The Juvenile Justice Center is now entering into its fourth year. We have trained over 120 Suffolk University Law School students who have represented nearly 1400 indigent youth in the Boston Juvenile Court and surrounding courts. We are continuing to provide educational advocacy and social services to many of these youth.

This year we are pleased to welcome a new supervising attorney to our group, Perry Moriearty, who joined us in August and has been working hard since her arrival. Our fourth annual conference in May, focusing on teaching defenders how to apply recent discoveries in behavioral science to zealous advocacy for young clients, was a success. We have also enjoyed success in the policy realm, challenging police conduct, challenging DA’s access to information on youth, and helping stop an initiative that would have required youth to present their “rap sheet” before being admitted to public high schools.

We have not neglected the courtroom. I am proud to tell you about a recent success story there.

As juvenile defenders know, the pressure to make pleas in juvenile court is significant. The value to the “system” is considered to be savings in time and effort. This attitude has meant that most youth spend only 6 to 8 minutes before a judge per court appearance.

This is particularly unfortunate in Massachusetts, which is one of only 12 states which permits jury trial for juveniles. The resulting lack of trials in the Commonwealth before a judge or a jury is striking: in 2002, only 224 jury trials were conducted for the 30,000 delinquency complaints on 13,000 kids. This may reflect many factors, including the relatively minor charges brought against the majority of youth.

But it also reflects that defenders in Massachusetts do not take full advantage of this unique provision of our juvenile code. The disincentives to conduct trials are sizable, as are the ramifications of not pursuing them. But advocates who don’t try juvenile cases are deprived of the opportunity to learn critical advocacy skills. The lack of bench or jury trials signals to our young clients that the system does not work, and regardless of culpability, it’s better – faster, easier – to take a plea.

Beyond the harm to juveniles and bar advocates, we must consider the damage to our system of justice. The legal rights of clients are only as valuable as the quality of the advocates who defend them. As trial opportunities diminish, the overall quality of advocacy inevitably suffers.

In light of these facts, special kudos to the Center’s Ken King for his recent 12 day jury trial in the Boston Juvenile Court. The jury deliberated less than 2 hours before rendering not guilty findings for 11 youthful offender indictments charging armed robbery, assault and battery with dangerous weapon, and firearms violations. We have detailed the case on page 6 on this issue.

We all dread going to trial. However Ken King’s trial reminded us that a judge’s assessment of a case at the pre-trial stage is no substitute for the community view expressed by a jury.

- Tony Demarco
  Director, JJC
The rates are falling! The rates are falling!

Violent crimes by youth are “the lowest recorded” since they were first collected in 1973, according to the Bureau of Justice Statistics, National Crime Victimization Survey issued this September.

The good news: Violent crimes by youth in the 12 to 15 and 16 to 19 year old categories decreased respectively 8.3% and 13.2% between 2000 and 2001. The region with the largest decrease in violent crimes by youth is the Midwest at 19% followed by the Northeast at 14%. No weapon was used in 66% of the reported crimes. The bad news: Youth in these same age categories were more likely to be victims of a violent crime than any other age group of Americans. The majority of violent victimizations were simple assault, aggravated assault, followed by rape.

The American Dream: 2000 & Beyond

Latino and Latinas with limited English proficiency find that law enforcement and corrections staff are not bilingual and cultural differences result in harsher treatment. The Immigration and Naturalization Service incarcerates many Latino youth, often under punitive conditions, even though in most instances they are not charged with any crime other than being in the United States without proper documentation. Anti-gang statutes in many states impose dramatically higher penalties on youth who police or courts believe are gang members, although such beliefs are often based on stereotypes about Latino youth.

The Massachusetts Office of Refugees and Immigrants’ reports that 40% of new arrivals have come from Central and South America since 1999. This issue is of heightened interest in Massachusetts where voters “recently overwhelmingly passed a ballot referendum to replace transitional bilingual education with a time limited, English, immersion-only approach. The English-only experiment has shown limited success in California.” Both issues raise critical questions about the treatment of immigrant children in the systems they must navigate.
Senator Diane Willkerson of Roxbury, and a member of the Black Legislative Caucus which convened hearings on the T Police in May 2001. “Even in 2002, there is a continuing need for a watchdog to protect people’s civil rights. The Juvenile Justice Center served that role for minority youth who ride our public transit system.”

NEW ATTORNEY JOINS OUR STAFF

Perry Morinarty has joined the staff of the Juvenile Justice Center as a supervising clinic instructor. An NYU graduate and disciple of the Juvenile Rights Clinic there, Perry worked at Ropes & Gray for five years before returning to her first love: juvenile defense.

