

University of Miami Law School

## University of Miami School of Law Institutional Repository

---

Articles

Faculty and Deans

---

2004

### Delivery of Legal Services to Children in the Boston Area

Tamar Ezer

Follow this and additional works at: [https://repository.law.miami.edu/fac\\_articles](https://repository.law.miami.edu/fac_articles)



Part of the [Family Law Commons](#), and the [Law and Society Commons](#)

---

# Delivery of Legal Services to Children in the Boston Area

---

TAMAR EZER\*

## Introduction

By 1990, families with children under age three became the single largest group living in poverty in the United States. With 25 percent of all such families living below the poverty line,<sup>1</sup> one fifth of all the nation's children are poor, and 40 percent of the poor in the United States are children.<sup>2</sup> There are also striking racial disparities among the poor—50 percent of African-American and 40 percent of Latino children under the age of six live in poverty.<sup>3</sup> In Massachusetts, one of the wealthiest states in the nation, it is estimated that over 17 percent of children were poor in 1994, a 4 percent leap from figures in 1990.<sup>4</sup>

Statistically the United States gives children less support than any other industrial country.<sup>5</sup> Although the United States is the wealthiest of all industrial democracies,

---

\* J.D. Harvard Law School 2001; Editor-in-chief of the Harvard Human Rights Journal 2001; B.A. Stanford University 1997.

<sup>1</sup> Martha Minow, *What Ever Happened to Children's Rights?*, 80 MINN. L. REV. 267, 293 (1995).

<sup>2</sup> *Id.*, see also Paul Holtzman, *Confronting the Challenge of Realizing Human Rights Now: Children in Poverty*, 34 HOW. L.J. 27, 27 (1991); Bruce A. Green & Bernandine Dohrn, *Children and the Ethical Practice of Law*, 64 FORDHAM L. REV. 1281, 1281 (1996) (stating that almost 25% of children under age six live below poverty level).

<sup>3</sup> Minnow, *supra* note 1, at 293-94; see also Holtzman, *supra* note 2, at 27.

<sup>4</sup> Jennifer R. Gavin, *Child Welfare Law Curricula in Legal Education: Massachusetts' Untried Opportunity*, 7 B.U. PUB. INT. L.J. 9, 11 (1998).

<sup>5</sup> DEREK BOK, *THE STATE OF THE NATION* 173 (1996).

poor children grow up in families with incomes that are lower than those of comparable families in any other industrialized country. Families of poor children in the United States—that is children in the poorest 20 percent—have less than two-thirds the income of comparable families in Sweden, Switzerland, Belgium, and Norway.<sup>6</sup>

In 1993, the American Bar Association produced a report recognizing that “our society is failing to protect its children”<sup>7</sup> and exploring ways in which the justice system may better serve those children.<sup>8</sup> A few years earlier, in 1987, the Massachusetts Bar Association and Governor’s Office likewise issued a report recognizing the unmet legal needs of children.<sup>9</sup> Already the state has become involved in the lives of many of these children. In July 1995, over 43,000 Massachusetts children were under the supervision of the Department of Social Services (“DSS”),<sup>10</sup> and nearly 15,000 children and young adults were being raised by the state, reflecting an increase of more than 50 percent in ten years.<sup>11</sup>

This paper surveys and compares the various legal service providers in the Boston area, assessing the delivery of legal services to children in the region. It examines both general providers of legal services and child-focused groups to obtain a complete picture of children’s needs and how they are being met. Part I of the paper highlights demographic trends in the provision of legal services. Part II discusses some of the important issues facing providers of legal services to children in the Boston area and analyzes unmet needs and areas for change. Part III provides a summary of needs and suggestions to improve the delivery of legal services. Finally, Part IV furnishes a map of the major players in the legal services field

---

<sup>6</sup> *Id.* at 172.

<sup>7</sup> This statement was made in a report by Judge A. Leon Higginbotham, Jr., and is entitled, “America’s Children at Risk: A National Agenda for Legal Action,” as cited by Gavin, *supra* note 4, at 19.

<sup>8</sup> Gavin, *supra* note 4, at 19.

<sup>9</sup> *Id.* at 18.

<sup>10</sup> DSS is Massachusetts’ child protection agency. For more information, please see <http://www.state.ma.us/dss/>.

<sup>11</sup> Gavin, *supra* note 4, at 12.

in Boston. This series of case studies, traces the philosophies of the different legal service organizations—both general and child-focused, how they access and represent children, how they interact, the changing needs of the community, and areas for potential improvement.

## Demographic Trends

### *A. Age*

General providers of legal services directly represent children in only a small percentage of cases. The figures from the Hale & Dorr Legal Services Center<sup>12</sup> reveal a small but growing number of clients under eighteen.<sup>13</sup> The figures are only available through 1996, but should reflect a greater increase over the past few years with the expansion into Guardian Ad Litem (“GAL”)<sup>14</sup> appointments.

#### Clients under age 18 at the Hale & Dorr Legal Services Center.<sup>15</sup>

|      |                    |
|------|--------------------|
| 1996 | 3.1% <sup>16</sup> |
| 1981 | 2.1%               |
| 1979 | 2.3%               |

### *B. Families*

These providers largely serve families. Most clients have children because female-headed families are often the poorest and most in need of services and because legal service organizations tend to have specifically family-oriented

---

<sup>12</sup> Each of the legal service organizations mentioned is discussed at length in Part V of the paper.

<sup>13</sup> In terms of the child-focused organizations, Tim Sindelar from the Disability Law Center remarks on the rise in the age of children served. Currently, clients are both young children and adolescents, while previously there were not so many adolescents. Telephone Interview with Tim Sindelar, Attorney, Disability Law Center (Dec. 1, 2000).

<sup>14</sup> Please see Part II, Section F for an explanation.

<sup>15</sup> 1979, 1981, 1996 Hale & Dorr Legal Services Center Annual Reports.

<sup>16</sup> Out of 43,449 clients.

policies. At the Hale & Dorr Legal Services Center, staff estimate that over half of the people who come in seeking services have children, and probably no more than a third of clients are childless.<sup>17</sup> Greater Boston Legal Services (“GBLS”) and the Harvard Legal Aid Bureau (the “Bureau”) only take divorce cases and prioritize housing cases when children are involved.<sup>18</sup>

### C. Women

The overwhelming majority of clients at legal service organizations are women. A constant 76 percent of GBLS’s clients are women.<sup>19</sup> More than half of the clients represented by the Harvard Tenant Advocacy Project (“TAP”) are women – approximately thirty-two clients.<sup>20</sup> Figures at the Hale & Dorr Legal Services Center reveal the same story.

#### Female Clients at the Hale & Dorr Legal Services Center:<sup>21</sup>

|           |       |
|-----------|-------|
| 1997-2000 | 75%   |
| 1996      | 68%   |
| 1979      | 67.8% |

This is due in part to the increasing feminization of poverty.<sup>22</sup> The lower income of women reflects their lower

<sup>17</sup> Telephone Interview with Alex Rabb, Attorney, Hale & Dorr Legal Services Center (Nov. 24, 2000).

<sup>18</sup> Telephone Interview with Jacquelynne Bowman, Deputy Director, Greater Boston Legal Services (Dec. 18, 2000); Telephone Interview with Elizabeth Saylor, Supervisor, Harvard Legal Aid Bureau (Dec. 7, 2000).

<sup>19</sup> Greater Boston Legal Services website at <http://www.gbbs.org>.

<sup>20</sup> Telephone Interview with Brent Landau, Co-Chair, Harvard Tenant Advocacy Project (Dec. 4, 2000).

<sup>21</sup> 1979, 1996 Hale & Dorr Legal Services Center Annual Reports; Telephone Interview with Alex Rabb, *supra* note 17.

<sup>22</sup> Diane Pearce first coined the phrase “feminization of poverty” in the late 1970s. Diane Pearce, *The Feminization of Poverty: Women, Work and Welfare*, 11(1) URB. & SOC. CHANGE REV. 28 (1972). Pearce declared that “poverty was rapidly becoming a female problem” in the United States and argued that women were “falling” disproportionately into poverty even though they were increasingly participating in the labor force. *Id.* at 28. She attributed their poverty to the segregation of women into low paying

earning capacity, especially as mothers with young children. Most of these women are female heads of households,<sup>23</sup> and many of them had children when they were very young.<sup>24</sup>

Legal service organizations also have policies that specifically favor women.<sup>25</sup> Most organizations only represent custodial parents, who tend to be women,<sup>26</sup> while others, like the Massachusetts Advocacy Center ("MAC"), prioritize cases involving single women.

#### D. Immigrants

The legal needs of lower income people are often intertwined with the needs of immigrant communities. The primary language of 40 percent of clients at the Family Advocacy Program at the Boston Medical Center ("FAP") is not English.<sup>27</sup> At least a quarter of the Hale & Dorr Legal Services Center's clients are Spanish-speaking,<sup>28</sup> and many come from Central American, Dominican, and Puerto Rican family backgrounds.<sup>29</sup> Boston also has a growing Vietnamese and Cambodian population,<sup>30</sup> which has led GBLS to start an Asian outreach unit, dedicated to the specific concerns of

---

jobs, the increase in divorce and single parenthood resulting in an increasing number of female-headed households, and the inadequacy of government benefits and enforced child support. *Id.* at 32-34. For a critique of this concept, please see Athena Mutua, *Why Retire the Feminization of Poverty Construct?*, 78 DENV. U.L. REV. 1179 (2001).

<sup>23</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18; Telephone Interview with Alex Rabb, *supra* note 17; Telephone Interview with Jean Zotter, Attorney, Boston Medical Center, Family Advocacy Program (Dec. 12, 2000); Telephone Interview with Josh Dohan, Director, Youth Advocacy Project (Dec. 5, 2000).

<sup>24</sup> Telephone Interview with Josh Dohan, *supra* note 23.

<sup>25</sup> Telephone Interview with Lynn Giron, Chief Counsel, Volunteer Lawyers Project (Dec. 18, 2000).

<sup>26</sup> Telephone Interview with Ruth Diaz, Manager of Family & Children's Law Practice, Hale & Dorr Legal Services Center (Dec. 18, 2000); Telephone Interview with Jean Zotter, *supra* note 23.

<sup>27</sup> Telephone Interview with Jean Zotter, *supra* note 23.

<sup>28</sup> Telephone Interview with Victoria Read, Manager of General Practice Unit, Hale & Dorr Legal Services Center (Nov. 30, 2000).

<sup>29</sup> *Id.*

<sup>30</sup> Telephone Interview with Josh Dohan, *supra* note 23.

Southeast Asian immigrants.<sup>31</sup> Especially in special education cases, many of the children served come from immigrant parents.<sup>32</sup>

### *E. Race*

Many of the children needing services are also children of color. The racial breakdown for GBLS and the Hale & Dorr Legal Services Center is as follows:

#### GBLS:<sup>33</sup>

1999:

|                  |     |
|------------------|-----|
| White            | 34% |
| African-American | 29% |
| Latino           | 25% |
| Asian            | 12% |

#### Hale & Dorr Legal Services Center:<sup>34</sup>

1996:

|                  |       |
|------------------|-------|
| White            | 51.3% |
| African-American | 26.2% |
| Latino           | 16.8% |
| Other            | 5.6%  |

1981:

|                  |       |
|------------------|-------|
| White            | 57.4% |
| African-American | 25.9% |
| Latino           | 13.7% |
| Other            | 2.9%  |

1979:

|                  |       |
|------------------|-------|
| White            | 56.9% |
| African-American | 29.7% |
| Latino           | 10.1% |
| Other            | 3.2%  |

---

<sup>31</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

<sup>32</sup> Telephone Interview with Lynn Girtton, *supra* note 25; telephone Interview with Josh Dohan, *supra* note 23.

<sup>33</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

<sup>34</sup> 1979, 1981, 1996 Hale & Dorr Legal Services Center Annual Reports.

Cases dealing with unsanitary conditions in children's homes, leading to asthma attacks and lead poisoning, reveal an especially skewed racial division. Lead poisoning disproportionately affects low income children and children of color since these children are more likely to live in older, poorly maintained housing, have more limited access to health care, and are more likely to suffer from malnutrition. Nationally, low income children are four times more likely to have elevated blood lead levels than higher income children, and African-American children are four times more likely to have elevated blood lead levels than white children. More than one-third of African-American children living in large cities have elevated blood lead levels.<sup>35</sup> Lead poisoning was the first environmental hazard disproportionately affecting children of color recognized by the federal government under the George Bush administration.<sup>36</sup>

This disproportion in both lead poisoning and asthma cases amongst children of color is apparent even after accounting for the over-representation of certain groups amongst the poor.<sup>37</sup> Although lead poisoning is widespread throughout Massachusetts, and children living in poor communities are more likely to experience it, the communities with a higher proportion of African-American children are the ones at the greatest risk.<sup>38</sup> In this way, housing conditions are thus not just an issue of poverty, but also a matter of political clout.<sup>39</sup>

---

<sup>35</sup> Clifford L. Rechtschaffen, *The Lead Poisoning Challenge: An Approach for California and Other States*, 21 HARV. ENVTL. L. REV. 387, 392 (1997); Rafael Mares, *Enforcement of the Massachusetts Lead Law and its Effect on Rental Prices and Abandonment*, 12-SPG J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 343, 345 (2003).

