A CAREER IN THE "KANGAROO COURT": REFLECTIONS OF A JUVENILE DEFENDER ON THE FORTIETH ANNIVERSARY OF *IN RE GAULT**

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My career as a juvenile defender has spanned the second half of *Gault*'s forty years. During that time I have held a variety of positions within the juvenile justice field, and each of my roles has provided me with new insights and perspectives on the work of the juvenile defender and the juvenile justice system generally. In this Essay, I will share my reflections and offer some lessons learned from the various paths I have taken.

As many of you reading this know from personal experience, the job of the juvenile defender is emotionally and physically draining. As a result of the lack of funding and the less-than-equal status of the juvenile justice system, the workload is endless and excessive; the conditions of our offices and the courts are substandard in terms of technology, efficiency, and basic necessities; and, most importantly, the needs of our clients, and our desire to meet them, are overwhelming. These challenges are compounded by the systemic bias that often exists against our clients, who are disproportionately poor and of color, and by the bias against us as their representatives in the system.

I have tremendous respect for those attorneys who have remained on the frontlines for their entire careers. I am not one of them. I spent a total of five and a half years as a trial attorney for juveniles and adults in the New York City court system, before the stress and demands of the job and my own high expectations for

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* 387 U.S. 1 (1967). My favorite line in the *Gault* decision has always been this: "Under our Constitution, the condition of being a boy does not justify a kangaroo court." *Id.* at 28. While the current family court may be somewhat less "kangaroo-like," the *Gault* decision failed to eradicate much of the inequity that young people in delinquency cases suffer. For a definition of "kangaroo court," see BLACK'S LAW DICTIONARY 382 (8th ed. 2004).

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myself made me unwilling to continue in that role. Nevertheless, my passion and commitment to the cause of my juvenile clients led me to spend the next fifteen years finding ways to serve them that were more compatible with my psyche. To others who share my dilemma, I encourage you to consider the old adage: Change is good. Even relatively slight changes of responsibility within the same organization, such as moving to an appeals or affirmative litigation or training position, assuming a management function, or changing neighborhood offices, provide opportunities for growth and reflection. Most importantly, these changes enhance longevity in this work without the personal costs that can go along with it. While the trial level tends to be associated with the relative glamour and thrill of defense work, there are many other ways to serve juvenile clients and enhance the quality of their representation. For example, if your organization allows leaves of absence or part-time schedules for nonlegal pursuits or parenting, the break or change in schedule can leave you more energized. Personally, during the past twenty years I have not gone more than three years without a change of job or schedule. I have no doubt that these transitions have enhanced my job performance and satisfaction while allowing me to remain in a field that I continue to find tremendously rewarding and vital.

I. STARTING OUT: MULTIFACETED REPRESENTATION AT THE JUVENILE RIGHTS DIVISION OF THE LEGAL AID SOCIETY

I began my career as a staff attorney at the Juvenile Rights Division (JRD) of the Legal Aid Society of New York in the Bronx trial office.[1] The office was always known for its camaraderie, and my co-workers there remain among my closest friends twenty years later.[2] The spirit was in part fostered by our somewhat remote

1. From the time Legal Aid was created, and for most of its history, the civil, criminal, and juvenile practice areas were known as "divisions." While Legal Aid touted itself as a full-service law firm for the poor, the reality of interdivisional cooperation and representation had never quite lived up to this vision. Recent attorneys-in-chief of Legal Aid have focused on building greater communication and sharing of legal expertise among the practice areas to the benefit of clients. As part of this effort to break down these walls, the "divisions" are now being called "practices," resulting in a change in acronym from "JRD" to "JRP." Although I firmly believe one can teach an old dog new tricks, I will use the acronym JRD throughout this Essay.

2. Consistent with the memoir-like tone of this Essay, I feel the need to recognize the juvenile defenders who were instrumental in my career development. Much of the wonderful atmosphere and spirit of the Bronx office I started in was attributable to the office's head, Tom Esposito, and his deputy, Sam Dulberg. As my first supervisors, I am tremendously indebted to both for teaching me different, yet complementary, lessons. From Tom, I learned how to roll with the many punches of courtroom work and the need to keep a healthy balance in my life to avoid burning out. From Sam, I learned the value of doing battle for a client even in the face of certain defeat and the lesson that making adversaries and judges angry was generally a sign that I was doing

(although not to Yankee fans, as we were just a few blocks from the stadium) location in the Bronx—far from the bustle, scrutiny, and wealth of Manhattan—in a courthouse-based office that was beginning to bust at the seams with my addition as the thirteenth staff attorney.[3] The attorneys and social workers all shared small, basic offices on a floor of the courthouse that was one short flight of stairs down from the courtrooms, making it sometimes all too easy for court officers to come knocking on our office doors when a judge wanted to call our case.

The neighborhood of the courthouse, along with many other parts of the Bronx, is among the poorest in the city, and the people who live there lack many basic amenities. The nearby park where we often ate lunch in the summer had been heralded as the scene of gunfire in *The Bonfire of the Vanities*, which had just been published around that time. While that description was largely exaggerated, it was common to see drug paraphernalia as well as crimes or arrests in progress as we ate our sandwiches. My favorite neighborhood spot, perhaps because of its incongruous name, given its location across the street from the courthouse, was the Fun City Diner, where my co-workers and I would go for coffee or comfort food in the middle of a hectic day (for me, the latter always came in the form of a grilled cheese on rye with bacon and a milkshake).

