to make repairs, negotiate a lower price, or back out. This includes inspections for pests, lead paint or radon gas.

The most important **local government regulation** that makes the Offer conditional is zoning. Zoning is a legal mechanism for cities and towns in Massachusetts to regulate the use of privately owned real estate to prevent conflicting land uses and promote orderly development and rehabilitation. Conditions postpone contract performance to a point until information can be obtained either through a lender’s response to the loan application, a title report, a housing inspection, an environmental audit, or a land use review. Afterwards, the attorneys will hammer out solutions.

One trap for the legally unsophisticated is whether the prescribed conditions leave so many terms open that no enforceable contract has been formed. In contract law terms, there has been no “meeting of the minds.” Failure to specify the financing terms, the condition of the premises and the land use restrictions that will be acceptable to the buyer may void the contract for indefiniteness when quantitative parameters are not used. Also, the conditional contract may be held too indefinite to support a specific performance decree for buyer or seller seeking an equitable solution in the courts. Since conditions will characteristically be phrased in general terms, and their fulfillment left to the exclusive control of one of the parties, there is the added question of illusoriness or mutuality of obligation. In Massachusetts, especially under Chapter 93A of the General Laws, the concept of good faith goes far toward preventing reneging parties from using a financing, title or other condition as an excuse for non-performance. In such cases, the court will examine the motives of the party relying on the condition to determine whether contract was canceled because of a valid condition permitting seller to terminate or because seller could now obtain a higher price from another buyer.

The converse problem arises when the conditions have been drafted with excessive detail. A financing clause that specifies the acceptable interest rate to two decimal places and also, loan fees or lists of inspection repairs that require more wishes than necessities would inevitably be hard to meet, giving the buyer considerable opportunity to renge for reasons totally unrelated to financing or habitability of the premises. Good faith is required of the parties when the contract condition is overly narrow or overly broad.

In conclusion, the first-time home buyer can avoid these traps by employing a real estate agent who is experienced in establishing boundaries of Offer conditions and employing legal counsel for reviewing the document before presenting it to the seller.

DeBorah Sönnesschein, Esq. is principal of Sönnesschein Law LLC, in Arlington. She can be reached at deborah@sonnenscheins.net.
SOMWBA: Giving Massachusetts Female- and Minority-Owned Businesses a Competitive Edge

by Loni Morganelli

In 2010, Massachusetts established the Supplier Diversity Program (SDP) to promote supplier diversity in public contracting. The program instituted policies to encourage the award of state contracts in a manner that developed and strengthened certified Minority and Women Business Enterprises in the Commonwealth, thus creating new business opportunities for this category of employers.

Some Goals of the SDP included:
• Streamlining the bidding process by requiring selection of a Certified Partner only by those bidders that are awarded contracts.
• Simplifying the evaluation process by only requiring bidders to submit and procurement teams to evaluate a percentage of sales commitment.
• Expanding eligible vendors in the Supplier Diversity Program Plan to include Service-Disabled Veteran-Owned business enterprises.

SOMWBA, or more fully known as the State Office of Minority and Women Business Assistance, is a sub-agency of the Supplier Diversity Office within the Commonwealth of Massachusetts that helps promote the development of business enterprises and non-profit organizations owned and operated by minorities or women. In addition to its service to minority and women business enterprises, SOMWBA has the responsibility to certify businesses that meet certain criteria.

SOMWBA certification is a marketing tool used to enhance a firm’s ability to do business in public markets. Although certification does not guarantee that a business will be successful every time it bids, it may add a competitive edge to a bid. The Commonwealth of Massachusetts spends more than $4 billion each year doing business with firms. More than $240 million of this amount is targeted to SOMWBA certified minority and women businesses. Becoming SOMWBA certified can help firms seeking contracts with the government.

State Certification is the process by which the SDO reviews and investigates applicants who seek to participate in affirmative business opportunities within state government to determine that they meet the requirements of the state statutes and regulations. SDO certifies companies for the State (MBE, WBE, MWBE) SOMWBA certification program.