<sup>36</sup> Telephone Interview with Rafael Mares, Attorney, Hale & Dorr Legal Services Center (Nov. 28, 2000). Although lead poisoning disproportionately affects children of color, it is also a problem that cuts across racial and class-based lines because of the pervasiveness of lead-based paint in older housing. Rechtschaffen, *supra* note 35, at 393.

<sup>37</sup> Telephone Interview with Rafael Mares, *supra* note 36.

<sup>38</sup> Mares, *supra* note 35, at 345.

<sup>39</sup> Telephone Interview with Rafael Mares, *supra* note 36.



Special education is another area where children of color are over-represented. First noted in a 1982 study by the National Academy of Sciences, a disproportionate number of minorities are said to suffer from minor mental retardation, behavioral disorders, and specific learning disabilities.<sup>40</sup> In 1998, approximately 1.5 million minority children were identified as having mental retardation, emotional disturbance, or a specific learning disability.<sup>41</sup> Compared to white children, African-American children (in data from 1997) were almost three times more likely to be labeled “mentally retarded.” As the proportion of a given district’s student body increases, Latino students are increasingly likely to be over-represented in special education. Here again, even after socio-economic factors are accounted for, the effect of race and ethnicity remains significant. In fact, contrary to expectations, as factors associated with wealth and better schooling increase, African-American boys are at greater risk of being labeled “mentally retarded.”<sup>42</sup>

Minority students are also less likely to be mainstreamed than similarly situated white students, and are placed instead in restrictive special education environments. The likelihood of mainstreaming with regular education peers further decreases for African-American, Latino, Native American, and Asian American children as the percentage of each minority subgroup’s population increases.<sup>43</sup>

#### *F. Disabilities*

Finally, many children accessing services have disabilities and are children of second-generation recipients of Supplemental Security Income Benefits (“SSI”)<sup>44</sup> for similar

---

<sup>40</sup> Telephone Interview with Daniel Losen, Legal and Policy Research Associate, Civil Rights Project (Dec. 1, 2000).

<sup>41</sup> Executive Summary, Conference on Minority Issues in Special Education, The Civil Rights Project.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> SSI is a government benefit paid to individuals who are poor and disabled. SSI children’s disability benefits are paid to children who are under 18 years old, are disabled, and whose parents or guardians are poor.

disabilities.<sup>45</sup> Lynn Girton, Chief Counsel for the Volunteer Lawyers Project, has observed a significant increase in the number of clients who have a mental health disability.<sup>46</sup> Tim Sindelar from the Disability Law Center has noticed that children served by the Center arrive with more severe disabilities—both physical and mental/emotional.<sup>47</sup> Of the over 1,000 families assisted by FAP by the year 2000, 350 cases related to children with disabilities or complicated illnesses. Almost half of these children had asthma or mental health problems. The rest suffered from developmental delays, learning disabilities, and other medical problems.<sup>48</sup>

## Analysis of Needs and Areas for Change

### A. Resources

As is always the case with legal service organizations, there is a need for more money and more staff.<sup>49</sup> Not a politically powerful constituency,<sup>50</sup> children are especially underrepresented and under-served.<sup>51</sup> Attorneys further see children's work as non-legal and less prestigious.<sup>52</sup> The juvenile bar association in Massachusetts is particularly well-trained, but the pay scale is very low.<sup>53</sup>

---

For more information, please see <http://www.social-security-disability-claims.org>.

<sup>45</sup> Telephone Interview with Eleanor Allen, Attorney, Hale & Dorr Legal Services Center (Nov. 30, 2000).

<sup>46</sup> Telephone Interview with Lynn Girton, Chief Counsel, *supra* note 25.

<sup>47</sup> Telephone Interview with Tim Sindelar, Attorney, Disability Law Center (Dec. 1, 2000).

<sup>48</sup> Boston Medical Center website: [http://www.bmc.org/development/funding/family\\_advocacy.html](http://www.bmc.org/development/funding/family_advocacy.html)

<sup>49</sup> Telephone Interview with Andrew Cohen, Coordinator, Children and Family Law Program (Dec. 4, 2000); Telephone Interview with Barbara Kabin, Deputy Director, Children's Law Center (Dec. 11, 2000); Telephone Interview with Daniel Losen, *supra* note 40.

<sup>50</sup> Telephone Interview with Eleanor Allen, *supra* note 45.

<sup>51</sup> Telephone Interview with Daniel Losen, *supra* note 49.

<sup>52</sup> Telephone Interview with Eleanor Allen, *supra* note 45.

<sup>53</sup> Telephone Interview with Barbara Kabin, *supra* note 49.

Resources that exist oftentimes focus on putting out “fires” and dealing with emergencies, rather than tackling systemic problems.<sup>54</sup> Barbara Kabin of the Children’s Law Center would like to do more impact litigation and spend more time on lobbying and strategies for systemic change.<sup>55</sup> Attorneys at the Disability Law Center could likewise undertake more systemic projects if they had more secretaries, paralegals, and law students on staff. Tim Sindelar of the Disability Law Center reports that 60 percent of his work is case management. He would like to do more beyond taking care of immediate crises and to address systemic matters by engaging in proactive litigation, criticizing existing laws, and drafting new legislation.<sup>56</sup>

One way to deal with the scarcity of resources is to draw more involvement from law schools in the representation of children. In her article, “Child Welfare Law Curricula in Legal Education: Massachusetts Untried Opportunity,” Jennifer Gavin makes a convincing argument that such involvement would benefit both children and legal institutions; she explains:

Children’s issues promote exploration of modern academic theories of constitutional, contract, evidence, tort, family, administrative, and criminal law. In the clinical setting, child welfare cases provide a range of opportunities to sharpen creative lawyering skills in interdisciplinary for, through law reform strategies, ethical quandaries, and analysis timely public issues. At a time when intense scrutiny is given to the breadth of the law school experience and the ability of law schools to prepare students for the wide range of legal work ahead in their careers, a child welfare law curriculum should be considered a suited vehicle for attaining the goals of a high quality legal education.<sup>57</sup>

---

<sup>54</sup> Telephone Interview with Daniel Losen, *supra* note 49.

<sup>55</sup> Telephone Interview with Barbara Kabin, *supra* note 49.

<sup>56</sup> Telephone Interview with Tim Sindelar, *supra* note 47.

<sup>57</sup> Gavin, *supra* note 4, at 11.

She further points to successful child advocacy programs in law schools throughout the country that have affected this merger.<sup>58</sup>

Some of the general legal service providers make good use of law school programs,<sup>59</sup> and others are run entirely by law students.<sup>60</sup> However, in terms of servicing children, law schools are a largely under-utilized resource. One interesting new exception is Juvenile Justice Partners, Inc. ("JJPartners"), a child-focused legal clinic, founded by Jessica Budnitz in September 2002, through which Harvard Law School students represent indigent juveniles in Cambridge, Massachusetts in both education and delinquency proceedings.<sup>61</sup>

Another way to deal with the scarcity of resources is by referring out more cases and training more lawyers to handle them. There is a tremendous pro bono role for private attorneys in servicing children.<sup>62</sup> Currently, one-third of children's cases are taken by legal service organizations and two-thirds by private attorneys. However, pro bono cases may not get the same quality or attention as legal service cases do because the private attorneys handling them do not have the

---

<sup>58</sup> Some of these programs are at the University of Michigan Law School, Northwestern University School of Law, Loyola University Chicago School of Law, New York University School of Law, Columbia Law School, University of Texas at Austin School of Law, University of Washington Law School, Brigham Young University, and University of San Diego School of Law, and University of Pittsburgh School of Law. *Id.* at 34-40.

<sup>59</sup> *E.g.*, the Hale & Dorr Legal Services Center.

<sup>60</sup> *E.g.*, the Legal Aid Bureau and FAP.

<sup>61</sup> Juvenile Justice Partners, Inc. at <http://www.jjpartners.org>. Additionally, some of the other child-specific legal service providers take on legal interns. The Children's Law Center has law students manning its hotlines two mornings a week. Telephone Interview with Barbara Kabin, *supra* note 49. The three attorneys at FAP supplement their staff with legal interns. Boston Medical Center's website at [http://www.bmc.org/development/funding/family\\_advocacy.html](http://www.bmc.org/development/funding/family_advocacy.html).

<sup>62</sup> The Volunteer Lawyers Project has dedicated itself to encouraging the private bar to engage in pro bono legal services on behalf of low income persons. Telephone Interview with Lynn Gorton, *supra* note 25.

experience of trying multiple children-related cases.<sup>63</sup> Representing children competently requires knowing how to interview and counsel them and the development of expertise that is substantially different from that used in representing adults.<sup>64</sup> Therefore, there is a strong need to provide more training to private attorneys. Furthermore, in some instances, such as in special education hearings and mediations, advocates do not necessarily have to be lawyers, and properly trained lay people can provide sufficient representation.<sup>65</sup>

FAP has taken an interesting approach to expanding its services through pro bono attorneys, while ensuring the consistent delivery of high quality representation. Since June 2001, it has partnered with the law firm of Mintz, Cohn, Ferris, Glovsky & Popeo ("Mintz"),<sup>66</sup> referring special education, SSI, child support, and immigration matters to them. Through this arrangement, Mintz attorneys can develop expertise in these types of cases, and FAP has been able to increase its caseload with Mintz accepting referrals of some of the more complex and time-consuming problems.<sup>67</sup>

### *B. Areas with Greatest Need*

Areas where the need for representation is greatest are special education, lead paint abatement, and divorce.

---

<sup>63</sup> Telephone Interview with Susan Cole, Staff Attorney, Massachusetts Advocacy Center (Dec. 5, 2000).

<sup>64</sup> Bruce Green proposes a process for certifying child advocates that would entail education in child development; education about the role of culture, race, ethnicity, and class in the choices that a child client might make; and basic knowledge of the work of social workers and psychologists and learning how to work with them as a team. Green & Dohrn, *supra* note 2, at 1296. JJPartners provides student attorneys with intensive training in developmental psychology, ethical issues particular to child advocacy, and effective communication strategies for youth. Juvenile Justice Partners, Inc. website at <http://www.jjpartners.org>; Telephone Interview with Jessica Budnitz, Founder, Juvenile Justice Partners, Inc. (Nov. 4, 2003).

<sup>65</sup> Telephone Interview with Johanne Pino, Staff Attorney, Massachusetts Advocacy Center (Dec. 6, 2000).

<sup>66</sup> For more information on this law firm, please see <http://www.mintz.com/>

<sup>67</sup> FAP website at <http://familyadvocacyprogram.org>.

### 1. Special Education

In Boston, the need for special education advocates is enormous and growing with recent changes in Massachusetts law, announced in August 2000 and in effect since January 2002.<sup>68</sup> The most significant change was the repeal of the Massachusetts' "maximum feasible benefit" service standard, previously governing special education. Massachusetts thus defaulted to the federal minimum standard of "free and appropriate public education."<sup>69</sup> In reaction to these changes, community groups and private attorneys that practice in special education law joined in a Special Education Task Force, which monitors and reports on special education reform issues and advocates for change.<sup>70</sup>

According to the Special Education Task Force, these changes were cost-motivated and emotional rather than logical.<sup>71</sup> Since money is tight in public education and children with special needs take up a lot of money, special education services have become an easy scapegoat on which to pin the ills of the public school system. Additionally, the new director of Boston's special education department argued that children's needs would be better met in a less restrictive, rather than special, setting. Advocates worry, however, that the needs of special education students are not adequately met when they are included with all other students.<sup>72</sup>

Currently, the needs of students with disabilities are inadequately met by schools, and Boston has an especially high incidence of funneling children into the juvenile justice

---

<sup>68</sup> Telephone Interview with Jean Zotter, *supra* note 23; Telephone Interview with Daniel Losen, *supra* note 4; Eleanor Allen, *supra* note 45.

<sup>69</sup> Telephone Interview with Johanne Pino, *supra* note 65. "Free and appropriate public education," commonly referred to as FAPE, is required under the Individuals with Disabilities Education Act of 1997. 20 U.S.C. § 1401(8) (2000 & Supp. 2001); 34 C.F.R. § 300.13 (2003).

<sup>70</sup> Telephone Interview with Eleanor Allen, *supra* note 45.

<sup>71</sup> Telephone Interview with Tim Sindelar, *supra* note 47.

<sup>72</sup> Telephone Interview with Eleanor Allen, *supra* note 45.

system.<sup>73</sup> In the wake of the Columbine shootings,<sup>74</sup> schools have tightened discipline and increased suspensions.<sup>75</sup> A high number of students with undiagnosed disabilities are burdened by harsh discipline policies and told not to return to school. Ironically, these same students are then suspended for truancy, thereby permanently removing them from schools. As Massachusetts has no alternative education requirement, suspended children, if not properly looked after, can easily begin a downward cycle.<sup>76</sup> These policies have most adversely affected minorities and students with medical need.<sup>77</sup> Mental illness has become “criminalized,”<sup>78</sup> and instead of schools surrounding children as a source of services, they discard the most needy children.<sup>79</sup>

This situation is further exacerbated by the difficulty of finding appropriate placement for children with emotional and mental health problems. Currently, all programs are full, and children who do not get into therapeutic day schools end up in

---

<sup>73</sup> Telephone Interview with Daniel Losen, *supra* note 49. Juvenile Justice Partners, Inc. website, *supra* note 64 (stating that children with special education needs are over-represented in juvenile justice system).