I came to JRD after a one-year clerkship with a federal magistrate, following graduation from New York University School of Law in 1985. I was one of those people who grew up watching Perry Mason reruns, and I always knew I wanted to be a lawyer. I went directly to law school after college, with an ambition to do public interest work to serve disempowered individuals. During the summer following my first year, I externed for a family court judge, which is where I discovered the existence of lawyers for children. Having been drawn to younger children my whole life, I was immediately hooked. In my third year of law school, I was accepted into the juvenile rights clinic, an experience that was instrumental in my career choice and proved to be a lasting influence. I was privileged to be taught by Professor Martin Guggenheim, a former member of the JRD Special Litigation Unit and ACLU Children's Rights Project, who litigated

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my job right. I thank them for these lessons and for the Friday night happy hours in their office, which allowed us all to end our weeks on a positive note.

3. To facilitate our ability to be in court every day and to save the state the cost of rent, the Bronx JRD office has always been located in the Bronx Family Court building. As the number of judges and various other agency staff has expanded, the space has become tighter and tighter. When I joined the office, I was one of the first additional lawyer staff lines in years. Now, twenty-one years later, the office has more than tripled, with a total of forty staff attorneys.

some of the leading juvenile rights matters in New York. I went to JRD both because of Professor Guggenheim and in spite of him—over the years, he had become concerned with the role that children's lawyers had come to play in the child protective cases of New York City Family Court. Sometimes the issues he raised in class gave me pause about taking on this role.[4]

However, my desire to become a lawyer for children and the advantages of working at JRD prevailed. But I made a pledge to myself to resist the tendency to become an agent of the state in child protective cases, and to always hold the value of family preservation foremost in my mind. The clinic was co-taught by Professor Ray Kramer, who had recently left the staff of the JRD Bronx office. It was because of Professor Kramer's Bronx tales that I specifically requested the Bronx office when I was offered a position at JRD. I have never regretted these decisions.

This is not to say that first year in the Bronx was easy. In fact, it was no doubt the most challenging time in my professional career. The learning curve was steep—nine judges with varying styles and approaches, and numerous court appearances in each of the three types of proceedings: delinquency, child protective, and PINS.[5] Additionally, I had some initial concerns that as a white woman from a privileged background, my clients might have some legitimate distrust or discomfort with me, given our lack of shared experience and the fact that I was assigned to them by a system in which they were generally unwilling participants. In reality, I found that taking the time to carefully listen and expressing a genuine desire to hear what my clients had to say helped overcome any barrier between us. I came to realize that many of my young clients had never experienced an adult in an authority position taking this kind of interest in their lives, feelings, and desires.

While the amazing personalities and remarkable resilience of my young clients kept me going, seeing the stress and trauma they were suffering, often at the hands of the very system I was working in, was extremely draining. Having a wonderful officemate was key. It

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4. *See* MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS 133-212 (2005); Martin Guggenheim, *How Children's Lawyers Serve State Interests*, 6 NEV. L.J. 805 (2006); Martin Guggenheim, *A Paradigm for Determining the Role of Counsel for Children*, 64 FORDHAM L. REV. 1399 (1996).

5. JRD is New York City's primary institutional provider for children's representation in three types of family court proceedings: delinquency proceedings, where children ages seven to fifteen are arrested and prosecuted in family court; child protective proceedings, where parents are alleged to have abused or neglected their children, ages birth to eighteen; and persons in need of supervision (PINS), where children ages seven to eighteen are alleged by their parents to be beyond their parents' lawful control.

was especially helpful that my officemate was a fellow woman, so that my male supervisors could send her into the ladies room after I had escaped there to shed tears when a court appearance had gone particularly badly for my client. It is remarkable to me that even now, twenty years later, I can still recall the names and faces of many of my clients during my first years of practice. It is a time in my career I have never come close to replicating.

Charles Schinitsky created the JRD in 1962 as a new branch of the Legal Aid Society, a nonprofit corporation that had been serving indigent New York City residents in civil proceedings since 1876, and subsequently in criminal proceedings as well.[6] Thanks to Schinitsky, New York was five years ahead of *Gault* in terms of giving children a legal voice in family court proceedings. In early 1962, Schinitsky, then a criminal defense attorney at Legal Aid, submitted an article on behalf of the Young Lawyer's Committee to the New York City Bar entitled *The Role of the Lawyer in Children's Court.*[7] The article recommended that courts assign attorneys to indigent adults and children in family court delinquency and neglect cases.[8] This recommendation led to the creation of JRD later that same year, and the report itself was cited five years later by the Supreme Court in a footnote in *Gault.*[9] The Court noted that New York was one of the few states that already recognized a right to counsel for juveniles in delinquency cases and did so without the walls of family court crumbling down.[10]

In fact, New York went beyond just delinquency cases; its Family Court Act provides for the assignment of a law guardian in all delinquency, child protective, and PINS cases.[11] Unfortunately, the statute does little to define the law guardian's role, which, when combined with the ambiguity of the "law guardian" title itself, has fueled much discussion and debate within JRD and among the larger child advocacy community over the years.[12] At least in the

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6. *See* The History of the Legal Aid Society, Legal Aid Society of New York, www.legal-aid.org/en/aboutus/ourhistory.aspx (last visited Dec. 4, 2007).

