



NORTHWESTERN UNIVERSITY SCHOOL OF LAW

LEGAL CLINIC

News and Notes

Spring 1995

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Clinic at the Crossroads

Tom Geraghty

The Clinical program has had a wonderful year. The activities of both the Clinic's faculty and students, described in this newsletter, speak more eloquently than can I about the breadth and depth of faculty and student involvement in the representation of clients, in law and court reform activities, and in the development of innovative materials for the teaching of Evidence, Trial Advocacy, and Professional Responsibility. The program also continues to benefit from the devoted service of the many talented adjunct professors whose participation in the classroom enriches our educational product immeasurably, demonstrating by example the highest standards of professionalism and enthusiasm for practice. The list of our adjunct faculty appears at *pp. 26-28* of this newsletter.

My hope is that the academic, pedagogical, service, and reform successes of 1993-94 will be replicated and augmented in the years to come. I feel certain that the simulation-based portions of the clinical program will continue to thrive. Under the leadership of Steve Lubet and Bob Burns, those courses are wonderfully organized and fully staffed. And though these courses are labor intensive, they are relatively inexpensive to administer because of the devotion and generosity of our adjunct faculty. As long as we can keep Bob and Steve at the helm of this portion of the clinical program, we are assured of success and growth.

The most serious challenge in the coming years will be to support student involvement in carefully supervised casework. In recent years, the Clinic was fortunate to obtain considerable outside funding for much of its work on behalf of clients. Last fall, the faculty completed a Clinic evaluation which noted that "during 1993-94, the entire law school received outside grants totalling \$773,616--an amount exceeding that received by the Kellogg Graduate School of Management--all of which was raised by the Clinic." Although this considerable fundraising success has been gratifying and has enabled the Clinic to include many more students than in the past, our success in fundraising may make us dependent on non-recurring, "soft" money to support casework supervision--a core activity of clinical education at North-

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(Clinic at the Crossroads conclusion from p.1)

western. In short, the Law School and the University have come to depend upon some rather extraordinary fundraising successes to fund an essential part of our clinical program. If this funding stream were to evaporate, what resources would be available to support casework supervision? The Law School, the University, and the clinical program must work together to develop means of continuing to attract outside funding while at the same time affording a basic level of support that will continue to ensure a stable, motivated, and secure teaching faculty.

The key to the success of our Legal Clinic continues to be the dedicated and talented casework supervisors who devote tremendous energy and creativity to their jobs. The combination of teaching and representation of clients requires our staff to be great teachers and great lawyers. They must prepare their cases on behalf of clients and respond to student inquiries during the course of representation. They are in court almost daily. At other times, they supervise the research, investigation, and strategizing which are the essential components of the education and excellent service that we provide.

The doors of our supervisors, Annette Appell, Bruce Boyer, Steve Drizin, John Elson, Derrick Ford, Cheryl Graves, Zelda Harris, and Laura Miller are always open to students. Despite phones that are always ringing and daily trips to court with students who are prepared to assert the rights of our clients, they bring unremitting enthusiasm to their work with our students. Our clinicians teach as much by example as through advertent instruction. Hopefully our students will aspire to replicate that sense of commitment and excitement in their professional lives. Should you visit the Law School in the evening or on weekends, you will find many of this wonderful group of teachers with their students preparing trials and appellate arguments.

Our clinicians are also the eyes and ears of the Clinic's research and reform activities. They know how the courts and the agencies before whom they practice operate, and this makes the Clinic's law reform activities intelligent and relevant. In addition, as you will read in "Faculty Notes," (p.3), our clinicians are involved in a number of impressive activities to advance the fair and efficient administration of justice.

The future of our clinical program depends to a great extent upon keeping this committed faculty together. I am hopeful that through a partnership of private and university funding, we can make long-term commitments to those who do the yeoman's portion of work in our clinical program.

Some faculty and staff at a recent Clinic/CFJC meeting, from left to right: (seated) Tom Geraghty, Bernardine Dohrn, Annette Appell, Steve Drizin, Bruce Boyer, (standing) Laura Miller, David Reed, Derrick Ford, Peggy Slater, Monica Mahan.



FACULTY & STAFF NOTES

Annette Appell continues her instructional and advocacy work with the Children and Family Justice Center of the Clinic. In addition to teaching and supervising students, she has worked on a number of projects designed to promote a reduction of the juvenile court caseload by empowering families to make and affect plans for wards. For example, Annette proposed legislation which would have encouraged parents of court wards to relinquish their children for adoption by known families approved of by the parents in exchange for enforceable post adoption visitation agreements. She also engaged in public speaking regarding adoption, including a presentation at a Chicago Volunteer Legal Services conference, "Adapting Adoption to the 90's," and appeared on Channel 11's "Chicago Tonight" with John Calloway, ChicagoLand Television's "Front and Center," and Continental Cablevision's "Life Styles." In addition, Annette spoke about gender, race and child welfare law in the context of her clinical teaching at the University of Chicago Law School's 1994, "Conference on Gender Bias and the Law: Ideas for Education and Action." She

co-wrote with Bruce Boyer an article titled, "Parents' Rights vs. Best Interests of the Child: A False Dichotomy in the Context of Adoption," which will be published in the spring 1995 *Duke Journal of Gender Law and Policy*.

Annette also taught outside of the Clinic, providing training in termination of parental rights for the Cook County Public Defender's Office and the Justice for Youth Campaign. She was an assistant team leader for the NITA program, "Training the Child Advocate."



Cynthia Grant Bowman offered two new *practicum* courses in the last year: one focusing upon legal issues affecting women and the other upon issues of professional responsibility in the practice of criminal law. In the first, offered in the spring of 1994, students were placed in externships at agencies working on sex discrimination (Lawyers Committee for Civil Rights Under Law and the Legal Assistance Foundation Women's Rights Project), domestic violence (Pro Bono Advocates Civil Court Advocacy Project), family law (LAF

Family Law Project), and legal issues concerning women's health (LAF Health Law Project's litigation concerning the provision of prenatal care to indigent mothers). In addition to selecting, arranging, and monitoring the placements, Professor Bowman led a weekly two-hour seminar, in which the students discussed readings concerning issues of professional responsibility in the context of representing women in these areas of law. Students were also required to keep and to submit extensive "participant-observer" journals about their experiences and submit final papers applying some aspect of the theories discussed in class to their practical experience in the field.

In the fall of 1994, Cynthia taught an additional four-credit *practicum* in the area of criminal law. Students were placed in the offices of the Federal Defender, U.S. Attorney, Cook County Public Defender, State Appellate Defender, and Cook County State's Attorney (both the felony trial division and domestic violence court). Their journals provided fascinating studies of the structure and workings of these public agencies. At the weekly seminar, discussion focused upon a series of readings and problems about professional responsibility in the practice of criminal law, from the perspectives both of prosecuting and defense attorneys, including the lawyer's role, effective (and zealous)

advocacy, confidentiality, conflicts of interest, selective enforcement, plea bargaining, disclosure of evidence, trial tactics, and race and gender considerations in the litigation of criminal cases. As might be anticipated, in the fall of 1994, the O.J. Simpson case was repeatedly a fruitful subject of discussion in almost every area studied.



In January, together with Tom Geraghty, **Bruce Boyer** organized and directed a novel, five-day, intensive, trial skills training program for juvenile court practitioners from around the country. Attended by fifty-six student/attorneys from sixteen states and the District of Columbia, this program was co-sponsored by the Children and Family Justice Center, the National Institute for Trial Advocacy, and the American Bar Association. Course materials written by Tom and Bruce will be published by NITA, and it is expected that the program will be repeated in coming years.

This past December, Bruce completed a detailed report on information management in the juvenile court, concluding an extensive assessment of the computerized information systems operating in and around the court. The report, co-authored by Center consultant David Reed, recommends wholesale revisions to the information systems that are

intended to support the court's work with children and families, but largely fail to do so.