<sup>74</sup> On April 20, 1999, two students from Columbine High School in Colorado opened fire, fatally shooting one teacher and 12 students and wounding 23 students before killing themselves. This tragic incident shocked the country, becoming shorthand for other school shootings. For coverage of the incident, see Gustav Niebuhr and Jodi Wilgoren, *Terror in Littleton: Shrines, From the Shock of Violent Deaths, New and More Public Rites of Mourning*, N.Y. TIMES, Apr. 28, 1999, page 24, column 1, available at [http://www.nytimes.com/learning/general/specials/school\\_violence/colo-yearbook-review.html](http://www.nytimes.com/learning/general/specials/school_violence/colo-yearbook-review.html)

<sup>75</sup> Telephone Interview with Tim Sindelar, *supra* note 47.

<sup>76</sup> Telephone Interview with Daniel Losen, *supra* note 49.

<sup>77</sup> Telephone Interview Tim Sindelar, *supra* note 47.

<sup>78</sup> Meeting the needs of children with mental health problems has been a longstanding national issue, however despite receiving such attention, there has been little real progress. The Office of Technology Assessment estimates that only 20-30 percent of children identified as in need of services actually receive care. It has further documented a growing number of youths with serious emotional disorders coming into contact with the juvenile justice system. Richard Gelles & Wanda Mohr *et. al.*, *Will the Juvenile Court System Survive?: Shackled in the Land of Liberty: No Rights for Children*, 564 ANNALS 47, 48 (1999).

<sup>79</sup> Telephone Interview Barbara Kabin, *supra* note 49.

psychiatric hospitals or waiting at home. There are between 500 and 600 children waiting for placement in Massachusetts.<sup>80</sup>

## 2. Lead Paint Abatement

The enforcement of lead paint standards is another area where the need for advocates is “close to infinite.”<sup>81</sup> Lead poisoning is widely recognized as the most serious environmental health hazard facing young children today.<sup>82</sup> Nationwide, nearly 9 percent of children between ages one and five have blood levels that exceed the Centers for Disease Control’s level of concern.<sup>83</sup> Even at low levels of exposure, lead can impair the development of a child’s nervous system, causing learning disabilities, decreased intelligence, hearing loss, and behavioral problems; at higher levels, it can cause comas, convulsions, and death.<sup>84</sup> Children under age six are at the greatest risk because their nervous system is still developing, they tend to be exposed to more lead than adults, and their absorption rates are higher.<sup>85</sup>

The major source of childhood lead exposure is lead-based paint in older homes.<sup>86</sup> Until about 1940, lead was a primary additive in house paints—in some cases comprising up to 50 percent of the paint’s weight.<sup>87</sup> In 1971, Congress enacted the Lead-Based Paint Prevention Act, which banned the manufacture of paint containing more than a certain

---

<sup>80</sup> This problem is additionally aggravated by the nursing shortage in Massachusetts, which has become increasingly severe. Telephone Interview Tim Sindelar, *supra* note 47.

<sup>81</sup> Telephone Interview Rafael Mares, *supra* note 36.

<sup>82</sup> Rechtschaffen, *supra* note 35, at 387. According to Centers for Disease Control, “lead poisoning remains the most common and societally devastating environmental disease of young children.” *Id.* at 390 (quoting CENTERS FOR DISEASE CONTROL, U.S. DEP’T OF HEALTH AND HUMAN SERVS., STRATEGIC PLAN FOR THE ELIMINATION OF CHILDHOOD LEAD POISONING xi (1991)).

<sup>83</sup> *Id.* at 387.

<sup>84</sup> Mares, *supra* note 35, at 345, 390-91.

<sup>85</sup> *Id.* at 345; Rechtschaffen, *supra* note 35 at 390.

<sup>86</sup> Mares, *supra* note 35 at 345; Rechtschaffen, *supra* note 35 at 387.

<sup>87</sup> Mares, *supra* note 35 at 345-46; Rechtschaffen, *supra* note 35 at 394.



percentage of lead by weight for residential use.<sup>88</sup> In 1978, the Consumer Product Safety Commission reduced the permissible percentage of lead in paint to its current level of 0.06 percent.<sup>89</sup> Lead-based paint applied before 1978, however, continues to be a problem because it does not decompose and presents a hazard even if covered over with latex paint.<sup>90</sup>

Massachusetts has been a leader in combating lead poisoning.<sup>91</sup> In 1971, it passed the Childhood Lead Poisoning Prevention and Control Law, the first state statute aimed at preventing lead poisoning.<sup>92</sup> It banned lead-based paint and gave parents with children under age six the legal right to live in housing that is lead paint safe.<sup>93</sup>

However, Massachusetts has been slow in enforcing the lead law, and childhood lead poisoning remains a serious health problem. In fiscal year 2001, 159 children in Massachusetts were considered to have been poisoned by lead,<sup>94</sup> and 159 had elevated blood lead levels.<sup>95</sup> In Boston, twenty-two children were poisoned by lead, and twenty-nine had elevated blood lead levels.<sup>96</sup> New England is particularly high in lead paint due to the many old buildings, and only a relatively low number of apartments have been lead abated. Between 1982 and 1986, only 0.5 percent of an estimated 450,000 high-lead paint units in selected cities in Massachusetts were abated, and in 1986, an estimated 80.7

---

<sup>88</sup> Lead-Based Paint Poisoning Prevention Act, Pub. L. No. 91-695, 84 Stat. 2078 (1971).

<sup>89</sup> 16 C.F.R. § 1303(1)(a) (2003); Mares, *supra* note 84 at 346; Rechtschaffen, *supra* note 35 at 394.

<sup>90</sup> Mares, *supra* note 35 at 346.

<sup>91</sup> For a description of the situation in California, please see Rechtschaffen, *supra* note 35 at 387.

<sup>92</sup> Many states have enacted lead paint statutes modeled after Massachusetts' program. Mares, *supra* note 35, at 343.

<sup>93</sup> Telephone Interview with Rafael Mares, *supra* note 36.

<sup>94</sup> They had a blood lead level of 25 mcg/dl or higher. *Id.*

<sup>95</sup> They had a blood lead level of between 15 mcg/dl and 24 mcg/dl. *Id.*

<sup>96</sup> These numbers even underestimate the size of the problem because in Massachusetts only 56 percent of children and in Boston only 69 percent of children between 6 and 72 months were screened in fiscal year 2001. *Id.*

percent of units in Boston still contained lead paint.<sup>97</sup> Between 1989 and 1997, letters indicating full compliance with Massachusetts law were only issued to an additional 18,336 units.<sup>98</sup> The situation is especially severe in the Boston neighborhoods of Roxbury, Dorchester, and Jamaica Plain.<sup>99</sup> Currently, the only legal service organizations focused on enforcing the lead law are the Hale & Dorr Legal Services Center and FAP at the Boston Medical Center. There is thus a severe need both to bring lawsuits and to get the word out in the community.

Furthermore, landlords are discriminating against tenants, based on the family status of having children under six, when renting apartments in order to avoid the lead law, and more cases need to be brought to stop them. This family status discrimination makes up the highest number of complaints reported at the Massachusetts Commission Against Discrimination.<sup>100</sup> The Hale & Dorr Legal Services Center has just recently begun to deal with this issue in a targeted manner.<sup>101</sup>

### 3. Divorce

Additionally, there is a huge and increasing demand for representation in divorce cases.<sup>102</sup> The probate and family courts are flooded with *pro se* litigants and have recently begun to address the issue by hiring staff to help people maneuver through the legal system.<sup>103</sup> There are also private attorneys who volunteer for the day to assist *pro se* litigants. While these efforts are helpful they present a problem of

---

<sup>97</sup> Mares, *supra* note 35, at 343.

<sup>98</sup> *Id.* at 343-44.

<sup>99</sup> Telephone Interview with Rafael Mares, *supra* note 36.

<sup>100</sup> Telephone Interview with Rafael Mares, *supra* note 36.

<sup>101</sup> Telephone Interview with Rafael Mares, Attorney, Hale & Dorr Legal Services Center (Oct. 31, 2003).

<sup>102</sup> Telephone Interview with Eleanor Allen, *supra* note 45; Telephone Interview with Elizabeth Saylor, *supra* note 18.

<sup>103</sup> Telephone Interview with Ruth Diaz, Manager of Family & Children's Law Practice, Hale & Dorr Legal Services Center (Dec. 18, 2000).

consistency in representation, as litigants will get advice from different people on different days.<sup>104</sup>

There is also a great demand for the representation of non-custodial parents. With the rise of fathers' rights organizations, this demand is becoming more insistent.<sup>105</sup> The Legal Aid Bureau is one of few organizations that represents non-custodial parents.<sup>106</sup> Legal services providers, who want to contribute to the stability and financial well being of the family unit, seem to have good reasons to limit themselves to custodial parents.<sup>107</sup> However, organizations may want to weaken this blanket policy and take some cases where fathers request visitation rights. In today's age, it may be good to encourage "new fathers" to involve themselves in their children's upbringing.

### C. Funding

Another important issue that deserves further research is the source of funding of the various organizations. Funding sources can influence issues tackled and methodology. For instance, GBLS is unable to tackle a wide range of family law issues because attorneys are paid to specifically focus on domestic violence cases.<sup>108</sup> Accepting public funds can also limit ability to sue the government<sup>109</sup> and work on immigration issues.<sup>110</sup> Furthermore, funding can lead to the categorization and narrowing of litigation. Attorneys only

---

<sup>104</sup> Telephone Interview with Eleanor Allen, *supra* note 45.

<sup>105</sup> Telephone Interview with Alex Rabb, *supra* note 17.

<sup>106</sup> Telephone Interview with Elizabeth Saylor, *supra* note 18. Attorneys at the Hale & Dorr Legal Services Center explain that the decision to only represent custodial parents is a result of limited resources, in order to avoid conflicts of interest, and to further the Center's mission of increasing money in the household where the child resides. The custodial parents are usually more financially-strapped, and the Center wants to help achieve stability, not break up families. Telephone Interview with Eleanor Allen, *supra* note 45; Telephone Interview with Alex Rabb, *supra* note 17.

<sup>107</sup> Telephone Interview with Eleanor Allen, *supra* note 45.

<sup>108</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

<sup>109</sup> Telephone Interview with Susan Cole, *supra* note 63.

<sup>110</sup> Telephone Interview with Jean Zotter, *supra* note 23.

paid to work in certain areas may not adequately care for all of these multiple legal needs of children.<sup>111</sup>

#### *D. Collaboration*

The interaction and collaboration amongst Boston's different legal service providers is quite good. Cases are frequently referred back and forth, and GBLS serves as a clearinghouse of experience and knowledge.<sup>112</sup> Furthermore, the Massachusetts Legal Reform Institute ("MLRI") specializes in providing attorneys with policy support and advice, staying in constant touch with the various legal services providers in Boston.<sup>113</sup> MLRI also runs task forces on different issues, like family law and special education, bringing advocates in these fields together to exchange ideas.<sup>114</sup> The Children's Law Center and MAC further provide attorneys with advice and training, and MAC runs the following coalitions: the coalition to defend special education, the educational law task force, and the task force on children affected by domestic violence.<sup>115</sup> The recent changes in Massachusetts special education law were especially instrumental in stimulating organizations to work together on special education concerns and to go out into the community.<sup>116</sup>

However, there is also room for organizations to work more closely together on other issues affecting children, for instance on care and protection cases<sup>117</sup> and Children in Need of Services ("CHINS") cases.<sup>118</sup>

---

<sup>111</sup> Telephone Interview with Andrew Cohen, *supra* note 49.

<sup>112</sup> Telephone Interview with Alex Rabb, *supra* note 17; Telephone Interview with Jean Zotter, *supra* note 23.

<sup>113</sup> Telephone Interview with Pat Baker, Massachusetts Law Reform Institute (Dec. 18, 2000).

<sup>114</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

<sup>115</sup> Telephone Interview with Susan Cole, *supra* note 63; Telephone Interview with Barbara Kabin, *supra* note 49.

<sup>116</sup> Telephone Interview with Tim Sindelar, *supra* note 47.

<sup>117</sup> In these cases, termination of parental rights is at issue due to the parents' unfitness. Telephone Interview with Ruth Diaz, *supra* note 103. Under Massachusetts law, a care and protection petition may be filed with

There should also be more collaboration across fields. Children often have multiple legal needs that interact with each other. For instance, family and education law issues often dovetail, and it would be good for clients to be able to consult with both types of attorneys.<sup>119</sup> Thus, family law units at organizations should ask questions to uncover special education problems and take on more special education cases.

Furthermore, there is often overlap in children's education and juvenile justice needs. In the juvenile justice system children with special education needs are often over-represented. And students are often referred to the juvenile justice system for school-based incidents. Thus, to be effective advocates, it is critical for lawyers for youth to develop expertise in both education and delinquency practice and to be capable of rigorous representation at both educational administrative hearings, as well as at all stages of the delinquency process.<sup>120</sup>

### *E. Multidisciplinary Approach*

Children's legal needs are also intertwined with non-legal ones, and it is necessary to take a multidisciplinary approach in order to resolve problems. As Barbara Kabin, the Deputy Director of the Children's Law Center explains,

---

DSS by anyone who suspects that a child is being abused. MASS. GEN. LAWS ANN. ch. 119, 51A (2003).