7. 17 THE RECORD OF THE ASS'N OF THE BAR OF THE CITY OF NEW YORK 10 (1962). For a description of juvenile courts in New York City prior to JRD's creation, see PETER PRESCOTT, THE CHILD SAVERS: JUVENILE JUSTICE OBSERVED 59-61 (1981).

8. *See* PRESCOTT, *supra* note 7, at 61-65; Jane Spinak, *The Role of Strategic Management in Improving the Representation of Clients: A Child Advocacy Example*, 34 FAM. L.Q. 497, 497-98 (2000).

9. *In re* Gault, 387 U.S. 1, 35-37 n.62 (1967).

10. *Id.* at 37-38 n.63.

11. N.Y. FAM. CT. ACT § 249 (McKinney's 1999).

12. N.Y. FAM. CT. ACT § 241 states: "This part establishes a system of law guardians for minors who often require the assistance of counsel to help protect their interests and help them express their wishes to the court." For some examples of the debate over the appropriate law guardian role, see, e.g., *Caught by Good Intentions,*

delinquency cases, Schinitsky's vision was clear: given the liberty interests of the young person that were at stake, the role should be one of a pure defense advocacy, unencumbered by best interests considerations.[13]

During the years between the founding of JRD and my joining the division in 1986, JRD's caseload underwent a tremendous shift. At JRD's inception, its caseload primarily consisted of delinquency cases and a small number of child protective and PINS cases. The next twenty-five years led to a steady growth in filings of abuse and neglect cases, which reached a peak when the crack epidemic exploded in New York City in the 1980s. By the time I joined, the caseload had flipped, with child protective cases comprising the vast majority of the caseload.

Up until that time, and for a number of years after, JRD was organized around the principle that our clients benefited from having their lawyers act as generalists, handling all of the different types of proceedings in which JRD provided representation. This meant that each lawyer had a caseload that mirrored the assignments of the division as a whole; by the 1990s, it was eighty percent child protective, fifteen percent delinquency, and five percent PINS. This model had advantages and disadvantages, which have been the source of much debate over the years, from the perspectives of both the client and the child advocate. The generalist approach provided the advocate with knowledge of the child welfare system, which often proved useful in dispositional planning for delinquency clients. Perhaps most importantly, the model provided glaring examples of the overlap between the client populations in the various types of proceedings. It was not at all unusual for one attorney to represent the same client in all three types of proceedings, either sequentially or simultaneously. This realization that the clients were the same was juxtaposed against the differential treatment the clients received based of the type of proceeding that brought them before the court. This lesson was invaluable at the start of my career, and facilitated my ability to later advocate for prosecutors and judges to look beyond the label of "delinquent" or "criminal" to see a child who very likely had previously been failed by another branch of the family court system.

The downsides of this model center around the overwhelming amount of legal knowledge and advocacy skills required to provide quality representation in all three practice areas, especially in a

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THE LAW SCHOOL, Autumn 2007, at 42, *available at* www.law.nyu.edu/pubs/magazineautomn2007documents/Rountable_001.pdf; *Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L.R. 1281 (1996).

13. PRESCOTT, *supra* note 7, at 65-66.

caseload as unbalanced as JRD's was and continues to be. Delinquency practice in New York requires knowledge of the New York Family Court Act,[14] the New York Penal Code,[15] portions of the criminal procedure law,[16] the law of suppression governing both adult and juvenile cases, as well as the case law interpreting all of these statutes. Child protective practice requires knowledge of articles 5 and 10 of the Family Court Act, portions of the social services law, and numerous regulations. Every time an attorney had a delinquency suppression hearing or trial scheduled, her time and attention would be pulled away from her myriad child protective clients while she got up to speed on the novel issues presented. Given that the attorneys carried only five to fifteen delinquency cases on average, half or less of which ever went to a hearing, there was a high likelihood that every suppression hearing or trial would present an entirely new set of issues for at least the attorney's first three years in the office. As a result, clients on both sides of the practice lost something: delinquency clients suffered from their attorney's inability to gain real expertise and fluency in the delinquency practice, while child protective clients suffered from losing their attorney's focus and attention at points during the representation when the attorney's delinquency cases were active.

Compounding the problem was the fact that the time frames in the two types of proceedings are vastly different. Delinquency cases, especially ones where clients are imprisoned, proceed at a very fast pace, with trials scheduled within days of the case coming into court.[17] Conversely, child protective cases tend to proceed very slowly, given the lack of speedy trial requirements present on the delinquency side.[18]

Clients lost out in another respect as well. While a passion for child advocacy is a common thread between delinquency and child protective practitioners, there are many people who are more suited to the work in one realm or the other. The nature and intensity of the litigation, as well as the skills needed to successfully broker

14. Article 3 of the New York Family Court Act is the primary statute governing the law and procedure of juvenile delinquency cases.

15. A juvenile delinquent is defined as a person "who . . . committed an act that would constitute a crime if committed by an adult." N.Y. FAM. CT. ACT § 301.2(1). Juvenile delinquency petitions charge violations of New York penal law.

16. Certain sections of the Family Court Act specifically incorporate provisions in the criminal procedure law, such as section 330.2, which regards procedures for suppression motions and hearings. *Id.* § 330.2. In addition, section 303.1(2) also allows family court judges to consider case law regarding criminal procedure law provisions that may provide assistance. *Id.* § 303.1(2).

17. *Id.* § 340.1.