Bruce's article entitled, "Jurisdictional Conflicts Between Juvenile Courts and Child Welfare Agencies: the Uneasy Relationship between Institutional Co-Parents," will be published in the *Maryland Law Review* this winter, and an article on the treatment of "parents' rights" in adoption law, co-authored with Annette Appell, will be published this spring in the *Duke Journal of Gender Law and Policy*.

Bruce has also continued his work as supervising attorney of the Children and Family Justice Center's Family Advocacy Project, working primarily with parents in the neglect/abuse division of the juvenile court. With Annette Appell, he also represented the natural father in the controversial "Baby Richard" adoption case before the Illinois and United States Supreme Courts. The Center's involvement in the case, stemming from concerns raised by the opinion of the Illinois Appellate Court, began with the filing of an *amicus* brief in the Illinois Supreme Court, urging the court not to eviscerate the requirement that a parent be found unfit before his relationship with his child is involuntarily terminated. Bruce subsequently assumed responsibility for arguing the constitutional issues arising from the adoption to the Illinois Supreme Court

last April, and for successfully defending the unanimous decision in favor of Richard's father against petitions for *certiorari* to the U.S. Supreme Court. In addition to his clinical work, Bruce is teaching Administrative Law this spring.



Bob Burns has been a principal author of the five volumes in Evidence, Trial Advocacy, and Ethics and has taught Evidence and Ethics using the new NITA materials. He teamed up with Steve Lubet to write a complex case file involving issues in private international law and accounting theory, recently published by NITA. He was elected chairman of the Law School's Faculty Advisory Committee last fall.



Steve Drizin continues to work with students to represent children charged with crimes in juvenile court. Steve has also chaired the Juvenile Law Committee for the Chicago Bar Association and served as a member of the Juvenile Detention Alternatives Initiative, a task force which developed a plan to reduce overcrowding at the Cook County Juvenile Temporary Detention Center and to provide more placement options for children pending trial. On the strength of the plan, the Annie E. Casey Foundation has agreed to provide Cook County with several million dollars of funding to help the county implement the

plan. In October, Steve was one of twenty-three persons in Illinois appointed by the governor to the Legislative Task Force on Juvenile Justice. The task force's mandate is to study the Illinois juvenile justice system and to make recommendations within eighteen months for improvements. In January 1995, Steve served as a NITA faculty member and an assistant team leader at the "Training the Child Advocate" program in Chicago.



John Elson was appointed in 1994 to the Accreditation Committee of the American Bar Association's Section of Legal Education. This committee decides whether law schools receive or maintain ABA accreditation. He recently published an article in the *Clinical Law Review* entitled, "The Regulation of Legal Education; the Potential for Implementing the MacCrate Report's Recommendations for Curricular Reform." He is continuing his law reform efforts in the Clinic on several fronts: a federal class action suit to require that appropriate educational services be provided to all Cook County Jail pre-trial detainees under twenty-one years old; litigation in federal district and appellate court on behalf of journalists to lift a seal on an entire court file in a suit between orange juice manufacturers over the adulteration of orange juice; suits against school officials for

unfair discipline of students; and several lawsuits against divorce attorneys for financially and/or sexually exploiting their clients. He also co-taught with Clinic alumna, Judge Grace Dickler, a *practicum* which combined students' clerking for Cook County divorce court judges with participation in class sessions analyzing the theory and practice of judicial decision-making and matrimonial litigation.



Derrick Ford replaced Nancy Gibson in January as an attorney with the Special Education Project. Derrick will assist Laura Miller in representing children with disabilities in delinquency proceedings, suspension and expulsion, and related cases.

For the past three years, Derrick was the director of the Fair Housing Project for the Chicago Lawyers' Committee for Civil Rights Under Law. Previously, Derrick was a senior attorney for the Legal Assistance Foundation where he specialized in employment and family law. He is an active member of the Cook County Bar Association and is the chairperson for its Law Day programming. Derrick recently co-authored a chapter on landlord-tenant law for the Illinois Institute for Continuing Legal Education (IICLE) training manual. He annually serves as an instructor for the Introduction to Legal Learning

course at the Law School, and Derrick also coaches the Northwestern undergraduate mock trial team.



Tom Geraghty was recently appointed by Governor Edgar to the Illinois State Justice Commission. The purpose of the commission is to consider the issue of how our justice system is functioning and what steps should be taken to ensure its effectiveness. In October, Tom received the 1994 Service to the National Institute for Trial Advocacy award. Tom serves as a member of the planning committee of the 1995 American Association of Law School's Clinical Teachers Conference and as a member of the governor's special committee to study the Joseph Wallace case. Last year, Tom was a member of the Solovy Commission's Subcommittee on Juvenile Justice. Together with Steve Lubet and Bob Burns, Tom authored *Materials on Professional Responsibility*, published in 1994 by the National Institute for Trial Advocacy. With Bruce Boyer, Tom authored *Cases and Materials on Training the Child Advocate*, to be published by the National Institute for Trial Advocacy after first being used in a program held at the Law School, January 9-13, 1995 entitled, "Training the Child Advocate."



In addition to her casework and supervision of clinic students, **Cheryl Graves** continues to coordinate the Women's Health Initiative Project at the Cook County Juvenile Temporary Detention Center. This health prevention and wellness program for young women has grown since its inception in 1993 and now involves collaboration with a film organization, Women in the Director's Chair, the Cook County Hospital Women and Children's HIV Project, as well as the Chicago Women's Health Center.

Cheryl has also been working with youth-focused community organizations to plan law-related education programs to teach juveniles about their legal rights and responsibilities. The impetus for these programs is based on last semester's experience teaching incarcerated juveniles in a joint project with the Loyola University Law School Street Law Project. Approximately twenty Northwestern law students participated in teaching over 150 detainees about their legal rights during the five-week session.

Finally, Cheryl is developing a community-based mediation project in conjunction with the Center for Conflict Resolution. The goal of the mediation program is to train members of the community to mediate disputes between juvenile offenders and their victims. It also hopes to divert less serious

offenders away from the Juvenile Court of Cook County while providing services and holding juvenile offenders accountable for their actions. The Northwestern University Settlement House, located in the West Town community of Chicago, will be the base for the mediation and several other programs to be initiated by the CFJC. Mediation sessions at this community site are planned to begin in late February,



Zelda Harris has been a clinical fellow since August 1992 and works with the Family Advocacy Project of the Clinic's Children and Family Justice Center. Prior to joining the Clinic, Zelda was a staff attorney at Land of Lincoln Legal Assistance Foundation in Alton, Illinois, where she specialized in child custody, divorce, domestic violence, and civil litigation. She currently serves as chair of the Domestic Violence Subcommittee of the Chicago Bar Association's Juvenile Law Committee and has been selected to be a peer review consultant by the U.S. Department of Justice for its National Institute of Justice. Zelda co-taught a seminar last year on law and the public interest with fellow clinicians Cheryl Graves and Alberto Benitez.



Steven Lubet's latest book, *Modern Trial Advocacy* (1993), has been adopted at over forty law schools. *MTA*, as Steve calls it, has been translated into Hebrew, and will soon be in use at three of Israel's six law schools. A Canadian edition is also in the works. Last January, Steve travelled to Israel to lead a seminar on advocacy teaching, given under the auspices of Bar Ilan University. Simulation teaching is relatively unknown in Israel, and Steve has been a leader in developing law school trial advocacy courses there. On his last trip, Steve also met with a group of lawyers from the West Bank, and began work on the development of an advocacy program for the Association of Palestinian Lawyers. Says Steve: "The rule of law is an essential component of a durable peace. The enhancement of advocacy can also lead to increased respect, on all sides, for individual rights and freedoms." Steve's international teaching is certain to continue. In addition to return visits to the Middle East, he has also been invited to help bring advocacy teaching to the Russian Federation and other former Soviet republics.

Regards to **Nancy Gibson** ('85), who was an NU Legal Clinic instructor for 7 years and recently moved to Maine with her husband, Jim Bailenson, and their son Peter. We wish her much happiness in her new home.