“When I was offered the position of Clinical Supervisor last July, I could not have been more thrilled. The job represented a blend of everything that I had hoped to do upon leaving Ropes & Gray: teach law students in a dynamic academic setting, advocate on behalf of indigent children, and work alongside a passionate and deeply committed group of colleagues,” said Perry. “My first three months at the Juvenile Justice Center, however, have exceeded even these expectations. From the moment I walked in the door, I have been consistently impressed with the quality and breadth of clinical, legal, educational, and social service resources that the Center offers to both our clients and our students. From my perspective, the Center is unique among law school clinics in that it gives students the same high level of juvenile defender training that I received at NYU, while enabling them, through their work with Jaye, Danette and Lisa, to address the needs of the whole child. I feel incredibly lucky to be here.”

The Center is equally thrilled to be working with Perry who jumped right into the fray when she arrived in August, immediately handling cases and seconding Ken King in his 12 day jury trial. (See page 6)

CENTER UPDATES:

In October 2001, the Juvenile Justice Center with the firm of Peabody and Arnold filed a 49 count complaint on behalf of 11 youth claiming the youths’ state and federal civil rights had been violated. The filing of the law suit was a culmination of two years of intensive advocacy by the Center to challenge “quality of life” and “zero tolerance” policies employed by the MBTA Police Department under the leadership of Chief Thomas O’Loughlin.

The suit described what the Center’s attorneys regularly saw in court: MBTA police, known as “T cops” arrested youth who were waiting for trains as part of a “zero tolerance” policy. The complaint alleged that the form of “community policing” employed by the T meant “the warrantless and unconstitutionally stopping, searching, interrogating and arresting of juveniles on or near MBTA facilities.

Since the Center began its advocacy, the Anti Crime Unit, which was responsible for the largest number of arrests of youth going to and from school, was disbanded. The zero tolerance policy has been formally abolished by the MBTA Board of Directors. Juvenile officers – required by department regulations – were subsequently hired and now handle juvenile arrests. Officers about whom many complaints had been filed were re-assigned. Chief O’Loughlin’s contract was not renewed. O’Loughlin left the MBTA in August 2002 for a small, suburban posting.

Presently the MBTA Board of Directors is conducting a nationwide search for a new Police Chief and has prepared new training materials for the T police, because as one Board member put it, “We want to change the culture there.” The T reportedly has preliminary plans to work more closely with youth and the Boston School Department to change the quality of T police and student interactions.

“The Juvenile Justice Center proved to be the source of the most reliable, accurate facts during the MBTA hearing process,” said

FEDERAL JUVENILE JUSTICE LEGISLATION

Re-Authorized with Some Important Changes:
The Juvenile Justice Delinquency Prevention Act passed in early October with resounding support in both the House and the Senate. The President signed the legislation into law on November 2nd.

Marc Schnidler of the Youth Law Center, which rallied juvenile justice groups to support the legislation and oppose some of the more harmful proposals, happily reported, “[T]hat there is no question that the progress made from where this process started six years ago represents a major legislative victory for child advocates around the country.”

The new law expands prior law by requiring all states to now study and rectify disproportionate minority representation of youth throughout the system – not just in the context of the detention or commitment. Core protections of the Act include deinstitutionalization of.status offenders, i.e. kids who are charged with being a runaway or truant, keeping juveniles separate from adults in prisons; and requires states to address prevention and systemic efforts to reduce the number of minority youth who are incarcerated.

In addition, the Act reauthorized the issuance of state formula grants. These grants will now fund new focus areas, foremost among them mental health services and post-placement services to juveniles, and expanded use of probation officers to keep youth out of jail and in the community. The Act maintained the requirement that states provide competent counsel to juveniles, services tailored to the needs of girls, and hate crime prevention programs. No appropriation to the states has yet been made.

In addition, the JJDPA reauthorized the Juvenile Accountability Block Grant to the tune of $350 million for each of the next three years. Massachusetts will receive an appropriation in FY 2003.

USA MASSACHUSETTS LEGISLATURE CONSIDERS

But Does Not Move On HURRICANE BILLS

The Legislature closed its legislative session without enacting several pieces of legislation against which the Center fought. The first was the most recent incarnation of the juvenile justice community roundtable legislation. The second required all youth to show their “rap sheet” or Criminal Offender Record Information (CORI) document to be admitted to high school. The third bill was a combination of the two. The Center argued they risked seri-}

NEW RESOURCES:

The Center for Law & Education has published a new guide, When Schools Criminalize Disability, offering education law strategies for advocates. This book is especially useful for attorneys representing children with disabilities who have been subjected to disciplinary petitions resulting from their conduct, including the manifestation of their disability, in school. This document provides useful tips on what schools are legally required to provide students, hypotheses, and legal arguments based on the Individuals with Disabilities Education Act. For more information, contact the Center at its website at www.cleweb.org, and look for the report at Link 10.

