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## ARTICLES

### CHILD WELFARE LAW CURRICULA IN LEGAL EDUCATION: MASSACHUSETTS' UNTRIED OPPORTUNITY

JENNIFER R. GAVIN\*

Many children in America still wait for justice.

They are abused and neglected children, young people accused of wrongdoing, and children wanting permanent homes. They need love, guidance and stability, and — for those involved with our judicial system — they also need the best attorneys available. They need attorneys who can explain the proceedings in ways that a child can comprehend, and attorneys who have time to listen to their concerns and fears. They need attorneys who will grasp what it means to a child to 'be in court,' and ensure that — when a court or agency decides the course of a child's life — that the very best resources have been brought to bear on behalf of that child and family. That type of justice is still all too rare for America's children.<sup>1</sup>

#### INTRODUCTION

This paper calls upon Boston-area law schools to expand and enhance their participation in the child welfare<sup>2</sup> law community. Although the American Bar

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\* 1996 Kellogg Advanced Fellow in Child Welfare Law and Policy and Senior Staff Attorney, Children's Law Center of Massachusetts, Inc. This article was written under the guidance of Donald Duquette, Professor of Law and Director of the Child Advocacy Law Clinic of the University of Michigan Law School with the support of the W.K. Kellogg Foundation Families for Kids Initiative; my thanks to both for their invaluable assistance. I also owe thanks to the staff of the Children's Law Center of Massachusetts, especially Executive Director Tony DeMarco, for their support and perseverance in the long process from conception to publication of this work. For their support in innumerable other ways I also wish to acknowledge Suellyn Scarnecchia, Lance Jones, Jolene Lowry, Louanne Betts, Alicia Lixey, and my fantastic husband, Bryan Decker. This work is dedicated to each and every child who has known the uncertainty of even the most loving foster home.

<sup>1</sup> American Bar Association President N. Lee Cooper, Pledge, "Challenge to State and Local Bar Organizations on 'Improving Legal Representation in Cases Involving Children, Youth and Families' " (Feb. 1, 1997).

<sup>2</sup> The term "child welfare" refers to the system of public social services, including

Association directly advocates higher quality legal representation for children, rarely does a law school graduate arrive in court prepared for the challenge of representing the special legal interests of a child. Because child welfare law is often overlooked by legal education institutions, law school graduates possess, at best, a cursory understanding of the legal status and significance of children. Yet there is no more dynamic area of the law for academic pursuit. Rich in complexity, history, and contemporary relevance, child welfare law presents the next horizon for legal scholarship.

Changing social conditions and failures of social service systems demand that child welfare law receive increased attention from the legal community. During the past decade the child welfare system has affected millions of children.<sup>3</sup> Today a half million children nationwide live in state custody, nearly double the figure of just ten years ago.<sup>4</sup> Tragically, this "protective" system is not always the safe haven one expects. Countless children continue to receive inadequate care despite their removal from abusive or neglectful homes.<sup>5</sup>

Children with "special needs" — children of color, children who are part of a sibling group, children with physical, psychological or emotional disabilities, children who are pre-natally exposed to drugs, children orphaned by AIDS, and teens — are particularly vulnerable to the vagaries of our current system.<sup>6</sup> An estimated 100,000 forgotten kids, the majority with special needs, linger without families.<sup>7</sup> These children are free for adoption, yet languish in legally, and often factually, impermanent homes. This crisis necessitates a thoughtful legal response.

Unfortunately, the legal doctrine needed to meet this massive social dilemma is still in its infancy and requires much development. In child welfare actions,

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child protection, family preservation, substitute care, and public adoption services provided to families following an allegation of child abuse or neglect.

<sup>3</sup> See Martin Guggenheim, *The Effects of Recent Trends to Accelerate the Termination of Parental Rights of Children in Foster Care — An Empirical Analysis in Two States*, 29 FAM. L.Q. 121, 125 n.14 (1995) ("Current figures indicate that there are nearly 500,000 children in foster care on any given day in the United States. (citation omitted). Over a ten-year period, probably several million children enter and leave foster care.").

<sup>4</sup> See Fred Bayles, *Part IV: Nobody's Children: Who Will Care for the Kids No One Wants?*, THE ASSOCIATED PRESS, May 2, 1995, available in 1995 WL 4386320, and Clinton endorses GOP adoption bill: Writing to speaker, he sees costs falling, prejudice ending, BOSTON GLOBE, May 7, 1996, at 16, available in 1996 WL 6860417.

<sup>5</sup> Class action litigation on behalf of these children reveals systemic abuse and neglect. See, e.g., *Mansol A. v. Giuliani*, 929 F. Supp. 662, 669-72 (S.D.N.Y. 1996); and see *LaShawn A. v. Dixon*, 762 F. Supp. 959, 971-87 (D.C. Cir. 1991).

<sup>6</sup> See generally W.K. Kellogg Foundation, *Families for Kids Who Wait: Promising Directions in Community-Based Adoption Reform* (Oct. 28, 1997) <<http://www.wkkf.org/for-site/?SubSystemID=3&ComponentID=635>> (stating that children of color are disproportionately represented in the foster care population, making up fifty-seven percent of children in substitute care and in cities like New York and Chicago, constituting eighty to ninety percent of the child welfare population).

<sup>7</sup> See *id.*

parties' rights are governed by sparse, often vague or antiquated, and regularly under-utilized state and federal statutes. Courts have yet to recognize the full panoply of constitutional rights for children.<sup>8</sup> Historically disregarded as an area of substantial scholarly attention, the law concerning these uniquely powerless legal parties remains not only a blank canvas for progressive legal thought, but a long neglected pedagogical tool in legal education.

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

This article is a guidepost for analyzing the potential for successful child welfare law curricula at Massachusetts' law schools. Part I lays the basis for academic interest in the field, and describes the social problem of a long-unsuccessful foster care system, the deficiencies in the law and the courts, the role of legal education in a recommended solution, and the development of sophisticated legal actors in the field. Part II provides the pedagogical basis for the development of a child welfare law curricula. Focusing on the educational goals to be achieved, Part II constructs a rationale for the development of various methodologies of instruction, each suffusing the law student and the legal academy in the child welfare community. The work concludes that mutual benefits will be derived from the long overdue marriage of child welfare law and legal education.

## I. THE RESULT OF AN UNFOCUSED LEGAL SYSTEM

### A. *The Social Problem*

Children are vulnerable. In Massachusetts, one of the wealthiest states in the nation, it is estimated that more than seventeen percent of all children, were poor in 1994, a four percent leap from 1990 figures.<sup>9</sup> In 1994 alone, over 26,000 cases of child abuse and neglect were confirmed by the state child protection agency, the Department of Social Services ("DSS").<sup>10</sup> Statistics from 1995 show

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<sup>8</sup> See Bruce C. Hafen & Jonathan O. Hafen, *Abandoning Children to Their Autonomy: The United Nations Convention on the Rights of the Child*, 37 HARV. INT'L L.J. 449 (1996).

<sup>9</sup> See Indira A.R. Lakshmanan, *Under Poverty's Burden: In Massachusetts, a Quarter of a Million Children are Growing up Poor, in Rural Towns as well as Cities*, BOSTON GLOBE, June 6, 1995, at 1.

<sup>10</sup> See Jordana Hart, *Toddler has Rocky Start, Uncertain Future: Adults Admit they have Failed Gardner Boy*, 2, BOSTON GLOBE, Oct. 21, 1996 at B1, available in 1996 WL 6882388.

that the number of children with open social services cases was at an all time high. Over 43,000 Massachusetts children were under DSS supervision in July 1995.<sup>11</sup> Of that number, nearly 14,000 children and young adults were being raised by the state — an increase of more than *fifty percent* in the last ten years.<sup>12</sup>

Poverty is a significant factor in the incidence of child abuse and neglect.<sup>13</sup> Therefore it is not surprising that as poverty rates rise, so do child maltreatment rates. Alcoholism, drug abuse, bad housing, unemployment, lack of education, marital discord, and a personal history of neglect or abuse are also cited as stress factors that may precipitate abusive behavior by caretakers.<sup>14</sup> Due to the prevalence of these risk factors, child protection systems are necessary to safeguard children from dangerous homes.

Yet, regrettably, for many children foster care is but the next episode in a life of ongoing tragedy. For children unable ever to return home due to severe and unremediable abuse, neglect, or abandonment, as well as those for whom a return is sound but unrealized, extended stays in substitute, impermanent, and unstable environments further limit their chances for psychologically healthy development. In 1995, forty-seven percent of the children in the Massachusetts foster care system remained in temporary placements for more than the legally advised maximum of eighteen months.<sup>15</sup> "Foster care drift" describes the condition of

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<sup>11</sup> Massachusetts Department of Social Services, Demographic Report on Consumer Populations July 1995, at 17 (Apr. 1996).

<sup>12</sup> See *id.* at viii ("Consumers in placement (includes children under 18 years old and young adults 18 and older) increased 52% to 13,591 (from 1987 to 1995)"). *Id.*

<sup>13</sup> See ANDREA J. SEDLAK & DIANE D. BROADHURST, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, EXECUTIVE SUMMARY OF THE THIRD NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-3) 10 (Sept. 1996) (Children in families with annual incomes below \$15,000 were more than twenty-two times more likely to experience some form of maltreatment, forty times more likely to experience physical neglect, over twenty-two times more likely to be seriously injured, and sixty times more likely to die from maltreatment than children whose families earned \$30,000 or more. The NIS report goes on to confirm that *race is not a factor* in child maltreatment, noting that although there is disproportionate representation of children of color in the child welfare system, this differential representation of minorities in the child welfare population does not derive from inherent differences in the rates at which they are abused or neglected).

<sup>14</sup> See Brandt F. Steele, *Psychodynamic Factors in Child Abuse*, in THE BATTERED CHILD 82-83 (R.E. Helfer and R.S. Kempe eds., 4th ed., 1987).

