In the modern age of litigation, where few cases actually proceed to trial, many firms are looking for innovative ways to train their litigators. Enter the Children and Family Justice Center (CFJC) at the Northwestern University School of Law. Through the Children’s Law Pro Bono Project, the CFJC has instituted a program in which cases are assigned to various firms in the City of Chicago, whose lawyers undertake the representation of youth in juvenile delinquency cases. The results of this experiment have been exceptional for both juvenile defendants and the attorneys who represent them.

A wonderful example of the partnership fostered by the CFJC is embodied in the case of Robert. Robert, whose name has been changed, was charged with beating a man with a lead pipe and stealing $25 from him in the process. Witnesses who identified the assailant described someone taller than Robert, wearing different clothes than Robert, and at least four years older than Robert. Indeed, the only feature that Robert shared with the individual who was identified by witnesses of the assault was the color of his skin: black.

Robert’s case was referred by the CFJC to the law firm of Katten Muchin Zavis Rosenman (KMZR), where a team of lawyers, led by Jonathan Baum, Jenny Johnson, Mike Tiffany, and Cara Roecker, assumed his representation. KMZR began its representation of Robert by researching the applicable law and deploying its team to engage in a vigorous motion practice. The results of KMZR’s pre-trial techniques resulted in the suppression of a dubiously obtained out-of-court identification after the incident and the quashing of his arrest.

KMZR’s team continued to zealously defend Robert through trial. During the proceedings, the KMZR team was able to highlight the critical deficiencies in the state’s case. At one point, the KMZR team was able to gain an admission from the victim that the assailant had a full head of hair. Although Robert had hair at the time of the trial, the mug shot taken of Robert hours after the alleged offense proved that his head was shaved at the time the victim was attacked by someone with a full head of hair.

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From the Chairs

Fall 2004 marks the 12th year of the Section of Litigation Children’s Rights Litigation Committee and working group. Created as a task force by then Section Chair Louise Lamothe, the committee has focused on the development of resources for the legal representation of children. Beginning with the first-ever published ABA Directory of Pro Bono Children’s Law Programs, the projects of the committee have been creatively designed to fill a gap in the knowledge and practice of children’s law.

This year the committee will concentrate on the following activities:

- Distribution of a new document, the Report on the Legal Needs of Harris County Children. The Report is an action plan for the Texas children’s bar and private lawyers to improve the delivery of legal services to Houston children. Two years in the writing, using primarily pro bono efforts, it will be unveiled in Houston at an event to encourage law firms to undertake projects outlined in the report. To order a copy of the Report, contact our committee director, Cathy Krebs at catherinekrebs@prodigy.net or (202) 547-3060.
- A new program in which CRLC law student members will be paired with children’s lawyers or judges to discuss the practice of children’s law. If you are a law student and are interested in being connected with a children’s lawyer or judge in your area, please contact our committee director.
- Working with the children’s bar in Detroit to plan a new pro bono project for children that will increase the quality and availability of representation for Detroit children.
- Initiating a meeting in South Florida to discuss the legal needs of children in that community, and developing ways that the CRLC may be of assistance.
- Again assisting in the planning and staffing for a National Institute for Trial Advocacy program, Training the Lawyer to Represent the Whole Child, to be presented in 2005.

In addition to these projects, the committee and working group members are always available to respond to questions and brainstorm solutions to problems surrounding the representation of children. We welcome your call!

We also invite you to join the committee and participate in our activities. Please learn more about the committee at our webpage: www.abanet.org/litigation/committee/childrens_l/ or contact us directly or through our committee director.

We look forward to working with you this year.

K. Ann Barker is Assistant General Council for the Tennessee Department of Children’s Services

The Children’s Rights Litigation Newsletter is published four times a year, Winter, Spring, Summer and Fall by the Children’s Rights Litigation Committee, Section of Litigation, American Bar Association. The views contained within do not necessarily reflect the views of the ABA, the Section of Litigation or the Committee. Issue: Fall 2004.

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An Unlikely Alliance (continued from page 1)

head of hair. With his able team of lawyers behind him, Robert was acquitted of the charges that were filed against him.

Robert’s success highlights the benefits of having motivated and well-trained pro bono lawyers serving children in need. A motivated advocate has the ability to provide state of the art representation. Lawyers (like the team from KMZR), who are used to spending ample time in developing their cases in private practice, bring much needed thoroughness to a chronically over-worked juvenile justice bar. Volunteer attorneys can often supplement the work done by public defenders and make more services available in juvenile court. Most firm pro bono attorneys have been reared in a discovery practice replete with motions ad seriatim and are accustomed to a more robust pretrial practice. Their willingness to attempt, at an early stage, to knock out weak claims against juvenile defendants brings much needed systemic and individual relief.