The special needs of youth in The Juvenile Justice System: Implications For Effective Practice. A project of the Children’s Law Center of Caring for Kentucky. To order email: childrenslaw@fuse.net or call 859-431-3313

The Steering Committee’s new report is a call to lawyers and child advocates everywhere, encouraging them to invest their time and provide needed legal and other services that will benefit our nation’s children. Chapters include discussions on:

- the importance of quality legal representation for children;
- child immigrants’ issues;
- legal issues involved in the transition from childhood to adulthood; and
- the impact of violence on children.

TO ORDER: ABA Publications Online, P.O. Box 10892, Chicago, IL 60610-0892, Fax: 312-988-5568, Phone: 800-285-2221, Email: Service@abanet.org. Website: www.abanet.org/jusnet
**THE ROBBERY**

On December 29, 2001, around 6 p.m., two masked gunman wearing camouflage jackets entered a barber shop on Massachusetts Avenue in Boston's South End. Forcing everyone onto the floor, they robbed both owners, one employee and six patrons of nearly $6,000 in cash and enough jewelry to open up a small jewelry store. One of the gunmen was especially violent. He punched, kicked and stomped on an employee's head. He kicked nearly everyone present as they lay on the floor of the shop. The time the men left the scene, blood covered portions of the floor of the shop.

As they continued down Douglas Park, though the masked man match the description of the barbershop gunman that had just been broadcast over his radio -- and the boy did not -- the officer decided to chase the boy. As soon as he became aware that a police officer was chasing him, the boy stopped, raised his hands, and told the officer that he didn't do anything. A second officer handcuffed and arrested him. Though the interior of the boy's jacket bore a camouflage pattern, no mask, no gun, no money, and no jewelry were found on the boy. The officer arrested him anyway.

The boy was taken from the street where he was arrested to the barbershop. Still handcuffed and surrounded by several police officers, he was forced to stand on the street in front of the barber shop with glass windows so that the witnesses could view him from within. Because it was dark outside (and had been since 4:30 p.m.), the BPD officers on the scene turned off the lights in the barbershop and relied on area streetlights to illuminate the boy.

In sharp deviation from accepted police practices, the officers allowed the witnesses to remain in the barbershop by themselves as they attempted to make an identification of the boy. When it became clear that none of the witnesses could identify the boy as one of the gunmen, an officer lifted the boy's black down parka to reveal its camouflage interior to the group. As would later be revealed in real, the witnesses in the barbershop discussed for nearly 15 minutes whether or not the boy was one of the perpetrators as he stood before them. Ultimately, none of them was certain, but several thought he could be.

As the witnesses deliberated, a man emerged from the crowd outside the barbershop. Identifying himself as an employee of the barbershop, he told the officers that he had not been in the shop during the robbery but had seen the two of the two gunmen from his girlfriend's adjacent seventh floor apartment as they fled the barbershop. The boy was one of the two men, the man said. The officers took the man's statement, and when nearly 100 feet above them, had only a fleeting opportunity to view the robbers behind in the dark, and described men that were wearing clothing much different from the boy's clothing. Nonetheless, the BPD charged the boy and ended its investigation.

The BPD police report generated later that night was cursory. As with every grand jury proceeding where the defendant does not challenge the indictment, the police report was cursory and limited to the description of the barbershop gunmen that had just been identical to the boy. When it did not identify the boy as one of the perpetrators, the witnesses in the barbershop discussed for nearly 15 minutes whether or not the boy was one of the perpetrators as he stood before them. Ultimately, none of them was certain, but several thought he could be.

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THE TRIAL

Trial began on September 13, 2002. After a series of hearings, the defense team won an order precluding the prosecution from using Mike's prior juvenile record to impeach him in the event that he testified, an order for the jury to visit the scene where the chase occurred, and won the right to individual voir dire of the potential jurors. This appeared to be a promising start. "That's the first time in 20 years I've gotten a court to send the jury to a scene or conduct individual voir dire," Ken sighed. "It was amazing." The theory of the defense's case was misidentification. "Our client had made the bad luck to be running in an area where police were looking for a robber," Ken said. "They grabbed the first black kid they found and they conducted no investigation after the incident to be sure they had the actual perpetrator. This case was rife with sloppy police work."

From the grand jury transcript, the defense knew that the prosecution would attempt to prove at trial that, because Mike's coat was the same as the robber's coat, and because he was running with one of the robbers, who dropped a gun, a mask, a camouflage jacket, and some loot in Carter Playground, Mike was guilty. The police had in Mike's prior juvenile record to impeach him in the event that he testified, an order for the jury to visit the scene where the chase occurred, and won the right to individual voir dire of the potential jurors. This appeared to be a promising start. "That's the first time in 20 years I've gotten a court to send the jury to a scene or conduct individual voir dire," Ken sighed. "It was amazing."