<sup>15</sup> MASS. GEN. LAWS ch. 119 § 26 (1982) amended by 1992 MASS. ACTS 303, § 3, 42 U.S.C.A. § 675(5) (1982). It is noteworthy that the Federal Adoption and Safe Families Act of 1997, signed into law in November 1997, has further reduced the amount of time that a child shall remain in substitute care before a petition to terminate parental rights is required to be filed by the state agency. It reads: "In the case of a child who has been in foster care under the responsibility of the state for 15 of the most recent 22 months . . . the state shall file a petition to terminate the parental rights of the child's parents . . . and concurrently, to identify, recruit, process, and approve a qualified family for an adoption . . ." 42 U.S.C. 675(5) (1997).

these invisible children who spend long periods in foster care "drifting" from placement to placement, failing to be either reunited with their parents or adopted.<sup>16</sup> For these children, whose parental rights have been terminated but who linger without new parents, our modern day system perpetuates the long ago condemned status of "legal orphans."<sup>17</sup>

Tragically, for some children, foster care is not only an inadequate alternative to a home, but a place of ongoing maltreatment.<sup>18</sup> For instance, over one third of Latino children under DSS care are placed in non-Latino homes, frequently experiencing a language barrier which isolates them from the foster family.<sup>19</sup> Over half of all foster children endure ongoing instability due to their perpetual movement from one home to another.<sup>20</sup> In 1995, 359 children raised by the state were completely unaccounted for, having run away from their placement.<sup>21</sup>

Moreover, nothing is more grievous than the preventable death of a child. In 1995, Michelle Walton, a nine year old girl, was brutally raped and killed in her Mattapan foster home. Also, Manny Santiago, a three-month old baby, was suffocated when his Medway foster mother left him in the back of a car on a muggy day.<sup>22</sup> Although child death by maltreatment in state care has decreased in recent years, eighteen foster children died from 1993 through 1995.<sup>23</sup>

In response to this catastrophic pattern, the editorial board of the Boston Globe asserted: "The state's foster care system is a shambles, and Governor Weld's scramble to patch its more egregious failings, though justified, won't help much without a thorough reordering of the state's priorities toward the thousands of damaged children handled by the Department of Social Services

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<sup>16</sup> Guggenheim, *supra* note 3, at 122; see also Alice C. Shotton, *Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later*, 26 CAL. W. L. REV. 223, 254-55 (1990).

<sup>17</sup> Guggenheim, *supra* note 3, at 122.

<sup>18</sup> "Secondary abuse" of children removed from their homes due to allegations of abuse or neglect is not a problem limited to Massachusetts or to the United States. Thousands of children are living in terrible conditions in places of safety all over the world. In South Africa, for instance, it is reported that children, identified by social workers as having been exposed to physical or sexual abuse or neglect, are often without sufficient clothing and bedding at night, without proper educational facilities and in buildings that are unhealthy and unsafe. Children tell of emotional, physical, and sexual abuse, by staff as well as other children, while in government care. See Mail and Guardian, *Places of Safety Really Places of Danger*, AFR. NEWS SERVICE, Sept. 27, 1996, available in 1996 WL 13171375.

<sup>19</sup> See Jordana Hart, *DSS Urged to Recruit Hispanic Foster Parents*, BOSTON GLOBE, Oct. 12, 1996, at B1, available in 1996 WL 6881341.

<sup>20</sup> See MASS. DEP'T OF SOC. SERV., DEMOGRAPHIC REPORT ON CONSUMER POPULATIONS JULY 1995, at 28 (Apr. 1996).

<sup>21</sup> See *id.* at 21.

<sup>22</sup> See Michael Grunwald, *DSS Chief Points to Progress*, BOSTON GLOBE, Dec. 19, 1995, at 1, available in 1995 WL 5966723.

<sup>23</sup> See *id.* at 2.

every year."<sup>24</sup> In 1995, a Massachusetts legislative committee reluctantly reported that the state's foster care system is so ineffective that some children would be better off staying with their troubled families than being placed in state care.<sup>25</sup> The Committee's conclusion relied upon the following findings:

\*The Department is unable to answer simple questions that ordinary parents would ask about their children, i.e., 'Are they healthy? Are their emotional needs being met? Are they living a stable life?'

\*DSS does not collect data on how foster children are doing in school, whether they go on to college, or if they are capable of moving . . . into productive adulthood.

\*Twenty percent of all DSS children, and thirty percent of the adolescents, have moved at least three times while in custody of the state.

\*There is a lack of coordination between DSS and the mental health, public health and juvenile-offender agencies. This means that DSS workers frequently can't find services to preserve troubled families or support foster families.<sup>26</sup>

Yet, despite this legislative siren, in 1996 the Department of Social Services returned \$7.4 million of its budget, unspent on additional staff or services.<sup>27</sup> Social workers protested caseloads twenty percent above state standards.<sup>28</sup> Additionally, the number of available foster homes for needy children fell to a critical low in spite of a multi-million dollar effort to inflate the ranks.<sup>29</sup>

These facts are alarming. They not only illustrate the plight of impoverished children in Massachusetts, but indicate the failures of the current legal and social services programs originally and explicitly designed to promote "the strengthening and encouragement of family life for the protection and care of children."<sup>30</sup>

## B. *The Legal Landscape*

The foster care policy of the 1970's was of unbridled state discretion to remove children from unsafe homes. In response to the recognition that this policy lead to needless family destruction and lengthy "temporary" placements in fos-

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<sup>24</sup> *The Foster Care Gap*, BOSTON GLOBE, Apr. 30, 1996, at 16, available in 1996 WL 6859523.

<sup>25</sup> See Indira A.R. Lakshmanan, *Panel Rips DSS, Seeks an Overhaul, Some Children Worse off in Foster Care*, BOSTON GLOBE, Nov. 3, 1995, at 1 (citing the report of the Senate Post Audit and Oversight Committee).

<sup>26</sup> Draft Response of the Senate Committee on Post Audit and Oversight to the Massachusetts State Senate Relative to Senate Order 1896 (1995).

<sup>27</sup> See Eileen McNamara, *Election Nears; Children Suffer*, BOSTON GLOBE, Oct. 16, 1996, at B1.

<sup>28</sup> See Jordana Hart, *State Social Workers Protest High Caseloads*, BOSTON GLOBE, May 15, 1997, at B6.

<sup>29</sup> See Michael Grunwald, *State Finds Fewer Want to Fill Foster Parent Role*, BOSTON GLOBE, Feb. 26, 1997, at 1.

<sup>30</sup> MASS. GEN. LAWS ch. 119, § 1 (1994).

ter care, Congress enacted sweeping foster care reforms.<sup>31</sup> The Adoption Assistance and Child Welfare Act of 1980<sup>32</sup> sought to "lessen the emphasis on foster care placement and to encourage greater efforts to find permanent homes for children either by making it possible for them to return to their families or by placing them in adoptive homes."<sup>33</sup> This law required states, as a condition of receiving federal funds, to certify that "reasonable efforts" are made to keep families together, to reunify families when possible, and to find adoptive homes for children who are unable to return to their parents.<sup>34</sup> However, the promise of the federal law has failed to be fully realized. Like many of this country's well-intentioned social programs, funding streams have come up short and state-level support of the policies has been less than adequate.<sup>35</sup> As the numbers of children and families in need of service increase, more children, rather than fewer, have become the permanent residents of foster care by default.

On the state level, limited legal reforms have similarly failed to result in better lives for Massachusetts foster children. Parents and children secured the right to counsel in child welfare matters in 1978.<sup>36</sup> By 1986 it was determined that a standard of "clear and convincing evidence"<sup>37</sup> was required for a judicial finding that a child is in need of care and protection<sup>38</sup> or a decree terminating parental rights<sup>39</sup> and freeing the child for adoption.

These legal reforms, however, were met by a fragmented court structure nearly strangled by an ever increasing caseload of matters involving more complex and demanding issues of family dysfunction.<sup>40</sup> Between 1983 and 1993 the

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<sup>31</sup> See Guggenheim, *supra* note 3, at 122.

<sup>32</sup> Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified as amended in scattered sections of 42 U.S.C.A.).

<sup>33</sup> H.R. REP. No. 336, 96th Cong., *reprinted in* 1980 3 U.S.C.C.A.N. 1450.

<sup>34</sup> 42 U.S.C.A. § 675(1) (West 1992). In November 1997, Congress passed and the President signed the Adoption and Safe Families Act of 1997. Title I of the Act includes a "clarification of the reasonable efforts requirement." The statute now includes the following exceptions to the general requirement that reasonable efforts shall be made to preserve and reunify families: when a court finds that (1) the parent has subjected the child to aggravated circumstances; (2) the parent was involved in the murder of another child of the parent or committed a felony assault on the child or another child of the parent; or (3) the parental rights to a sibling have been involuntarily terminated. *See* 42 U.S.C. § 671(A)(15) (1997).

<sup>35</sup> *See* Donald N. Duquette, et al., A Policy Framework for Child Welfare Reform, Oct. 1996, draft document at 3.

<sup>36</sup> *See* MASS. GEN. LAWS ch. 119, § 29, as amended by St. 1978, ch. 501, § 4.

<sup>37</sup> *Santosky v. Kramer*, 455 U.S. 745, 769 (1982); *Custody of Two Minors*, 396 Mass. 610, 487 N.E.2d 1358 (1986); *Custody of a Minor* (No. 2), 13 Mass. App. Ct. 290, 432 N.E.2d 546 (1982).

<sup>38</sup> *See* MASS. GEN. LAWS ch. 119, §§ 23C, 24 (1994).

<sup>39</sup> *See* MASS. GEN. LAWS ch. 210, § 3 (1994).

<sup>40</sup> *See* Jane Strickland, *The 1992 Court Reform Act: Its Role in the Development of the Massachusetts Juvenile Court*, 39-Apr. B. B.J. 9, 10 (1995).



number of cases more than doubled.<sup>41</sup> The severity of the issues and the newly created procedural requirements obliged courts to spend more time on each matter. Three separate court systems heard cases related to child abuse and neglect. Jurisdiction over termination of parental rights was vested solely in the Probate and Family Court, necessarily requiring the filing of a separate petition, and the possibility of a new trial, following a finding of care and protection by the District or Juvenile Court. The court system faltered, adding to foster care drift, rather than alleviating it.