Furthermore, the contributions of private pro bono attorneys can add an additional dimension to juvenile delinquency proceedings. Almost anyone who has participated in a delinquency proceeding notices the acute shortage of resources allocated to defending the children who are most critically in need of specialized care. Private attorneys are accustomed to using different kinds of resources (such as human capital) in their cases to achieve results. Just the example of KMZR’s allocation of manpower — a partner, two associates, and one summer associate — radically differs from the many juvenile cases in which one public defender is charged with taking a case from the early stages to its conclusion. Of course, the CFJC recognizes that not every case can garner the resources of private attorneys. However, the hope is that, in the relatively few cases in which private attorneys are enlisted, their allocation of resources will help to deepen the regular practice of the juvenile defense bar and demonstrate to judges that prosecutors can make mistakes with serious, life-altering consequences for young people.

While there are clear benefits to the children being served by the pro bono attorneys recruited by the CFJC, the advocates who become involved in this process also gain skills that will contribute to their overall development. Unlike civil cases, which can take years to mature and often prove unlikely to reach the culminating event of a trial, delinquency cases tend to be short in duration and often provide many in-court opportunities for litigators. In this way, a young associate, likely to spend the first few years of her career reviewing documents or responding to discovery requests, can take on a pro bono opportunity with a limited time commitment to learn litigation skills that will greatly enhance her career.

Many law firms have also recognized that pro bono cases, like those offered by the CFJC, are becoming more important to the training of their young lawyers. As rates in law firms have gradually risen, many commercial clients are loath to allow young associates to handle trials or substantive argument in court. This reluctance presents a real problem for firms. How do they continue to offer first rate litigation services when their younger lawyers are wanting in actual substantive experience? One answer to this problem is the use of pro bono cases. For example, numerous Chicago law firms now actively encourage their young associates to obtain trial experience through CFJC cases.

If Robert’s case (and those like it) are heartening for the system and the attorneys who work and volunteer within it, there are also some lessons to be learned from his experience. First, the need for trained attorneys, who are appropriately compensated and reimbursed for necessary case expenses, is critical. It is simply not enough for an occasional juvenile defendant to receive the resources and attention that he or she deserves from a volunteer lawyer.

Second, regardless of the stellar quality of Robert’s representation, he and many juvenile defendants like him are unable to expunge their records immediately when they win an acquittal of criminal charges. In Illinois, a child who has been acquitted of all charges has to wait until he turns 17 to expunge his juvenile record. A youngster like Robert, who has been falsely arrested and accused, should not have to check the “yes” box for the next few, yet critical, years of his life, in response to the questions: “Were you ever arrested?” and “Were you ever charged with a crime?”

With respect to both problems, the pro bono attorneys enlisted to act as courtroom advocates will need to be further recruited to employ their skills in public debate. They and we must make our case for more training, better compensation, and additional resources for the key corps of lawyers who represent juvenile defendants on a daily basis. Finally, we must work for the enactment of more just laws that take into account the vulnerable state of many juvenile defendants, such as laws allowing for the immediate expungement of juvenile records when a child is acquitted of all charges. As the CFJC likes to say, we are only beginning, please help us.

Monica L. Llorante is the director of the Children’s Law Pro Bono Project and a clinical assistant professor at the Children and Family Justice Center of the Bluhm Legal Clinic of the Northwestern University School of Law. She is also one of the coordinators of the National Children’s Law Network, eight child law clinics around the country committed to pro bono efforts and to improving the quality of counsel and representation provided to children.
defender’s office, launched the Juvenile Defense Network (JDN) in January 2003. YAP primarily represents juveniles in Suffolk County by using a multidisciplinary approach, which integrates the work of delinquency and education attorneys, social workers, community outreach workers, and a psychologist to fully address the legal and developmental needs of its clients. YAP extends its efforts beyond the courtroom to include community partnering and advocating for juvenile justice policy reform.

JDN provides information, training, and support to hundreds of juvenile defenders to increase their ability to provide high quality representation. The objective of this initiative is twofold: to develop and deliver trainings on all areas of juvenile representation and to establish a network connecting juvenile defense attorneys across the state. Wendy Wolf, a public defender for nearly twenty years, spearheaded this effort and serves as the JDN Coordinator. In 2003, the Massachusetts Executive Office of Public Safety awarded JDN a one-year grant under the Juvenile Justice and Delinquency Prevention Act formula grant program. Recognizing the tremendous need for quality training and the strong foundation established by JDN, the Executive Office of Safety recently awarded JDN formula grant funding for a second year.