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Using the map of the area with transparency overlays, the defense
They were able to show graphically, by placing one officer's trans-
had the officers draw where they saw people running that night.
Mike's speech became more "street" and less articulate over the 10
and from a series of gunshots that had been fired in his vicinity.
One of the 911 callers provided additional testimony that may
have been even more valuable. While preparing her for the testi-
mony at trial, Perry learned that she owned the same brand of
reversible down parks that Mike had owned. Similar to Mike's,
her coat had camouflage on the interior of the collar. "It was
completely random that she had that coat," said Perry, still amused
at the coincidence. "But it helped a lot; she was totally believ-
able. She testified that it was a common coat and that she got rid
of it because the feathers started to leak out, which was consistent
with the forensic lab's analysis of Mike's coat leaking feathers."
The second major argument of defense involved the observations
made by the BPD officer, who had arrested Mike, and the
Northeastern officer who also had seen two people running from
the Carter Playground at about the same time.

The BPD police report and its three missing addresses would also prove
criucial. Unbelievably, the detective who wrote the report
stated that the computer "ate" the other 3 addresses. In the midst
of trial, the defense finally spoke with one of the three "lost" vic-
tims. He explained to Ken — and later to the jury — that he had
told the BPD officers on the night in question that Mike was
"too small" to be one of the robbers.
The defense was also prepared to show that the bartender wit-
nesses were simply wrong when they testified before the grand
jury that Mike was one of the robbers. The defense established
that the witnesses who did identify Mike saw the robbers for only
a few seconds and made many errors in their description. Through
the prosecutor's leading questions to witnesses at the grand jury
proceedings, the defense showed the jury how words — and
descriptive details — were put into witnesses' mouths. The most
critical of these moments came when the only witness to have
identified Mike at the scene — the man who had seen the robbers
fleeing from his girlfriend's seventh floor window — admitted that
he "may have made a mistake."
By the time the prosecution had rested in its case, the defense team
had pooled enough holes in it that the judge dismissed one of the
12 indictments against Mike.
I DO NOT BELIEVE I'VE EVER TRIED A CASE WHERE THE
EVIDENCE BROKE THE WAY I NEEDED IT TO BREAK, QUITE
AS WELL AS IT DID IN THIS CASE.

—KEN KING

THE VERDICT
On Monday, September 30th, the defense rested and the jury
heard the closing arguments and the Court's instructions for ren-
dering a verdict. The jury was released at 12:45 p.m. to deliberate.
"That was a tense 90 minutes" said Perry.
The jury returned with a verdict of not guilty on every single one of
the counts — all eleven.

THE TOLLS TAKEN
Being on trial for anyone is, obviously stressful. For young people
it is especially so. "Legal proceedings are difficult to understand
and hard to sit through even for adults," Ken said. "For adoles-
cents, it's torture."
Throughout the trial, Mike had paid close attention to the pro-
cedings, made helpful comments to his attorneys, wrote notes
and asked questions. His family and friends of his family had
attended each day of the trial and their anxiety was palpable.
When the jury returned, "Mike kind of deflated," Ken said. "Once
all 11 indictments were read out loud, and he heard 'not guilty' 11
times, Mike understood that he had been acquitted. Then the ten-
sion drained out of him and he was exultant."
Ken thought being held in detention was even harder for Mike
than the trial itself. Mike spent 10 months out of his life in jail.
He wasn't in school. He wasn't getting an education. Mike was
transferred to a so-called juvenile offender lockup within the adult
Plymouth facility. Although youth are physically separated from the
adults, they have verbal and visual contact with adults. "It is a very
unhealthy environment," Perry said, "and violates federal law that
precludes juveniles from having sight or sound contact with adults."

The importance of jury trials is enormous symbolically according
to the Center's defense team. "This trial reinforced that you can
win, that it is important to fight and not roll over. We demonstrat-
ed that despite prosecution's claims about their cases, they are often
not that strong," Ken said.
He added that this was a case where he could not get a judge to
take assertions of Mike's innocence seriously. On several occasions,
DAs who handled earlier steps in the case - not the trial DA -
blatantly misrepresented the facts. Now that Mike has been
acquitted, Ken said, "I hope some judges will remember our experience
and realize that the agents of the Commonwealth are
not always accurate."
And for the kids we represent, the defense team showed that adults
do care and adults will fight for them. "Obviously, being acquired
was extremely important to Mike. He was able to show the world
that he did not do the things that the Commonwealth said he
did. Instead of staying in the system for years to come, Mike is
now free to get an education, grow up with his family, live the life
that a teenager should be allowed to live, said Perry. "But I also
think that this trial did something else for Mike. It showed him
that there are adults out there who will not dismiss him simply
because he is a young, black teenager of limited means, but will
stand up and fight for him because he is entitled to it and because
he is worth it."
BERNADETTE E. BROWN, JJC FELLOWSHIP
Boston University School of Law, Class of 2003

When I received the fellowship with the Juvenile Justice Center I knew that I was going to work on behalf of juveniles charged with criminal offenses in the Boston Juvenile Court. I also knew that I would work with a commendable group of attorneys. I expected to have a very intellectually stimulating summer where I would learn a great deal about criminal law.