In response to these delays brought on by the court system, the Massachusetts legislature undertook court reform. Chapters 303 and 379 of 1992 Mass. Acts strove to reorganize the child welfare law system. "The Court Reform Act" mandated the development of a statewide juvenile court system;<sup>42</sup> brought about changes in the statute authorizing the court, upon motion, to amend care and protection petitions to terminate parental rights;<sup>43</sup> established an eighteen month outside time limit for the disposition of child welfare matters;<sup>44</sup> and codified factors to guide judicial decision-making in termination of parental rights cases.<sup>45</sup> A single court system empowered with this jurisdiction was intended to "give the court the breadth and flexibility, in a single forum, to finalize a complete and integrated plan for a child's interim and permanent care and custody."<sup>46</sup>

However, this laudable goal remains out of reach. Five years later the statewide juvenile court has yet to become a reality. Although its full complement of thirty-nine specialized juvenile court judges have been appointed, it remains under funded: the lack of resources for adequate courthouse facilities and court personnel contributes to docket delays and severely limits the ability to address serious family needs.<sup>47</sup> Adding to the ineffectiveness of the judicial system, in 1995 the state Supreme Judicial Court issued rulings which interpreted the child welfare statutes to divest power from the court to determine the needs and best interests of children in the state's custody.<sup>48</sup> A stronger and more child-centered

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<sup>41</sup> See *id.*

<sup>42</sup> 1992 MASS. ACTS 379, § 162 (amending MASS. GEN. LAWS ch. 218, § 57).

<sup>43</sup> See 1992 MASS. ACTS 379, § 59 (amending MASS. GEN. LAWS ch. 210, § 1).

<sup>44</sup> See 1992 MASS. ACTS 303, § 3 (amending MASS. GEN. LAWS ch. 119 § 26). *But see* MASS. GEN. LAWS ch. 119 § 26 (1982) *amended by* 1992 MASS. ACTS 303, § 3, 42 U.S.C.A. § 675(5) (1982).

<sup>45</sup> See 1992 MASS. ACTS 303, § 5 (amending MASS. GEN. LAWS ch. 210 § 3(c)); *see also* J.S. J. Elder, *Children, Families and the State: State Intervention in Child Custody Cases* 5 (MCLE 1993 and Supp. 1996) (the seminal work on child welfare law practice in Massachusetts).

<sup>46</sup> Strickland, *supra* note 40 at 9, 12.

<sup>47</sup> See Herbert P. Wilkins, Chief Justice of the Massachusetts Supreme Judicial Court, Nine-Point Plan Towards a "First-Rate" System, Address before the Massachusetts Bar Association (Feb. 8, 1997), *reprinted in* MASS. LAW. WKLY., Feb. 17, 1997, at 11; *Four Sites Picked for New Juvenile Court*, MASS. LAW. WKLY., Mar. 3, 1997, at 2 (describing conditions for juvenile sessions at District Courts).

<sup>48</sup> See *Care and Protection of Isaac*, 419 Mass. 602, 646 N.E.2d 1034 (1995); *Care and Protection of Jeremy*, 419 Mass. 616, 646 N.E.2d 1029 (1995). *Isaac* and *Jeremy* together

legal system continues to elude us.

Yet, pockets of change in the legal landscape give rise to optimism. The Chief Justice of the Probate and Family Court received appropriations from the Massachusetts legislature to address the "backlog" of child welfare cases pending before that court.<sup>49</sup> In the one year that the project has been in place several systemic barriers to timely resolution of these cases have been identified and addressed. Among them was a pilot session fashioned in the Probate and Family Courts of two counties, designed to schedule and hear overdue trials in contested child welfare matters. Additionally, a system to monitor and expedite all appeals of termination of parental rights cases was also implemented by cooperation between DSS, the Committee for Public Counsel Services (the public defender agency), and the Appeals Court. The court sponsored the filing of two legislative amendments affecting the child welfare system: 1) to reform the disposition in a termination of parental rights case and to allow for guardianships or other permanent placements in addition to adoption; and 2) to empower the court to make remedial orders in the best interests of children in the custody of the state.

In addition, Massachusetts was targeted by the W.K. Kellogg Foundation ("Kellogg") as one of eleven states in which to concentrate their efforts to improve the child welfare system. Since 1990, Kellogg has devoted nearly \$50 million to the Families for Kids Initiative, a nationwide campaign dedicated to the ideal that every waiting child deserves, and can have, a permanent home. Its \$3.7 million grant to Massachusetts brought together the Department of Social Services, Children's Services of Roxbury, The Special Needs Adoption Network, and Boston College School of Social Work to work toward five goals for the child welfare system:

1. Comprehensive Family Support to prevent placement.
2. One case worker or caseworker team.
3. One comprehensive assessment process.
4. One stable foster care placement.
5. One year, at most, until placement in a permanent home.<sup>50</sup>

This coalition, titled Massachusetts Families for Kids, focuses its legal efforts on the implementation of court reform legislation.

The courts and the legal framework of child welfare matters in Massachusetts are currently undergoing a level of transformation which lends itself to critique and influence. The addition of legal scholarship could enrich the debate and impel child-centered legal reforms.

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hold that placement and services decisions are at the discretion of the DSS until such time as the court finds that the agency has abused its discretion.

<sup>49</sup> See Honorable Mary C. Fitzpatrick, Report of the Probate and Family Court on the Backlog of Child Welfare Cases, Fourth Quarterly Report (Jan. 7, 1997).

<sup>50</sup> See W.K. Kellogg Foundation, *supra* note 6, at 5-7.

C. *The Need For A Sophisticated Class of Legal Professionals*

In Boston, lawyers review the case of a three year-old boy taken from his drug addicted mother eighteen months ago. The goal is to terminate her parental rights so the child can be adopted.

A year of procedural delays have dragged the case out. And now, one attorney is absent.

"Who wants to sit in for Steve?" someone asks. An attorney, loaded with files, volunteers. He is applauded. But then a thought occurs.

"Who is it I'm representing?" he asks.<sup>51</sup>

Although this observation is recent, the Massachusetts Bar formally recognized its shortcomings in the delivery of legal services to children ten years ago. In 1987, the Massachusetts Bar Association and the Governor's Office issued a report on the unmet legal needs of children.<sup>52</sup> The Commission concluded that if the enforcement of children's legal rights is to be "more than a sterile and empty gesture" then there must be improvements in "judicial education and in legal resources available to children."<sup>53</sup> The Commission's goals were

to ensure that the legal needs of the Commonwealth's children are met, that children are assisted in achieving the basic legal safeguards accorded to adult citizens, that their entitlement to services and protection is fought for zealously, and that the legal system serve as a conduit to the non-legal services children need.<sup>54</sup>

The Commission determined that "ardent and informed advocates" for children were essential to an effective juvenile court system.<sup>55</sup>

A poll of child welfare practitioners pointed to the uneven quality of representation of children in court and administrative hearings affecting their welfare as a systemic barrier to the advancement of children's rights.<sup>56</sup> In addition to a lack of adequate specialized training and expertise in matters of children's law, the Commission cited a "perception by the bar that legal matters directly involving children are 'kiddie matters' — at best, professional stepping-stones for the young and inexperienced; at worst, punishment for inadequate or unmotivated practitioners."<sup>57</sup>

Yet, as practice in the field continues to wane, abuse and neglect litigation is becoming more complex.<sup>58</sup> Before becoming involved in an abuse and neglect

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<sup>51</sup> Fred Bayles & Sharon Cohen, *Part I: Nobody's Children: A Child Welfare System in Chaos*, Apr. 18, 1995, available in 1995 WL 4385896.

<sup>52</sup> See *Report of the Governor's/Massachusetts Bar Association's Commission on the Unmet Legal Needs of Children* 16 (1987).

<sup>53</sup> *Id.* at 16.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> See *id.*

<sup>57</sup> *Id.*

<sup>58</sup> See Mark Hardin, *Legislative Developments: Grants to State Courts to Improve Foster Care Litigation*, 12 A.B.A. JUV. & CHILD WELFARE L. REP. 140 (Nov. 1993).

case lawyers must have a sophisticated understanding of the complexities of the practice. The National Council of Juvenile and Family Court Judges, the premier associational and educational institution comprised of the nations jurists involved with children, youth, and families, recommends that attorneys be trained in, or be familiar with:

- \*Legislation and case law on abuse and neglect, foster care, termination of parental rights, and adoption of children with special needs.

- \*The causes and available treatment for child abuse and neglect.

- \*The child welfare and family preservation services available in the community and the problems they are designed to address.

- \*The structure and functioning of the child welfare agency and court systems, the services for which the agency will routinely pay, and the services for which the agency either refuses to pay or is prohibited by state law or regulation from paying.

- \*Local experts who can provide attorneys with consultation testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in the home.<sup>59</sup>

As the lives and futures of one half million of America's children wait, the legal community must organize to meet this challenge. The weightiness of the issues of child maltreatment dictate no less from the profession.

#### D. *The Role of Legal Education*

In 1993, the American Bar Association ("ABA") undertook a task similar to that undertaken six years earlier by the Massachusetts Bar: to examine the ways in which the justice system may better serve children. In *America's Children at Risk: A National Agenda for Legal Action*, Judge A. Leon Higginbotham, Jr., declared that "our society is failing to protect its children."<sup>60</sup> The report urges lawyers to treat children the same as other important clients, and help them avoid legal entanglements. Attorneys should participate in community efforts to prevent child maltreatment and "advocate on behalf of children long before problems develop that place a child before the court."<sup>61</sup>

In order to achieve these goals, practicing attorneys must have a working understanding of how the law affects children. What rights, if any, do children hold? Are these rights derivative or may a child assert her own rights? What is the role of an attorney for a child? When are children competent to direct litigation? Just as law schools introduce young lawyers to the complexities and inter-

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<sup>59</sup> Honorable David E. Grossmann, Chairman, Publication Development Committee, Victims of Child Abuse Project, National Council of Juvenile and Family Court Judges, *Resource Guidelines Improving Court Practice in Child Abuse & Neglect Cases* 23 (Spring 1995).