In FY2003 the Massachusetts courts addressed over 40,500 delinquency complaints and youthful offender indictments. YAP, law school clinics and privately hired counsel combined, represented less than 5% of these cases. Thus, approximately 750 bar advocates were responsible for the remaining 38,000 juvenile cases. To be eligible to represent juveniles charged with delinquency complaints, bar advocates must first participate in a week long “Zealous Advocacy” training course. Less than 15% of the entire training is spent on issues related to juvenile law and representation. Once an attorney is certified to be a bar advocate, s/he is also responsible for satisfying continuing legal education requirements. Depending on the county in which the bar advocate practices, this continuing legal training may or may not cover juvenile issues. It is therefore entirely possible, and indeed common, for children to be represented by an attorney whose juvenile law and representation “expertise” consists of five hours of training in a classroom.

Lawyers representing children need the same legal knowledge and trial skills as lawyers representing adults, as well as a mastery of juvenile law and procedure. They must also understand the inner workings of the Department of Youth Services, the state agency responsible for detained and committed youth, the Department of Social Services, the state child welfare agency, and local school systems. Additionally, they should be willing and able to work effectively with child clients and their parents, and have knowledge of child and adolescent development. Effective advocates in juvenile court know that children require more than litigation strategies; they need to be empowered to participate fully and effectively in their own cases.

Nearly all the bar advocates in Massachusetts are sole practitioners or members of small practices with little support or extra time to keep up with new developments in juvenile law and practice, much less the latest theories on healthy child development. Before the creation of JDN, there was not a local or statewide juvenile law and practice forum, leaving no practical way for these attorneys to share or request information. In short, juvenile bar advocates were often isolated with no easy way to access necessary support. Additionally, the meager rate of $37.50/hour for delinquency representation does not afford many attorneys the ability to purchase training materials such as journals, books, online services, or attend conferences or seminars.

Fortunately JDN has begun to address this myriad of issues. As stated by Deborah Capuano, a bar advocate in Worcester Juvenile Court, JDN provides an opportunity that bar advocates have not had before to “brainstorm, share and exchange ideas and trial strategies. The dedication of the JDN to the enhancement of the juvenile bar has clearly dispelled the myth that we as juvenile attorneys merely practice, ‘kiddy law.’”

Over the past year, JDN has developed the following training curricula: Law of Miranda Rights and Waivers, Juvenile Dispositional Advocacy, Youthful Offender Representation, and Zealous Advocacy (bar advocate certification training). The Miranda training, which has been delivered in most of the counties, provides an overview of the law of Miranda and how it specifically applies to juveniles. The instructors, YAP’s psychologist and the JDN Coordinator, present an analysis of the factors the court considers along with psychological and developmental issues that can be raised regarding a
Supporting Delinquency Attorneys (continued from page 4)

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juvenile client and the Massachusetts “interested adult” rule. They also discuss when an attorney should hire a psychologist and what “red flags” the attorney should be looking for in determining whether to litigate a Miranda issue.

JDN presented a workshop on Adolescent Development and Probation, for the Annual Juvenile Law Conference in February 2004. Statistics from Massachusetts and other states demonstrate that many children are detained for violating terms of probation that do not include new arrests. The focus of this training was to consider principles of adolescent development in detention, probation, and CHINS (status offense) cases. In addition to reviewing the legal purpose of probation, the presenters discussed the stages of adolescent development and what is “normal” behavior, with the goal of educating participants, and subsequently the court system, that many conditions do not consider where a child is developmentally.

JDN trainings are free and include a PowerPoint presentation and several handouts, such as sample motions and relevant research articles. At each training participants are asked to complete an evaluation form, which asks the attorney to rate the training and provide feedback on possible future training topics. These candid evaluations are crucial for achieving JDN’s goal of developing high quality training curricula. In addition, JDN strives to provide training that is specific to the needs and interests of the attorneys in each county. For example, certain counties might approach probation surrenders differently than others and therefore bar advocates may need specific information on that subject.

JDN’s technological network has provided bar advocates with the necessary tools to become connected on a statewide basis. JDN created a listserv for bar advocates with the goal of sharing ideas, concerns, and advice about practice issues. By serving as a clearinghouse, JDN also uses the listserv to notify members of emerging case law and updates in juvenile practice and child development. The listserv allows JDN to reach a wide audience in a cost-effective manner. Membership on the listserv continues to grow and currently there are 116 participants. The potential for collaboration is quite remarkable, as attorneys throughout the state are able to communicate immediately about a broad range of issues, from courtroom strategies to policy and legislative changes affecting their profession.

JDN also created a webpage which is intended to serve as a resource center on juvenile defense and connect bar advocates throughout Massachusetts. The webpage, housed on the Youth Advocacy Project’s website, includes links on trainings, case updates, hot topics, events, YAP forms, juvenile justice links, disproportionate minority contact, and girls in the juvenile justice system.