Laura Miller continues to represent children with disabilities in actions to obtain appropriate educational services in delinquency and school discipline proceedings. She is active in a number of organizations which address the legal problems of children with disabilities including the Attorney General's Disability Rights Advisory Council and the Interagency Authority on Residential Services for Children workgroups. Laura was recently elected to the board of the Chi-

cago Council of Lawyers. She was on the faculty of the National Institute of Trial Advocacy, "Training the Child Advocate," which was held at the Law School on January 9-13, 1995.



Peggy Slater administers the Expedited Adoption Program in which volunteer attorneys provide legal services for expedited adoptions of juvenile court wards by relatives who have been caring for them. She also put together a step-by-step adoption manual for the program this fall and coordinated the training of thirty new volunteers. Forty adoptions have been completed in the past year.

Peggy is principal author of a joint report with the John Howard Association, which documents the extent of overcrowding in the Juvenile Division of the Illinois Department of Corrections, and sets out recommendations for minimizing the impact of the constantly increasing number of incarcerated youth. She is currently working on a joint report on services offered by the Juvenile Division of the D.O.C. in the areas of mental health, substance abuse, and sexual offenders, and how young people in need of services are reintegrated into the community while on parole.



Social Work Students Train with Law Students

Monica Mahan, MSW, joined the Clinic in September 1993 and brought with her six graduate students from the Loyola School of Social Work. Monica and her students are working on an evolving model of a multi-disciplinary team, which primarily uses social workers as consultants to the legal team. Other models exist where social workers provide case management services or are used as expert witnesses.

Monica believes that a social worker can aid lawyers by raising concerns and offering important considerations regarding their clients. For example, knowledge of the developmental stages of a child can aid the attorney in preparing a case in which parental visitation is an issue. Likewise, understanding the complex needs of a developmentally delayed mother is crucial in helping her to make decisions about the future of her family. In addition, the social worker can aid in the legal process by helping the client fulfill the court mandated service plan and by keeping the client on track.

The legal and social work professions complement each other. The strengths of each can enhance the other to produce a strong inter-disciplinary partnership, which promotes positive solutions for families. Understanding the differences and similarities in the way lawyers and social workers respond to clients is important to developing constructive working relationships.

It is also important to discuss thoroughly and often the division of responsibilities. Lawyers are responsible for the legal preparation of the case, while social workers should assess the family's needs and

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TWO EVALUATIONS NOTE STRENGTHS OF THE CLINICAL PROGRAM

Tom Geraghty

It is in the nature of legal education that clinical programs are evaluated regularly by law faculty. This is because law faculties are often skeptical of the benefit to be derived from clinical programs and because clinical programs are expensive. Clinics are also evaluated at the insistence of outside funders who want to ensure that they are getting their money's worth. Although participation in an evaluation process is time-consuming and sometimes threatening, much can be learned from a thoughtful examination of any program. Two in-depth evaluations of our clinical program were produced in 1993-94. These evaluations were enthusiastic about our program and made useful suggestions about how the program might improve its performance.

The first evaluation was conducted by a Law School faculty committee appointed by Dean Bennett. That evaluation began in the fall of 1993 and was completed in the spring of 1994. Prof. John Donohue was the chairperson of the committee which included Prof. Thomas Merrill, Prof. Thomas Eovaldi, Prof. Richard Speidel, Prof. Paul Robinson, Prof. Steven Lubet, and me. The Clinic Evaluation Committee was responsible for looking into all aspects of the program, evaluating its effectiveness, and making recommendations to the faculty on the future of the clinical program. The committee examined both the cost of the program and its efficacy.

The committee noted that the cost of the simulation courses was relatively low due to the number of adjunct professors of trial advocacy who volunteered their time to teach in the program. The cost of the case supervision portion of the clinical program was much higher but was offset to a significant degree, by the fact that the tenure track members of the clinical program spend a significant amount of time teaching non-clinical courses.

The committee remarked that past and current

students are extremely enthusiastic about their participation in the clinical program. In addressing the long-term financial implications of funding a viable clinical program, the committee recommended that the "Dean of the Law School make every reasonable effort to obtain a permanent commitment to fund five clinical fellows under a system of five-year renewable term contracts."

A second evaluation was conducted by Judge Leonard Edwards of the Juvenile Court of Santa Clara County, California; Professor Robert Dinerstein of American University School of Law, and Robert Schwartz, director of the National Juvenile Law Center in Philadelphia, at the request of the John D. and Catherine T. MacArthur Foundation, the Children and Family Justice Center's major grantor. The purpose was to measure the Center's progress in achieving its goal to improve and reform the Cook County Juvenile Court by the year 2000. The evaluators spent three days in Chicago interviewing juvenile court judges, lawyers who practice in the Cook County Juvenile Court, and Northwestern Law School faculty and students.

The report found that the work of the Children and Family Justice Center was highly valued by juvenile court judges and other juvenile court personnel. The report stated, "The Center has made an extraordinary beginning. It has set its own foundation for a major court reform effort."

The evaluators also addressed the question of how the Children and Family Justice Center fits into the Law School's educational and scholarly mission. On this issue, the report concluded, "The clinical faculty are highly competent and dedicated attorneys and teachers There needs to be a greater integration between the non-tenure track clinical faculty of the CFJC and the Northwestern non-clinical faculty."

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(Evaluations continued from previous page)

Regarding the issue of job security for clinical supervisors, the report stated, "... these clinicians have been funded almost exclusively through 'soft money' (i.e. money from sources other than the Law School) ... and have had virtually no job security from year to year. Northwestern needs to embrace fully the presence of the CFJC at the Law School. ... and should consider increasing its financial support of the Center, even as the Center explores other non-law school funding sources for its work."

THE "BABY RICHARD" CASE

In August of 1993, the Illinois Appellate Court affirmed the termination of parental rights of Otakar Kirchner, allowing the adoption of his son "Richard" by a couple now known across the nation as "John and Jane Doe." Shortly before the boy's birth in March of 1991, Richard's mother had moved out of the apartment she shared with Mr. Kirchner, after hearing a false report that he had left her for another woman. Distraught over this report, Richard's mother placed her son for adoption without the knowledge or consent of Mr. Kirchner, who did not learn of the pending adoption until two months after the Does assumed custody of the newborn child.

In a divided opinion described at the time by a newspaper editorial as "savage," the appellate court affirmed the trial court's conclusion that Mr. Kirchner had abandoned his son at birth. The court reached this result despite compelling evidence that: (1) the child had been concealed from his father; (2) that Mr. Kirchner had searched in vain for information about the fate of his son; and (3) that the adoptive parents and their lawyer had lied to the trial judge that Richard's father was unknown, effectively preventing him from learning of the pending adoption in a timely fashion. More significantly, the appellate court concluded that the adoption should be affirmed in the "best interests" of the child, based solely on the passage of nearly two and one half years since the child's placement with the Does. This unprecedented decision was directly at odds with the constitutional requirement that a parent be proven unfit before his or her relationship with a child can be permanently severed.

The appellate court's opinion triggered substantial concern among child advocates. The requirement that a parent be found unfit before a child may be freed for adoption is a fundamental safeguard that assures all parents the unfettered right to raise their children, free from interference by the state, except when the child's welfare is placed at real risk. Advocates feared that if left to stand, the appellate court's decision could potentially permit the relocation of children from "bad" homes to "good" homes, based on nothing more than a judge's value-laden conclusion that a transfer would serve the best interests of a particular child. These concerns seemed especially acute for the growing numbers of poor and minority families involved with the juvenile court, where the boundaries between poverty and legitimate child-protection concerns are often blurred.

Based on these concerns, the Children and Family Justice Center submitted an *amicus* brief to the Illinois Supreme Court, urging that the dramatic and far reaching opinion of the appellate court be reversed. In their brief, Center attorneys Bruce Boyer, Annette Appell, and Zelda Harris argued that the court should focus on the purposes served by the threshold requirement of unfitness in

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(Baby Richard continued from p. 9)

adoption cases, and on the risks of permitting the evisceration of this standard in favor of an indeterminate "best interests" standard. Bruce subsequently agreed to assist Mr. Kirchner's lead attorney at oral argument, during which he challenged the appellate court's use of the "best interest" standard as clearly inconsistent with both state and federal law. In June of 1994, the Illinois Supreme Court unanimously agreed with the Center's arguments, concluding as well that the finding of unfitness against Mr. Kirchner was a patent fiction, and that the adoption must consequently be reversed. Bruce and Annette subsequently authored several briefs in opposition to petitions for review by the U.S. Supreme Court, which denied *certiorari* last November.