<sup>60</sup> American Bar Association Presidential Working Group on the Unmet Needs of Children and Their Families, *America's Children at Risk: A National Agenda for Legal Action* v (July 1993).

<sup>61</sup> *Id.* at 3.

relations of constitutional, tort, contract and criminal law, these schools must also prepare lawyers to meet the ABA's challenge regarding children.

The ABA has laid the responsibility of improving the quality of children's counsel at the feet of legal educators:

Every law school should offer its students the opportunity to learn about children's issues (including related topics such as poverty and disability law) as part of their substantive studies, and to represent children and families as part of clinical training programs during their law school years. Exposing law students to children's issues will achieve several goals: it will increase immediately availability of counsel for children; it will train future attorneys who, regardless of their later professional specialties, will be able to provide critical pro bono assistance to children and families; and it will encourage some law students to specialize after graduation in service to low-income and minority children and families.<sup>62</sup>

As a self-taught and self-regulated profession, the ABA serves as our guidepost. It has identified the lack of substantial education in the field of children's law as a deficiency in legal education. Its remedy, however, will bestow multiple benefits to the academy.

## II. CHILD WELFARE LAW CURRICULA AS AN EXEMPLARY PEDAGOGICAL TOOL

Law schools have overlooked the opportunity presented by multifaceted social problems, including family violence, child development, and state intervention, to teach students legal theory and practice skills which will make them better advocates in any field. Of the six accredited Boston-area law schools, each offers a course on child welfare, but none currently provides substantial experiential programming in child abuse and neglect, foster care, termination of parental rights, or adoption.<sup>63</sup> This field, however, offers numerous opportunities for the creative enrichment of new legal minds.

### A. *Opportunities For Enhancing Law School Curricula by Including Child Welfare Law Courses*

Successful models for child welfare legal curricula are no longer rare. The ABA Section on Litigation Task Force on Children cites thirty-eight law school clinics nationwide which provide representation to children.<sup>64</sup> Each has developed a variety of successful curricula. More than twenty of these law school programs provide opportunities for law students to represent parties in matters

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<sup>62</sup> *Id.* at 8.

<sup>63</sup> In the Spring of 1997 the author conducted a survey through review of available literature and discussions with various faculty of curricular offerings at the following law schools: Northeastern University School of Law, Boston College Law School, Boston University School of Law, Suffolk University School of Law, Harvard Law School, New England Law School, and Massachusetts School of Law.

<sup>64</sup> See *A Directory of Pro Bono Children's Law Programs*, ABA SEC. OF LITIG. TASK FORCE ON CHILDREN, PART II LAW SCHOOL CLINICS (3d ed. 1996).

involving the alleged maltreatment of children.<sup>65</sup> Three more law schools are creating child welfare law advocacy programs.<sup>66</sup>

As an instructional tool, eleven institutions have been surveyed to provide an overview of successful programming.<sup>67</sup> Ten of the eleven law schools surveyed offer a live-client in-house clinical program as a core of the child welfare law curriculum. Many of these schools also combine programming with other schools or colleges in the university, or employ non-lawyer professionals, offering students a cross-discipline perspective. Several utilize impact litigation or appellate work as a pedagogical tool. Three include a research center for advanced students. Two report being involved in legislative efforts. Three provide a forum for students to work with private, non-faculty attorneys, either as pro bono co-counsel or in externship fora, extending their efforts to enhance the practice of child welfare law matters to the bar at large. Whether the approach is newly developed or longstanding, each is archetypal.

Part II explores the pedagogical underpinnings of the most commonly adopted method, the in-house, live-client clinic, and offers suggestions for its parameters within the Massachusetts juvenile court constellation. In addition, Part II posits several options, including an externship program, an interdisciplinary seminar, a research center, as well as systemic reform advocacy programming. Each option could stand alone or complement a successful in-house, live-client clinic.

### B. *In-House Live-Client Clinical Programming*

The ABA's "MacCrate Report,"<sup>68</sup> an important work analyzing the success of legal education, offers the following about clinical education:

[Clinics] are a key component in the development and advancement of skills and values throughout the profession. Their role in the curricular mix of courses is vital. Much of the research leading to the advancement of knowledge about lawyering, the legal profession and its institutions is found in the work of clinicians, and many are recognized to be among the most

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<sup>65</sup> *See id.*

<sup>66</sup> The University of Arizona College of Law, The Ohio State University College of Law, and the University of Washington Law School have each recently developed clinical law courses in child welfare advocacy.

<sup>67</sup> Appended are descriptions of the eleven programs: (1) The University of Michigan Child Advocacy Law Clinic, (2) Northwestern University School of Law Children and Family Justice Center, (3) Loyola University Chicago School of Law ChildLaw Clinic, (4) University of Washington Law School Child Advocacy Clinic, (5) Yale Law School Advocacy for Parents & Children program, (6) University of San Diego School of Law Children's Advocacy Institute, (7) New York University School of Law Family Defense Clinic, (8) Columbia Law School Family Advocacy Clinic, (9) University of Pittsburgh School of Law Child Welfare Law Clinic, (10) The University of Texas at Austin Children's Rights Clinic, (11) Brigham Young University.

<sup>68</sup> *See Robert MacCrate, et al., Legal Education and Professional Development - An Educational Continuum, 1992 A.B.A. Sec. Of Legal Educ. & Admissions to the Bar* [hereinafter "MacCrate Report"].

dedicated and talented teachers in law schools. Clinics provide students with the opportunity to integrate, in an actual practice setting, all of the fundamental lawyering skills. In clinic courses, students sharpen their understanding of professional responsibility and deepen their appreciation of their own values as well as those of the profession as a whole.<sup>69</sup>

Such resounding support of experiential learning, particularly in the context of live-client in-house clinics, is based upon the unique ability of clinical curricula to provide a compendium of skills and values<sup>70</sup> desirable in the successful practitioner. Furthermore, since the decline of post-graduate apprenticeship training, preparing new lawyers for successful practice has become an essential goal of legal education. Clinical curricula which utilizes child welfare law and policy can successfully instill the skills and values outlined in the MacCrate Report.<sup>71</sup> In order to produce practitioners appropriately schooled in MacCrate's skills and values, a clinic must be designed to meet particularized pedagogical goals. In 1991, the Association of American Law Schools (AALS) Section on Clinical Legal Education articulated a wide range of clinical goals in its comprehensive *Report of the Committee on the Future of the In-House Clinic*.<sup>72</sup>

- 1) Skills Development
- 2) Learning to Deal with Unstructured Situations
- 3) Learning to Learn by Doing
- 4) Instruction in Professional Responsibility
- 5) Exposing Students to the Demands of Acting in Role

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<sup>69</sup> *Id.* at 238.

<sup>70</sup> See *id.* at 138-141 (identifying the following skills and values to be fundamental: Lawyering Skills

1. Problem Solving
2. Legal Analysis and Reasoning
3. Legal Research
4. Factual Investigation
5. Communication
6. Counseling
7. Negotiation
8. Litigation and Alternative Dispute Resolution Procedures
9. Organization and Management of Legal Work
10. Recognizing and Resolving Ethical Dilemmas

Values of the Profession

1. Provision of Competent Representation
2. Striving to Promote Justice, Fairness, and Morality
3. Striving to Improve the Profession
4. Professional Self-Development).

<sup>71</sup> See Donald N. Duquette, *Developing a Child Advocacy Law Clinic: A Law School Clinical Legal Education Opportunity*, UNIV. MICH. L. SCH. CHILD WELFARE LAW PROGRAM (1996).

<sup>72</sup> *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508 (Aug. 1990, Rev. Rep. Oct. 1991) [hereinafter Dinerstein, named after Robert Dinerstein, Committee Chair].

- 6) Providing Opportunities for Collaborative Learning
- 7) Imparting the Obligation for Service
- 8) Examining the Impact of Doctrine in People's Lives
- 9) Encouraging Critique of Lawyering and Legal Systems<sup>73</sup>

By analyzing a clinical curricula's child welfare cases in accordance with AALS's goals, it is evident that clinics may achieve important teaching goals. These goals are essential to a successful clinic and an optimal legal education. The following analyzes the efficacy of child welfare matters as the basis for clinical legal education curricula in relation to the pedagogical goals of successful clinical programs.

### 1. Skills Development<sup>74</sup>

Law schools traditionally have provided training in interviewing, counseling, fact investigation, oral advocacy, and pleading preparation through live-client clinics. Child welfare law, including the representation of parents, children, or the state<sup>75</sup> in abuse and neglect petitions provides experience and instruction in each of these aspects of litigation practice and more. For instance, interviewing a four year-old client necessitates the use of legal skills as well as knowledge of child development. Fact investigation takes on a whole new significance when a student is placed in the role of guardian ad litem,<sup>76</sup> charged with determining the child's "best interests." Meeting with all parties, their identified witnesses, as well as each participant in the child's life, sheds light on the child's experiences from which the student develops an understanding of the "child in context."<sup>77</sup>

Opportunities to develop advocacy skills in settings other than a courtroom are also prevalent. Advocacy for appropriate placement and services for young children regularly includes meetings with care providers or medical personnel. The same holds true for an adolescent client, which nearly always includes participation in school meetings or staffings at mental health or correctional institutions. By taking on the role of the holistic practitioner, students learn the subtle differences as well as similarities in effective representation of a child in each distinctive forum.

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<sup>73</sup> *Id.* at 512-16.

<sup>74</sup> *See id.* at 512-13.

<sup>75</sup> Students of the University of Michigan Child Advocacy Clinic, described in the Appendix, provide representation to each of the parties in abuse and neglect matters. Due to the unique county division of the Michigan Family Independence Agency, students may represent these opposing parties by handling cases in three separate counties adjacent to the Ann Arbor campus. Most commonly, however, child welfare clinics choose to represent only parents and/or children.

<sup>76</sup> The Brigham Young University clinic represents children in the role of guardian ad litem, conducting court investigations and making recommendations to the Court as to the child's "best interests."