<sup>118</sup> CHINS cases are brought to court to obtain government intervention and the monitoring of a minor by social workers and probation officers. There are three types of CHINS cases: truants, "stubborns," and runaways. Truants are brought by schools; "stubborns" are brought by parents; and runaways can be brought by anybody. Under MASS. GEN. LAWS ANN. ch. 119, 21 (2003), a CHINS petition can be filed by a school supervisor or guardian when a child consistently fails to attend school, allowing the court to place the child in DSS custody. CHINS cases commonly follow a minor's violation of a minor-specific law. Parents also bring CHINS cases when they feel they can no longer handle their child alone. Telephone Interview with Eleanor Allen, *supra* note 45; Telephone Interview with Andrew Cohen, *supra* note 49.

<sup>119</sup> Telephone Interview with Andrew Cohen, *supra* note 49; Telephone Interview with Susan Cole, *supra* note 63; Telephone Interview with Daniel Losen, *supra* note 49.

<sup>120</sup> Juvenile Justice Partners, Inc. website, *supra* note 61.

"When dealing with children, everything is especially interrelated, and it is not possible to treat a criminal act in isolation."<sup>121</sup> Attorneys thus need to consult with educators, psychologists, and social workers. Some organizations, like YAP and FAP, have done a fantastic job of providing children with comprehensive services through a multidisciplinary team. However, this is an area in which there is a lot of room for improvement. Lynn Girton, the Chief Counsel, represents adults who want to adopt or become guardians of children. Although she works on these cases alone, she says that there is usually a role for an entire battery of non-lawyer clinicians.<sup>122</sup> MAC, the Disability Law Center, and the Children's Law Center have no psychologists or social workers on staff, though all work closely with expert clinicians.<sup>123</sup> Tim Sindelar of the Disability Law Center finds it difficult not to have in-house experts on which attorneys can rely.<sup>124</sup> Barbara Kabin of the Children's Law Center would likewise like to have in-house psychologists with whom attorneys can routinely consult, and she believes it would be helpful, though not crucial, to have an in-house social worker who would help make their services more accessible to children in the community. However, they are limited by a lack of funding.<sup>125</sup>

It would probably be ideal for schools to have health clinics, social workers, and legal clinics on their premises. It would be most convenient and efficient for clients to access all services in one location. This would also encourage the different providers to work together more often, but, as is YAP's practice, it is important that lawyers remain the "captains" in charge of their legal case.

---

<sup>121</sup> Telephone Interview with Barbara Kabin, *supra* note 49.

<sup>122</sup> Telephone Interview with Lynn Girton, *supra* note 25.

<sup>123</sup> Telephone Interview with Susan Cole, *supra* note 63; Telephone Interview with Barbara Kabin, *supra* note 49; Telephone Interview with Tim Sindelar, *supra* note 47.

<sup>124</sup> Telephone Interview with Tim Sindelar, *supra* note 47.

<sup>125</sup> Telephone Interview with Barbara Kabin, *supra* note 49.

### F. GALs

Another area where there is room for improvement is in the appointment of Guardians ad litem ("GALs").<sup>126</sup> Courts can appoint GALs in family law and immigration cases to provide a voice for children whenever the judge believes that the litigants are not addressing the children's needs. Parties may also make a motion requesting a GAL. A GAL can be an attorney, psychologist, or social worker.<sup>127</sup> In Boston, half of all GALs are mental health professionals.<sup>128</sup>

However, there is no standard procedure to have certain GALs on particular cases,<sup>129</sup> and policies often vary by court.<sup>130</sup> An attorney can request a particular type of GAL depending on the case, but courts do not always grant such requests.<sup>131</sup> Furthermore, as FAP argues, appointing only one type of GAL may be insufficient. For example, a therapist GAL does not understand important legal complexities, and attorney GALs do not have psychological expertise.<sup>132</sup>

Since children's problems stem from multiple psychosocial origins, the appointment of psychologist or sociologist GALs can be quite helpful. For instance, these GALs can help determine what social services would be most appropriate in cases concerning young teen moms or in neglect cases.<sup>133</sup> However, appointments should be standardized to assure children a fair procedure that would best protect their welfare.

---

<sup>126</sup> Unlike attorneys, GALs are not required to adhere to the stated desires of the child. Rather, they serve as officers of the court appointed to represent the best interests of the child. Diane Geraghty, *Conference on Ethical Issues in the Legal Representation of Children in Illinois*, 29 LOY. U. CHI. L.J. 289, 291-92 (1998); Frances G. Hill, *Clinical Education and the "Best Interest" Representation of Children in Custody Disputes: Challenges and Opportunities in Lawyering and Pedagogy*, 73 IND. L.J. 605, 617-18 (1998).

<sup>127</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

<sup>128</sup> Telephone Interview with Eleanor Allen, *supra* note 45.

<sup>129</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

<sup>130</sup> Telephone Interview with Andrew Cohen, *supra* note 49.

<sup>131</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

<sup>132</sup> Telephone Interview with Jean Zotter, *supra* note 23.

<sup>133</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

In terms of attorney GALs, however, the professional consensus is that lawyers serve children best as full attorneys and not as GALs.<sup>134</sup> Currently, children generally only have attorneys in criminal cases and in care and protection cases.<sup>135</sup> A better practice would be to regularly appoint attorneys to safeguard children's rights in all abuse and neglect proceedings, in foster care proceedings, in CHINS cases,<sup>136</sup> and in mental health commitment cases.<sup>137</sup>

### G. Uniformity in Courts

There should also be greater uniformity in the courts in which cases are brought. In Massachusetts, there are separate family courts and juvenile courts, and children often fall through the cracks. Certain issues are initially brought in one court, and certain issues are initially brought in the other. There should be statewide family courts that take responsibility for children's cases.<sup>138</sup> Furthermore, courts do not centrally collect information on children's cases tried.<sup>139</sup> Collecting and analyzing this data is crucial for improving children's policies.

### H. Specialized and General Organizations

Another important issue is whether children's legal needs can best be met by general providers of legal services or children specific organizations. The consensus is that both types of organizations are necessary. As Ruth Diaz from Hale

---

<sup>134</sup> Green & Dohrn. *But see* Hill, *supra* note 126 (explaining problems with attorney *qua* GAL representation).

<sup>135</sup> In care and protection cases, both parents and children have the right to counsel. Children have the right to an attorney to represent their express wishes or unarticulated desires. The court can also appoint a GAL, either independently or upon an attorney's request, to represent the child's "best interests." Additionally, court investigators are appointed in every case. Telephone Interview with Andrew Cohen, *supra* note 49.

<sup>136</sup> Petitioners usually bring CHINS cases without the assistance of lawyers, and courts have the discretion to appoint either an attorney or GAL to represent the child. Telephone Interview with Eleanor Allen, *supra* note 45; Telephone Interview with Andrew Cohen, *supra* note 49.

<sup>137</sup> *See* Green, *supra* note 134, at 1294.

<sup>138</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

<sup>139</sup> Telephone Interview with Andrew Cohen, *supra* note 49.



& Dorr Legal Services Center explains, "Both types of organizations have a role to play and the demand exceeds what either type of organization can provide. There is no shortage of demand."<sup>140</sup>

While specialization in children's issues enables a certain amount of depth and efficiency,<sup>141</sup> children are part of families and cannot be represented in isolation.<sup>142</sup> Children are best cared for when their parents' needs are met,<sup>143</sup> and the pro-parent policies of the general legal service providers thus support the well being of children. However, general providers need to do more to incorporate children's issues in their work. The Hale & Dorr Legal Services Center is starting to move in this direction by working on lead poisoning and special education cases and accepting GAL appointments.<sup>144</sup> The housing units of other legal services providers could similarly expand to take more affirmative lead poisoning and asthma cases.

Children also have special needs that can best be met by children-specific organizations. The child's perspective is different from that of the parents. Working from the child's perspective encourages attorneys and advocacy staff to do more broad-based policy work, such as lobbying and helping to draft appropriate legislation.<sup>145</sup> When working with children a multidisciplinary approach is especially important, and children-specific organizations can specialize in providing these complementary services.<sup>146</sup>

---

<sup>140</sup> Telephone Interview with Ruth Diaz, *supra* note 103.

<sup>141</sup> Telephone Interview with Tim Sindelar, *supra* note 47.

<sup>142</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

<sup>143</sup> Telephone Interview with Jean Zotter, *supra* note 23.

<sup>144</sup> Telephone Interview with Eleanor Allen, *supra* note 45; Telephone Interview with Rafael Mares, *supra* note 36; Telephone Interview with Victoria Read, Manager of General Practice Unit, Hale & Dorr Legal Services Center (Nov. 30, 2000).

<sup>145</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

<sup>146</sup> Telephone Interview with Barbara Kabin, *supra* note 49.

### I. The Representation of Children

Organizations also struggle with whether to represent children directly and how to best represent their interests.<sup>147</sup> There are several options for representing children:<sup>148</sup> organizations can represent children directly, they can represent them through their parents, they can represent children and parents jointly, or they can represent the “objective” best interests of the child. What the best option is may depend on the type of case.

The “objective” best interests standard appears least favorable.<sup>149</sup> It is a formless standard that dis-empowers clients and gives attorneys license to express their own beliefs and biases. Senator Hillary Clinton has written that the best interests standard is not properly a standard but a rationalization by decision-makers, justifying their own judgments about a child’s future; it is like “an empty vessel

---

<sup>147</sup> Traditionally, general legal service providers have not addressed children’s issues directly, preferring to serve families as groups through parents. They feared conflicts of interest; figuring out the interests of a young child poses special difficulties; and attorneys do not have direct access to children, but rather only make contact with them through the court system, the health care system, and their families. Telephone Interview with Eleanor Allen, *supra* note 45.

<sup>148</sup> A lot of legal literature focuses on this topic. Issues raised by the representation of children were explored at length in the Conference on Ethical Issues in the Legal Representation of Children, hosted at Fordham University School of Law from December 1-3, 1995. Green & Dohrn, *supra* note 2 at 1294; see also Donald M. Duquette & Sarah H. Ramsey, *Representation of Children in Child Abuse and Neglect Cases: An Empirical Look at What Constitutes Effective Representation*, 20 U. MICH. J.L. REF. 341 (1987); Martin Guggenheim, *The Right to Be Represented but Not Heard: Reflections on Legal Representation for Children*, 59 N.Y.U.L. REV. 76 (1984); William Kell, *Ties that Bind?: Children’s Attorneys, Children’s Agency, and the Dilemma of Parental Affiliation*, 29 LOY. U. CHI. L.J. 353 (1998); Ellen Marrus, *Best Interests Equals Zealous Advocacy: A Not so Radical View of Holistic Representation for Children Accused of Crime*, 62 MD. L. REV. 288 (2003).

<sup>149</sup> The position advocated by the American Bar Association Standards and a majority of child advocates is that attorneys are ethically obligated to respect the judgment of their children clients as to their own best interests. Geraghty, *supra* note 126, at 298.

into which adult perceptions and prejudices are poured.”<sup>150</sup> Furthermore, it is the judge’s job to determine the “objective,” “right” answer. Josh Dohan of YAP makes a powerful argument that loyalty to the client is necessary for the integrity of the legal system.<sup>151</sup> Additionally, imposing views and “solutions” on a child does not work and will only undermine the child’s trust.<sup>152</sup>

An organization can also represent children, but draw a line when the children’s wishes are clearly contrary to their best interests. FAP has taken this approach. If the children’s interests are contrary to their best interests, FAP refuses representation, but there is usually some way to reach a compromise.<sup>153</sup>

In criminal and care and protection cases, it is particularly important to directly represent children and follow their expressed wishes. In both of these cases, children have a due process right to counsel,<sup>154</sup> and in care and protection cases, children’s interests may be directly opposed to those of parents. However, if the child is insufficiently mature, it may be difficult to get a sense of the child’s interests and wishes. A child may be unable to understand proceedings and articulate meaningful, competent desires. In such a case, attorneys have two options. They can accept the substituted judgment model and advocate, not what they believe to be in the child’s best interest, but rather what they believe the child would want if the child could understand all the options and make wishes and needs known. Or, attorneys can look for clues to the child’s interests in the adults around the child.<sup>155</sup> Unfortunately, both of these methods are highly subjective, and attorneys can never really know that they uncovered the true interests and wishes of the child. Nonetheless,

---

<sup>150</sup> Martin Guggenheim, *Reconsidering the Need for Counsel for Children in Custody, Visitation, and Child Protection Proceedings*, 29 LOY. U. CHI. L. J. 299, 306 (1998).

<sup>151</sup> Telephone Interview with Josh Dohan, *supra* note 23.

<sup>152</sup> Telephone Interview with Barbara Kabin, *supra* note 49.

<sup>153</sup> Telephone Interview with Jean Zotter, *supra* note 23.

<sup>154</sup> Telephone Interview with Eleanor Allen, *supra* note 45.

<sup>155</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

representing the child's interests seems the proper goal, respectful of the child's integrity, and attorneys should at least aim to uncover them.

The situation is more complicated in housing or education cases where the right resides with the parent. In these cases, most of the general providers of legal services in Boston—GBLS, the Hale & Dorr Legal Services Center, the Bureau, the Volunteer Lawyers Project, and MLRI—represent the parents.<sup>156</sup> However, all these organizations agree that the case revolves around the child,<sup>157</sup> and it seems strange to litigate for the interests of the unrepresented party. It is a legal fiction to pretend that the interests driving the litigation are not those of the child. Especially in special education cases, it is pointless to ignore children's wishes and send them to programs they do not like.<sup>158</sup>

The better course thus may be to simultaneously represent both parents and children. This is the mode of representation opted for by the Children's Law Center, FAP, MAC, and the Disability Center.<sup>159</sup> Legal services providers have traditionally worried about conflicts of interests between children and parents,<sup>160</sup> but these conflicts rarely arise.<sup>161</sup> If conflicts arise, the Children's Law Center will not go through with a case.<sup>162</sup> The threat of losing representation alone is usually enough to make parents and children work out their

---

<sup>156</sup> Telephone Interview with Pat Baker, *supra* note 113; Telephone Interview with Jacquelynne Bowman, *supra* note 18; Lynn Girton, *supra* note 25; Rafael Mares, *supra* note 36; Elizabeth Saylor, *supra* note 18.