With the Supreme Court's refusal to disturb the Illinois Supreme Court's decision, the Center ended its formal involvement with Mr. Kirchner's case. Since then, however, highly public litigation has continued over the Does' claim that they are still entitled to keep custody of Mr. Kirchner's son,¹ and the Center has offered ongoing support to Mr. Kirchner and his attorney. Our advocacy has several objectives. First, in the legal arena, we have resisted the recognition of rules that would encourage the kind of inexcusable delays that have marked this case at every stage of the legal process. We have raised concerns about the impact of requiring "best interest" hearings in the wake of disrupted adoptions, out of fear that the right to seek such a hearing provides an unfortunate incentive for adoptive parents and their lawyers to engage in dilatory tactics, in the hope that delay will solidify dubious legal claims through the simple passage of time. On a positive note, the Illinois legislature last July passed a law requiring expedited treatment of adoptions.

Second, and most important to the future of young Richard, we have worked to encourage the parties to negotiate an agreement regarding custody outside of the court system. Such an agreement would spare the child the potential harm of being the subject of a hearing in which competing adults would seek to depict each other as selfish, uncaring, and inadequate. It is our view that whatever may be the ultimate resolution of the questions surrounding the child's custody, Richard should be permitted both to maintain relationships with the Does and to know something of his family of origin. After four years of fierce litigation, the outlook for a mediated settlement is tenuous at best. Yet Richard's only hope for a constructive outcome lies in the prospect that he will emerge with two sets of parents, both willing to look forward towards a truly child-centered solution.

Finally, though our position has been unpopular, we have urged respect for the role of the courts and for the straightforward rules of law applied in this case. In the midst of the hyperbolic debate over the future of young Richard and the vilification of the Illinois Supreme Court, we have cautioned against the erosion of fundamental legal safeguards that continue to serve important purposes for children and families generally.

¹As of this writing, the Illinois Supreme Court has allowed Mr. Kirchner's application for a writ of *habeas corpus*, giving him an immediate legal entitlement to custody of his son. An application for a stay of this decision is pending in the U.S. Supreme Court.

THE CHILDREN and FAMILY JUSTICE CENTER

Report at the Second Year

Bernardine Dohrn

"The Center has established itself as an outstanding clinical law program and a credible and independent voice for juvenile court reform ..."

The Children and Family Justice Center of the Northwestern University Legal Clinic has completed its second year of operations with the mission of reforming the Juvenile Court of Cook County, the first juvenile court in the world, established in Chicago ninety-six years ago. The Center has developed a three-part reform strategy: first, undertaking the direct representation of children and parents at juvenile court and involving clinical law students and social work students in cases of child welfare, adoption, delinquency, and domestic violence; second, conducting research regarding specific, targeted aspects of the legal needs of children and their families to better provide the juvenile court, the legal community, and the city with the information to make improvements; and third, engaging in advocacy through bar associations, cooperation with other law schools and universities, collaborations with juvenile court judges, attorneys, probation, detention and child welfare agencies, and citizen organizations to create an understanding of the work of juvenile court and concrete ways to improve it.

The Center has established itself as an outstanding clinical law program and a credible and independent voice for juvenile court reform, working with official court structures where possible, and building coalitions and alliances for improvement in justice for the 35,000 children brought before the court in new cases each year. The overwhelming caseloads for judges (from 2,500-3,000 cases each year), attorneys, probation officers, caseworkers, and detention center attendants create conditions which make the practice of law at juvenile court nearly im-

possible. Judges typically have 1500-3000 cases on their calls. There is virtually no fact pleading, no written findings of fact, little motion practice, and few appeals. Training of legal personnel is inadequate, and resources to meet the desperate needs of children and their families are uneven and often nonexistent.

Despite the opening of an eight-story, sixteen-courtroom addition to the juvenile court building and the appointment of sixteen new judges to juvenile court last year alone, caseloads continue to rise. Few cases are screened into alternatives to adversarial litigation, and increasing numbers of children charged with delinquency offenses are being tried as adults, resulting in lengthier stays in the Juvenile Temporary Detention Center. Detention has reached all-time highs, with 690 juveniles held last fall in a center licensed for 498. On the neglect and abuse calendars, cases remain open for years, leaving children without permanency and the court unable to monitor or devote adequate attention to the cases on its call.

Sensational cases of child deaths, homicides, and abuse receive frequent media coverage, although the majority of dependency cases are neglect, and the large majority of delinquency cases are for non-violent offenses. This crisis atmosphere leads to scapegoating of judges, caseworkers, and attorneys who labor in fear of being held accountable for terrible harm which they could not prevent.

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News and Notes

Yet hopeful indications of official concern and commitment are becoming more evident. The quality and expertise of judges has risen; court rules have been developed with the active participation of all parties involved at juvenile court; efforts to professionalize the care and practice of custody at the detention center is underway; and major recognition of the need for fundamental change has been documented in official reports, commissions, and task forces. The new chief judge of the Circuit Court of Cook County has pledged that the improvement of juvenile court is one of his top priorities.

Children and Family Justice Center attorneys and staff have accomplished an extraordinary amount of productive work in the past year:

Bruce Boyer, Annette Appell, Zelda Harris, Steven Drizin and Cheryl Graves represented children and parents at juvenile court in cases involving 60 law students and 15 social work students. They have represented approximately 75 parents in neglect and abuse cases and 60 children charged in delinquency petitions, including 5 juveniles in transfer hearings which determine whether they will be tried as adults. The Center has presented several successful appeals in the area of family law. In addition, Center attorneys have taken cases in the area of domestic violence, adoption, and termination of parental rights.

Center attorneys created and teach two weekly clinical classes on child welfare and juvenile justice for both clinical law students and social work student interns.

Center lawyers, with their students, appealed or filed amicus briefs in five cases and wrote numerous trial briefs.

In January, 56 children's lawyers, from 13 states and every major legal office in Cook County, underwent a five-day litigation skills training program, "Training the Child Advocate," co-sponsored by the Center and Northwestern School of Law, the National Institute of Trial Advocacy, and the Litigation Section of the American Bar Association. This was the first NITA litigation skills program to focus on the special needs and interests of lawyers for children. It involved a faculty of 24, including 5 judges, trial lawyers from private practice, states attorneys, public defenders, public guardians and academics. Center attorney Bruce Boyer and Clinic director Tom Geraghty were responsible for creating the case file, the teaching materials, and program planning; Annette Appell provided critical assistance. Team leaders were Professors Randolph Stone and Barbara Bergman; their assistants were Center attorneys Annette Appell and Steven Drizin; Center attorney Zelda Harris was a faculty member and Peggy Slater participated as both faculty member and administrator.

The Center initiated and co-sponsored a 2-day workshop for 35 participants entitled, "Framing the Message on Youth and Guns: A Dialogue on Juvenile Violence." The meeting, held at the Children's Defense Fund in Washington, D.C. on November 3-4, 1994, included participants from public health, juvenile justice attorneys, and gun control organizations. This conference was co-sponsored with the National Association of Child Advocates.

"...Children and Family Justice Center attorneys and staff have accomplished an extraordinary amount of productive work in the past year..."

“A neighborhood evening legal clinic to serve children and families is also planned and will be staffed by law students and *pro bono* attorneys.”

The Center initiated, co-sponsored, and conducted two major conferences on the legal needs of children:

◆
“Beyond Rhetoric: Determining the Best Interest of the Child,” took place in October 1993 and was attended by over 350 attorneys, judges, social workers, probation officers, and social service community organizations. Co-sponsors included Illinois Action for Children, the Legal Assistance Foundation Children’s Rights Project, the Citizens Committee on the Juvenile Court, and the Justice for Youth Campaign of the Chicago Bar Association; the conference co-sponsors have subsequently prepared a protocol for determining best interests, circulated the protocol for comments, and are working to have the protocol widely accepted. Annette Appell has been a moving force in developing these guidelines.