<sup>77</sup> *See* Koh Peters, *The Roles and Content of Best Interests in Client-Directed Lawyering for Children in Child Protective Proceedings*, 64 *FORDHAM L. REV.* 1505 (1996).



## 2. Learning to Deal with Unstructured Situations<sup>78</sup>

It is valuable for students to grapple with the impact of doctrine when there is no fixed fact pattern.<sup>79</sup> Child welfare law cases are highly complex and unpredictable. Because children continue to grow, change, and develop, their needs, wishes, and "best interests" change throughout the litigation. The child whom the student meets at the beginning of the semester is rarely the identical child one knows at the end. This process of analyzing and reanalyzing the "facts" in light of the law teaches students how to be reflective practitioners by developing modes of planning and analysis for dealing with unstructured situations.<sup>80</sup>

## 3. Learning to Learn by Doing<sup>81</sup>

Learning by doing teaches students that each time they take on the role of representing a client, they should process their actions and develop new skills from the experience.<sup>82</sup> The variety of legal fora encountered by quality practitioners in child welfare law extend the parameters of the clinical experience for students, increasing the breadth of their appreciation for creative advocacy.

In addition, beyond the obvious benefit of this skill to attorneys in any area of practice, the ability to learn from experience has particular significance for Juvenile Court practitioners. Due to the present poor remuneration associated with child advocacy, as well as the low regard given the field, many practitioners of child welfare law find themselves working on their own, without the collegial advantages of a firm.<sup>83</sup> Thus, by necessity, practitioners must rely on the skills of self-critique and personal enrichment to advance their legal skills. The ability to learn from experience is a skill appropriately taught as part of law school training.

## 4. Instruction in Professional Responsibility<sup>84</sup>

The teaching of professional responsibility in a live-client clinical setting includes more than an understanding of the Code of Professional Responsibility. It also includes the development of the student's ethical understanding of lawyering.<sup>85</sup> An analysis of the ethical responsibilities of counsel for children stretches the parameters of any instruction in professional ethics.<sup>86</sup> For a child who has

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<sup>78</sup> See Dinerstein, *supra* note 72, at 512.

<sup>79</sup> See *id.*

<sup>80</sup> See *id.*

<sup>81</sup> See *id.*

<sup>82</sup> See *id.* at 513.

<sup>83</sup> See William Wesley Patton, *Law Schools' Duty to Train Children's Advocates: Blueprint for an Inexpensive Experientially Based Juvenile Justice Course*, 45 JUV. AND FAM. CT. J. 3, 4 (1994).

<sup>84</sup> See Dinerstein, *supra* note 72, at 513.

<sup>85</sup> See *id.*

<sup>86</sup> The University of Michigan Law School Child Advocacy Law Clinic awards academic credit in Professional Responsibility for successful completion of a clinical journal

been abused or neglected, the question: "what is justice?" is at the heart of the lawyer's role.

By enmeshing the student in the role of a lawyer for a child, students experience the push and pull of ethical quandaries first-hand. What is the lawyer's duty to a child client? Should a lawyer be directed by the wishes of her client? Or, due to minority/incompetency, must the lawyer direct the litigation in the child's "best interests"? How does one know what is really in a child's "best interests"? Who should decide? How is the lawyer/client relationship changed by altering the role of an attorney? May a lawyer breach client confidentiality, contrary to her client's wishes, when she deems it to be in her client's best interest? When the situations are real and the dangers tactile, students can be easily motivated to accept the challenges of ethical lawyering.

#### 5. Exposing Students to the Demands of Acting in Role<sup>87</sup>

Related to the pedagogical goal of instructing students in professional responsibility is the goal of exploring with students the psychological and sociological aspects of lawyering.<sup>88</sup> Authority relationships and the effects of the partisan role of a lawyer are particularly profound and can pose vexing problems in the child welfare arena. The problems of lawyer dominance of clients is readily apparent and uniquely problematic when the client is a child. Strained relationships with adversaries cannot so easily be disregarded as routine when a neglected child still wants to return home to her cognitively limited parents. Experiencing the effect of partisan lawyering on the ability to preserve or reunify families or to effectuate cooperation with a government agency on behalf of a needy child can help students understand and critique the current structure of juvenile law proceedings, as well as the adversarial process of achieving justice.

#### 6. Providing Opportunities for Collaborative Learning<sup>89</sup>

Collaborative learning via cross-discipline education is a hallmark of child welfare law curricula. Although the law school experience is generally one of individualized learning, clinical education is commonly a forum where students are introduced to collaborating with colleagues and faculty of the law school. Collaborative skills are another essential component of successful lawyering.<sup>90</sup> A child welfare law clinic, however, has special advantages to advancing collaboration across disciplines as well as among legal professionals.

Increasingly, multi-disciplinary teams of professionals, including lawyers, psychologists, social workers, pediatricians, nurses, educators, and law enforcement work together to meet the needs of maltreated children. Based on this model, a law school clinical program in child welfare law could serve as the catalyst for

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as part of the clinic placement.

<sup>87</sup> See Dinerstein, *supra* note 72, at 514.

<sup>88</sup> See *id.*

<sup>89</sup> See *id.* at 515.

<sup>90</sup> See *id.*

bringing together students and faculty from other disciplines in the university, either as clinical associates or as partners in an academic setting.<sup>91</sup>

Students from each field have a great deal to learn regarding the respective roles of each professional at the table as well as the core of each other's discipline. For example, in a case where termination of parental rights is contested, lessons in attachment and bonding are essential to a full understanding of the issues and competent litigation. Likewise, an understanding of the legal requirements for termination of parental rights is essential for the complete understanding of the effects of the legal system on case planning for children by social workers.

Multi-disciplinary, interdepartmental collaboration is important to professional education. As specialization increases in law, as in psychology and medicine, the ability to successfully integrate the theories, methodologies and conclusions of colleagues from other fields of the same discipline, as well as professionals from other disciplines, becomes more challenging. However, much of the work necessary to unearth solutions to vexing social problems are found in collaborative fora.

One such social problem is child abuse and neglect.<sup>92</sup> The development of opportunities for law students to learn these skills will enhance the contributions made by the legal profession toward forging a more effective child welfare system.

## 7. Imparting the Obligation for Service<sup>93</sup>

Providing a forum for instruction in the realities of poverty and the professional obligation to serve the underrepresented is one of the original justifications of clinical legal education.<sup>94</sup> A child welfare law clinic can provide ample material for discussions of the issues of poverty and social justice. Family income is significantly related to rates of child maltreatment.<sup>95</sup> Biases of race, ethnicity, and gender, are prevalent in the services provided to families involved with social welfare systems and in their treatment by the court system.<sup>96</sup> Ques-

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<sup>91</sup> Interdisciplinary cooperation and education is common at many of the law school clinical programs surveyed. See Appendix for descriptions of the ways in which the University of Michigan, Northwestern University, Loyola University of Chicago, New York University, Columbia, The University of Washington, and The University of San Diego, collaborate with professionals in social work, psychology or medicine.

<sup>92</sup> See Donald N. Duquette & Kathleen C. Faller, *Interdisciplinary Teams in Professional Schools: A Case Study*, in *The New Child Protection Team Handbook* 535, 536 (Donald C. Bross et al. eds., 1988). See also Martha Minow, *Children's Studies: A Proposal*, in *Symposium: Meeting the Basic Needs of Children: Defining Public and Private Responsibilities*, 57 OHIO ST. L.J. 511 (1996).

<sup>93</sup> See Dinerstein, *supra* note 72, at 515.

<sup>94</sup> See *id.*

<sup>95</sup> See *supra* text accompanying note 12.

<sup>96</sup> See *id.*

tions of economic and social justice can be novel when explored through the eyes of a child.

In addition, the 1990's have brought about an increase in law students' expressed desire to learn about and become involved in social justice work focusing on the legal rights of children.<sup>97</sup> This preexisting interest provides a ready-made opportunity to engage and expose students to the range of possibilities for current and future service to the community. By failing to respond to this desire, law schools may unintentionally teach that the field of child welfare law is unimportant, lacks opportunity for fulfilling legal work, or is unavailable as a forum for the advancement of social justice.<sup>98</sup> Yet, engaging students in the practice of child welfare law as part of the law school curriculum would provide a practical outlet for interest, enhance gratification with the law school experience, and promote students' commitment to the field.

#### 8. Examining the Impact of Doctrine in People's Lives<sup>99</sup>

By observing and analyzing the impact of doctrine on individual lives, students heighten their understanding of that doctrine.<sup>100</sup> Building upon many law school offerings of classroom instruction in juvenile or family law, clinics offer a laboratory for observing and participating in the impact that doctrine has in the lives of real families and children. But beyond the application of obviously child-related courses, a child welfare law clinical program can expose students to the application of the full spectrum of legal doctrine. Concepts of criminal law, tort law, evidence, contract law, constitutional law, administrative law, and civil procedure find their application in the legal lives of children and families. Only through actual live-client case practice do these generally unnoticed junctures become apparent and present novel opportunities for scholarship, both for students as well as faculty.

#### 9. Encouraging Critique of Lawyers and the Legal System<sup>101</sup>

In addition to teaching legal skills, clinical programs can provide the opportunity to examine how the legal system functions. It allows students to examine and question how such systems came to be and currently function as well as

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<sup>97</sup> For example, student groups organized around the issues of children's rights or juvenile justice have formed at three Boston area law schools in recent years: Northeastern University School of Law, Boston College Law School and Harvard Law School. Also, applications from law students for participation in the summer internship program of the Children's Law Center of Massachusetts have increased over fifty percent in recent years. In 1997, the Law Center received over one hundred twenty applications.

<sup>98</sup> See Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 42 (1995).

<sup>99</sup> See Dinerstein, *supra* note 72, at 516.