<sup>157</sup> Telephone Interview with Pat Baker, *supra* note 113; Telephone Interview with Jacquelynne Bowman, *supra* note 18; Lynn Girton, *supra* note 25; Rafael Mares, *supra* note 36; Elizabeth Saylor, *supra* note 18.

<sup>158</sup> Telephone Interview with Barbara Kabin, *supra* note 49.

<sup>159</sup> Telephone Interview with Susan Cole, *supra* note 63; Telephone Interview with Barbara Kabin, *supra* note 49; Telephone Interview with Tim Sindelar, *supra* note 47; Telephone Interview with Jean Zotter, *supra* note 23.

<sup>160</sup> Telephone Interview with Eleanor Allen, *supra* note 45.

<sup>161</sup> Telephone Interview with Susan Cole, *supra* note 63; Telephone Interview with Barbara Kabin, *supra* note 49; Telephone Interview with Jean Zotter, *supra* note 23.

<sup>162</sup> Telephone Interview with Barbara Kabin, *supra* note 49.

differences.<sup>163</sup> In a rare conflict, MAC and the Disability Law Center follow the child.<sup>164</sup>

### *J. Follow-Up*

Finally, there should be some follow-up after children's cases are resolved. Josh Dohan of the Youth Advocacy Project recounts how the organization does not have the capacity to deal with children after their cases are won. Thus, unfortunately, recidivism is high, though well under 50 percent.<sup>165</sup> Other providers of legal services, like the Bureau, also have many repeat clients.<sup>166</sup> In the case of children, it is especially crucial to have follow-ups to ensure that their needs have been met. Follow-ups can also prevent the expense of future litigation.

---

<sup>163</sup> Telephone Interview with Susan Cole, *supra* note 63.

<sup>164</sup> Telephone Interview with Susan Cole, *supra* note 63; Telephone Interview with Tim Sindelar, *supra* note 47.

<sup>165</sup> Telephone Interview with Josh Dohan, *supra* note 23.

<sup>166</sup> Telephone Interview with Elizabeth Saylor, *supra* note 18.

**Summary of Needs and Suggestions for Improvement**

1. More funding for support staff.
2. More impact litigation and policy work.
3. Better training and greater use of pro bono and private attorneys.
4. More regular partnerships with particular private law firms.
5. More representation in special education cases.
6. More attorneys bringing affirmative lead paint suits.
7. Education of the community on lead paint and asthma issues.
8. Bringing suits for family status discrimination.
9. More divorce representation.
10. Some representation of non-custodial parents.
11. More flexible funding.
12. Family lawyers and education lawyers should work together more closely; more special education cases by family units of general legal service providers.
13. Advocates should develop expertise in both education and delinquency practice, and they should represent children at both education and juvenile justice proceedings.
14. More educators, social workers, and psychologists on the staff of legal organizations.
15. Health clinics, social workers, and legal clinics on school grounds.
16. Standardization of GAL procedures.
17. The regular appointment of attorneys to represent children in abuse and neglect proceedings, foster care proceedings, CHINS cases, and mental health commitment cases.
18. Statewide family courts that deal with all children's issues.
19. Central collection of data on children's cases tried.
20. More children-specific cases by general providers of legal services.
21. More joint representation of children and parents.
22. Follow-ups in children's cases.

## Case Studies: Legal Service Providers in the Boston Area

### A. General Providers of Legal Services

#### 1. Greater Boston Legal Services (GBLS)

Greater Boston Legal Services ("GBLS") is the primary provider of free non-criminal legal assistance in the Greater Boston Area. It is New England's largest legal service organization. GBLS represents individuals and families, working on both individual client needs as well as systemic problems. Further, it represents community groups and provides community legal education. GBLS traces its roots to 1900 with the founding of the Boston Legal Aid Society. GBLS is a quasi-private state agency, receiving funds from both the legislature and the Massachusetts Legal Assistance Corporation.<sup>167</sup>

GBLS consists of fifty-six attorneys and twenty-six paralegals. The caseload requirement for attorneys is forty open and active cases. In 1999, GBLS assisted 17,439 low-income clients. GBLS serves twenty cities and towns in the greater Boston area.<sup>168</sup> The majority of clients are members of low income, female-headed households. A constant 76 percent of clients are female, and in 1999, 27 percent of clients were over age sixty.<sup>169</sup> Many of the clients are recent immigrants of Southeast Asian descent, and GBLS has started an Asian outreach unit to reach out to this population.<sup>170</sup> GBLS gets 60 percent of its clients from the legal advocacy and resource center and 40 percent from agency or community walk-ins.<sup>171</sup>

GBLS has the following units: Asian Outreach Unit, Elderly Unit, Employment Unit, Family Law Unit, Health and Disabilities Unit, Housing Unit, Immigration Unit, and

---

<sup>167</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

<sup>168</sup> Greater Boston Legal Services website, at <http://www.gbbs.org>.

<sup>169</sup> *Id.*

<sup>170</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

<sup>171</sup> *Id.*

Welfare Unit. In 1999, 26 percent of cases dealt with housing issues, 19 percent with health and disability, 16 percent with employment and welfare, 16 percent with family, 16 percent with immigration, and 7 percent with other miscellaneous issues.<sup>172</sup> The number of family law cases has decreased in recent years. Due to funding constraints, GBLS is unable to tackle a wide range of family law issues, focusing mainly on divorce and domestic violence. GBLS receives funding to deal specifically with domestic violence cases.<sup>173</sup>

All the areas of law in which GBLS operates affect children. In their family law cases, GBLS only represents people who have children. In their housing cases, GBLS mostly represents families, but also represents elders. Welfare cases necessarily involve children because in order to receive welfare benefits, families must have children. Children seeking SSI make up 10 to 15 percent of the health and disability cases at GBLS. GBLS also started a juvenile immigration project to help children living on their own, in foster care, or without their parents. This project accounts for 2 percent of immigration cases at GBLS.<sup>174</sup>

At times, children and families have conflicting responses. GBLS only represents children in certain specific cases, like the juvenile immigration project and SSI cases. In special education cases, parents hold the legal right, and in divorce cases, children technically do not have legal rights.<sup>175</sup> GBLS tends to recommend a GAL when there are no clear answers and background research is necessary.<sup>176</sup> It is rare for a GBLS attorney to take a case when there is a GAL.

In terms of its cooperation with other legal service organizations, GBLS participates in coalitions and task forces both on the state and national level. For instance, it participates in the family law and special education task forces

---

<sup>172</sup> Greater Boston Legal Services website, *supra*, note 168.

<sup>173</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*



run by MLRI.<sup>177</sup> GBLS is also involved in both housing and welfare coalitions, as well as various national task forces, run by legal support centers, such as the youth law support center in San Francisco.<sup>178</sup>

## 2. Hale & Dorr Legal Services Center

The Hale & Dorr Legal Services Center is a general practice law office, which was founded about twenty years ago by Harvard Law School Professor Gary Bellow and Lecturer Jeanne Charn. The Center maintains 1000 to 1200 active cases at a time and has the capacity to supervise eighty or more law students each semester.<sup>179</sup> The Center serves the greater Boston area, and its clients come mostly from Jamaica Plain, Roxbury, Dorchester, and the South End. As clients come from Central American, Dominican, and Puerto Rican family backgrounds,<sup>180</sup> the Center employs bilingual staff and interpreters.<sup>181</sup> Three-quarters of the clients are women, many of whom are the heads of their households.<sup>182</sup> Over 50 percent of people who come in seeking services have children, and fewer than 30 percent of clients are childless.<sup>183</sup> Many of the children are disabled, and often their mothers are second generation recipients of SSI for similar disabilities.<sup>184</sup>

The Center is comprised of the following units: the Community Enterprise Unit, a transactional legal practice which caters to small businesses and first time homebuyers; the Immigration Unit; the Medical and Legal Services Unit, which assists the elderly and people living with disabilities; the Family and Children's Law Unit; the Housing Law and Litigation Unit; and the General Practice Unit, which performs intake and provides clients with a comprehensive legal

---

<sup>177</sup> Please see section below on MLRI for a description.

<sup>178</sup> Telephone Interview with Jacquelynne Bowman, *supra* note 18.

<sup>179</sup> Hale & Dorr Legal Services Center website, at <http://www.law.harvard.edu/academics/clinical/Prereg/PlaceBK/clinics/lsc.html>.

<sup>180</sup> Telephone Interview with Eleanor Allen, *supra* note 45.

<sup>181</sup> Telephone Interview with Victoria Read, *supra* note 144.

<sup>182</sup> Telephone Interview with Alex Rabb, *supra* note 17.

<sup>183</sup> *Id.*

<sup>184</sup> Telephone Interview with Eleanor Allen, *supra* note 45.

assessment of their needs and referrals,<sup>185</sup> in addition to taking care of welfare benefits and simple guardianship, bankruptcy, and estate planning cases.<sup>186</sup> Recently, the largest demand for services has been in the housing area, while the need for public benefits work has dropped.<sup>187</sup>

The Center frequently interacts with other legal service organizations, both by receiving referrals and referring out clients. Attorneys also discuss strategy with and call on GBLS for advice.<sup>188</sup> The Center also collaborates with Catholic Charities, which provides social services, counseling, and health care.<sup>189</sup>

The percentage of cases where the Center directly represents children is currently quite small,<sup>190</sup> but recently they have tried to expand in this area by taking guardian ad litem (GAL) appointments from the court. Thus, the Center has branched out into unconventional realms for legal service organizations that have traditionally preferred not to address children's issues directly.<sup>191</sup>

The Center's areas of practice that impact children are individual rights, family, housing, and benefits. The individual rights practice is a one-year old program that helps people living with chronic or terminal disabilities, such as AIDS, to engage in permanency planning for children and arrange guardianships and adoptions.<sup>192</sup> The Family and Children's Law Unit assists clients with a wide range of domestic relations issues including divorce, abuse prevention, adoption, guardianship, paternity, contempt, and modification actions.<sup>193</sup> Divorce and paternity matters account for around

---

<sup>185</sup> Hale & Dorr Legal Services Center website, *supra* note 179. Recently, the General Practice Unit and the Medical and Legal Services Unit have merged. Telephone Interview with Rafael Mares, *supra* note 36.

<sup>186</sup> Telephone Interview with Victoria Read, *supra* note 144.

<sup>187</sup> *Id.*

<sup>188</sup> Telephone Interview with Alex Rabb, *supra* note 17.

<sup>189</sup> Telephone Interview with Victoria Read, *supra* note 144.

<sup>190</sup> Telephone Interview with Ruth Diaz, *supra* note 103.

<sup>191</sup> Telephone Interview with Eleanor Allen, *supra* note 45.

<sup>192</sup> Telephone Interview with Victoria Read, *supra* note 144.

<sup>193</sup> Hale & Dorr Legal Services Center website, *supra* note 179.

75 percent of cases. The Unit's caseload averages 40-50 cases at a time with a turnover of about 30 to 40 cases each year. The Unit consists of three attorneys and one paralegal who runs the clinic's *pro se* divorce clinic in the Unit. The Unit has the capacity to use and supervise 20 students. Most of the Unit's clients call or walk in from the community.<sup>194</sup>

The Family and Children's Law Unit is also taking on more cases that relate directly to the welfare of children, such as service to unmarried teen parents and special education and child disability work.<sup>195</sup> It plans to concentrate more of its practice on special education cases, rather than care and protection cases<sup>196</sup> as demand for special education advocates in Boston is especially great.<sup>197</sup> In care and protection cases, the legal need is less because parents are automatically entitled to counsel and children are represented by the Department of Social Services.<sup>198</sup> Furthermore, care and protection cases take up many resources and last a long time.<sup>199</sup>

Additionally, the work by the Center's Housing Unit has an important impact on children; an estimated 90 percent of its cases involve children.<sup>200</sup> The Housing Unit, which is composed of five attorneys,<sup>201</sup> represents tenants in eviction defense actions and litigates to improve housing conditions.<sup>202</sup> The Housing Unit frequently works on behalf of children, but does not represent them directly because the parents are the tenants.<sup>203</sup> Most clients are from Dorchester and Roxbury,<sup>204</sup> and 20 percent of clients find out about the Center through court referrals.<sup>205</sup>

---

<sup>194</sup> Telephone Interview with Ruth Diaz, *supra* note 103.

<sup>195</sup> Hale & Dorr Legal Services Center website, *supra* note 179.

<sup>196</sup> Telephone Interview with Victoria Read, *supra* note 144.

<sup>197</sup> Telephone Interview with Eleanor Allen, *supra* note 45. Please see discussion in Part III, Section B.

<sup>198</sup> Telephone Interview with Victoria Read, *supra* note 144.

<sup>199</sup> *Id.*

<sup>200</sup> Telephone Interview with Rafael Mares, *supra* note 36.

<sup>201</sup> *Id.*

<sup>202</sup> Hale & Dorr Legal Services Center website, *supra* note 179.