18. *See id.* §§ 1011-1085.

agreements and outcomes among the various players, are different between the two realms. While some skills are transferable and helpful in either realm, others are clearly much more essential in one. Finally, there is the simple fact that many attorneys tend to prefer one type of case over another, and those preferences often came to bear on the way newly assigned cases were distributed among the lawyers on an intake team at JRD. While this informal mechanism might have seemed to resolve the problem, it often led to caseloads being even more skewed, with those who preferred child protective cases having five or fewer delinquency clients, thus perpetuating the lack of knowledge and comfort in handling these cases. For all of these reasons, I was extremely supportive of the movement toward specialization that happened many years later at JRD.

II. THE SWITCH TO THE ADULT SYSTEM

After three years at JRD, I found that I had a real preference and passion for the delinquency side of the practice, and since specialization was not possible at JRD at that time, I transferred to Legal Aid's Criminal Defense Division (CDD) as a staff attorney in the Brooklyn office. Working in CDD provided me with the opportunity to advocate before a jury instead of being limited to the bench trials of family court—a move that improved my acquittal rate enormously.[19] The comparison of the adult with the juvenile system brought with it many insights. First, I saw how much more I learned about New York's criminal law when I was immersed in it day in and day out, handling a caseload entirely comprised of clients facing felony and misdemeanor charges. At CDD, I discovered legal arguments pertaining to sections of the penal law identical to the ones I had used in family court that I had never before contemplated.

However, what I lacked in the depth of my legal knowledge coming from the family court system, I made up for in trial experience. Because plea bargaining in family court was so much less advantageous than in the adult system, I had tried many more cases than my equivalent counterparts at CDD. As a result, I was able to become felony certified quickly, and began carrying a heavy caseload within my first year in the office. Since New York has an absurdly young age of adulthood for criminal justice purposes, many of my

19. Clearly I was the same lawyer in both offices, and the change in my acquittal rate was due to the change of fact-finder from judge to jury. *See, e.g.*, Martin Guggenheim & Randy Hertz, *Reflections on Judges, Juries, and Justice: Ensuring the Fairness of Juvenile Delinquency Trials*, 33 WAKE FOREST L. REV. 553, 556 (1988) ("[J]uries are generally more likely than judges to be fair and just triers of fact on the issue of guilt or innocence in a criminal or delinquency case.").

clients were teenagers.[20] As their lawyer, I experienced firsthand the bizarre anomaly that young people often benefited from being charged as an adult. The advantageous plea bargains in adult court, and the greater sense of perspective on the part of prosecutors and judges, often resulted in better client outcomes in adult court than in comparable cases in family court. Moreover, the "rehabilitative" function of family court resulted in children with educational and familial issues being sent away from home on minor charges, when they would have received much more benevolent sentences in the "punitive" adult system.[21]

On the downside, I found that my stress level had increased enormously. In New York City Family Court, an experienced, competent juvenile defense lawyer has all the advantages of the big fish in the small pond—it is possible to learn the intricacies of the system, gain the respect of the judges, and form relationships with adversaries, probation officers, and even court officers, which can be beneficial to clients. This is not to say, however, that the challenges of institutional lawyering were not present in the family court system. One always had to guard against trading off one client against another, or toning down an argument out of concern that you would be appearing before the same judge on five other cases that day.

In the family court system, a lawyer who garnered respect through diligence, intelligence, and honesty could act as a buffer against a system that often felt irrational and random in its treatment of the children who came before it. In adult court, on the other hand, randomness reigned without even the illusion of control. For example, in the arraignment parts of New York Supreme Court, where felony cases were sent after an indictment by a grand jury, there was the ever-present and very real possibility that bail would

20. Anyone who is sixteen or older at the time of the alleged crime is considered an adult who must be prosecuted in the criminal justice system for all charges, and children as young as thirteen can be prosecuted as adults for murder and at ages fourteen or fifteen for serious violent felonies. *See* N.Y. PENAL LAW §§ 10.00(18), 30.00 (McKinney 2004); N.Y. JUD. CT. ACTS LAW § 301.2(1) (McKinney 1999). As of this writing, New York is one of only two states with such a low age of mandatory adult court jurisdiction. Just in the past year, Connecticut raised its age of adult prosecution to eighteen. 2007 Conn. Legis. Serv. 1177 (West) (effective Jan. 1, 2010).

21. Family court dispositions are based on "the needs and best interests of the respondent as well as the need for protection of the community." N.Y. FAM. CT. ACT § 352.2(2)(a) (McKinney 2008). Thus, in rejecting the criminal court approach of "a punishment that fits the crime," family court dispositions often bear no relation to the nature of the crime. Instead, the disposition is based on every aspect of the child's life, which, under the harsh family court microscope, frequently comes up wanting. This reality is reflected in recent placement patterns in New York City, which show that the majority of children being sent to upstate facilities have committed misdemeanor offenses rather than felonies.

be set on people who had appeared voluntarily that day. In the subsequent supreme court appearance, cases would be conferenced at the bench, giving defense lawyers the opportunity to make their pitch in no more than sixty seconds for what might be the best possible chance for a more lenient resolution. At times, it was hard not to feel that the judge's decision to give a client probation or a significant jail sentence was totally unrelated to anything the defense lawyer had to say. Then, following this brief conference, clients were expected to decide whether to accept the offer at that very moment, a decision that often involved choosing between a substantial prison sentence or turning down an offer that may well be the best they would receive over the life of the case.