<sup>100</sup> See *id.*

<sup>101</sup> See *id.*

how they might be changed to work more effectively.<sup>102</sup> In addition to involvement in individual case matters, child welfare law clinics offer the opportunity for review of a social services delivery system and specialized court system that are the ongoing laboratory of reformers.<sup>103</sup>

By placing the student within this system, as a player, as a representative of an integral party, the student will not have the luxury of imparting merely observational criticism but will be required to examine her own performance in light of the system reforms that are underway or may be necessary. Issues ripe for advocacy, through legislative, administrative, or litigation strategies, are readily gleaned from the panoply of children's lives represented by the clinic's caseload. These law reform efforts<sup>104</sup> become as real and compelling for the students as the children's lives with which they are intimately familiar.

Clinical curricula, unlike any other learning experience in law school, "combines the extraordinarily varied and dramatic context of real cases and problems with the opportunity for intensive teaching, supervision, growth, and reflection."<sup>105</sup> Child-centered cases provide the additional benefits of varied fora, complex legal roles, breadth of issues, changing facts, as well as developing common and statutory law, ethical quandaries, and interdisciplinary collaboration. In addition to addressing a stark unmet legal need, child welfare law clinical programming is an ideal choice for the expansion of experiential learning curricula for any progressive law school.

### III. SUGGESTIONS FOR TYPES OF CASES/CLINIC STRUCTURE

Approximately thirty American law schools currently participate in the child welfare systems of their communities through clinical programming.<sup>106</sup> Options ranging from the direct representation of children at the trial stage of abuse and neglect litigation, to the finalization of an adoption provide rich venues for meeting the array of educational goals outlined above.

#### A. Representation of Parents or Children in Petitions for Abuse and Neglect

In Massachusetts, upon the filing of a petition for "Care and Protection" pursuant to section 23C or 24 of chapter 119 of the Massachusetts General Laws<sup>107</sup> alleging that a child is at risk of abuse or neglect, counsel is appointed to par-

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<sup>102</sup> See *id.*

<sup>103</sup> See *infra* pp. 11-15.

<sup>104</sup> Systemic reform efforts, appellate work, and impact litigation are utilized as successful educational tools at Northwestern University and the University of San Diego.

<sup>105</sup> Dinerstein, *supra* note 72, at 517.

<sup>106</sup> See A.B.A. SEC. LITIG. TASK FORCE ON CHILDREN, *A Directory of Pro Bono Children's Law Programs*, (3d ed. 1996), for a partial listing of law school programs providing representation in matters involving child abuse and neglect, termination of parental rights, adoptions, or guardianships.

<sup>107</sup> MASS. GEN. LAWS ch. 119, §§ 23C, 24 (1994).

ents and children.<sup>108</sup> If the DSS staff believes that the child is in immediate danger, it may seek an ex parte order providing for the removal of the child from the home.<sup>109</sup> To determine whether the child is "suffering from serious abuse or neglect, or is in immediate danger of serious abuse or neglect," an evidentiary hearing must then be held within seventy-two hours of the initial order.<sup>110</sup>

This initial step in the litigation is both a vital one for the parties and an ideal stage for student attorneys to infuse their energy and enthusiasm. Legal practice at the preliminary hearing involves a precise, yet time limited investigation of the allegations against the parents, the formulation of either the child's or the parents' position at the hearing, a review and compilation of documentary evidence, oral argument, and the presentation of witnesses.

The course of abuse and neglect litigation after preliminary hearings involves students within the social services delivery system. Issues of family support, reunification, education, and permanency planning arise during this period. Although it is uncommon for a student, or student team to see a case through from start to finish,<sup>111</sup> students involved at any stage of the litigation are guaranteed exposure to a variety of venues for child advocacy. As cases progress, students have the opportunity to participate in administrative foster care reviews;<sup>112</sup> school meetings;<sup>113</sup> motion hearings regarding placement, services or visitation;<sup>114</sup> pretrial conferences;<sup>115</sup> negotiations; trials;<sup>116</sup> and substitute care reviews.<sup>117</sup> The ability to offer such diversity of experience within the context of one substantive area of law can be an invaluable part of a clinical curriculum.

Direct representation in child welfare matters is also complemented by an interdisciplinary aspect. A child welfare advocacy program could achieve cross-disciplinary training by incorporating the work of graduate students from other schools within the university. These graduate students could serve as clinical partners or academic colleagues. Such programs have been successful at several law schools nationwide.<sup>118</sup>

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<sup>108</sup> MASS. GEN. LAWS ch. 119, § 29 (1994), *see also* Balboni v. Balboni, 39 Mass. App. Ct. 210, 654 N.E.2d 937 (1995).

<sup>109</sup> *See* MASS. GEN. LAWS ch. 119, §§ 51B(3), 51C (1994).

<sup>110</sup> MASS. GEN. LAWS ch. 119, § 24 (1994).

<sup>111</sup> *See* Paul D. Reingold, *Why Hard Cases Make Good (Clinical) Law*, 2 CLINICAL L. REV. 545, 546-47 (1996) (discussing the benefits of using "hard cases," those that risk taxing the program's resources, may be controversial, are likely to outlive the students who are assigned to it, and present issues of a scope, scale, character or complexity that is not usually handled by the program).

<sup>112</sup> *See* MASS. GEN. LAWS ch. 18B, § 6A (1994); MASS. REGS. CODE tit. 110, § 6.12 (1993).

<sup>113</sup> *See* MASS. GEN. LAWS ch. 71B (1994), MASS. REGS. CODE tit. 603, § 28.00 (1993).

<sup>114</sup> *See supra* note 44. *See also* Mass. Juv. Ct. Rule 6.

<sup>115</sup> *See* Mass. Juv. Ct. Rule 7.

<sup>116</sup> *See* MASS. GEN. LAWS ch. 119, §§ 24-26 & ch. 210 § 3 (1994).

<sup>117</sup> *See* MASS. GEN. LAWS ch. 119, § 29 (1994).

<sup>118</sup> *See infra* note 91.

### B. *Representation of Parents or Children in Appeals*

Appellate advocacy provides yet another venue for child welfare law clinical programming. Pursuant to state law, parties are entitled to appeal child welfare matters as a matter of right.<sup>119</sup> Representing a party in an appeal of a court decision to dispense with parental consent to adoption or termination of parental rights exposes students to appellate procedure. In addition, students would have the opportunity to perform advanced research and writing in a case of real significance. Moreover, since appellate counsel replaces trial counsel after the filing of an appeal, these matters are particularly ripe to be utilized in law school clinical programs. Student participation in appellate work would help alleviate the shortage of appellate counsel currently available for parents and children in these matters, and thereby speed the finalization of cases on behalf of children awaiting permanency.<sup>120</sup> It is also worth noting that law schools have founded successful child welfare clinics which handle appeals of court decisions terminating parental rights.<sup>121</sup>

### C. *Representation of Foster Parents in Petitions to Adopt Foster Children*

A successful program in child welfare law may also include the representation of foster parents seeking to adopt foster children. Thousands of children remain in legally impermanent homes each year awaiting adoption.<sup>122</sup> Several hundred of these children are legally free to be adopted<sup>123</sup> and living in pre-adoptive homes.<sup>124</sup> The adoption is sometimes delayed due to legal barriers faced by the prospective adoptive parents, such as an incomplete divorce. For some prospective parents, delays may be caused simply by the lack of legal representation to finalize the adoption.<sup>125</sup> By representing foster parents, students would gain exposure to the child welfare system, have the opportunity to draft appropriate pleadings, and participate in oral argument before the court.

### D. *Representation of Foster Children in Related Matters*

Law schools with vibrant general poverty law clinical programs may consider developing clinical curricula focusing on the myriad of legal needs of foster children beyond abuse and neglect litigation.

Although all children in Massachusetts are guaranteed lawyers in abuse and neglect matters,<sup>126</sup> counsel for children infrequently venture beyond the immedi-

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<sup>119</sup> See *Care and Protection of Valerie*, 403 Mass. 317, 318, 529 N.E.2d 146, 147 (1998).

<sup>120</sup> See Discussion *infra* at Part I.

<sup>121</sup> See Appendix for descriptions of clinical curricula that handle appeals cases.

<sup>122</sup> See 1996 MASS. DEP'T OF SOC. SERV., DEMOGRAPHIC REP. ON CONSUMER POPULATIONS, July 1995, at 37.

<sup>123</sup> See MASS. GEN. LAWS ch. 210, § 3 (1994).

<sup>124</sup> See *id.*

<sup>125</sup> See *id.* at §§ 1, 2.

<sup>126</sup> See MASS. GEN. LAWS ch. 119, § 29 (1994).

ate matters of whether the child has been abused or neglected and where the child is going to live. This is attributable to many causes, including lack of resources and/or expertise. Yet, frequently, foster children face more than one legal barrier to their health, safety, and stability.

For instance, a foster child may suffer emotional difficulties which manifest themselves in behavioral problems in school. His new school, three towns away from his home, may never have received the records of his special education<sup>127</sup> status (stemming from severe emotional difficulties) and consequently may refuse to provide appropriate services. Although his school is not a party to the care and protection matter, asserting the child's rights to education will go a long way toward stabilizing his new placement.

An attorney appointed to represent the child in the care and protection matter may have appropriate expertise in the regulations regarding foster care services, but may feel like a "fish out of water" in the education arena. Yet, student attorneys can handle this matter appropriately and expeditiously through a law school clinic.

Student attorneys can supplement the work of court-appointed counsel. By representing foster children in "supplementary" legal matters related to their welfare in care, but extraneous to the abuse and neglect action, law students could meet a currently unmet legal need of foster children. Attorneys appointed to represent children in foster care cases could refer these cases to the law school clinic when they recognized that a child required counsel in an area outside their expertise. Alternatively, the clinical program could act as a Court Appointed Special Advocate, through the nationally renowned program.<sup>128</sup> Anticipated areas of need include special education, immigration, disability benefits, health care issues, discrimination, and other general civil matters.

Students would have full exposure to the child welfare system without the necessity of the clinic staff having to commit itself to ongoing representation of the child for the duration of the child welfare case. Yet, each action that a student undertook would further the stability of the child, and thus, shorten her time in foster care. Classroom time could offer a broader array of theoretical and substantive training in the legal status of children.