<sup>203</sup> Telephone Interview with Rafael Mares, *supra* note 36.

<sup>204</sup> *Id.*

<sup>205</sup> Telephone Interview with Victoria Read, *supra* note 144.

In 1999, the Housing Unit appointed Rafael Mares as a Sacks Fellow to focus on combating environmental hazards that endanger the health of children.<sup>206</sup> Rafael Mares has been bringing civil actions on behalf of children seeking damages and the abatement of unsanitary conditions leading to asthma attacks and lead poisoning. For decades, legal service organizations have used violations of the lead law and the sanitary code as a defense in eviction cases,<sup>207</sup> and the Housing Unit has recently expanded in bringing affirmative suits. These affirmative cases, which involve all sorts of conditions of disrepair in apartments, make up about 10 percent of the Housing Unit's work. The office helps to abate lead levels in 1 to 2 apartments per month.<sup>208</sup>

The Center hopes that if attorneys bring enough cases, more landlords will feel pressured to begin lead abatement efforts on their own, thereby eradicating the problem. The Housing Unit's work complements that performed by private attorneys and the City. The Housing Unit handles lead poisoning cases that private attorneys do not take. Private attorneys will only take cases if the lead content is above a certain level and there is strict liability. While these attorneys represent tenants, Boston's Public Health Commission brings suits on behalf of the government to enforce the lead law, and it inspects homes for free. Currently, need in this area is "close to infinite," and more attorneys and organizers are necessary.<sup>209</sup>

---

<sup>206</sup> Rafael Mares is currently a Clinical Instructor at the Hale & Dorr Legal Services Center.

<sup>207</sup> Under Massachusetts General Laws Chapter 239, Section 8A, the presence of lead paint counts as a condition for a defense against a landlord's attempt to evict the tenant. A lead law violation can be raised as a breach of the implied warranty of habitability, a breach of quiet enjoyment, a violation of the Consumer Protection Act, or as a claim against the landlord's negligence in failing to inspect and repair. Thus, violations of the lead law are often raised as defenses and counterclaims in summary process in the context of evictions, and tenants can obtain injunctive relief, damages, and/or rent abatement. Mares *supra* note 35, at 348.

<sup>208</sup> Telephone Interview with Rafael Mares, *supra* note 36.

<sup>209</sup> *Id.*

Tenants are oftentimes unaware of their rights as tenants regarding lead and asthma issues, and the Housing Unit has had to find creative ways to reach them. The Housing Unit receives some tenants through referrals by GBLS and the Center's General Practice Unit. Rafael Mares has also targeted community day care and health centers, such as the Boston Medical Center. Furthermore, he initially worked with a Harvard undergraduate who traveled door to door in certain neighborhoods and notified tenants of their rights.<sup>210</sup>

Additionally, since March 2001, the Housing Unit has been systematically bringing cases against landlords discriminating against tenants, based on the family status of having children under six, when renting apartments in order to avoid the lead law. The Housing Unit has worked with the Fair Housing Center of Greater Boston to employ testers and develop evidence for these cases.<sup>211</sup>

### 3. *Harvard Legal Aid Bureau*

The Harvard Legal Aid Bureau was established in 1913 and chartered as a Massachusetts charitable corporation the following year. It is the oldest student-run legal services office in the country.<sup>212</sup> The office is composed of fifty students with five to six half time supervisors. The Bureau services the Boston area. It receives most of its clients through attorney referrals, but also has a listing at the housing court and services many repeat clients.<sup>213</sup>

Founded with the notion that Harvard law students should help the needy in the community and provide legal services to Boston's indigent, the Bureau has been marked by shifts in philosophy. The first major shift came about gradually, as the Bureau became one of the three selective

---

<sup>210</sup> *Id.*

<sup>211</sup> The Housing Unit is currently involved in a class action against the Boston Housing Authority, pursuant to which they have agreed to de-lead their largest housing development. *Id.*

<sup>212</sup> Harvard Legal Aid Bureau website at <http://www.law.harvard.edu/students/orgs/hlab/summary.html>.

<sup>213</sup> Telephone Interview with Elizabeth Saylor, *supra* note 18.

organizations on campus, along with the Law Review and Board of Student Advisers. The Bureau's President, together with the Law School's Dean, selected members mainly on the basis of grades. The program thus had an "elites-serving-the-unfortunate" quality. Around the late sixties and early seventies, a "young Turk" movement shifted the Bureau's philosophy again, and the Bureau began reaching out into the community and taking more policy-driven cases to further racial and social justice goals. Those goals since have become somewhat diluted by the pragmatic limitations of student practice and members' perception of the constraints of addressing poverty issues through legal services. Recently, the Law School has required the Bureau to concentrate its efforts on the academic and pedagogical aspects of service.<sup>214</sup>

Along with these shifts in philosophy, the Bureau's practice has considerably narrowed. In the 1960s, it used to take criminal law cases. In the 1970s, there was an attitude that it was important to take whatever cases came along, and the practice included tort suits and workers compensation cases. In the 1980s, the Bureau started an AIDS practice group which addressed a wide range of issues for HIV positive people. This group disbanded last year as the needs of the community shifted, and such services became more widely available through regular legal service organizations. In the last couple of decades, the Bureau has focused its practice on benefits, housing, and family law work.<sup>215</sup>

The Bureau now handles 250 to 450 cases in a year; one-third are benefits cases, one-third are housing cases, and one-third are family law cases. The Bureau rarely represents children directly, but SSI cases are an exception. However, the Bureau prefers to take housing cases when children are involved and foreclosure of the marital home is imminent.<sup>216</sup>

---

<sup>214</sup> Telephone Interview with Michael Ng, Outreach Director, Harvard Legal Aid Bureau (Dec. 13, 2000).

<sup>215</sup> *Id.*

<sup>216</sup> Telephone Interview with Elizabeth Saylor, *supra* note 18.

The demand in family law is also growing,<sup>217</sup> as there is an increasing need for representation in divorce and paternity suits. Most of the Bureau's divorce cases involve children, although they occasionally take divorce cases when there are no children if there is domestic violence.<sup>218</sup> The Bureau is the only organization that represents non-custodial parents. If it did not restrict intake to domestic violence cases, it would probably take even more non-custodial parents because the demand is great.<sup>219</sup>

The Bureau interacts with Boston's other legal service organizations through referrals and the sharing of information. They refer cases to the various organizations, keeping track of the kinds of cases each is accepting, and they get referrals from larger organizations, especially GBLS. The Bureau further participates in various collaborative efforts to share information and policy updates.<sup>220</sup>

#### 4. *Volunteer Lawyers Project*

The Volunteer Lawyers Project is about twenty years old and its mission is to encourage the private bar to engage in pro bono legal services on behalf of low-income persons. The Project is composed of six attorneys, who handle 1,200 housing, family law, SSI, consumer, trusts and estates, and special education cases per year. They keep in regular and consistent touch with other legal services offices, and obtain most of their cases through referrals. All of the Project's cases can potentially affect children, but the more child-specific areas are SSI, special education, and the representation of

---

<sup>217</sup> The Bureau does not take care and protection cases, though, because they tend to be big and unwieldy and last a long time. DSS also appoints lawyers in care and protection cases so there is not the same need.

<sup>218</sup> The Bureau prioritizes divorce cases involving domestic violence and waitlists cases involving children.

<sup>219</sup> Telephone Interview with Elizabeth Saylor, *supra* note 18.

<sup>220</sup> Telephone Interview with Michael Ng, *supra* note 214.

caretaker relatives/foster parents.<sup>221</sup> The Project typically represents the parents, not the children in these cases.<sup>222</sup>

### 5. *Harvard Tenant Advocacy Project (TAP)*

The Harvard Tenant Advocacy Project (TAP) is a student-run organization dedicated to representing residents of public and subsidized housing before local housing authorities. TAP assists tenants facing eviction or those who have been denied admission to public housing, while also providing advice on general landlord-tenant matters.<sup>223</sup>

On average, TAP is comprised of about fifty students and handles approximately forty-four active cases each day. In 1999-2000, TAP entered the academic year with thirty-six open cases, opened fifty-two new cases during the year, and closed sixty-two cases. Additionally, it was forced to turn away sixty-three cases due to staffing constraints. TAP further provided general landlord-tenant advice over the telephone for 233 people. More than half TAP's current clients are women—approximately thirty-two clients.<sup>224</sup>

The following child-specific issues frequently arise in TAP's cases: (1) reasonable accommodation involving a child's health in a unit (e.g., asthma), (2) problems with lead paint, and (3) a family's eviction when a child (usually an older child) commits a crime.<sup>225</sup>

### 6. *Disability Law Center*

The Disability Law Center consists of twelve attorneys, ten of whom are located in Boston. Three of the attorneys do primarily special education work, two concentrate on housing, and one focuses on employment. However, finding previous compartmentalization to be

---

<sup>221</sup> The Project has noticed a significant increase in the number of children with a mental health disabilities seeking services.

<sup>222</sup> Telephone Interview with Lynn Girtton, *supra* note 25.

<sup>223</sup> Telephone Interview with Brent Landau, Co-Chair, Harvard Tenant Advocacy Project (Dec. 4, 2000).

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*



stultifying, attorneys have recently shifted to a more generalist approach, taking on cases in a variety of areas. In addition to litigation, attorneys also engage in lobbying and have worked with GBLS and MAC<sup>226</sup> on their policy-related work.<sup>227</sup> The Center accepts cases from throughout the state, but the majority of their special education cases come from Lowell.<sup>228</sup>

The Center serves both young children and adolescents. In past years, adolescents made up a smaller percentage of clients served. In recent years, the Center has also found its clients to be suffering from increasingly severe disabilities—both physical and mental/ emotional.<sup>229</sup>

As indicated in its retainer agreement, the Center represents both children and their parents, but in cases of conflict, the Center follows the child. The child is the client and makes the final determination. Attorneys, however, are also an important part in this equation since, as in other areas of law, they have great power to influence their clients.<sup>230</sup>

Most of the Center's child-specific work revolves around special education cases. The Center receives 30 to 40 calls for special education cases a week. However, some of their litigation centers on the operation of high stakes testing, and they also deal with school governance issues, trying to make schools accountable to children with disabilities. For the past few years, the Center has been engaged in community organizing and lobbying, working with organizations, like MAC, to combat changes in Massachusetts special education law.<sup>231</sup> Along with other community groups and private attorneys that practice in special education law, the Disability Law Center has joined a Special Education Task Force.<sup>232</sup>

---

<sup>226</sup> Please see section below on MAC for a description.

<sup>227</sup> In terms of the Disability Law Center's interaction with other legal service providers, they also frequently make referrals to GBLS.

<sup>228</sup> Telephone Interview with Tim Sindelar, *supra* note 47.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> Telephone Interview with Eleanor Allen, *supra* note 45.

Attorneys at the center could undertake more projects if they had more staff, such as secretaries, paralegals, and law students. Tim Sindelar, a staff attorney, reports that 60 percent of his job involves case management. He would like to focus more on addressing matters on a systemic basis, rather than just taking care of immediate crises; he would like to spend more time on proactive litigation, criticizing legislation, and drafting new legislation.<sup>233</sup>

The Center could also benefit from having in-house psychologists on which attorneys can rely. Other than using them as witnesses, the Center currently has no formal relationship with psychologists. Furthermore, for the sake of efficiency, it would be good for the client to have access to all services in one location.<sup>234</sup>

### 7. Massachusetts Law Reform Institute (MLRI)

Since 1968, Massachusetts Law Reform Institute ("MLRI") has served as a statewide legal services support and advocacy center. MLRI focuses on systemic strategies to help low-income, elderly, and disabled people, working on both state and national issues.<sup>235</sup> Besides its legislative and policy campaigns, MLRI represents clients in class action litigation and writes amicus briefs. MLRI does not directly represent children, but rather deals with children's issues by representing families. MLRI consists of eleven full time attorneys and two policy analysts. It also has many part-time employees, and often serves co-counsel on cases with private attorneys.<sup>236</sup>

MLRI is in constant touch with the various legal services providers in Boston, providing lawyers with advice and policy support.<sup>237</sup> It runs task forces on various issues, like family law and special education, monitoring and reporting on changes in these fields and bringing advocates

---

<sup>233</sup> Telephone Interview with Tim Sindelar, *supra* note 47.

<sup>234</sup> *Id.*

<sup>235</sup> *Newsletter*, MASS. L. REFORM INST. (Nov. 2000).

<sup>236</sup> Telephone Interview with Pat Baker, *supra* note 113.

<sup>237</sup> *Id.*

together to exchange ideas and propose improvements. It further collaborates with state, local, and national organizations to achieve its goals.<sup>238</sup> Some issues MLRI has concentrated on are welfare reform,<sup>239</sup> domestic violence,<sup>240</sup> and inadequate housing.<sup>241</sup>

#### 8. Civil Rights Project (CRP)

The Civil Rights Project ("CRP") at Harvard University was founded in 1996 to provide an ongoing assessment of prospects for justice and equal opportunity for racial and ethnic minorities.<sup>242</sup> CRP is not a legal service provider in the normal sense since it does not represent clients in disputes. Rather, CRP grounds its advocacy efforts in research, providing reports to civil rights and educational groups throughout the country to aid them in their work.<sup>243</sup> Besides publishing books and commissioning new research, CRP frequently sponsors conferences and roundtable discussions looking at research and policy.<sup>244</sup> CRP has also been involved in training programs for other service providers,

---

<sup>238</sup> *Newsletter*, *supra* note 235.