I survived through four trials in which the jury acquitted my clients. My fifth trial at CDD, however, would be my last. I represented a girl who, at age sixteen, just satisfied New York's age of criminal adulthood, and, although she had never been arrested before, was charged with a serious assault in a neighborhood fight involving girls who all knew each other well. After learning of my client's unblemished history and family support, the judge agreed to a plea bargain in which my client would receive probation after completing a six-month multiservice program in the community.

My client graduated from the program with flying colors, only to have her plea unilaterally vacated by the judge because the complainants, two sisters with whom my client had a long-standing feud, objected to the promised sentence. For them, the sentence was not harsh enough, given the injuries they had suffered. The case was forced to trial with an imperfect self-defense claim. The jury returned a compromise verdict to a lesser felony charge. The judge, however, felt it was necessary to send a message to the community that using knives in street fights was not acceptable, and—although my client was now seventeen, consistently attending high school, and still devoid of any other arrests—the judge sentenced her to one year of weekends on Rikers Island.

Although we were ultimately able to stay the sentence and obtain a reversal on appeal, the growing ulcer in my stomach told me that my days in the adult system were over. I missed working with children, something my relationship with this young client reminded me of, and I felt powerless in the face of the heavy sentences and ruined lives that so many of my adult clients faced. Ironically, despite the lower rate of success in family court, that practice was more palatable to my psyche, mainly because the sentences were often shorter, and I found I had a greater ability to affect my clients' lives. My return to the JRD in 2001 also marked the beginning of my career as a trainer and teacher.

III. THE TRANSITION FROM DOING THE WORK TO TEACHING OTHERS

I returned to JRD as the assistant director of training, one member of a three-person unit responsible for both the initial and ongoing training of the JRD staff. I have subsequently served in a training capacity at JRD during three different time periods under four different attorneys-in-charge. When I first started as the assistant director of training, I recognized the importance of developing trial advocacy and courtroom skills, and thus created training sessions that focused on the tricks and intricacies of the New York City penal code. I also attempted to infuse some of the more psychological and philosophical experiences that are part of a criminal defense office. Because the juvenile delinquency work had become such a small part of the law guardian's average day, it was hard to maintain the coating of righteous battle armor that is particularly critical for a strong defense attorney. How does one hold her head high and argue forcefully for a client's return home even when she knows the client has just broken a condition of release? It is difficult to make a vigorous argument when you know you will lose, and incur the wrath of the judge in the process.

Our role as trainers was to provide an initial training program, and then follow-up with the new attorneys in their trial offices to provide enhanced one-on-one supervision beyond what borough supervisors were able to do. This was my first foray into direct supervision. I found that I truly enjoyed working with young attorneys. It was extremely gratifying to see them make their first appearances in court and know they were putting into practice the skills I had taught them. I was surprised to discover, though, that my new role did not necessarily reduce my feelings of responsibility; to the contrary, they were increased in some respects. Now, in addition to the responsibility I felt for our client (which, as the supervisor, still rested on my shoulders), I was also responsible for the young attorney—to prepare her[22] well enough to represent the client capably and enable her to feel positive about her abilities.

Learning how to balance these responsibilities while remaining cognizant of the impact other system players have had in the outcome for our clients has continued to be a career-long struggle. The experience of teaching and counseling young lawyers how to manage their own proclivities toward over-responsibility has probably helped me the most in managing my own. I think that many of us who witness the lack of control our clients have over the system, and its often detrimental impact on their lives, feel that, as their

22. I use the female pronoun because, over my entire career at JRD, the vast majority of the attorneys have been women. To my knowledge, the explanation for this has never been studied.

advocates, we should be able to offer them some measure of outcome certainty.

My second stint in the training unit came at the same time that specialization was taking hold at JRD. It was an exciting and unsettled time—for the first time in the division's thirty-five-year history, a major structural change was occurring. The process began in the Bronx office as an experiment proposed by staff in response to a new division head who encouraged new approaches. When the experiment was viewed as a success by Bronx management and staff, JRD's leader initiated the movement toward specialization division wide. This shift involved the creation of a small team of attorneys and social workers in each office. The group, led by a supervising attorney, would represent all of the office's delinquency clients. This restructuring became a lesson for those of us in management[23] on the challenges of leading a large organization with a significant number of senior staff members through the process of change. As someone who was at the more senior end of the spectrum, I came to appreciate how any major alteration of the way attorneys were practicing could seem like an indictment of the attorneys themselves. To these attorneys, an agreement that specialization was better would be equivalent to acknowledging that our current quality of practice was deficient. In spite of this resistance, the specialization effort was finally achieved. In some boroughs, it happened later rather then sooner, through fiat or consensus, and initially with varying models. JRD's push toward specialization was soon mirrored by the family court, which resulted in fewer judges handling all the delinquency cases. Although JRD continues to periodically ask whether specialization has achieved its intended goals, it is hard to imagine ever going back to a generalized practice, given the degree to which the system has followed suit.