◆
“Children in a Violent America: Justice in the Juvenile System,” was held in the spring of 1994, attended by 300 participants in the juvenile justice system, including corrections and detention personnel, lawyers, judges, police, and community members. The conference was co-sponsored with the Mandel Legal Aid Clinic of the University of Chicago Law School, the Lawyers Committee for Civil Rights Under Law, the John Howard Association, the Citizens Committee on the Juvenile Court, and the Illinois Juvenile Justice Commission. In July 1994, the Center organized a day-long follow-up to the conference which focused on the central role that easy accessibility to handguns is playing in youth victimization and violence today.

◆
In the summer of 1994, the Center opened an office at the Northwestern Settlement House in West Town and began work to initiate a juvenile mediation

program in cooperation with the Center for Conflict Resolution. Cheryl Graves, Center attorney responsible for work at the Settlement House, has initiated a program to teach basic legal principles to young people and to parents (“street law”), and is working with the states attorney’s office and the juvenile court to hold mediations for neighborhood youth at the Settlement House. A neighborhood evening legal clinic to serve children and families is also planned and will be staffed by law students and *pro bono* attorneys. Center secretary Sarah Cortez, who is bilingual, is assisting at the neighborhood office.

◆
Peggy Slater has developed a successful *pro bono* program, the Expedited Adoption Program, with the Chicago Bar Association Permanency Planning Committee to recruit, train, and match volunteer private attorneys to complete uncontested adoptions of juvenile court wards who have been living with relatives. This remarkable program has resulted in almost as many completed adoptions by relatives in its first year as DCFS completed that year. Ms. Slater has created a training manual for volunteer attorneys, and she and Annette Appell have been working with the DCFS inspector general’s office and general counsel to facilitate relative adoptions and consents to adoption by parents unable to parent.

◆
Cheryl Graves created and continues to work with the Women’s Health Initiative in the Juvenile Temporary Detention Center for female juveniles incarcerated pending trial. She has helped to form an inter-agency task force on female juvenile offenders composed of four custodial agencies and key community organizations.

◆
Zelda Harris was selected to be a peer review consultant by the U.S. Department of Justice, National Institute of Justice, and will provide analysis and evaluation of institute-funded projects. Ms. Harris has legal experience in family law, domestic violence and child welfare, chairss the CBA Juvenile Law Committee's Domestic Violence Subcommittee, and is involved in projects exploring the feasibility of a unified children and family court approach in Cook County.

◆
The Center has established working relationships with area law schools, including Loyola's Civitas Program and the Mandel Legal Aid Clinic at the University of Chicago; the Loyola University School of Social Work, the Jane Addams School of Social Work of the University of Illinois at Chicago, and Social Service Administration at the University of Chicago; and academic research entities, including the Center for Urban Affairs at Northwestern University, Chapin Hall, the Irving B. Harris School of Public Policy at the University of Chicago, and the Department of Adolescent Psychiatry at the University of Chicago. In addition, the Center has established working relationships within Northwestern University, including the Medill School of Journalism, the medical school, and the Department of Child and Adolescent Psychiatry. Monica Mahan is leading a program with the Center for Urban Affairs that will regularly convene researchers investigating children's matters throughout Northwestern University for discussion and collaboration.

◆
The governor's office has appointed Steve Drizin to serve on the Illinois Legislative Committee on Juvenile Jus-

tice. The committee is studying the juvenile justice system in Illinois and will make recommendations during the next eighteen months to strengthen the Illinois Juvenile Court Act. He also serves as the chair of the Juvenile Law Committee of the Chicago Bar Association.

◆
Monica Mahan is involved in planning the 7th annual "Conference on Children, Adolescents, and Families," sponsored by the Family Systems Program, the Institute for Juvenile Research, and the Department of Psychiatry at the University of Illinois at Chicago.

◆
Bernardine Dohrn was appointed to the steering committee of the Illinois Family Violence Coordinating Council, which was convened by the Illinois Supreme Court to develop programs, structures, and recommendations within the next two years on domestic violence, child abuse, and elder abuse. She is also the chair of the Court Structure Committee, co-chair of the American Bar Association's Task Force on Children, a member of the ABA steering committee on the Unmet Legal Needs of Children, and a member of the advisory board of the ABA Center on Children and the Law. She helped write and distribute the ABA report, "The Impact of Domestic Violence on Children," released in August 1994.

The Center has also engaged in the following research projects:

◆
David Reed and Bruce Boyer have released a report on the management information system of the juvenile court. This report, the result of a year's investigation into the needs and workings of the computer information system of the Juvenile Division of the Circuit Court of Cook County, includes detailed assessments of the weaknesses and advantages of the current system, observations from visits to several other juvenile court

"The Center has established working relationships with area law schools, ...school(s) of social work ...and academic research entities..."

“The undertaking of juvenile court reform cannot be claimed by any single group, for too many interests are at stake for any single entity to win reform by itself.”

systems, and a series of strong recommendations, which have been endorsed by the new chief judge of the Circuit Court of Cook County.

◆
Consultants David Reed and Courtney O'Malley have undertaken a research report on orphanages, funded by the Chicago Community Trust. This short term project will include a review of the literature, site visits to large and small institutions caring for children, a cost analysis, a review of the Indian boarding school experience, and major questions to frame the national and local discussion on appropriate care for children in need.

◆
Peggy Slater coordinated a research investigation and report, with the John Howard Association's Charles Fasano, on the six juvenile facilities of the Illinois Department of Corrections. Ms. Slater conducted site visits to all Illinois juvenile facilities, prepared a report on each institution, suggested recommendations for improvement, and has returned to all six facilities for site visits the second year;

◆
Elizabeth Clarke investigated and prepared a report on the impact of automatic and discretionary transfer laws on juvenile justice in Cook County and Illinois.

Finally, several Center members had work published this year. Bruce Boyer's law review article, "Jurisdictional Conflicts Between Juvenile Court and Child Welfare Agencies: The Uneasy Relationship Between Institutional Co-Parents," will be published in the *Maryland Law Review* spring 1995 issue. Bruce Boyer and Annette Appell wrote an article entitled, "Parents' Rights vs. Best Interest of the Child in the Context of Adoption: A False Dichotomy," for the spring 1995 issue of the Duke University multi-disciplinary *Journal of Gender, Law and Policy* (produced by the Duke School of Law, the Sanford Institute of Public

Policy, and the Duke Graduate Program in Women's Studies). Bernardine Dohrn wrote an article published in the University of Chicago *Roundtable* spring 1995 issue, entitled, "Good Mothers, Bad Mothers and the State: Children on the Margins," and an article for the *Maryland Journal of Contemporary Legal Issues*, "We Die Soon: Children, Violence and the Law."

The Center has developed an effective network of cooperating relationships and coalitions, and we place accomplishment before recognition or credit. The undertaking of juvenile court reform cannot be claimed by any single group, for too many interests are at stake for any single entity to win reform by itself. The Center's strategy is to engage law schools and universities, professional organizations and the community in this reform effort and to contribute to a shared belief among all relevant constituencies that improvement is desirable and possible. The Center argues for a multi-disciplinary approach to justice, for excellence in legal representation and preparation, and a persistent and strategic approach toward change and improvement.

Three outside consultants, asked to evaluate the work of the Center for the John D. and Catherine T. MacArthur Foundation, concluded, "The faculty, staff and management of the CFJC are dedicated, energetic and well-qualified to implement the teaching and advocacy goals of the Center. . . . the Children and Family Justice Center has begun its work

(concluded on p. 16)

(CFJC Report at Second Year conclusion from p. 15)

with great energy, visibility and productivity. Its first two years have been remarkable. It has quickly established itself as a credible player in the juvenile justice and child welfare systems. It has walked a delicate line of providing critique and support of public officials, while advancing a reform agenda in collaboration with other advocates. . . .”