Breaking down the Business Classifications:
MBE – Minority Business Enterprises: includes principals of a business that are members of the following cultural groups: African, American Indian, Asian, Hispanic, Eskimo or Aleut or the original peoples of the Cape Verde Islands.
MWBE – principals who are both Female and Members of the Cultural Groups listed above.

What are the Requirements for Certification?
Certification regulations (425 CMR Section 2.00 et seq.) require that the entity must:
1. Be both owned and controlled by the same eligible principal(s); In other words, a company whose eligible principal is also the full-time, day-to-day manager of the company, making financial, managerial and operational decisions of the highest order, and who is CEO/President of the company if a corporation and who, along with other eligible principals, dominates the Board of Directors.

continued on page 9
SOMWBA continued

2. Be free of any conversion rights.

3. Be independent: The company uses its own employees and workforce in the performance of its work, uses its own supervisory and managerial staff in the performance of its work, does not unduly rely on another firm for its policies, management, technical affairs, goodwill, income, payroll, etc. The company has the capability and capacity to perform with its own workforce, equipment, facilities, or other functional assets the work it contracts to perform.

4. Be ongoing: The company is currently and actively in business, able to demonstrate that the revenue stream has begun or is about to begin, that substantial marketing activity is taking place, that the company owns and leases the resources that are typical for a business in the industry, and that the business facility is appropriate for the conduct of business of its type at the present stage of development of the company. In other words, a company that is actively engaged in business activity from an established place of business utilizing equipment, finances and other resources that are independently owned or leased.

In addition to certification, SOMWBA also assists government agencies in meeting their affirmative purchasing and contracting goals. It does this by providing business development assistance to certified companies through information on procurement opportunities and business resources.

Finally, SOMWBA publishes a directory of certified minority and women business enterprises and certified minority and women-controlled, non-profit organizations, making identifying and working with such members easier. Currently, Minorities and Women owned businesses make up the state's fastest growing business sector in the Commonwealth. Minority Business Enterprises (MBE’s) and Women Business Enterprises (WBE’s) gross approximately $13.3 Billion dollars and employ approximately 65,000 employees. (mass.gov) These enterprises are a huge asset to the Massachusetts economy and the SOMWBA program solidifies their vital contribution to creating a thriving, diverse workforce in the Commonwealth.

For Paralegals working in Massachusetts, understanding the SOMWBA certification program can prove to be an attractive new practice area for your Firm. Despite having been instituted only four years ago, the program is still relatively new and business owners in the State are not always aware of such initiatives to grow and prosper. Having a key resource in your Firm to market this exciting business initiative can be wonderfully successful to the Firm and its clients.

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Must Reads for Paralegals

by Shawna Hansen

Most of us paralegals fall into two camps regarding cell phones: 1) Cell phone for work provided by employer or 2) Personal cell phone — dual use for work and personal. There is a third option rearing its head lately: Bring Your Own Device (“BYOD”), where your employer reimburses you for using your own cell phone for work purposes. If you leave the job, be prepared for them to wipe your BYOD.

The hazards of having a primary cell phone for work that you also use for personal business is that your employer has insight into your use of the phone. Not having a work phone means you will use your personal phone for business calls (everyone at work has your personal cell phone number). There is no right or wrong. We’re all professionals and we know how to handle either scenario.

BYOD may be the trickiest because you will be responsible for supplying your own phone, but you will not maintain complete control over your device. Like it or not, cell phones are now a necessary evil for paralegals to keep in touch with the office, obtain information and stay organized.

Our Must Reads for the Spring issue of Viewpoint will fall into two categories of necessary evils for online access to info:

1. ABA Techshow’s 2014 “60 websites in 60 minutes” list;
2. U.S. News by Briana Boyington on cell phone legal apps.

For a full armchair conference overview of the 2014 ABA Techshow, please check out: www.techshow.com/conference/schedule

Let me know which tools below you adopt and which you reject by emailing me at shawna.hansen@3DS.com.