In its present form, specialization has its own set of pros and cons. Although we have never found a systematic way to study it, I firmly believe our clients are better off with lawyers who concentrate in the delinquency practice—their chances of knowing about an available defense or favorable legal argument are much improved over the days of a generalist practice. However, new challenges have arisen. How does one handle initial training when the vast majority of newly hired attorneys are placed in the child protective area? If the decision is to forgo delinquency training until a group of attorneys is moving to that branch of the office, how does one avoid

23. From 1998-2000, I held the position of deputy attorney-in-charge of the division, and was very involved in the shift toward specialization during that time. In 2000, I asked to return to the training unit and assume a part-time schedule in order to spend time with my infant daughter.

newer staff becoming intimidated by the delinquency practice? Indeed, delinquency cases pose a very different set of challenges: fast-paced trials, aggressive adversaries, a bench more hostile to defense attorneys than child protective attorneys, and, most of all, clients being locked up and sent away from home for often questionable reasons. This is the situation JRD found itself in a few years after specialization took hold. We have since experimented with different approaches to getting new attorneys trained, or at least exposed to delinquency practice early, so that at some point they may feel interested and comfortable performing that part of the practice.

IV: SOMETHING TOTALLY DIFFERENT: COMMUNITY DEFENSE AT NDS

Following my first three years at the JRD Training Unit, a position that was both similar and completely different became available at the Neighborhood Defender Service of Harlem (NDS). My time at NDS is the only time in my twenty-year career that I was not affiliated with the Legal Aid Society. Although I only remained at NDS for eighteen months, the lessons that I learned there have been invaluable.

NDS was created in 1990 with the ground-breaking notion that indigent criminal defendants could choose their own lawyers, and those lawyers should be conveniently located in the community where their clients live, rather than in the courthouse community where the lawyers worked. NDS opened its office doors on 125th Street in Harlem, and its lawyers could be retained to represent any indigent resident of the larger Harlem neighborhood from the earliest contact with the police, even prearrest. Thus, NDS, a project of the Vera Institute of Justice, created the model of the community-based defender. In addition to its location and client criteria, NDS was novel in other respects. The office was organized in teams, which consisted of a team leader (a senior attorney who acted as supervisor), several staff attorneys, and a community worker who functioned as an investigator and a sentencing advocate who referred clients to community programs. Although each client had one primary attorney, the client was represented by the whole team and all cases that went to trial were co-chaired by two team members. The training team, which I headed, consisted of the newest lawyers in the office, who spent their first year on that team going through an intensive training program and then handling adult court misdemeanors and family court delinquency cases. It was a perfect opportunity for me to combine all three of my practice worlds—adult and juvenile representation with the training of young lawyers—in an innovative setting.

The contrast with my experience as an institutional defender at Legal Aid was striking. The difference was evident from the first moments of the initial client interview. To start, many of these interviews took place in our office, where clients would come in either prior to arrest, when the police had first contacted them as part of an investigation, or postarrest, where clients sought representation at an early court date. Gone was the need to overcome the legitimate suspicion on the part of many clients that I, the court-assigned institutional lawyer, was part of the system and was somewhat less than a "real" lawyer. While I like to think I overcame this hurdle with most, if not all, of my clients, I am sure some had lingering doubts, especially when the case did not go their way—as often happened, given the unfortunate realities of the system. At NDS, the obstacle of client suspicion did not exist because clients knew that they could hire or fire us at will, and our location in their community went far in mitigating any identification with the system. Even when we met our clients for the first time in the holding cells behind the criminal court arraignment part, we were different. We were there not because we had randomly picked up their court papers as part of our institutional assignment, but because a family member or the client himself had called to retain us just like any private attorney. As a result, we generally knew more about our client and the case than an attorney who just picked up a set of court papers possibly could know. It was that early knowledge that led to some of the most gratifying moments of my NDS career.

Since we were usually called shortly after a client was initially arrested, we were often able to do early investigation, which was another advantage of our community office location. We could get to a crime scene quickly because of its proximity, and locate witnesses and evidence that would help our client's defense. In addition, we were able to gather information on a client's community ties, which was heavily relied upon by the court in deciding whether to set bail. We would then track our clients as they waited for their arraignment and did what we could to expedite the process by, at a minimum, insuring that he would be seen by a judge within the required twenty-four hours after arrest.[24] Once the moment for the arraignment had arrived, the young lawyer I was supervising would be able to walk in and deliver one of the most detailed and compelling bail arguments I had witnessed in my criminal court career. Most notably, I was proud to be part of providing the people most disempowered by the criminal justice system—indigent defendants of color—with the type of representation that previously

24. People *ex rel.* Maxian v. Brown, 570 N.E.2d 223, 224-25 (N.Y. 1991).

could only have been obtained by a wealthy, legally savvy, and most likely white, defendant.

I left NDS because I was given the opportunity to become an adjunct professor in New York University School of Law's clinical program, and join the management at JRD just after specialization had begun. Although my time at NDS was short, the lessons I left with were powerful, and have influenced my view of effective client representation, while no doubt making me a better lawyer as a result.

V. CREATING A CLINICAL MODEL THAT ENHANCES DEFENDER CAPACITY

For the past ten years, I have had the opportunity to extend my teaching to an earlier point in young attorneys' careers by co-teaching the Juvenile Defender Clinic (JDC) at NYU School of Law.[25] In its original form, the clinic received cases through a relationship with JRD and handled them in-house at NYU. This was the model for the clinic that I was in as a student, and also when I later returned to co-teach it. While this model had the benefits of providing a small number of JRD clients with high-quality representation,[26] its impact was limited, and it created unrealistic expectations for students entering the juvenile defense field. While students could draw from the "best practice" lessons they learned during the clinic, they could never hope to come close to replicating them with a typical defender's full caseload.