The year 1999 will be the centennial of the founding of the Cook County Juvenile Court, the first juvenile court in the world. The work to transform this juvenile court into an outstanding source of justice for children and to imagine the needs of the 21st century’s children requires the engagement and effort of academia, the public and private sectors, and the community.

below:

Center attorney Cheryl Graves stands between Secretary, Sara Cortez, and receptionist, Deborah Raby



*above: (from left to right)
Professors Bob Burns, John Elson,
Steve Lubet and Tom Geraghty take a
rare break to smile for the camera*



Representation at a Juvenile Transfer Hearing: A Student's Perspective

Angela Coin ('95)

An attentive walk through the atrium of the Law School reveals the many burdens and responsibilities law students shoulder. Students' conversations include the difficulty of completing research on a journal article on time and complaints about the extensive outline required to do well on an upcoming exam.

As a third year law student who has been working on juvenile transfer cases all semester, I feel as if I have had a very different experience than my colleagues. While I am also loaded down with papers, finals, and other scholastic responsibilities, I have the overwhelming feeling that my representation of a sixteen year old child before the juvenile court takes precedence over my other responsibilities.

This semester Tom Swigert, another third year law student in the Clinic, and I were responsible for the investigation, strategy, and courtroom argument on behalf of a sixteen year old accused of attempted murder. The State of Illinois moved the court to transfer our client's case to adult court due to the violent nature of the crime he was accused of, attempted murder. A juvenile court judge heard argument on whether this case met the seven criteria set out in the Juvenile Court Act that allow a judge to transfer a juvenile offender to adult jurisdiction where he would be subject to adult punishments and facilities. With Professor Thomas Geraghty's advice and oversight, we labored through the semester. We took our client through the process of investigation, psychological assessment, preparation for testimony at trial, plea discussions, and an extensive hearing on the transfer issue.

I suppose all law students feel satisfied to finally hand in a final copy of a hundred page law review article or receive a very high grade on an exam they studied particularly hard for. In my two-and-a-half years at the law school, however, none of those events has made me feel as proud and elated as I did upon receiving the news that the judge decided not to transfer our client.

As we prepare for my client's upcoming trial date where his guilt or innocence will be determined, I am becoming painfully aware that our job is far from over. We go to trial in the juvenile court with few facts



(please turn to page 19)

*Clinic students prepare for trial (from left to right)
Angela Coin, Lindsey Levin,
Catherine Hart,
Terry Campbell, Roger
Townsend*

TRAINING THE CHILD ADVOCATE

A First for Child Advocacy Training

On January 9-13, 1995, the Children and Family Justice Center of the Legal Clinic, the A.B.A. Section of Litigation, and the National Institute for Trial Advocacy co-sponsored a "NITA-style" trial advocacy training program for lawyers who work in juvenile courts. The program attracted fifty-six lawyers from around the country--public defenders, state's attorneys, and public guardians. Representatives from the Cook County Public Guardian, State's Attorney, and Public Defender's offices were in attendance, the first time that such a combined training has been held for members of these offices. During the week-long program, fifty faculty members also participated in this intensive advocacy training.

Funding for the program was provided by the A.B.A.'s Section of Litigation, which contributed \$15,000 in scholarships (Children and Family Justice Center Director, Bernardine Dorhn, was instrumental in obtaining these funds) and from tuition paid by participants and agencies who had training funds. NITA contributed the design, printing and mailing of brochures, accounting services, and printing of course materials. Northwestern Law School contributed the design of the program, the substantive materials for the program, and the facilities in which to hold the program.

Materials for the program were developed by Bruce Boyer and Tom Geraghty. These materials will be published by the National Institute for Trial Advocacy and distributed nationally. The teaching team leaders were Professor Randolph Stone of the University of Chicago School of Law and Professor Barbara Bergman of the University of New Mexico School of Law.

In addition to involving students in NITA's

"learning by doing" teaching methodology, program participants were exposed to the need to be current in psycho-social issues involving children. A highlight of the program was a presentation by child-psychiatrist, Dr. Bennett Leventhal of the University of Chicago Medical School. The presentation by Dr. Leventhal was jointly sponsored by the Training the Child Advocate Program and by the Civitas Child Law Center of the Loyola University School of Law.

If the Cook County Juvenile Court is to be improved, cooperation between the various agencies involved in the court is essential. It is also important that those working for reform independently of the court share their knowledge and engage in cooperative and coordinated efforts. The "Training the Child Advocate" program was an excellent example of such cooperation and was a fitting successor to the Children and Family Justice Center's two earlier programs, "Beyond Rhetoric: The Best Interest of the Child" and "Children in a Violent America."

(Social Workers continued from p. 7)

assist in the development of a comprehensive plan to meet the legal objective. Mutual professional respect must be developed; this is the real essence of the collaborative struggle.

The opportunity to train MSW students and law students together on critical issues revolving around the juvenile court is very rewarding and mutually beneficial to both professions; this clinical experience has received very positive feedback from the social work students and gives them a sense of how to communicate and compromise which will carry over in their chosen fields of study.

N I T A PUBLISHES CLINIC'S
MATERIALS
in
EVIDENCE, ETHICS &
TRIAL ADVOCACY

Robert Burns

Over the past five years, clinical teachers at Northwestern have developed an integrated set of simulated courses first in Evidence and Trial Advocacy and, more recently, in Professional Responsibility. The underlying notion is that evidence and legal ethics can best be understood (and critically evaluated) contextually, as they function in concrete situations. Simulation allows for an orderly progression of concepts and doctrines and requires students at every step to integrate evidentiary and ethical doctrine into actual performances: trial exercises, counseling sessions, and negotiations. The materials thus provide a double advantage over traditional teaching methods. First, since the students must solve evidentiary and ethical problems in order to execute their assigned performances, they gain the advantage of truly active learning. Second, in contexts where "meaning is use," students can more easily grasp the importance (or unimportance) of specific doctrines in representative situations.

Five volumes have appeared. *Problems and Materials in Evidence and Trial Advocacy* contains two volumes. Volume I contains two long case files, one civil and one criminal, that force students to choose among various possible factual theories and which contain, the authors believe, every basic evidentiary concept which a beginning trial lawyer must master. Volume II contains over 270 problems in Evidence and 60 exercises in Trial Advocacy based almost exclusively on the cases in Volume I. A 250-page *Teacher's Manual* contains exhaustive discussions of every problem and exercise and instructions on teaching the integrated program.

Exercises and Problems in Professional Responsibility contains 14 simulated exercises in Legal Ethics followed by over 130 problems which fill out the picture. The *Teacher's Manual* contains discussions of the exercises and problems, together with extensive witness scripts and instructions on organization of the courses.

Northwestern has taken four steps forward with this integrated curriculum. First, the teaching of Trial Advocacy and Evidence are coordinated. Second, Evidence is taught in a manner that allows a concrete understanding of how the rules function in a rich factual context. Third, the crucial conceptual and rhetorical issues surrounding theory choice in Trial Advocacy are highlighted. Finally, students gain an appreciation of the importance of professional responsibility and, we think, a heightened ability to see ethical issues as they arise in practice. Since law schools are such conservative institutions, we have designed the materials so that a given school may adopt a part of the program before adopting it all. You can't let the best be the enemy of the good! The addition of the Professional Responsibility materials improves a program that had already won the Emil Gumpert Award for excellence in the teaching of Trial Advocacy.

Although the materials have just been published, several law schools have already adopted parts of the program.

(*Student continued from p.17*)

on our side. But our small victory may be a huge victory in the life of our client. It is much more than two third year law students' first victory in real court -- it is a second chance for my client to straighten out his life. I have come to recognize that my experiences this semester are different from those other students in the Law School atrium, because the result of my work benefits someone besides myself. My successes belong to my client. That is a very exciting feeling as a young lawyer -- it is a very gratifying feeling as a person.

BEST INTEREST PROTOCOL

Annette Appell

In response to several tragedies involving children in 1993, the Illinois legislature inserted the phrase, "best interest of the child," over thirty times in the Illinois Juvenile Court Act. The legislators failed, however, to provide any definition of that elusive phrase or guidelines to apply it.