60 sites in 60 minutes (http://tinyurl.com/kw2ulru)

Here’s the full list of “60 in 60” sites for 2014 [with comments]:

1. www.mangolanguages.com [affordable tool to learn foreign languages and culture]
2. http://tinyurl.com/43qovec – Legal Technology Resource Center [This should be the #1 starting point for paralegals to learn and stay on top of what’s hot in legal technology news]
5. http://ProBono.net [resource to refer clients to pro bono legal services]
7. www.law.cornell.edu [established site for free legal research — I have been using this for years]
10. http://lawyertechreview.com [Must read Top Pick — be sure to have a couple of tech sites that you follow regularly]
12. www.wobi.com [top business news and videos]
13. http://legaltalknetwork.com [Check out the wrapup of the ABA Techshow on this site — very cool!]
15. http://worldlii.org [free access to worldwide laws]
17. http://Insightly.com [online customer relationship management tool]

continued on page 12
Pursue Justice

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Must Reads continued

19. http://TelepathWords.com [find out how bad your passwords are]
21. http://justdelete.me [directory of links to delete passwords from websites]
22. http://Forvo.com [how to pronounce a word]
27. www.giftsontime.com [gifts for client and employee recognition]
29. http://pearltrees.com [collect, organize and share everything you like]
30. http://WhereCoolThingsHappen.com [a cool lifestyle and travel platform — a place to find inspiration]
31. http://Everyday-carry.com [photos of small items people carry around to be prepared for anything]
32. http://Payscale.com [get a salary report; see how much to pay someone]
33. http://PeopleOfWalmart.com [Need a redneck moment? This is a fun site with trailer trash type humor]
34. http://MakeBeliefsComix.com [make your own comic]
35. http://Symbaloo.com [your personal internet desktop (I have used Google and also Netvibes)]
37. http://WhatWasThere.com [established site for searching archived or past websites as they looked at a particular date]
38. www.you-had-one-job.com [job screwups]
40. http://naturesoundsfor.me/WrigleyRainOut [relaxing sounds for your website]
41. www.hashtracking.com [what’s trending online]
42. data:text/html, <html contenteditable> (Enter this as a

continued on page 13
Must Reads continued

URL in some web browsers and your browser window will turn into a very simple text editor.)

43. www.google.com/imghp [Filter images by copyright and use those available for public use – Must Reads Top Pick]
44. http://dealmac.com [get deals on Apple computers]
45. https://howsecureismypassword.net [check how secure your password is (but it still doesn’t solve the question about how to remember your secure password!)]
46. www.reddit.com [create an online community to share information]
47. https://haveibeenpwned.com [has your data been breached (again?)]
48. https://shouldichangemypassword.com [another site to test your password strength]
49. http://consumereview.org [Must Reads Top Pick — use this site to find the best your money can buy]
50. wannaspend.com [great site to evaluate cost]
51. www.uberconference.com [free conference call access]
52. http://chartporn.org [probably not a good idea to use this site at work (but a great site for revving up your presentations!)]
53. www.callrail.com [phone call tracking, recording and analytics]
54. https://marketing.grader.com [get a grade for your website’s marketing ability]
55. www.optimizely.com [fast results for testing changes to your web pages]
56. www.pointerpointer.com [amusing photos of people pointing]
57. http://99designs.com [get offers on design work and bids]
60. http://giphy.com [search gif images by categories]

Great article on top legal apps for your phone:


1. Law Dojo (www.lawschooledojo.com): app to answer questions about the law
2. Law in a Flash (http://tinyurl.com/kr92q9g): Aspenlaw Q&A mobile app for legal research
3. HeinOnline (http://tinyurl.com/kmdtqq4): image based legal research database
4. Lexis Advance (http://tinyurl.com/m9avdgt): legal research solution
5. WestLawNext (http://tinyurl.com/lhc8tbw): legal research solution
6. Black’s Law Dictionary (http://tinyurl.com/lt66fab): mobile access to the most widely cited law book in the world
7. NOLO’s Plain English Law Dictionary (http://tinyurl.com/migpdo): plain English law dictionary app
8. Camera to PDF (http://tinyurl.com/lc2hz8k): use your camera as a scanner and then create a pdf of the photo with this app (photo to pdf converter)
10. Legal news: the ABA Journal (http://tinyurl.com/k85zkfc): news from the ABA on your phone
11. SCOTUSblog (http://tinyurl.com/ktlmgw): news from the Supreme Court on your phone