These thoughts led my co-teacher and me to experiment with a new model that we came to call a "hybrid" between the traditional in-house and externship forms. The new clinic would pair students up individually with a JRD defender, and have the students work with various clients from the attorney's caseload in a second-chair capacity under the attorney's supervision. In addition, students would each handle one case as first-chair from start to finish on which the attorney would receive more intensive supervision from my co-teacher or me. This new model proved to have numerous advantages. From the students' perspectives, it exposed them to the full range of clients and cases rather than the conscribed group that

25. Professor Guggenheim passed on the Juvenile Defender Clinic to Professor Randy Hertz in 1985, the year after I graduated from NYU School of Law. Professor Hertz, who came to NYU via the Public Defender Service of the District of Columbia as a prominent juvenile defender, has become well known as a prolific juvenile justice and habeas scholar. Of greatest personal significance, he is a phenomenal teacher to whom I am indebted for mentoring my own teaching.

26. Students were assigned to one or two cases at a time, with substantial time for investigation and case preparation under the close supervision of highly experienced juvenile defenders and the professors.

they could comfortably handle.[27] Additionally, students gained mentors in the field and an opportunity to observe the real life experience of institutional juvenile defenders.

The attorneys received something equally valuable: they gained the opportunity to see their work through fresh eyes—to question aspects of the system they had come to take for granted, and to imagine and attempt new legal arguments that the more jaded attorneys (and their supervisors) may well reject as fruitless.[28] Furthermore, there is a value in allowing judges and clients to see defenders aggressively challenging practices that, while widely accepted, may in fact be unfair. The defender's credibility as a fighter is enhanced and, even if not initially successful, may serve to raise questions that chip away at the practice over time. In my own experience working with students, I have always found that their greatest gift to me has been a renewed sense of outrage and passion for the work, two key characteristics of the best defenders.[29]

Finally, many more JRD clients received a benefit from the clinic in this new form—student investigation, dispositional planning, and legal research impacted substantially more than the single case done in-house, and I would contend that the inspirational and rejuvenating effects on the attorney impacted their entire caseload. The overall success of this hybrid model, which enhances the capacity of a local public interest entity, suggests that it should be adopted by any law school clinical program that is truly committed to serving a public interest mission as well as educating students.

VI. A NEW PERSPECTIVE: PARENT

After thirteen years as a juvenile defender, I became a parent. Now, seven years later, my oldest child has reached the jurisdictional

27. The clinic guidelines for the cases that were taken in-house had two main requirements. First, that clients be paroled (released) to their homes pending the trial because the time tables for remand cases (where clients were locked up) are considerably expedited, often requiring a hearing three days after arraignment, and are therefore not compatible with student representation. Second, that clients have a low risk of placement (being sent away from home at disposition) so that the level of responsibility would not be too overwhelming for a first time student-lawyer. This was obviously a small and not entirely representative subset of the cases.

28. As a somewhat jaded "senior" defender myself, I learned my lesson early in my teaching career never to discourage students from making a novel argument I initially regarded as hopeless after I witnessed several of these "futile" efforts actually work!

29. One early example was a student who pointed out the demeaning nature of the way cases are called in family court. Court officers scream out the names of the parties involved to a large waiting room of people giving the impression of a human "cattle call."

age for delinquency in New York.[30] My journey as a parent has provided new and surprising insights into the juvenile justice system and, in particular, the vast racial and class injustice that it perpetuates. I always knew that the clients I have represented, who are overwhelmingly African American and Latino (in fact, I can remember only a handful of white clients in my twenty years of practice), were much more likely to be arrested and prosecuted for their actions than their white counterparts. However, I think the vastness of this disparity has been brought home to me in a new way. As I always tell my training classes and other audiences, in conveying the racial injustice of the juvenile justice system, if I were to follow my seven-year-old daughter around with the New York penal law in my hand, she would commit acts that violate the literal language of the law several times over in a day: attempted assault of her younger brother, damaging property, taking something that does not belong to her—all misdemeanors for which a seven-year-old can be prosecuted in New York. What keeps this from happening is who is making the decisions of whether to arrest or prosecute her. She has two parents who are financially secure and, as a result, do not have the stress of lack of money, housing, or child care to worry about, and thus do not need the intervention of government agencies to provide these basic necessities and child care. She goes to a school without a metal detector and where problems are dealt with by a trip to the principal's office or, at worst, calling parents in for a meeting. She rarely comes into contact with a police officer—except one that might give a friendly wave to her walking down the street—and no one would suggest we turn to child welfare, probation, or the courts because of child rearing issues. Finally, if her actions were ever brought to the attention of the system, I have no doubt that she would be treated less harshly given her white skin (although she is Latina) and privileged background.

I also have developed a greater understanding and appreciation of my clients' parents. Most juvenile defenders have had the experience of becoming impatient with parental intervention in a case. In some instances, it is a parent who has run out of answers for the problems they are having with their child, and sees the juvenile justice system as a possible solution. This parent, unwittingly or not, often becomes an agent of the prosecutor in ways that are harmful to the child. On the other side is a parent who, in support of their child, seeks to control the direction of the case on matters such as whether to plead guilty or go to trial, just as they would any other decision in

30. N.Y. FAM. CT. ACT § 301.2(1) (McKinney 1999) (defining a juvenile delinquent as "a person over seven and less than sixteen years of age").

their child's life. Now that I have walked in parents' shoes, I can relate to both these types of parents.