I was not disappointed. My summer at the JJC was amazing. The legal issues were complex, the investigative work was intense and the people I worked with were first-rate.

There was one aspect of the fellowship that I did not expect: I did not expect my heart to be ripped open. Of course, anyone who had no criminal record and had never been in trouble in his life. For example, one client, Marty, came in for an arraignment. He had been arrested at the Boston Juvenile Court (BJC) for possession of a weapon and was trying to get a bond. He felt that the police had planted drugs in his pocket, and I agreed to take a number of “time-outs” in the BJC restroom.

Fortunately, we appealed the bail the next morning before a Superior Court judge who reduced it to $500 cash and Marty went home to his middle school graduation and graduated from the 8th grade. I was relieved but still exhausted from the emotion of it.

What many people don’t realize is that this is not just a job. What juvenile attorneys do has tremendous impacts on young people’s lives. They are faced with devastating racism and general apathy exuded by the judges, prosecutors and probation officers. In speaking with many of the parents of our clients, the unanimous sentiment was that the juvenile criminal justice system is designed for the destruction of minority children, not as an opportunity for them to rehabilitate their indiscretions.

My JJC fellowship was not just a summer job. It was a profound, life changing experience, not for the weak and weary. I left it with a great deal of knowledge about criminal law.

Whether it was representing children who grew up in Detroit with all of the ills and obstacles or working at the Rhode Island Public Defender Office. For 11 weeks, I represented children who amazed me with what they had gone through in their short lives.

Amongst my family and peers I am hardly known as an overly zealous advocate for children. For all the times a juvenile attorney does have a profound impact on a child’s life, it is not a danger to the community.

There was one client in particular who intrigued me. David came to the JJC through a fellowship at the Rhode Island Public Defender Office. For 11 weeks, I represented children who were charged with police reports against them, I learned that there are wonderful people beneath the labels. Without heart and hope to see that wonderful person, an attorney can never be a great and zealous advocate for children.

In the end, there will always be a client or a number of clients who touch your heart, not for anything that they say but for how they say it or how they act. David had nothing but manners and grace; I will never forget my image of David standing in court, with love in his heart for his mother and tears in his eyes for his predicament.

I helped my supervising attorney prepare for a probable cause hearing by going over the facts in the case, as well as inventing scenarios of what may have occurred, since we were unable to get much information from David, other than that the drugs were not his. When it finally took place, David had been sitting at the “training school” for about three weeks doing nothing. The judge decided there was probable cause to uphold the charges, but he released him from detention.

At the moment the judge gave his decision, tears fell from David’s eyes. He knew the fight was not over, but the judge’s decision to detain him. Before the day’s end, the judge applauded the judge’s decision to detain him. Before the day’s end, the judge applauded the judge’s decision to detain him. Before the day’s end, the judge applauded the judge’s decision to detain him.

I then stood with my supervising attorney and gave it my best shot. I wanted so badly to get this boy released.

I failed to get him released. My heart broke. It seemed plain by looking at him and talking with him and his mother that he was not a typical juvenile delinquent and could be trusted on release. He worked two jobs and was a manager at one of them. He also was a senior in high school pulling pretty good grades. David stood strong for his mother and gracefully handled the judge’s decision to detain him. Before the day’s end, the judge applauded the judge’s decision to detain him. Before the day’s end, the judge applauded the judge’s decision to detain him. Before the day’s end, the judge applauded the judge’s decision to detain him.

The legal issues were complex, the investigative work was intense and the people that I worked with were first-rate.

The police report indicated that another student, who had a prior history, had placed the weapon on Marty prior to his being searched.

We prepared a bail argument but the judge set bail at $100,000 cash! I was shocked by the violence of it. There was no way these parents had that kind of money and the judge surely knew that. I looked at Marty’s parents, who were in tears. We kept arguing with the judge. When I saw the bailiff handcuff Marty and take him away, I burst into tears, right in court.

Fortunately, we appealed the bail the next morning before a Superior Court judge who reduced it to $500 cash and Marty went home to his middle school graduation and graduated from the 8th grade. I was relieved but still exhausted from the emotion of it.

