

NEW HOPE FOUND IN PRACTICE STANDARDS

By Laura Cohen

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Over the past 18 months, a variety of symposia and other programs commemorated the fortieth anniversary of *In re Gault*, 387 U.S. 1 (1967). Most of these focused on *Gault*'s central guarantee of the right to counsel for children charged with delinquency and asked the essential question, "Where are we now?" The answer, sadly, is not too far from where we began. Although indigent juvenile defense systems now exist in every state, young people still are routinely denied the essential assistance of counsel envisioned by the Court.

These shortcomings have been painfully documented, first in the ABA Juvenile Justice Center's groundbreaking study, *A Call to Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (1996) and, subsequently, in assessments of juvenile defense operations that have thus far been conducted in 16 states (collected at www.njdc.info/assessments.php). Despite the many dedicated juvenile defenders who represent their clients with passion and zeal, and despite the pockets of excellence that exist in parts of the country, the assessments tell what seems to be a universal story: inadequate access to counsel at all stages of delinquency proceedings; insufficient time, training, and resources; and frequent failures to advocate for necessary mental health and educational services.

Since *Gault*, juvenile justice reform projects--and there have been many-- largely have ignored the question of effective assistance of counsel. The perfect storm of the *Gault* anniversary and the assessments, however, has inspired a wave of new initiatives aimed at increasing access to counsel and improving the quality of representation. These include, among others, the development and implementation of specialized practice standards for the juvenile defense bar and the newly created Juvenile Defense Action Network, part of the John D. and Catherine T. MacArthur Foundation's "Models for Change" program.

Practice Standards

At their best, practice standards chart a course for attorneys as they navigate the tricky waters of the lawyer-client relationship, case preparation, and trial and appellate practice, fleshing out ethical obligations in a way that is sensitive and specific to young clients and the legal settings in which they find themselves. Standards further are effective tools for defenders who all too often need to battle for adequate time resources in the courtroom and in the legislature, especially when they quantify reasonable attorney workloads and qualifications. Their utility is to some degree contextual, dependent upon the political sway of the adopting body, the existence of enforcement mechanisms, and the ability of advocates to integrate them into case, legislative, and media advocacy.

Practice standards further empower lawyers to engage in “expressed interests,” or client-driven, advocacy. As the Washington State assessment report notes, “There is confusion and disagreement about the role of juvenile defenders. As a result, important opportunities to effectively counsel and represent the interests of the child are lost.” (Am. Bar Ass’n Juvenile Justice Center et al., *Washington: An Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters* (October 2003).) Although Rule 1.14 of the ABA’s *Model Rules of Professional Conduct* exhorts lawyers who represent minors to maintain as “normal” an attorney-client relationship as possible, although the venerable Institute for Judicial Administration /American Bar Association *Juvenile Justice Standards: Standards for Private Parties*, Standard 3.1 (1980) makes clear that “counsel for the respondent in a delinquency ... proceeding should ordinarily be bound by the client’s definition of his or her interests,” and although commentators almost unanimously agree that “[i]n the juvenile justice context, advocates must comport with the Model Rules’ preference for client loyalty and autonomy, while simultaneously maximizing the child’s mental, emotional, and educational development,” many juvenile defense attorneys continue to engage in paternalistic, or “best interests,” representation. (Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child’s Counsel in Delinquency Cases*, 81 NOTRE DAME L. REV. 245, 323 (November, 2005).) Whether this tendency springs from legitimate concern for their clients’ well-being or a more self-protective impetus, juvenile defenders need the guidance that specialized standards provide.

Standards also can help shape what has been called a new “paradigm” for juvenile defense practice. (See Patricia Puritz and Katayoon Majd, *Ensuring Authentic Youth Participation in Delinquency Cases: Creating a Paradigm for Specialized Defense Practice*, 45 FAM. CT. REV. 466 (July 2007). This model integrates youth development theory, principles of cultural competence, and intersystemic advocacy with the traditional components of zealous representation. It also recognizes that, due to children’s cognitive differences, the rehabilitative goals of the juvenile court, and the intractable failings of the country’s juvenile detention centers and long-term facilities, skilled counsel is essential from the moment young people enter the system until they leave for good.