<sup>239</sup> MLRI is concerned about welfare policies that require family caps; impose time limits, forcing families to forgo benefits prematurely; and fail to provide child care after hours, leading to the phenomenon of unsupervised "latch-key kids" in poor families. MLRI has also worked to combat the lack of participation in food stamp programs as Massachusetts is currently the second to last worst state in food stamp participation. Welfare workers discourage families from taking advantage of benefits, and the office is only open for limited hours. Massachusetts also has a 6 month residency requirement before families can receive Aid to Families with Dependent Children ("AFDC").

<sup>240</sup> Domestic violence is increasing, and 64 percent of families on AFDC suffer from domestic violence.

<sup>241</sup> Much of low-income housing is substandard and far from schools. Telephone Interview with Pat Baker, *supra* note 113.

<sup>242</sup> Civil Rights Project website at <http://www.civilrightsproject.harvard.edu>.

<sup>243</sup> Civil Rights Project brochure, available at <http://www.civilrightsproject.harvard.edu>.

<sup>244</sup> For example, on November 17, 2000, CRP held a conference on minority issues in special education.

and one of its current projects helps train attorneys and community leaders on special education issues.<sup>245</sup>

### *B. Child-Focused Organizations*<sup>246</sup>

#### *1. Massachusetts Advocacy Center (MAC)*

The Massachusetts Advocacy Center (“MAC”) is a statewide child advocacy organization whose purpose is to improve the living conditions and opportunities of children who have disabilities or are from low income, racially diverse, or limited English speaking families.<sup>247</sup> On staff, MAC has two lawyers, one paralegal, an intake coordinator, two policy analysts, and two parent information specialists. MAC receives about 1,000 calls per year and advises, represents, or refers to pro bono attorneys between 300 to 400 people each year. The organization’s in-house staff resolves 2 to 3 cases a month and supervises pro bono attorneys in about 40 cases a year. The great majority of in-house cases deal with special education with an additional 10 percent centered on other education issues. Approximately half of the calls received concern students who are out of school due to expulsions and lack of services for their disabilities. MAC does not take CHINS cases, but often serves in a consulting role on education issues in CHINS and juvenile cases.

Staff attorneys place their emphasis on systemic change through legislative advocacy, policy advocacy, and, where necessary, impact litigation and thus take only a small number of cases. They find that these cases are useful in informing their work for systemic change, enabling their advocacy for policy changes to reflect the needs and concerns of their clients. MAC addresses legislative issues affecting low income children in Massachusetts, informs the legal community of emerging issues on children, provides advice and policy support to other legal service organizations, and

---

<sup>245</sup> Telephone Interview with Daniel Losen, *supra* note 49.

<sup>246</sup> Rather than providing general legal services, these organizations specifically focus on the needs of children.

<sup>247</sup> Massachusetts Advocacy Center website at <http://www.ita.doc.gov/td/advocacy/masschu2.htm>.

coordinates to assure that there is no duplication of services. Through statewide coalitions, MAC coordinates statewide legislative work, develops uniform approaches to casework, and trains parents, parent advocates, and other lawyers. MAC currently runs the following coalitions: the task force on children affected by domestic violence, the education law task force, and the coalition to defend special education. Other issues MAC is working on include increasing understanding of the underlying causes of student disruption in school, challenges to MCAS (a mandatory test in Massachusetts public school),<sup>248</sup> and reform of Boston public schools.<sup>249</sup>

MAC frequently interacts with other legal service organizations both through referrals and by collaborating on policy issues. MAC also receives referrals from government agencies, schools, and legal service organizations.<sup>250</sup>

Because MAC sues the state and advocates legislative reform, it accepts no government funding to avoid conflicts of interest. Rather, MAC receives its funding from private foundations.<sup>251</sup>

MAC represents a diverse array of clients, and many of the parents it deals with are immigrants or people with disabilities themselves. Formerly named the Task Force on Children Out of School, MAC continues to prioritize students who are out of school for any reason, including discipline, lack of services, and residency issues.

MAC represents children individually in 5 percent of its cases. As it is difficult to represent a child when the parent is not involved, MAC's general policy is to represent both the parents and the children together. The lawyer has to take

---

<sup>248</sup> According to MAC, MCAS is test of questionable validity. Schools focus on teaching to the test, often depriving students of important curriculum. The growing consensus to suspend the test is resisted by inner city administrators who have publicly claimed that they need the pressure of the test to improve education. MAC is working to increase information on this issue in low-income communities and communities of color so that the voices of parents, rather than simply administrators, can be heard.

<sup>249</sup> Telephone Interview with Susan Cole, *supra* note 63.

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

orders from clients, and children are often unable to make educational decisions alone. If the joint clients disagree, MAC helps them work through their differences. This is usually successful, but in the few cases where the student and parent were unable to reach an agreement, MAC has followed the student's wishes.<sup>252</sup> In these instances, it may be best for one attorney to represent the parent and for another to represent the child.<sup>253</sup>

In most of MAC's cases, the expertise of psychologists and social workers is necessary. However, MAC has no psychologist on its staff as it prefers not be connected to one expert and special education law allows for one independent evaluator paid for by the schools. Furthermore, two of MAC's legal staff is comprised of former teachers with degrees in special education, providing a valuable resource to the organization.<sup>254</sup>

## 2. Boston Medical Center's Family Advocacy Program (FAP)

Founded in 1993, the mission of the Boston Medical Center's Family Advocacy Program (FAP) is to improve the health of children through advocacy.<sup>255</sup> FAP works to accomplish this mission by pursuing three different strategies: it provides free legal services to families whose children are served by the Boston Medical Center and affiliated neighborhood health centers;<sup>256</sup> it trains health care providers to identify poverty-based barriers to a patient's health and to incorporate advocacy as part of the treatment plan; and it pursues policy initiatives to address systemic problems and gaps in services. Recognizing the link between low-income

---

<sup>252</sup> An example of this was when the student wanted to drop out of school and dismiss MAC. Notwithstanding the parent's objections, MAC respected the student's wishes.

<sup>253</sup> Telephone Interview with Susan Cole, *supra* note 63.

<sup>254</sup> *Id.*

<sup>255</sup> The idea for FAP's multidisciplinary approach came from Professor Gary Bellow's program in Brigham Hospital with the elderly unit, which combined legal with medical services. Telephone Interview with Jean Zotter, *supra* note 23.

<sup>256</sup> Families access services through weekly walk-in legal clinics at the Boston Center and four of its affiliated neighborhood health centers.

and inadequate health care, FAP enables families to improve the social, economic, and environmental factors that undermine their children's health by helping them navigate the maze of federal, state, and local regulations.<sup>257</sup>

All of FAP's cases are child-centered. Over 50 percent of Boston Medical Center's patient population has income below the poverty level.<sup>258</sup> Most of the patients are from Dorchester, Roxbury, and the South End. Most come from families headed by single parent female households, reflecting the "feminization of poverty."<sup>259</sup> Children who live in poverty are more likely to be sick and suffer from serious health problems. Many do not speak English; the primary language of 40 percent is not English.<sup>260</sup>

Since its founding, FAP has provided service to over 3000 families, and it provides 20 to 30 case consultations per month to health care providers.<sup>261</sup> FAP handles cases relating to housing, public benefits, nutrition, education placements, employment, and domestic violence.<sup>262</sup> Additionally, it takes on a limited number of immigration and political asylum

---

<sup>257</sup> FAP's website at <http://familyadvocacyprogram.org>. For more information on FAP, please see Pamela Tames, *et al.*, *The Lawyer is in: Why Some Doctors are Prescribing Legal Remedies for their Patients, and How the Legal Profession Can Support this Effort*, 12 B.U. PUB. INT. L.J., 505-06 (2003) (explaining that "Boston Medical Center . . . pediatricians are frequently confronted with the reality that their patient-families' basic needs for housing, nutrition, safety, and healthcare are routinely not met resulting in poor child health and well being . . . . Although laws to prevent harm or poor health exist, bureaucratic obstacles and lack of compliance by government agencies, landlords, and others often deprive families of the benefits and services to which they are legally entitled.")

<sup>258</sup> The Boston Medical Center is New England's largest safety-net hospital. Tames, *supra* note 257.

<sup>259</sup> Pearce, *supra* note 22, at 28.

<sup>260</sup> Telephone Interview with Jean Zotter, *supra* note 23.

<sup>261</sup> Since June 2001, FAP has partnered with the law firm Mintz, Levin, Cohn, Ferris, Glovsky & Poeo ("Mintz"). This law firm accepts referrals of special education, SSI, child support, and immigration matters, and provides support for FAP internships and projects. By accepting referrals of some of FAP's more complex and time-consuming cases, Mintz has enabled FAP to greatly increase its caseload capacity. FAP website, *supra* note 258.

<sup>262</sup> *Id.*

cases.<sup>263</sup> FAP's docket consists of: 40 percent housing cases, 30 percent benefits, and 30 percent other. Recently, the Program has had more housing cases, mirroring the affordable housing problem in Boston. FAP attorneys see themselves as generalists, the legal equivalent of pediatricians in the medical profession, tackling all legal issues affecting children's health, rather than specializing in a particular concern.<sup>264</sup>

FAP takes a multidisciplinary approach to cases, and the Program's three attorneys work closely with the hospital's medical personnel. For instance, FAP attorneys work with the medical staff on housing cases, litigating to combat environmentally caused asthma and fix poor housing conditions affecting children's health.<sup>265</sup> Another interesting collaboration is the child witness to violence program, which pairs attorneys and psychiatrists, to assist children under age eight who have been exposed to violence and help courts make more informed decisions about child custody and visitation in cases involving domestic violence.<sup>266</sup> Traditionally, these children would be represented by either therapist GALs, without an understanding of important legal complexities, or attorney GALS, with no psychological expertise.<sup>267</sup> The most recent addition to FAP's cooperative efforts is participation in multidisciplinary clinical teams, involving psychiatrists, psychologists, and social workers, to better serve children suffering the effects of trauma. The presence of an attorney on the team "allows clinicians to move beyond the traditional modalities of in-office therapy and

---

<sup>263</sup> Under federal law, organizations who obtain Legal Services Corporation ("LSC") funding cannot work on more than a certain number of immigration issues. For more information, please see <http://www.lsc.gov/>.

<sup>264</sup> Telephone Interview with Jean Zotter, *supra* note 23.

<sup>265</sup> *Id.* This emphasis is unique because other legal service organizations focus mostly on evictions and do not work on housing conditions. Rafael Mares' innovative work at the Hale & Dorr Legal Services Center similarly takes this approach.

<sup>266</sup> FAP, *supra* note 257; Telephone Interview with Ellen Lawton, Director, Boston Medical Center, Family Advocacy Program (Nov. 15, 2003).

<sup>267</sup> Though the psychiatrists are merely volunteers, they take their responsibilities seriously and see it as part of their job. Telephone Interview with Jean Zotter, *supra* note 23.



psychopharmacology and to assist families in changing or overcoming environmental stressor; such as substandard housing; inadequate income; custody; guardianship, and visitation concerns; special education access; and immigration status issues.<sup>268</sup>

As reflected in FAP's retainer agreement, FAP attorneys represent the best interests of the child. In SSI cases, attorneys represent the child, while in housing and education cases they represent the whole family. FAP prefers to represent custodial parents. Conflicts between children and parents rarely arise and usually only in abuse cases. For a younger child, attorneys use a best interest standard, but if the children are old enough to express their wishes, attorneys try to represent them directly. If the children's wishes are contrary to their best interests, FAP refuses representation, but a compromise can usually be reached.<sup>269</sup>

FAP has worked widely with the other legal service providers throughout the Boston area. GBLS, the Volunteers' lawyers Project, the Disability Law Center, and MLRI have provided FAP with back-up support, and FAP has co-counseled suits with GBLS and MLRI.<sup>270</sup> FAP also responds to technical questions the other organizations may have about asthma or educational disabilities.<sup>271</sup> Additionally, recognizing that children's eligibility for public benefits and services is often linked to the legal status of their relationship to caretakers, FAP has teamed up with the Volunteer Lawyers Project and the Massachusetts Appleseed Center for Law and Justice to create the Kinship Care Project and facilitate relative guardianship.<sup>272</sup>

FAP further collaborates with medical professionals and organizations city- and state-wide to address systemic barriers to children's health. For instance, an FAP attorney is

---

<sup>268</sup> Tames, *supra* note 257, at 510.

<sup>269</sup> Telephone Interview with Jean Zotter, *supra* note 23.

<sup>270</sup> Some of these cases have dealt with obtaining an exemption from the welfare work requirement for clients that have a disabled child.

<sup>271</sup> Telephone Interview with Jean Zotter, *supra* note 23.