In addition, JDN offers phone and email support for defense attorneys. Bar advocates are encouraged to contact JDN with questions about their cases. The Network Coordinator has provided help, both over the phone and online, to numerous attorneys, on issues ranging from advice on how to handle a particular case to providing feedback on a motion before it is filed to analyzing potential issues for appeal.

Without a qualified and well-equipped defense bar, the entire juvenile court system is compromised. And with research showing that the juvenile courts act as a “gateway” to adult prisons, with as many as 50% of adult offenders having been adjudicated delinquent, it is crucial, not to mention cost effective, to fix the system.

For more information, please visit the JDN webpage at http://youthadvocacyproject.org/jdn.htm, or contact Wendy Wolf at wwolf@publiccounsel.net.

Kate Gaffney is a 2003 graduate of Boston College Law School. She worked for the Juvenile Defense Network in a one-year, grant funded...
Updates and Announcements

♦ The Summer 2004 edition of the Children’s Rights Litigation Committee Newsletter contained an article, *The Constitutional Rights of Foster Children*, by Casey Trupin. Since that publication, a settlement has been reached in *Braam v. Washington*. “After a six year battle, foster children have reached a settlement with Washington, in which that state agrees to reform its child welfare system and to create an independent panel to ensure that children are provided with adequate mental health care and not constantly moved to different foster homes. Columbia Legal Services, the National Youth Law Center, and a private lawyer, all of which represented the children, will receive a total of $1.6 million in attorneys fees. The settlement agreement draws partly from the ‘Kids Come First II’ plan written by the state Department of Social and Health Services’ new child-welfare director, Uma Ahluwalia. The plan recommended an estimated $50 million in reforms to Washington’s child welfare system in response to a federal government review finding that the performance of Washington’s system was far below national standards for protecting foster children and abused and neglected children. The settlement agreement, possibly one of the largest in the state’s history, also empowers the panel to set professional standards and enforceable outcomes in six areas. It requires the state to: 1) reduce the number of times children move to different foster homes, 2) monitor the safety of foster homes, 3) provide adequate mental health services, 4) give foster parents with more training and support, 5) try to keep siblings together in the same foster home, and 6) improve services to adolescents and foster children who age out of the system. Casey Trupin, a staff attorney at Columbia Legal Services, calls the outcome a ‘tremendous victory,’ saying that it will ‘ensure systemic improvements by instituting court-enforceable mandates developed and established by experts. . . . We hope and truly believe that this is the beginning of the end of the state’s inability to adequately care for abused and neglected kids of all ages.’ Jonathan Martin, *State Makes a Deal to Fix Foster Care*, The Seattle Times, Aug. 12, 2004, page reference unavailable; Heath Foster, *Landmark Battle Over Foster Care Is Settled*, Seattle Post-Intelligencer, Aug. 12, 2004, page reference unavailable; also based on original reporting by Brennan Center staff.” Brennan Center for Justice E-lert, August 20, 2004.

♦ The Family Advocacy Program at the Boston Medical Center will host its 4th annual conference, *Medical-Legal Collaboration: A New Era for Child Health*, on Friday, November 5, 2004. For more information contact Rebekah Knapp at (617) 414-7430 or rebekah.knapp@bmc.org

♦ The National Child Welfare Resource Center is pleased to announce that its Standards of Practice for Lawyers Representing Child Welfare Agencies (by Mimi Laver) are now available on its website at: http://www.abanet.org/child/documents/agencyattystandards.pdf. The purpose of these standards is to improve the quality of child welfare agency representation and uniformity of practice throughout the country.

WANTED:

Content for the Children’s Rights Litigation Committee Newsletter

Topics for articles can include:

- Unique or innovative children’s law projects or clinics
- The experience of children’s pro bono attorneys
- Information of interest to children’s lawyers and pro bono attorneys

Please contact our editor, Catherine Krebs at 202-547-3060 or catharinekrebs@prodigy.net if you have an idea for an article, or if you would like to write an article, but do not have a topic in mind.
MEMBERSHIP IN THE CHILDREN’S RIGHTS LITIGATION COMMITTEE

To receive information on membership, please send this completed form to the address below.

NAME: ________________________________

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Please send me information regarding membership and the Committee
Please send me information on how to start a children’s law center in my area

Are you a member of the ABA? ______ yes ______ no
Are you a member of the Section of Litigation? ______ yes ______ no
If you are a member of the Section of Litigation do you wish to be enrolled as a member? ______ yes ______ not at this time

For Members Only: Join a Subcommittee

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I wish to join the following subcommittee:

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________________ Education
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Upon completion, please return form to:
Catherine Krebs, Committee Director
Children’s Rights Litigation Committee
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Washington, D.C. 20003
(p) (202) 547-3060
(f) (202) 547-3064
Check out the Children’s Rights Litigation Committee on the Web:
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