Watching my daughter's seven-year-old mind at work has also brought to home how much our delinquency system in New York has become a criminalization of childhood. The very essence of being a child is learning the right ways to behave from the wrong ways and making many, many mistakes along the journey. I remember reading in a parenting book that children need to be told things hundreds of times in order for the behavioral change to really take hold. While most of my delinquency clients are older than seven, what science has learned recently about the adolescent brain suggests that their decision-making capabilities are not much different from a seven-year-old, and perhaps they are even more challenged in their ability to reign in their instinctive emotional response, especially when the powerful influence of peers is involved.[31] It is no surprise that the vast majority of our delinquency cases are of clients who acted in concert. Kids are just far more likely to make mistakes when they are together. The defense of "I did it because he/she did it first" has already become a frequent refrain from both my five- and seven-year-old despite their parents' repeated response of "only *your* brain knows what's best for you." Yet, family court, as it currently exists and functions in New York City, is often unforgiving, and does not allow childish mistakes to go unpunished.

One key section of the Family Court Act suggests that this was not the intent of the drafters. It is a section I use as a call to arms with my students and trainees—a section stating that in order to adjudicate a delinquent in New York, the court must make an additional finding beyond the commission of a delinquent act; it must also find that the juvenile is in need of treatment, supervision, or confinement.[32] The significance of this statute is unmistakable. It is an explicit acknowledgement by the legislative authors that a child *could* commit a delinquent act and *not* be in need of court intervention. In nonlegalese, he could simply be a child making a mistake. Despite this powerful message, in my more than twenty years of practice I have yet to see a court dismiss a case on this basis. This fact alone makes me want to continue this career, if only to see this argument succeed. It will take a juvenile defender to make it happen.

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31. Roper v. Simmons, 543 U.S. 551, 569 (2005); Brief for American Medical Association et al. as Amici Curiae Supporting Respondents, *Roper*, 543 U.S. 551 (2005) (No. 03-633), 2004 WL 1633549.

32. N.Y. FAM. CT. ACT § 352.1

VII. CONCLUSION

My goal in writing this Essay is to spur a conversation within existing juvenile defense organizations, as well as in those that have yet to exist, about how they do business day to day. My hope is that this anniversary of *Gault* causes us to think about inventing, or reinventing, child advocacy organizations in ways that increase the chances of giving our young, vulnerable clients the highest quality representation. Writing this piece caused me to reflect on the lessons that could be drawn from the various models I worked within, and ask how to best realize the right provided by the *Gault* Court. I will summarize those lessons here.

Some of the advantages of a large institutional child advocacy organization like the Juvenile Rights Division include its single-minded child focus, the huge amount of collective knowledge garnered by its staff, and the premium placed on social work support. While less significant, such an office is somewhat disadvantaged by the lack of a public defender atmosphere, and the gains, both tangible and intangible, incumbent on that model. There are also hiring issues created by a practice where "defense" work is in the minority, which results in the potential loss of high quality candidates seeking a defense practice.

An institutional defense organization like the Criminal Defense Division of the Legal Aid Society provides the defender mindset and depth of legal knowledge of a public defender office, but lacks the expertise on children's issues. There is a danger that the child clients will get lost in the shuffle of more serious and more numerous adult cases. At the Legal Aid Society, these disadvantages are minimized by the fact that JRD and CDD are part of the same large organization, which allows for a vast network of shared expertise and information. There is also a special unit within CDD that represents the adolescents who are charged as adults. These disadvantages would be magnified if each practice area was a free-standing entity, as is the case in most states with a government-run public defender office.

A community-defender office such as the Neighborhood Defender Service of Harlem is significantly benefited by its location in the client's community, the team structure of representation, and the change in the attorney-client relationship dynamic created by the ability of indigent clients to retain their attorneys' aid. However, as in any office that represents both adults and juveniles and delegates the juveniles to the newest attorneys, there is a risk, which NDS seeks to combat, of a second-class status for juvenile cases. Such a structure can breed the notion that it takes less skill, experience, or talent to represent juveniles, and juvenile clients may not get the benefit of the attorneys with these qualities.

Finally, a law school clinic, such as the JDC, while not a practice model, still can offer valuable lessons as well. The clinic has a total child and defense focus—everything is tailored to juvenile defense. Additionally, the clients are benefited by the premium placed on investigation and dispositional planning—student schedules allow for more client contact in general, particularly in the client's community.[33]

In the end, I came to the conclusion that the ideal *Gault* organization does not exist as of yet, but that it would have components of all of the places in which I have worked. From JRD, it would draw the total focus on and prioritization of children without any danger of second-class status, and a nod to the need for practitioners to understand that kids given different labels by the court system are all the same kids—no different in any key ways from kids who are not involved in any court proceeding. From NDS, it would take the neighborhood base and the commitment to holistic representation and early intervention. Finally, from the NYU clinic, it would add the low caseloads and the attendant ability to spend time at the scene, client's home, school, and community. This greater focus on investigating trial and dispositional issues would result in the ability to bring the case's weaknesses and the child's strengths into court, leading to a more just result overall. The clinic experience—constant infusion of new energy and perspectives—could be gained through a robust internship program, as well as regular conversations with other defender offices, clients, and among the office's staff to continually challenge assumptions and suggest improvements to the way the office functions.

Perhaps the next forty years will see this organization come to life.

33. The ability of students (or other staff) to make home visits to clients is one vehicle for adding a community defense component to an institutional defender, which substantially enhances capacity in terms of dispositional representation.