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<sup>127</sup> See Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq* (1994); [34 C.F.R. Part 300 (1997)]; 1972 MASS. ACTS 766; MASS. GEN. LAWS ch. 119, § 71B (1994); MASS. REGS. CODE tit. 603, § 28.00 (1993).

<sup>128</sup> CASA volunteers serve as investigators, presenting the relevant facts at court hearings; act as advocates, ensuring that the court, social services agencies, and other professionals fulfill their obligations to the child; and function as negotiators, enabling the judge to make more informed decisions. See CASA, A CHILD'S VOICE IN COURT, SPEAK UP FOR A CHILD.

Judge Francis G. Poitras, Chief Justice of the Boston Juvenile Court System of the Trial Court of Massachusetts, implemented the program in Boston in 1982. See Barbara Donlon, *A Voice for Children*, THE BOSTON SUNDAY HERALD, July 8, 1990, at 10.



### E. Externship Placements

Another option for the successful expansion of child-centered offerings is the development of a well-structured externship program. Externship programs, or field placement programs, utilize the law offices and staff of outside firms, government agencies, and non-profit organizations to provide the means of exposing students to the practice aspects of the field.<sup>129</sup> Many externship programs also offer a simultaneous classroom component. It is argued that "externship programs can provide a distinctively valuable educational experience for students—an experience not available in traditional classrooms and also an experience with some benefits not available through in-house clinics."<sup>130</sup>

By distancing faculty supervisors from the practice experience of students, externship programs increase student responsibility for the learning agenda, and thus teach valuable lessons of self-teaching and critique.<sup>131</sup> Yet, students are not without professional supervision. On-site guidance by the placement attorney or faculty supervision in one-to-one tutorials, classroom discussions, or journal reviews, provide the reflective opportunities which enhance the experience.<sup>132</sup> Among the most important goals of successful externship programs are:

1. Skills Training
2. Training in Self-Directed Learning
3. Education in Perspectives on the Legal System
4. Introducing Students to a Wide Range of Specific Practice Contexts.<sup>133</sup>

Massachusetts offers a host of potential placements for a successful externship program in child welfare law. The DSS field offices, the Children's Law Center of Massachusetts, and clerkships with Juvenile Court Judges would be ready opportunities for placement. Since conflicts in an in-house clinic would preclude the representation of DSS as well as the representation of parents and children, a field placement with DSS might provide the only possible experience as counsel for the state within an educational setting.

### F. Systemic Reform Advocacy/Impact Litigation

Legal services attorneys have traditionally forged the way in initiating litigation that effectuates systemic foster care reforms nation-wide. The primary thrust of the impact cases which were filed in a flurry in the late 1970's were to halt unwarranted removals of children from their homes, to compel the provision of "preventive" or "reunification" services to natural families, and to alter other social service agency policies, such as visitation and placement policies, which impacted upon the likelihood of a child's return home from foster care.

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<sup>129</sup> See Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems and Possibilities*, 2 CLINICAL L. REV. 413 (1996).

<sup>130</sup> *Id.* at 415.

<sup>131</sup> See *id.* at 417-19.

<sup>132</sup> See *id.* at 419.

<sup>133</sup> See *id.*

In Massachusetts, *Lynch v. King*<sup>134</sup> brought to light the Commonwealth's failures to comply with case plan and review obligations of federal law in regard to children in state care. Since that time, little systemic litigation has taken place on behalf of Massachusetts foster children addressing some of the systemic barriers that children face in receiving services, treatment, and placement designed to meet their best interests.<sup>135</sup> A law school based clinical program might consider undertaking class-action litigation on behalf of foster children. Although such "hard cases" will likely be controversial, labor and resource intensive, and sure to out-live an academic semester of the students, work in this area is invigorating for faculty and an excellent learning experience for students,<sup>136</sup> not to mention the benefit to children in foster care.

### G. Research Center

Child welfare law programming can also be enhanced by establishing a law school based Research Center for members of the bar who handle child abuse and neglect cases.<sup>137</sup> As novel issues of law arise in their caseload, practitioners in child welfare law rarely have the time or resources to conduct the extensive research required. Unfortunately, this may mean that such issues are not raised or are given only a cursory review by counsel and the Court. The fall-back position becomes the status quo, and the status quo for children in foster care can translate into foster care drift.

A law school child welfare law program which provides research assistance and the drafting of legal memoranda for use by counsel in active child welfare cases would serve the interests of educators as well as the bar. Students would have the opportunity to hone their research skills by working on real cases and witnessing the fruits of their practical research. Further, the bar and the courts would benefit from the high quality of legal writing offered by the students. A Research Center could also be the catalyst in forging a working relationship between the developing Juvenile Court and the Law School.<sup>138</sup>

### CONCLUSION

Law schools would fare well by accepting the challenge to enter the legal and social spheres of child protection, foster care, and adoption. Students who yearn for such opportunities would be fulfilled and encouraged to include child welfare as a career choice. Others would gain an understanding of the crucial interplay

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<sup>134</sup> 550 F. Supp. 325, 327-28 (D. Mass. 1982), *aff'd sub nom. Lynch v. Dukakis*, 719 F.2d 504 (1st Cir. 1983).

<sup>135</sup> No class action litigation has been undertaken. *But see Isaac*, 646 N.E.2d at 1034; *cf. Jeremy*, 646 N.E.2d at 1029.

<sup>136</sup> *See* Reingold, *supra* note 111, at 546.

<sup>137</sup> *See* Appendix for a description of the University of Michigan Resource Center.

<sup>138</sup> Northwestern's Children and Family Justice Center is an example of a program that has worked successfully to immerse itself in the reform of the Juvenile Court. *See* Appendix for a description of the program.

between law and other social disciplines and transfer those skills to other legal careers. Still others would be affected by the institution's choice to promote the legal needs of these commonly invisible members of society. Faculty would gain both a legal laboratory in which to research and analyze our current legal institutions for children and a forum for creative law reform. The list of academy-focused interests which the development of child welfare law curricula would serve is extensive.

In addition to meeting the needs of students and academics, law schools, like all social institutions, are under an obligation to serve the community. Abused and neglected children and the deplorable substitute systems of care we have created to raise them are the next venue for public service. These systems are in a state of flux, and are on the cusp of change for better or for worse. The infusion of legal educational institutions into this sphere could be the factor that determines whether Massachusetts will utilize this opportunity to the advantage of children.

#### APPENDIX - Description of Programs

##### 1) The University of Michigan Law School:

The Child Advocacy Law Clinic of the University of Michigan Law School is one of the strongest, longest-standing child welfare law programs at an American law school. Since 1976, it has created and tested a successful, comprehensive program of experiential learning in the area of child abuse and neglect.

Each semester sixteen to twenty students enroll in the seven credit clinical course. Working in pairs, second and third year students handle cases involving allegations of child maltreatment and termination of parental rights. Students represent each of the three roles of counsel in such cases; attorney for the child, the parents, or the child protection agency. Students practice before courts in three separate counties to avoid conflicts. Supervision by clinical staff is optimized at a ratio of 1:8.

The clinic's classroom component meets six hours per week. Guest speakers include graduate students and faculty from the Schools of Social Work and Psychology. Students receive instruction in substantive law and practical skills, and are engaged in discussions on public policy and professional responsibility. Students may earn academic credit in ethics by completing an ethics journal in which they reflect upon the ethical dilemmas which frequently arise in the context of representation.

The Child Advocacy Law Clinic benefits from an interdisciplinary collaboration which guides the student's legal representation. Faculty from the schools of Social Work and Psychology consult regularly on cases and are frequently invited guest lecturers in the classroom component. An Interdisciplinary Seminar on Abuse and Neglect is offered as a separate course for students who have completed the clinic. The course is co-taught by faculty from the schools of Law, Social Work, and Psychology. Students work together on a "cross-disciplinary" comprehensive research and writing project.

The Michigan Child Welfare Law Resource Center, recently developed by the Law School and the Michigan Juvenile Law Association, is a research, training, and technical support facility which assists practitioners and judges in child welfare matters. Students, also veterans of the clinical course, work as research staff, responding to subscribers' requests with memos of law on pertinent issues. For more information contact:

Donald N. Duquette, Director  
Child Advocacy Law Clinic  
The University of Michigan School of Law  
313 Legal Research Building  
Ann Arbor, MI 48109-1215  
Telephone: (313) 763-5000

2) Northwestern University School of Law:

The Children and Family Justice Center was established at Northwestern University School Of Law in 1992. It has made great strides in its mission to support the improved performance of the Juvenile Court of Cook County, Illinois. The Center has been recognized by leaders in both the Juvenile and Circuit Courts as a valuable resource.

This success is partly due to the strong practice component which complements the academic/research component. In 1995, seventy-five second- and third-year law students and ten graduate social work students worked on supervised clinical cases involving abuse and neglect, adoption, termination, domestic violence, and delinquency. In 1995, its appellate project produced six appeals and amici briefs, involving law students in research, drafting, and oral argument.

In addition to its representation of parties in the Juvenile Court, the Center has recently launched the Community Law Clinic at the Northwestern Settlement. The outpost's purpose is to engage private bar members in the representation of children and families in Juvenile Court.

Northwestern also strongly focuses on academic research and scholarly publication. It reports on children's law issues in Illinois, and its faculty members regularly publish in the fields of child welfare law and juvenile justice. The Children and Family Justice Center co-sponsored a national academic conference on ethical issues in representation of children and a national training symposium for child advocates. Through its strong in-house clinic, cross-disciplinary training, appellate advocacy, and national prominence in research and advocacy, The Children and Family Justice Center has achieved nationwide recognition within the academic community.

For more information contact:

Bernardine Dohm, Director  
Children & Family Justice Center  
Northwestern Legal Clinic  
357 E. Chicago Avenue  
Chicago, IL 60611-3096  
Telephone: (312) 503-0396

3) Loyola University Chicago School Of Law:

Established in 1993, the Loyola ChildLaw Clinic (formerly the Civitas ChildLaw Center) at the Loyola University of Chicago is the first U.S. program to integrate a traditional law curriculum with a specialized three year course of study preparing students to serve children's legal needs. Its purpose is to train law students as specialized litigators and advocates for abused and neglected children.