In response, the Children and Family Justice Center co-sponsored and coordinated a working conference in September 1993 entitled, "Beyond Rhetoric: Determining the Best Interest of the Child." The conference, which brought together nearly 400 child advocates, attorneys, judges, social workers, mental health professionals, foster parents, caseworkers, and community activists, addressed the question of how to make determinations about the best interest of a child from a multi-disciplinary perspective. Remarkably, although there was some consensus on best interest factors, conference attendees could not agree on what determination to make in any particular case.

Inspired by the lack of shared definition of the phrase, a working group was formed at the conference to develop a protocol for making best interest determinations. The group included representatives

from the Children and Family Justice Center, the Children's Rights Project of the Legal Assistance Foundation of Chicago, the Illinois Department of Children and Family Services (DCFS), Chapin Hall, the special counsel to the governor for DCFS, Voices for Illinois Children, the Citizens Committee of the Juvenile Court, the Cook County Public Guardian, the Civitas Trial Law Center, private child welfare agencies, and Illinois Action for Children. After a year of meetings, the group completed the protocol in the form of decision-making standards, and it was adopted by four of the conference's five sponsoring groups. The standards focus on issues to consider when deciding whether to place a child and the importance of viewing each child and her individual relationships. The protocol provides a number of factors, which should be considered in weighing the interests of a child. The group hopes that the court and DCFS director, Jess MacDonald, will adopt the standards.

The Center's goal is for the document to provide a common structure for all parties to utilize whenever a legal decision about a child must be made. Although disagreements are likely to continue in most juvenile court cases, at least with the new standards, judges and lawyers will come closer to realizing a common understanding of this crucial phrase.

"Children in a Violent America" Conference

Steven Drizin

On May 19-20, 1994, the Legal Clinic's Juvenile Advocacy Project co-sponsored a conference entitled, "Children in a Violent America: Justice in the Juvenile System," at the Bismarck Hotel in Chicago. Over 300 juvenile justice and child welfare professionals gathered to discuss the problems associated with youth violence and how to reduce the numbers of children involved in and victimized by violence.

A major impetus for our involvement in the conference came from our impression, through our work in the Clinic, that the nature of juvenile crime had changed. The change was not so much in the number of juveniles involved in violent crime or their types of disputes, but in the increasingly lethal and violent ways in which juveniles were resolving their differences. This impression was confirmed by national crime data which shows that the rate of violent crime has remained relatively stable over the past twenty years and that juvenile involvement in violent crime has increased only slightly. What has increased significantly is the number of children killed by juveniles, an increase in great part attributable

(Conference article continued)

to the easy availability of firearms to our children.

The second impetus for our involvement was borne out of a concern that public pressure might jeopardize our rehabilitative goals for the juvenile court.

After opening remarks by Bernardine Dohrn and the Honorable Sophia H. Hall, presiding judge of the Juvenile Court of Cook County, the conference began with a discussion by five adolescents about their experiences within the juvenile and criminal justice systems. Panelists described their personal encounters with probation officers, attorneys, judges, and other court personnel and described what it is like to be an adolescent in today's more violent world. The panelists suggested several ways to reduce the violence and improve the treatment of youth in the juvenile justice system. The comments of the youth panel members set the tone for the conference, and each keynote speaker referred to these comments. We are continuing to meet with youth panel members to assist in planning their own "Youth Conference" in 1995.

The conference's speakers included Dr. Barry Krisberg, president of the National Council on Crime & Delinquency; Scott Harshbarger, the attorney general of Massachusetts; Geoffrey Canada, president/CEO of the Rheedlen Centers for Children

and Families in New York; James Bell, a staff attorney at the National Center for Youth Law; and Randolph Stone, former Cook County Public Defender, present chair of the American Bar Association's Criminal Justice Section, and director of the Mandel Legal Aid Clinic of the University of Chicago Law School.

Two panel discussions were also held, one on media responsibility and juvenile justice and the other on the future of juvenile justice, moderated by Lawrence Marshall, professor of the Law School. Using a hypothetical situation based on the facts of the case of one of the Juvenile Advocacy Project's clients (Terry B.), Professor Marshall asked a panel composed of juvenile court judges, detention and corrections officials, prosecutors, defenders, and advocates how a case involving a minor charged with murder in a discretionary transfer petition would be processed by the juvenile court. The questions and answers raised the gamut of issues presented at the conference including, among others, abuse of prosecutorial discretion, overrepresentation of minorities, lack of adequate resources for juvenile court judges, inadequate alternatives to pretrial detention and post-adjudication incarceration, and the value of confidentiality in juvenile court proceedings. All panelists were asked to speak briefly at the end of the discussion on their thoughts about the upcoming 100th anniversary of the Cook County Juvenile

Court and to provide one suggestion for improving the quality of justice for juveniles.

The Center and the Juvenile Advocacy Project plan to become more involved in building a network of concerned advocates for juvenile justice. We hope to be a clearinghouse for juvenile justice-related legislation and to be both reactive and proactive in the future, criticizing or commending pending bills, and drafting new laws which will improve the treatment of juveniles in Illinois. Using the Center's advisory board, the conference advisory committee, our many contacts in the juvenile justice community, and the conference participants as a base, we hope to bring attention to the needs of the juvenile justice system.

R

(Notes from the individual workshops, Dr. Krisberg's full report, "Images and Reality: Juvenile Crime, Youth Violence and Public Policy," and videos of the keynote speeches and large panel discussions are available through Toni Curtis, administrator of the Children and Family Justice Center, at 312/503-0396.)

SELECTED CLINIC CASES:

A Status Report

Abuse and Neglect

The Clinic was successful in its representation of **Margarita B.** in the Illinois Appellate Court. Margarita's 13 year old daughter alleged that her father had molested her on several occasions. Margarita responded by ordering the father out of the family home. At trial, the juvenile court rendered a finding of neglect against Margarita and found that she failed in her parental duty to protect her daughter from an injurious environment. On appeal, the Clinic argued that the trial court applied an improper standard in making its finding of neglect. The appellate court agreed, and the case was reversed and remanded for a rehearing under the appropriate standard. Clinic student Robert Lawrence drafted the briefs to the appellate court.

Death Penalty

People v. Dino Titone:

Since last report, Judge Thomas Maloney, the judge who found Dino Titone guilty and sentenced him to death, was found guilty in federal district court of extortion and conspiracy for soliciting and accepting bribes during the period in which Mr. Titone was convicted and sentenced. Based upon this new development in the case, the Clinic filed a fourth-amended, post-conviction petition alleging that it was impossible for Dino Titone to receive a fair trial from Judge Maloney because he did not pay him a bribe. Our petition alleges that the Titone family was, in fact, solicited for a bribe by Dino's Greylord involved lawyer (that lawyer was just released from the federal penitentiary) but that the bribery arrangement was not consummated. This case thus involves the question of whether a defendant, who does not pay a bribe to an extortionist judge, can receive a fair trial or a just sentence.

People v. Leroy Orange:

This case, argued in January in the Illinois Supreme Court, raises the issue of whether the defendant was prejudiced when his lawyer, who was facing disciplinary proceeding for neglect of other cases, failed to file a motion to suppress the defendant's statement (the defendant told his lawyer that the statement was coerced by electro-shock administered by the police) and counsel's failure to present any mitigation witnesses.