Riding in front of the “new wave” of practice standards are the National Juvenile Defender Center and National Legal Aid and Defender Association’s *10 Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems*, which were adopted in partnership with the American Council of Chief Defenders in December 2004 and revised and reissued in July 2008. Unlike more typical standards, the principles focus on the obligations of indigent defense delivery systems rather than individual defenders, and mandate that those systems provide quality, specialized, independent representation to their child clients “throughout the delinquency process.” (*Principles* 1, 2, 4, 8.) The principles further exhort defense delivery systems to “support quality juvenile delinquency representation through personnel and resource parity with adult indigent defense systems” and professional work environments, to “promote fairness and equity for children,” and, interestingly, to “supervise and ... review juvenile staff according to national, state, and/or local

performance guidelines or standards.” (*Principles* 3, 10, 6.) In short, the principles themselves encourage state and local jurisdictions to adopt and ensure compliance with specialized standards. (See also, National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines*, principle #7 (2005).)

A growing number of jurisdictions have heeded this call. Among the first was the District of Columbia, where the family court adopted practice standards for defense attorneys in delinquency and status offender matters as early as 2004. (See Superior Court of the District of Columbia, Family Court, *Attorney Practice Standards for Representing Juveniles Charged with Delinquency or as Persons in Need of Supervision* (adopted by Administrative Order 04-13, June 2004).) The D.C. standards contemplate a representational model best summed up as “criminal defense plus.” They meticulously track the ethical obligations of the attorney set forth in the Rules of Professional Conduct, interpret these as they pertain to the juvenile defender, and mandate that attorneys take specific actions with regard to dispositional and post-dispositional proceedings. They require specialized training and efforts in areas unique to juvenile defense, including mental health and special education. They also resolve quite forcefully the question of decision-making authority: “The lawyer’s principle [sic] duty is the representation of the client’s legitimate interests. Thus, counsel should seek the lawful objectives of the client and should not substitute counsel’s judgment for that of the client.” (D.C. Standard C-1.)

Other states have followed suit, with varying emphases on the unique nature of juvenile defense. These include, among others, *Law Guardian Representation Standards, Volume I*, adopted by the New York State Bar Association in 1996; *Standards of Representation of Clients in Juvenile Delinquency Proceedings*, adopted by the Ohio Public Defender Commission and in use across the state; *State of Georgia Performance Standards for Juvenile Defense Representation in Indigent Delinquency and Unruly Cases*, adopted by the Georgia Public Defense Council in December 2004; and the North Carolina Commission on Indigent Defense Services’ *Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level*, adopted in December 2007. In Alabama, the state legislature incorporated a limited set of standards for defense representation into its comprehensive Juvenile Justice Act of 2008, Ala. Code sec. 12-15-102, -202. And, in a strong embrace of both performance and workload standards, the Nevada Supreme Court imposed statewide mandates in January 2008. (In the Matter of the Review of Issues Concerning the Representation of Indigent Defendants in Criminal and Juvenile Delinquency Matters, ADKT No. 411 (January 4, 2008). See also the State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems*, pp. 22-24 (2006); Oregon State Bar Board of Governors, *Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases*, pp. 13-27 (1996).)

The standards movement attempts to shape and articulate a new vision for juvenile defense practice. The nascent Juvenile Indigent Defense Action Network may well help realize that vision.

Indigent Defense Action Network

The Juvenile Indigent Defense Action Network (JIDAN) grew out of the John D. and Catherine T. MacArthur Foundation's "Models for Change" initiative, a multiyear effort to promote sustainable, systemwide juvenile justice reform in four states: Pennsylvania, Illinois, Louisiana, and Washington. In addition to its core activities in these jurisdictions, the foundation also created three "action networks" to promote reform efforts in the areas of racial disparity, mental health, and, most recently, juvenile indigent defense. Four additional states were added to the JIDAN: New Jersey, Massachusetts, California, and Florida.

With JIDAN, indigent defense has for the first time been brought to the forefront of juvenile justice system reform efforts. The Foundation has committed \$4 million over the next three years to improving access to and the quality of defense accorded children in delinquency proceedings. The National Juvenile Defender Center (NJDC), the offspring of the ABA's Juvenile Justice Center, will serve as the "lead entity" in this critically important initiative. According to Patricia Puritz, executive director of the NJDC, JIDAN "presents a unique and critically important opportunity for teams from eight states to work together on improving juvenile indigent defense policies and practices. For three years, these states will collaborate on strategies and targeted initiatives designed to accelerate the pace of reform and ensure adherence to fairness and due process in the handling of delinquency cases."

The inaugural JIDAN meeting was recently held in Washington, D.C. With luck, the combined forces of this unique initiative and careful implementation of practice standards will deliver on *Gault's* promise of a vigorous, ethical, and specialized defense for every child who stands before a juvenile court.

LAURA COHEN is a clinical professor of law and co-director of the Eric R. Neisser Public Interest Program at Rutgers Law School in Newark, New Jersey. She also co-directs the Northeast Juvenile Defender Center, a regional affiliate of the National Juvenile Defender Center.