So what’s on my work/personal phone? I have an iPhone 4s for work. I use my email, calendar, and a driving GPS/directions program called Waze. I also use the following apps on my lunch break: My Fitness Pal (connects with Endomondo to track my lunchtime walk), Kindle reader to read Amazon ebooks, Zip Realty to house-hunt and look at design ideas for my current home, GooglePlus (funny photos and updates from friends), Facebook (social interaction), and Goodreads (book reviews).

What is my #1 favorite website? MA Trial Law Library at www.lawlib.state.ma.us.

READER FEEDBACK: Do you text and IM a lot at work? Any tips you’d like to share about the new “instant” communication methods and how paralegals can best utilize these tools? Email me at shawna.hansen@3DS.com with your comments!
Getting to Know Caren Chaneco

Boston University Paralegal Certificate Graduate

It’s like training for a marathon — making a career change, that is. I should know since I’m doing both! The roads to my goals are bumpy, full of hills, and very long, but worth the reward at the finish line. When I made the decision to switch careers from marketing to paralegal, I knew it would be a tough hill to climb, but not impossible.

About a year ago, I set off for a professional career change into a field in which I had no experience. Being in a large company, I learned the importance of networking. It has since become invaluable to me, but I’ll get to that part later. I made it my priority to connect with paralegals in various firms in different areas of the law. I wanted to get my name out there and make it known that I wanted to become a paralegal. I knew it would be a tough hill to climb, but not impossible.

Informational meetings became essential time that I had with these practicing paralegals and I learned a lot in these sessions, everything from pros and cons to what makes a successful paralegal. Along the way I was lucky enough to get a few job interviews, to no avail, however, as I was told it came down to experience, and that I didn’t have. Going through the career change process into a completely different industry with no experience, I became used to rejection, but I never let it deter me. If anything, being the underdog made me more determined and committed to follow through.

That’s when I decided that I needed to pair my years of business experience with something that would set me apart from others who had already been in the industry and possessed that practical know-how: I decided to get my paralegal certificate.

Deciding on what program was important. Since I work full time, I needed a class that didn’t conflict with my regular 9 to 5 job but was also affordable. I researched the programs that were available and came across Boston University’s Paralegal Certificate Program. This program fit my work schedule, as it took place every Saturday, and each module was led by practicing attorneys and in some courses, assisted by Paralegals. This was key as the course material wasn’t just hypothetical problems but real-life topics that attorneys and paralegals encounter in their careers. All the instructors were knowledgeable in their fields and were very engaging in class.

Going through this program also gave me the opportunity to get a general understanding of different areas of the law and helped me decide what area interested me the most. The program exposed me to people that were actually in the profession that I wanted to become a part of. So, just as in the beginning of my career change journey, I began networking with the instructors. I reached out to one in particular and let her know I wanted to parlay the skills I’ve acquired in the marketing workforce to the paralegal field. I let her know that I was actively searching for job opportunities, and through our correspondence I connected with a contact of hers. I was able to set up an informational meeting at a great law firm in the practice area of my choice. One thing led to another and before I knew it, I was going in for an interview at this law firm! I was elated and, to make a long story short, I landed the job! One of the reasons owing to my success was because the hiring manager saw that I had initiative by taking the paralegal program at Boston University.

Putting in the effort and the hard work does pay off and networking does help. You never know who knows who. In my case, although my road to a paralegal career took a year, I’m fortunate that at the end everything worked out. The dedication and drive that pushed me through my career change is the same determination that will get me across the finish line.

My overall experience was very positive. Weekend classes were convenient, and faculty members were well-prepared and passionate about the areas of law they dealt with. They even helped me create a new résumé, enabling me to obtain a job within a week of graduation.”

— JOANNE GRACE, BU certificate awarded 2010