People v. Scotty Lee

Kinthead: The Illinois Supreme Court also heard this case in January. Mr. Kinthead, who was offered and accepted a natural life sentence in return for a guilty plea, appeared to change his mind and then seek the death penalty. This case raises the issue of whether the defendant should have been examined for competency before he entered his plea of guilty and whether the state was permitted to seek the death penalty in this case when it had previously agreed to a sentence

*Congratulations to former Clinic fellow, **Julie Nice** ('86), assistant professor at the University of Denver College of Law, who received in 1994, for the second consecutive year, the Professor of the Year Award. This distinguished award is presented for teaching excellence and is based on a vote of 600 daytime division law students.*

Dependency Cases

Gloria C: We took Gloria's case, because the juvenile court had not yet begun to apply a new law which governed permanency planning for wards in juvenile court. The court had ordered that Gloria's children be freed for adoption, even though the agency was actively working with her toward having her three children returned home. Thinking it would be a simple matter to inform the court of the new law, which required the Court to defer to the agency unless the agency's plan was unreasonable, we filed a motion asking for the court to vacate its order. Six months and several briefs later, it came time to argue the matter before the judge and a packed courtroom. Law student Jill Andrews ('94) did a remarkable job defending our position, particularly in light of a steady barrage of difficult questions by the judge who initially questioned, in open court, the wisdom of letting a student argue such a motion. Eventually, after further briefing, hearings, and arguments the court ruled according to the new statute. The plan for Gloria to have her children returned has since been abandoned, however, due to a persistent, although not necessarily debilitating drug problem. Gloria C. also felt that a state placement was in the best interest of the three children.

Despite this set-back for Gloria, she gave birth to a healthy, drug free baby with her partner of four years. Although there was an attempt to remove the infant from her care, due to her previous drug use and involvement with DCFS, third year law student Robin Crabb successfully defended Gloria in a hearing for temporary custody of the new baby, who went home with his loving and relieved parents. Gloria has done well in caring for the child.

JoAnne C: We have represented JoAnne for nearly two years, since shortly after her three school age children were removed from her care for truly slender cause. Nevertheless, JoAnne and her children, like so many families caught in the juvenile court system, cannot seem to get out. Whenever she takes a step forward, something happens, or she does something which sets her back. The most recent setback came as a result of having kept her three daughters over a weekend when she was not permitted to have them even overnight. Although the children were not harmed and JoAnne kept them because she learned that they were being mistreated in their foster home and did not want to go back, their *guardian ad litem* began proceedings to terminate the unsupervised

visits. Third year law student Meredith Bluhm, assisted by second year student Charles (Mike) Murray, handled the hearing and the closely related dispositional hearing which proceeded by testimony and by stipulation. Meredith learned first hand through those proceedings how difficult it is for our clients to be heard at juvenile court. Frustrated, but not stymied, by different evidentiary rulings and resistance by the court to hearing JoAnne's evidence, Meredith persevered. We were disappointed but not surprised when JoAnne lost her unsupervised visitation rights and guardianship of her children. We plan to assist JoAnne C. in her effort to regain visitation.

Juvenile

In the Interest of B.H:

The state sought to transfer this 15 year-old minor to adult court for the charge of aggravated assault. He was charged with firing a shotgun at a crowd of rival gang members. There were minor injuries. Psychological and educational testing revealed that the B.H. was learning disabled. Despite the testing results, he had never received remedial services at school. In fact, his mother kept him out of school for two years before his arrest. The juvenile court judge denied the state's motion to transfer finding that

(cont. from p. 23)

B.H. had never been offered rehabilitative services. After the state's motion for transfer was denied, the minor was released from custody and, with the assistance of the Clinic's social worker and students, was placed in an alternative school where his educational deficits could be addressed.

In the Interest of D.H./ People v. Derrick Hardaway:

Derrick Hardaway is charged, along with his brother, with the murder of eleven year old Robert Sandifur. The case received national attention because it was reported that Robert Sandifur was killed by his own gang member due to his involvement in the slaying of a young neighborhood girl. The Clinic represented Derrick at his transfer hearing. Although all of the experts who testified recommended that Derrick be kept in the juvenile court, because he was amenable to treatment and rehabilitation, the juvenile court judge ordered Derrick transferred to adult court to be tried with his seventeen year old brother. The Clinic is now preparing Derrick's defense in the criminal case, assisted by Michael Gill of Mayer Brown & Platt. The case will be tried during this semester. A team of law students and Clinic lawyers will represent Derrick.

Special Education/ Rights of Disabled Children

The Special Education Project continues to represent children with disabilities in obtaining needed educational services (speech therapy, vocational training, social work, learning disabilities instruction, etc.) and changes in educational setting where their current placement does not meet their needs. We also represent children with disabilities in suspension and expulsion proceedings. In addition, we join with the Clinic's Delinquency Project in representing children with disabilities in delinquency proceedings, where the disability is in some way relevant to the adjudicatory or dispositional phase of the delinquency proceeding. We handle class actions as well as individual cases.

In May 1992, the Special Education Project and Designs For Change, a Chicago-based school reform group, filed a class action lawsuit in federal court on behalf of the more than 40,000 children with disabilities enrolled in the Chicago Public Schools. That suit, **Corey H. v. Chicago Board of Education**, alleges that the Chicago Board of Education and the Illinois State Board of Education have violated the federal mandate that children with disabilities be educated in the least restrictive environment appropriate for their needs. The

Individuals with Disabilities Education Act and the Rehabilitation Act both require that children with disabilities be educated with nondisabled children whenever possible. Yet thousands of Chicago children with disabilities are unnecessarily placed in environments segregated from nondisabled children. These environments provide little or no opportunity for contact with nondisabled children, set unnecessarily low expectations, and fail to prepare children for an integrated adult life. Other Chicago children with disabilities are integrated into regular education environments but are not provided with the aids and services to succeed in those environments. Early in 1994, the parties agreed to suspend discovery and jointly hire nationally recognized experts in the field of special education. The experts' mission was to assess whether the Chicago Public Schools are complying with least restrictive environment mandates and, if not, to recommend solutions. The experts spent the summer and fall of 1994 visiting Chicago Public Schools and reviewing the practices and policies of the Chicago Board of Education and the Illinois State Board of Education. Their report is due early in 1995.

We prevailed in our appeal of an adverse ruling in the case of **Todd A.**, a young man with severe autism. Because of the nature and severity of Todd's disabilities, Todd's high school program was geared towards vocational and community-living

education, rather than towards traditional academics. His Individualized Education Program (IEP), a federally-mandated document, which must be prepared for every child with a disability and which must state the specific amounts and types of service that the school will provide, guaranteed to Todd a specified amount of vocational and community-living educational services. Unfortunately, the school district disregarded the IEP and gave him far fewer services than promised. The district also kept him in an unsatisfactory job site for nine months. We sought two years of education beyond Todd's 21st birthday, the usual date for termination of special education services. The Level I hearing officer, based on a hearing which was devoid of fairness and which deprived us of the opportunity to present important evidence, held that the district had acted properly in all respects. On appeal, the Level II hearing officer held that the district did not meet all of its obligations to Todd and awarded six months of compensatory education. He also found that the district had violated the "stay-put" provision (a federal statute that requires a district to pay for a child's current placement pending completion of the legal process) by terminating payment for Todd's education even prior to the Level I hearing decision. He awarded an additional year of education for that violation. The district has appealed the case to federal court, arguing, *inter alia*, that the "stay-put" provision does not apply once the

child turns twenty-one. The district is making this argument notwithstanding clear precedent to the contrary. We recently filed our answer and counterclaim. We are representing another client, **Troneeko F.**, in a state court appeal of a Level II proceeding, in which a different school district has ignored the "stay-put" requirement.

Dahoud G. is a sixteen year old boy with autism and a cognitive disability. He lives with his parents and four siblings. He attends a public high school, where he is making good progress. In August, the family's next-door neighbors filed a complaint with the police alleging that on one occasion, Dahoud was standing in his yard yelling and throwing rocks at their home. Based on this incident, Dahoud's father was charged with a municipal ordinance violation. He appeared in court unrepresented by counsel and was fined \$500. He was also cautioned by the court to supervise his son more vigilantly. With the assistance of Dr. Edwin Cook, an expert on autism at the University of Chicago and Dahoud's treating psychiatrist, we prepared a post-trial motion requesting that the court reconsider its ruling. We contended that Dahoud's behavior was a direct result of his autism and that the court's order was therefore in conflict with both state and federal law protecting persons with disabilities. Moreover, the order conflicted with Dahoud's educational plan, which was designed

to increase, not decrease, his independent functioning. The court continued the motion and directed that a mediation be held between Dahoud's parents and the neighbors. After the mediation in January, we will return to court.



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