<sup>272</sup> FAP website *supra* note 257.

leading a collaborative effort with the Boston Housing Authority and the Boston Public Health Commission to address the problem of mold in public housing and its effects on child asthma.<sup>273</sup> FAP's systemic work has included assembling expert panels, encouraging health-related legislation, and presenting legislative testimony.<sup>274</sup>

One of FAP's goals is to promote nationwide replication of its model for medical-legal collaboration in order to improve children's health. To this effect, FAP's staff provides start-up programs with consultation, technical support, and site visits.<sup>275</sup> Ellen Lawton, FAP's Director, recounts that there are currently thirty such start-ups across the country.<sup>276</sup>

### 3. Children's Law Center

The Children's Law Center is the oldest nonprofit legal organization for children in Massachusetts, providing services for about twenty-five years. The Center currently has 7 staff attorneys, who focus exclusively on representing children. Attorneys handle care and protection, CHINS, delinquency, school suspension and expulsion, special education, disability, and criminal cases. The Center also serves as a resource to other attorneys representing children in special education and disability cases providing them with information and advice. It maintains advice hotlines, which are manned by law

---

<sup>273</sup> *Id.*

<sup>274</sup> See FAP, *School Readiness Pathways*, at [http://www.aecf.org/pathways/outcomes/schoolreadiness/examples/family\\_advocacy.htm](http://www.aecf.org/pathways/outcomes/schoolreadiness/examples/family_advocacy.htm). Specific policy initiatives worked on by FAP include greater accountability in the delivery of state mental health services for children, the impact of welfare reform, cutbacks to free health insurance, and improved adherence to sanitary codes and the remediation of mold conditions in public housing. See FAP website *supra* note 257; see [http://www.bmc.org/pediatrics/special/fap/policy\\_initiatives.htm](http://www.bmc.org/pediatrics/special/fap/policy_initiatives.htm).

<sup>275</sup> For information on starting such a program, please see FAP website *supra* note 257; see also [http://www.bmc.org/pediatrics/special/fap/start\\_fap.html](http://www.bmc.org/pediatrics/special/fap/start_fap.html).

<sup>276</sup> Telephone Interview with Ellen Lawton, *supra* note 266. Contact list for organization in Chicago, Connecticut, Ohio, New York, Rhode Island, and Washington, D.C. available at: [http://www.bmc.org/pediatrics/special/fap/start\\_fap\\_contact.html](http://www.bmc.org/pediatrics/special/fap/start_fap_contact.html).

students, two mornings a week. The Center serves primarily the north shore, but works throughout Massachusetts.<sup>277</sup>

In 1999, the Center handled 360 cases requiring court appearances. Approximately 160 of these were delinquency cases. The Center further received over 600 requests for legal assistance in special education cases. Ninety-five percent of the Center's work is court appointed.<sup>278</sup>

The Center frequently collaborates with MAC and the Disability Law Center to which they often refer cases. The Center receives funding from private foundations, the Massachusetts Bar Association, the Boston Bar Association, and court fees.<sup>279</sup>

Attorneys represent the expressed wishes of the child in criminal and in care and protection cases. They make sure children understand their options and include parents in discussions, but ultimately children make the final decisions. As explained above, issues are more complex in education cases since the right resides with the parents. However, conflicts rarely arise, and if they do, the Center will reject the case.<sup>280</sup>

Funding constraints limit staffing and projects at the Center. Barbara Kabin, Deputy Director of the Children's Law Center, would like to do more impact litigation and spend more time on lobbying and strategies for systemic change. She is especially concerned with the expulsion and suspension from schools of an enormous number of children with mental illness.<sup>281</sup> Furthermore, the Center does not have the funds for in-house psychologists or social workers, although regular

---

<sup>277</sup> Telephone Interview with Barbara Kabin, *supra* note 49.

<sup>278</sup> *Id.* In order to receive court appointments it is necessary to have certification from the Committee for Public Counsel Services. Please see section on the Children and Family Law Program below.

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> Echoing the concerns of Tim Sindelar from the Disability Law Center and Daniel Losen from the Civil Rights Project, Barbara Kabin believes that mental illness has become "criminalized" in Boston, and instead of schools surrounding children as a source of service, they dump the most needy children. *Id.*

consultations with such experts would provide an important resource to attorneys and help improve services to children.<sup>282</sup>

#### 4. Children and Family Law Program (CAFL)

The Children and Family Law Program (CAFL) of the Committee for Public Counsel Services (CPCS) is the statewide public defender agency that oversees the representation of children and parents in DSS-related cases. CAFL serves all of Massachusetts, providing representation in about 1,000 care and protection cases and 17,000 CHINS cases per year. According to staff attorney Andrew Cohen, care and protection cases take on average fifty hours to complete, while CHINS cases take approximately fifteen hours. CAFL consists of two staffed offices of five attorneys each and approximately 900 private attorneys certified by CAFL to do this work. CAFL provides trial training twice a year for roughly thirty people and appellate training once a year.<sup>283</sup> There is also ongoing monitoring of attorneys, and every county has a “regional coordinator” who oversees cases.<sup>284</sup> CAFL staff attorneys and private attorneys certified by CAFL can represent the father, mother, or child in care and protection cases.<sup>285</sup>

CAFL’s two staff offices thus only take a fraction of the cases. CAFL’s limited size is due to political reasons, and the private bar in certain counties opposes expansion perceiving CAFL’s staff attorneys as competition for their livelihood. Private attorneys obtain CAFL’s certification both because it is a way to make more money and because it is good public service work. Many of the attorneys specialize in child welfare work. Since cases can take many years to resolve, very rarely do members of large firms participate on a paid or pro bono basis.<sup>286</sup>

---

<sup>282</sup> *Id.*

<sup>283</sup> The trend in the last couple of years has been for fewer appeals.

<sup>284</sup> Telephone Interview with Andrew Cohen, *supra* note 49.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

CAFL staff attorneys have encountered a need for more money, better quality representation, and greater access to information. Currently, every region has its own system, and there is no central collection of information in CHINS and care and protection cases. Furthermore, children in child custody cases often have other legal needs that would ideally be addressed simultaneously.<sup>287</sup>

### 5. Youth Advocacy Project (YAP)

The Youth Advocacy Project (YAP) or the Roxbury Children's Law Project, is a unit of the Committee for Public Counsel Services. It is composed of seven criminal defense attorneys and two education advocates. YAP provides criminal defense for indigent children accused of crimes and operates primarily in Suffolk County. In the last few years, YAP has also started preventative programs.<sup>288</sup> Ninety-eight percent of YAP's cases are court appointments. The private bar handles around 85 percent of the cases, YAP handles 10 percent, and law school clinics 5 percent. YAP participates in the training of the law students and will take cases if they are too complicated. According to YAP, there is a shortage of defense attorneys for children.<sup>289</sup>

YAP interacts with MAC, the Children's Law Center, the Disability Law Center, GBLS, and FAP. Contact includes referrals and advice both ways, but there is room for more interaction, according to Josh Dohan, YAP's Director.<sup>290</sup>

YAP provides comprehensive services for children through a multidisciplinary team. Defense attorneys are paired with educational advocates, staff psychologists, and social workers. The criminal defense attorney is the captain of the team. For adults, a private attorney is sufficient, but this is not the case with children. Children's problems with the law are usually related to their educational performance, and cases often start out as a suspension or expulsion from schools.

---

<sup>287</sup> *Id.*

<sup>288</sup> Telephone Interview with Josh Dohan, *supra* note 23.

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

Many of YAP's clients have special education problems, and their behaviors are the product of unaddressed disabilities.<sup>291</sup> YAP thus tries to put together an education plan appropriate to each child. However, YAP does not have the capacity to deal with children after their case is won, and recidivism is high; although a lot of clients return, the number is well under 50 percent.<sup>292</sup>

Most of the clients are children of color and come from households of immigrant parents or of parents who themselves did not succeed at school. Boston has a growing Vietnamese and Cambodian population.<sup>293</sup> Many of the clients are also of Dominican or Puerto Rican ancestry. A lot of them come from single parent households and from mothers who had children when very young.<sup>294</sup>

The number of cases has gone down from the early 1990s. In part, this may be a function of the economy. It may also be attributed to the decrease in crack cocaine use and to the success of Boston's services.<sup>295</sup>

YAP strictly represents the children's expressed interest. It is theoretically the district attorney's and judge's job to work for the best interest of the child. According to Director Josh Dohan, not only is loyalty to the client an integrity issue on behalf of the child, but it is also necessary for the integrity of the system. It would undermine the system for the attorney not to do what the client wants. The system is set up on the basis of adversarial advocacy, and it is in society's best interest to represent the client. Otherwise, the voice of the client would be silenced, and the judge could not take it into account in rendering the decision.<sup>296</sup>

YAP attorneys thus exhibit traditional loyalty to their clients, but they rarely end up advocating for something that is

---

<sup>291</sup> Some of these disabilities being caused by undiagnosed exposure to lead paint.

<sup>292</sup> Telephone Interview with Josh Dohan, *supra* note 23.

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

not good for the child. They build a trust relationship with the children, and when the children understand that their attorney will fight for them even if what they want is not reasonable, they are more likely to take the attorney's advice. However, one area in which children often ignore the attorney's advice is in pleading guilty to acts where this is not warranted by the facts. Children do not want to take the chance of being locked up, and they want the procedure over with quickly. In the beginning, parents may not like YAP's child-centered approach, but by the end they usually come to appreciate the respect YAP's attorneys show their clients.<sup>297</sup>

#### 6. U.S. Department of Education's Office of Civil Rights (OCR)

The United States Department of Education's Office of Civil Rights (OCR), located in Boston, enforces civil rights laws in the schools and colleges of six New England states. These include Title VI, which prohibits discrimination on the basis of race, color, and national origin; Title IX, which prohibits discrimination on the basis of gender; and Section 504; and Title II of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability. OCR has the authority to withhold federal funding.<sup>298</sup>

The Boston office employs ten attorneys among its forty employees, who are involved in the investigation and resolution of complaints filed on behalf of students. Besides responding to complaints, OCR staff also initiate proactive investigations and provide technical assistance. Some OCR decisions are published commercially, and all decisions are available under the Freedom of Information Act.<sup>299</sup>

#### 7. Juvenile Justice Partners, Inc. (JJPartners)

Juvenile Justice Partners, Inc. (JJPartners) is a legal clinic founded in September 2002 to represent indigent

---

<sup>297</sup> *Id.*

<sup>298</sup> Telephone Interview with Thomas Mela, U.S. Department of Education, Office of Civil Rights (Dec. 18, 2000).

<sup>299</sup> *Id.*

juveniles in Cambridge, Massachusetts in education<sup>300</sup> and juvenile justice proceedings. JJPartners has not yet started accepting cases, but it expects to handle approximate thirty cases this year. JJPartners' current staff consists of two full-time attorneys, three part-time Harvard law schools students, and eight part-time college student interns.<sup>301</sup> The organization has partnered with Harvard Law School and is located on its premises.

JJPartners' mission is to inspire and train the next generation of child advocates.<sup>302</sup> Student attorneys will receive training in developmental psychology and in the specific legal, strategic, and ethical issues involved in child advocacy.<sup>303</sup>

Another of the organization's goals is to ensure children have a voice in the system and to focus on their wishes and talents. Jessica Budnitz, the organization's founder, believes that too often critical decisions are made about the lives of children without them having an effective voice in the process. She hopes to gain the respect and trust of clients and help them pursue their own goals and aspirations.<sup>304</sup>

To this end, JJPartners will attempt to connect juveniles to Cambridge community enrichment programs. Rarely if ever are troubled children linked to enriching opportunities that would improve the quality of their lives. By involving children in enrichment programs in sports, the arts, the environment, and leadership, JJPartners plans to provide children with concrete alternatives to traditional punitive measures typically imposed on them and with a positive outlet for their energy. It is JJPartners' philosophy that such

---

<sup>300</sup> Education cases will include both school discipline and special education cases.

<sup>301</sup> Telephone Interview with Jessica Budnitz, *supra* note 64.

<sup>302</sup> Student attorneys will receive clinic credit for representing clients through JJPartners.

<sup>303</sup> Juvenile Justice Partners, Inc. website, *supra* note 61; Jessica Budnitz, Founder, Juvenile Justice Partners, Inc. (Nov. 3, 4, 2003).

<sup>304</sup> Juvenile Justice Partners, Inc. website, *supra* note 61; Telephone Interview with Jessica Budnitz, *supra* note 64.



programs can break the cycle of court-involvement for troubled youth.<sup>305</sup>

Furthermore, to better serve their clients, JJPartners attorneys will develop expertise in both education and delinquency practice. They perceive these two areas as interrelated as students are often referred to the juvenile justice system for school-based incidents, and children with special education needs are over-represented in the juvenile justice system.<sup>306</sup>

---

<sup>305</sup> Juvenile Justice Partners, Inc. website, *supra* note 61.

<sup>306</sup> *Id.*

**Appendix—Quick Reference:****General Providers of Legal Services:**

|                                      |                |
|--------------------------------------|----------------|
| Greater Boston Legal Services (GBLS) | (617) 603-1602 |
| Hale & Dorr Legal Services Center    | (617) 522-3003 |
| Harvard Legal Aid Bureau             | (617) 495-4408 |
| Volunteer Lawyers Project            | (617) 423-0648 |
| Harvard Tenant Advocacy Project      | (617) 493-9394 |
| Disability Law Center                | (617) 723-8455 |
| Massachusetts Law Reform Institute   | (617) 357-0700 |
| Civil Rights Project (CRP)           | (617) 496-6367 |

**Child- Focused Organizations:**

|  |                |
|--|----------------|
| Massachusetts Advocacy Center                            | (617) 357-8431 |
| Children's Law Center                                    | (617) 581-1977 |
| Children and Family Law Program                          | (617) 482-6212 |
| Youth Advocacy Project (YAP)                             | (617) 445-5640 |
| Juvenile Justice Partners, Inc.                          | (617) 492-8899 |
| Boston Medical Center's<br>Family Advocacy Program       | (617) 414-7430 |
| U.S. Department of Education's<br>Office of Civil Rights | (617) 223-9679 |