The required curriculum is a specialized legal writing course in the first year, and in the final two years the following courses: Children and the Law, ChildLaw Trial Practice, ChildLaw Interdisciplinary Seminar, ChildLaw Policy, Practice and Profession. Students also participate in the Loyola ChildLaw Clinic. The Clinic represents abused and neglected children in the Cook County Juvenile Court. Students directly represent children through interviews, investigations, and courtroom advocacy.

Nineteen students participated in the clinic during the 1995-1996 academic year. Students earn four credits for the semester-long clinic, and three in the summer program. Some students continue their work in the clinic through directed study in later semester receiving an additional two credits. The student faculty ratio is 7:1.

The Clinic anticipates offering a clinic-based simulation course for second-year students (two or three credits) as well as a legislation/policy clinic, both dedicated to the study of child welfare law. Beginning in 1997-1998, the Clinic will include students from Loyola University of Chicago School of Social Work. The Clinic is staffed by two supervising attorneys and a part-time social worker.

For more information contact:

Michael Dsida, Director  
Loyola ChildLaw Clinic  
Loyola University Chicago School of Law  
16 East Pearson Street  
Chicago, IL 60611  
Telephone: (312) 915-7927

#### 4) Yale Law School

The Advocacy for Parents and Children Program was added to the clinical program at Yale Law School in 1995. Fourteen to eighteen law students per year, supervised by clinical faculty, represent parents and children in abuse and neglect, termination of parental rights, special education, and delinquency cases. Students earn three credits for their representation of clients and participation in the accompanying two hour per week classroom component. Clients are referred by the Juvenile Court and social services agencies. The clinic also occasionally retains social workers and other paid consultants.

For more information contact:

Jean Koh Peters or Kathleen Sullivan  
Advocacy for Parents and Children  
The Jerome N. Frank Legal Services Organization  
P.O. Box 209090  
New Haven, CT 06520-9090

Telephone: (203) 432-4806

5) New York University School of Law

The Family Defense Clinic is a teaching clinic at the New York University School of Law representing parents and other adults whose relatives are in, or are at risk, of entering foster care. This practice encompasses abuse and neglect cases, voluntary foster care cases, extensions of foster care placement, foster care review proceedings, termination of parental rights cases, adoption, and post-termination issues. The clinic also handles custody, visitation, guardianship matters, and represents clients in administrative proceedings concerning foster care, welfare, SSI and public assistance.

The clinic is a fourteen credit full year course (seven credits per semester). The seminar component meets two to four hours per week. The clinic's sophisticated simulation component includes interviewing, counseling, negotiating, trial courtroom exercises, and a full trial. Students must take Evidence or one of three other preparatory courses as a pre- or co-requisite to enrollment in the Family Defense Clinic.

The clinic's staff of two supervising attorneys, one social worker, two graduate social work students and twelve law students handle approximately fifteen to twenty cases per year. The staff consults psychiatrists, psychologists, and medical doctors when necessary.

For more information contact:

Prof. Martin Guggenheim  
Prof. Madeleine Kurtz  
Family Defense Clinic  
New York University School of Law  
Washington Square Legal Services, Inc.  
249 Sullivan Street  
New York, NY 10012  
Telephone: (212) 998-6430

6) Columbia Law School

Columbia Law School's Prisoners and Families Clinic (PFC) is a full-year course featuring interdisciplinary collaboration between law and social work students. The clinic is staffed by three faculty members. Students receive a total of twelve credits for their participation in the year-long program.

Approximately twelve teams of two students each litigate on behalf of incarcerated parents requiring legal assistance with child custody, visitation, and other related issues. In the PFC students represent parents (primarily mothers) both while they are incarcerated and after their release. The practice involves child welfare issues such as visitation proceedings, advocacy for social services, and reunification petitions; post-conviction criminal proceedings affecting their ability to care for children, such as clemency petitions or parole revocation hearings.

The clinic includes classroom, prison teaching, and case work components. The class meets six hours per week in the fall and two hours per week in the spring. There are no prerequisites for the clinic; students receive a foundation in the relevant substantive criminal and family law as part of the classroom compo-

nent. Intensive simulation exercises develop student's skills in interviewing, case planning, negotiation, and trial techniques. Professional responsibility issues that arise in the representation of poor clients are examined in the context of the criminal justice and child welfare systems.

A unique component of the Clinic is student involvement as instructors in legal workshops for women at Bedford Hills prison. Students teach preventive law sessions designed to inform incarcerated parents of their legal rights and responsibilities in the child welfare system.

For more information contact:

Philip Genty, Director  
Prisoners and Families Clinic  
Columbia Law School  
Morningside Heights Legal Services, Inc.  
410 W 116th Street  
New York, NY 10027  
Telephone: (212) 854-3250

7) The University of Texas at Austin School of Law:

Since 1980, the Children's Rights Clinic of the University of Texas at Austin provides training for up to twenty students per semester. The Clinic handled approximately 250 cases in 1996. Students work with one of the two staff attorneys, assisting clients referred by the District Court in matters of abuse, neglect, and child custody. Students who have completed half of the credits for graduation are certified to handle court appearances with supervision. They represent clients in removal hearings, review hearings, and trials.

The clinic includes a classroom component, which meets four hours a week. Students receive cross-disciplinary instruction with lectures by social work and psychology professionals. Students receive three academic credits for their participation in the Clinic.

For more information contact:

Cynthia Bryant, Supervising Attorney  
Children's Rights Clinic  
The University of Texas at Austin  
727 East 26th Street  
Austin, TX 78705  
Telephone: (512) 471-3253

8) The University of Washington Law School:

The University of Washington Law School launched the Child Advocacy Clinic in the fall of 1996. The program requires three courses: a Child Advocacy Course in the fall quarter (four credits), a one-quarter clinic also offered in the fall (eight credits), and a two-quarter clinic offered in the winter/spring (six credits for each quarter).

Twenty-two students were enrolled in the first Child Advocacy Course. It is a strong multi-disciplinary program jointly taught by faculty from the schools of Law, Medicine, and Social Work. The course includes guest speakers and instruction on child development and types of child abuse. An interdisciplinary

panel presentation deal with issues such as handling child sexual abuse, medical aspects of abuse and neglect, fetal alcohol syndrome, and special considerations in representation including cultural awareness.

The first Child Advocacy Clinic supported four students, all concurrently enrolled in the Child Advocacy Course. The students meet an average of six hours per week, exclusive of the time devoted to cases. The class develops advocacy skills, including interviewing and counseling, case theory development, direct examination, documentary evidence, cross examination and impeachment. It also provides an in depth study of Washington's child abuse and neglect statutes.

Students serve as the child's attorney in dependency actions; as legal counsel for guardians ad litem, who are appointed for children under age twelve in dependency actions; and as representatives for parents in combined juvenile court/family court actions. During the Clinic's first academic year, students handled two trials in which the state sought to terminate the parental rights of children in state care.

For more information contact:

Michele Jones-Garling, Director  
Child Advocacy Clinic  
University of Washington School of Law  
4045 Brooklyn Ave. NE  
Box 354563  
Seattle, WA 98105-6261  
Telephone: (206) 543-3434

9) Brigham Young University:

Brigham Young University has established a program in which students earn internship credits by working as volunteer Court Appointed Special Advocates (CASAs). Students work with an supervising attorney who serves as a guardian ad litem for child clients referred by the Juvenile Court and social service agencies. Cases involve child abuse and neglect as well as parental termination. Although there is no required law school course component, students undergo the traditional CASA training, and many students enroll in the school's Child Advocacy course. Students receive one academic credit for each fifty hours of service, and may earn up to a total of six law school credits.

For more information contact:

Professor Susan Griffith  
Brigham Young University  
430 J. Reuben Clark Building  
Provo, UT 84602  
Telephone: (801) 378-3947

10) University of San Diego School of Law

The Children's Advocacy Institute (CAI), founded in 1989 with a grant from the Weingart Foundation, has offices in San Diego and Sacramento. The San Diego office is affiliated with the University of San Diego School of Law. CAI focuses on child abuse and neglect, child care and development, child health and safety issues, and efforts to improve the government's delivery of children's ser-



vices in California. During the 1991-1996 sessions of the California State Legislature, CAI sponsored sixteen bills that were enacted, and successfully litigated impact cases securing rights for children.

The staff is an interdisciplinary team of legal, social science, and health professionals. The CAI's law school clinic teams county public defenders with volunteer students to represent children in abuse, neglect, and dependency cases. CAI does not represent parents. Some clinic students assist CAI's professional staff in policy advocacy at county, state, and national levels. These "policy" clinicians conduct legal and empirical research and assist in regulatory agency, court and legislative advocacy.

Each semester twelve to sixteen students participate in the clinic, earning at least three credits. The Clinic includes a classroom session which meets 1.5 hours per week. The student to faculty ratio is 7:1. Prior to enrollment, students must complete a Child Rights and Remedies course.

For more information contact:

Robert Fellmeth, Director  
Children's Advocacy Institute  
University of San Diego School of Law  
5998 Alcala Park  
San Diego, CA 92110  
telephone: (619) 260-4806

11) University of Pittsburgh School of Law:

The Child Welfare Law Clinic provides training to ten third-year law students per semester as part of the University of Pittsburgh School of Law's curriculum. Students receive seven academic credits for their participation in the Clinic which includes a classroom component that meets for six hours per week. There are no prerequisites for the clinic, but Evidence is strongly recommended.

At a supervisor to student ratio of 1:5, students handle thirty to forty children's law cases per year. The program represents both children and parents in child abuse and neglect matters. Cases are referred by local attorneys.

The Clinic is interested in expanding its impact on the welfare of the children of Pittsburgh with the help of volunteer attorneys. The Clinic is also exploring the possibility of providing training, with Continuing Legal Education credit, to volunteer attorneys.

For more information contact:

Associate Dean David J. Herring  
University of Pittsburgh School of Law  
Child Welfare Law Clinic, Rm. 202  
3900 Forbes Avenue  
Pittsburgh, PA 15260  
Telephone: (412) 648-1402