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involved in Jason’s life as much as possible. Jason’s mother was addicted to drugs and in the past had been abusive towards Jason and his younger brother, threatening to kill them with her gun and verbally assaulting them. DOF knew of Jason’s situation, but because Jason was not committed to the DOF, they did little for the family. At the time I received the complaint, Jason had dropped out of school, was doing drugs and had threatened to steal his mother’s gun and use it on whoever angered him. Emily believed Jason was serious about his threat and I took this to be an emergency situation and contacted the police and the DOF. DOF was not aware of how much help Jason needed and they immediately investigated the complaint. I was in touch with the DOF almost daily for the next few weeks to make sure that they did not let Jason fall through the cracks once again. After I left the Commission, I learned that Jason and his brother had been removed from their home.

I also worked with, a barrister, Caroline Walters. Ms. Walters’ job within the Commission was a Community Visitor, which entailed regular visits to children and young people living in out-of-home care such as youth shelters, residential facilities and detention centers. The role of the Community Visitor is to speak with the children and determine what, if any, problems they are experiencing. These problems typically ranged from not having enough bedding to problems with other children to complaints of physical abuse by workers. I joined Caroline on these visits and listened to the children’s stories. Most children just wanted to talk because no one ever came to visit them and they loved hearing stories about America. I enjoyed having direct contact with them; they opened up more than when we spoke by phone. This was my most treasured time at the Commission.

One thing I noticed about the children in detention centers in Australia, compared to the children in the States, was that because Australia is so big, the kids placed in detention centers are flown to them. Many children went for months at a time without seeing any members of their family because their family could not afford to fly to see them. I found this very disturbing because so many of the children that I spoke with were lonely and missed their families terribly. This is a big issue in Queensland that has yet to be resolved.

I will always be grateful for the opportunity to work in Australia. My experience in Australia has broadened my knowledge of juvenile justice and, in the process, enabled me to become a better advocate for children.

School Advocacy

PROFILE: THE WORK OF THE CENTER’S EDUCATION ATTORNEY

ISABEL RASKIN

As the education attorney for the Juvenile Justice Center, my primary job is to provide educational advocacy for the clients our clinical staff and supervising attorneys represent in delinquency cases. I handle 15-20 calls per month from parents, attorneys and service providers who have heard about the Center and need help for their children.

In the Juvenile Justice Clinic we teach students to recognize symptoms of “educational distress” in their clients. We teach them how to identify “red flag” issues, including whether the client is currently not attending school, whether they have ever been suspended or expelled, whether they are failing classes, have poor attendance, repeated grades, or chronic low-level disciplinary issues. When clinic students discern one or more of these red flags in a client’s school history, they refer the case to me. I request the client’s school records and try to ascertain where our challenges lie.

The Process:

Research on our clients has shown that between 17 and 20% come to us with the designation of being entitled to special education services. In spite of being in special education classes, many of our clients continue to read 3-4 grades below grade level and have marked truancy issues. More striking is the number of our clients who have struggled in school for years but have never been identified or evaluated for special education services.

Under state and federal special education laws, schools are mandated to act when they see these “red flags” pursuant to the “child find” requirement which requires that schools identify students who may have special learning needs. Once a student is identified as being entitled to special education services, there is a process by which the school and the child’s family must determine what the appropriate services are to ensure the child has an opportunity to make effective academic and social progress in school. This meeting results in an Individualized Education Plan (“IEP”) for the child with goals and benchmarks to ensure that progress is being made. The resulting plan must be reviewed annually, at a minimum, and revised if it fails to help a child progress.

In addition to these provisions, for children who have behavioral manifestations of their disabilities, access to school must be accommodated by programming that takes into account their behavioral needs. The IEP for these children must include positive behavioral interventions, strategies and supports to address behavior that impedes learning. Children with explosive or aggressive behavior may be entitled to prevention and intervention strategies and services.

Federal law requires addressing students’ behavioral issues while monitoring their educational performance. Determination in a child’s behavior or repeated behavioral problems should trigger a reevaluation of the child and/or a review of whether the educational services being provided are in fact appropriate.

Furthermore federal law regarding the content of IEPs, including the duty to review and revisit them as necessary and the obligation to evaluate and re-evaluate children who have (or may have) disabilities, establishes a framework within which school systems must work when challenging behavior emerges, continues or escalates.

The Reality:

The Juvenile Justice Center’s caseload indicates that schools often do not comply with federal requirements to the detriment of the students they are mandated to serve. The Center has many clients who, in spite of numerous absences, years of failing grades in major subjects, and a plethora of disciplinary reports, have never been evaluated to see if they have a learning disability. Schools’ failure to act comes in the face of numerous studies showing that children with learning disabilities fall further behind. As their frustration mounts, they often act out in inappropriate and anti-social ways. For some, a byproduct of their school failure is that they lose respect and often find support and validation on the streets.

Consider the case of “Shawn.” Shawn, a junior high school student whose mother reported that he was struggling in school and hanging out with much older boys on the streets, was facing an expulsion hearing for a brawl involving a stabbing on school grounds after school. During sixth and seventh grade, Shawn failed all his subjects, was absent over 25 days by mid-year and had a long list of disciplinary infractions. His mother requested a special education evaluation when Shawn was faced with expulsion. This request was ignored. Shawn’s mother submitted a second request a month later which was granted.

Shawn was expelled. At his expulsion appeal hearing, the hearing officer overturned the expulsion citing the failure of the school to identify and evaluate the student as a special needs student in view of his failing grades, poor attendance and massive disciplinary history. After a special education evaluation, the student was found to have severe receptive language deficits, in addition to ADHD-triggered attention problems. Shawn went from receiving no services to being found eligible for the highest level of service within the public schools.

Putting these services in place will hopefully reverse or limit Shawn’s feelings of inadequacy in school and provide him with a positive experience that will keep him out of the Department of Youth Services.

Many of our clients are noted to have emotional disabilities in addition to learning disabilities, with attendant behavioral problems, yet their IEPs offer no behavioral strategies, crisis management or any programming to address the client’s psychological problems or assist the child in making healthier choices.

Schools are increasingly filing criminal charges against students

ANDREA FREEDMAN

Extenstship Fellow SilS class of 2003

Being awarded a Suffolk University Juvenile Justice Fellowship this past summer enabled me to experience a juvenile justice system on the other side of the world. My internship took me to the Commission for Children and Young People in Brisbane, Queensland Australia. I met amazing people and gained expertise and friendships I will always cherish.

About 10 years ago, a government investigation into abuse and neglect of children within the foster care system in Queensland Australia found serious abuse of young people. A Commission for Children and Young People was established to protect and promote the rights, interests and wellbeing of children in Queensland. The Commission was to act as a watchdog, to review all legislation that impacts children, and to actively protect children in the case of Department of Families (DOF) by visiting them and by investigating and reporting on claims of abuse.

I worked mainly in the Complaints and Investigations Unit within the Commission. This unit received calls from children, or adults advocating on behalf of children, who felt that DOF was not providing an appropriate level of care to children. Most of the complaints we received dealt with sexual and physical abuse, and neglect. Our job was to investigate the claim and advocate on the behalf of the children within the Commission.

The Commission granted us access to the Director General of DOF and we contacted him directly to determine what services were being provided and what steps should be taken in the best interests of the child.

One case particularly affected me. The Commission received a call from a woman, “Emily,” who was very concerned about “Jason.” She was the mother of one of Jason’s friends and tried to stay close to her son, who had severe receptive language disabilities and was very behaviorally challenged. Shawn, a junior high school student whose mother reported that he was struggling in school and hanging out with much older boys on the streets, was facing an expulsion hearing for a brawl involving a stabbing on school grounds after school. During sixth and seventh grade, Shawn failed all his subjects, was absent over 25 days by mid-year and had a long list of disciplinary infractions. His mother requested a special education evaluation when Shawn was faced with expulsion. This request was ignored. Shawn’s mother submitted a second request a month later which was granted.

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with these issues—even though the behaviors are clearly disability-related. Schools’ reliance on school-based police, who are not trained to interact with students with special needs or how to de-escalate conflict, appears to increase the num-
ber of arrests in these situations.

Consider the case of Esmerelda. A fifteen-year-old junior high school student receiving some special education services to address her reading deficits. She threw a muffin across the cafeteria aiming at a garbage can and hit a teacher instead. She was confronted by a school administrator and school police and told to leave. When she refused, the administrator and police officers grabbed her and dragged her out of the cafeteria. As soon as she was able to free herself, she lashed out and kicked the administrator in the leg.

Esmerelda was immediately arrested by the school police officer and charged with assault and battery with a dangerous weapon, her shod foot. A review of her school records showed that Esmerelda had serious lead poisoning, was functioning at an IQ level below 60. Her severe cognitive limitations cause her to misperceive and misinterpret situations. She has a history of being easily provoked, inordinately quick to anger and impossible to reason with.

According to the school’s own IEP, Esmerelda was diagnosed as having autism spectrum disorders, the school had never implemented a plan to address her behavior or a crisis team to deal with her aggression. The incident that gave rise to the delinquency charge occurred during an unsupervised period in a room of over 100 kids.

At Esmerelda’s expulsion hearing, the Center argued that the school was fully aware—and had even documented—Esmerelda’s special needs, had failed to abide by their own educational plan for her, and had completely ignored the behavioral issues she presented as a result of her severe lead poisoning.

Esmerelda was not expelled after the hearing. While the delinquency charges may ultimately be dismissed against her if she is not found competent, the school’s involvement of the police and consequent trauma and humiliation caused an enormous toll in both time and emotions on Esmerelda and her family.

Finally, for those who think that it may be too late to turn a child around after years of poor grades and disciplinary issues, there is hope. This is the best part of educational advocacy: seeing a dramatic turnaround in which a young person’s potential blooms.

Consider the case of Clara. An extremely bright thirteen year old with a high IQ. Clara was failing or barely passing classes for years. She was frequently engaged in fights with peers at school, culminating with an expulsion for bringing a knife to school and allegedly threatening another girl. She sat at home for over seven weeks with no educational services before she was put in touch with the Center. A review of her school records showed that Clara was manifesting signs that entitled her to an evaluation. The school’s failure to provide her with an educational plan in a new school with small classes which focus on social skills development. She was given intense counseling designed to address her emotional issues.

Clara is happily attending school daily and was named student of the month for October.

To intervene successfully and to teach Clinic students how to intervene, and to help youth move along more constructive paths, is exhilarating work. I only fear that the work of the Center barely touches the tip of the need.

The Center argued that the school had a basis for knowing that Clara was manifesting signs that entitled her to an evaluation. The school’s failure to provide her with an educational plan in a new school with small classes which focus on social skills development. She was given intense counseling designed to address her emotional issues.

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Consider the case of Peter. At a middle school suspension hearing, the facts:

Peter just sat there, generally silent, occasionally wondering out loud why he had to leave when it was the other student who had bothered him. This power struggle occurred in front of the other kids in the class. Chaos resulted, when the remaining 10 kids in the class started fighting each other.

The behavioral lab instructor called the Vice Principal (VP) on the radio. Radio messages are heard by 5 or 6 people in a radio response group and all those who hear it, are supposed to respond. In this case, the VP and the school police officer came to the classroom. The VP went into the class and asked Peter to leave but he ignored him. The VP tried to lift Peter out of his chair. Peter weighed over 200 pounds and was 5’2”. In response to the VP, Peter went limp and fell to the ground. The VP dragged him out of class.

In the hallway Peter stood up and there was some sort of physical contact between him and VP. The VP said that Peter hit him. Peter says he did not. The police officer observing the interaction placed Peter under arrest and charged him with assault and battery and disrupting a public assembly.

The Case:

Peter’s case was assigned to the J Clinic in Boston Juvenile Court where Peter was arraigned and released to his parents. “This is where I first met Peter,” said Janine. “Soon after Peter’s suspension hearing was scheduled by the school.” Janine and Izy requested the “incident reports.” Peter’s educational records, and submitted

Below are excerpts from SULS Professor Eric Blumenson and BU Professor Eva Nilsen’s recent article, 6 Univ. of Iowa Journal of Gender, Race and Justice 61 (2002).

The War on Drugs as a War on Education

...Not many Americans are aware that we now imprison two million people, six times as many as we did in 1972, in large part as a result of the drug war that has been waged over those three decades. Even fewer know that in the 90’s, educational deprivation became a weapon in the drug wars, reaching in the denial of high school or college opportunities to tens of thousands of students. While Americans are arguably more concerned with the racial dimension of the drug war, the war on drugs has effectively withdrawn this commitment to many children who are most at risk. This has done in a series of related ways that we explore in this article.

First, the drug war has combined with public school zero-tolerance policies to remove tens of thousands of able-bodied students from their public school. Eighty-eight percent of public schools have zero-tolerance policies for drugs, and according to one recent study approximately eighty percent of skydarts charged with drug or alcohol infractions are suspended or expelled from school.

Second, denial of higher education has been adopted as an additional punishment for drug offenders. Under the Drug Free Student Loans Act of 1998, students who have ever been convicted of a drug offense are either temporarily or permanently ineligible for federal college loans or grants. This has led to the withdrawal from school of thousands of college students who have no alternative means of paying for their education.

The war on drugs has spawned a second front: a war on education. The casualties of this war are all poor or lower-income people who can not afford to buy a private education. Laws that create an inequitableunderclass may be no constitutional significance to those judges who share Justice Thomas’ view that “there is a moral and constitutional equivalence between laws designed to subjugate a race and those that distribute benefits on the basis of race in order to foster some current notion of equality.” Those consigned to the underclass by deliberate educational privatization confirm a body of constitutional law that in various ways has grown, if not to the democratic and egalitarian values it is assumed to serve. The ultimate defeat, however, would be to allow that legal system to deprive its victims from even seeking justice.