

Mass Dissent

Massachusetts Chapter

National Lawyers Guild

14 Beacon St., Boston, MA 02108

November 2009

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BOARD MEETING

November 17, 6:00 pm

14 Beacon St., 1st Fl.
Boston

Children and the American Justice System

In this issue, we discuss various ways in which our legal system treats some of the most vulnerable members of our society: children.

Jennifer Honig, staff attorney at the Mental Health Legal Advisor's Committee and an NLG member, reviews three of the most critical developments in the children's mental health system in the past year, and gives us a preview of what may lie ahead in 2010 and beyond. She discusses two pieces of 2008 legislation aimed at remedying a range of barriers to mental health services for minors, and the implementation of the Medicaid remedial plan issued in 2007 as a result of the *Rosie D. v. Patrick* federal class action suit.

Melanie Jane Debrosse describes the evolution of "zero tolerance" policies in Massachusetts schools, and the increasing trend toward addressing children's behavioral problems with suspension and expulsion. She discusses the disproportionate impact those policies have on racial and ethnic minorities, as well as the long-term implications of their implementation on

society as a whole, and suggests proactive, positive alternatives to such punitive measures.

In a similar vein, **Timothy Muise**, the Long-Termers representative to the Board of Directors of the Lifer's Group, Inc., at MCI Norfolk, and a long-time jailhouse lawyer member of the NLG, urges reform of the criminal justice system's authority to try juveniles as adults when they are charged with first or second degree murder. Bridgewater State inmate Joseph Donovan offers a wry commentary on the juvenile justice system, confirming that a picture is indeed worth a thousand words.

Laura Alfring brings us a personal view of a Massachusetts Department of Youth Services facility, and the unique challenges it's young inmates face.

Finally, **Hillary Farber**, assistant professor at Northeastern University and a Guild member, discusses the ramifications of our legal systems' failure to recognize as privileged the communications between a parent and child.

- Ilana Greenstein -

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Join a Guild Committee

Street Law Clinic Project: The Street Law Clinic project provides workshops for Massachusetts organizations that address legal needs of various communities. Legal education workshops on 4th Amendment Rights (Stop & Search), Landlord/Tenant Disputes, Workers' Rights, Civil Disobedience Defense, Bankruptcy Law, Foreclosure Prevention Law, and Immigration Law are held at community organizations, youth centers, labor unions, shelters, and pre-release centers. If you are a Guild attorney, law student, or legal worker interested in leading a workshop, please contact the project at 617-723-4330 or nlgmass-slc@igc.org.

Lawyer Referral Service Panel (LRS): Members of the panel provide legal services at reasonable rates. Referral Service Administrative/Oversight Committee members: Neil Berman, Neil Burns, Joshua Goldstein, Jeremy Robin, and Azizah Yasin. For more information, contact the Referral Service Coordinator at 617-227-7008 or nlgmass@igc.org.

Foreclosure Prevention Task Force: Created in June 2008, the Task Force's goal is threefold: (1) to draft and introduce policies that address issues that homeowners and tenants of foreclosed on houses face, (2) to provide legal assistance to these homeowners and tenants, and (3) to conduct legal clinics for them. If you are interested in working with the Task Force, please call the office at 617-227-7335.

Independent Civilian Review Board: In coalition with the American Friends Service Committee and Greater Boston Civil Rights Coalition, the NLG has been pushing for the creation of an independent civilian board to review complaints against Boston police officers. To get involved in the campaign, please contact the office at 617-227-7335.

NLG National Immigration Project: Works to defend and extend the human and civil rights of all immigrants, both documented and undocumented. The Committee works in coalition with community groups to organize support for immigrant rights in the face of right-wing political attacks. For more information contact the NLG National Immigration Project at 617-227-9727.

NLG Military Law Task Force: Provides legal advice and assistance to those in the military and to others, especially members of the GIRights Hotline, who are counseling military personnel on their rights. It also provides legal support and helps to find local legal referrals when needed. The MLTF and the Hotline exchange many questions and information through their listserves. For advice and information, GI's can call 877-447-4487. To get involved, please contact Neil Berman (njberman2@juno.com) or Marguerite Helen (mugsm@mindspring.com).

COALITIONS:

Jobs with Justice, a coalition-based organization addressing workers' rights. The NLG is a member of Jobs with Justice; any interested Guild members can attend meetings & events.

GUILD NEWS

NLG HAPPY HOUR

The NLG Massachusetts Chapter's Happy Hour - for Guild members and non-Guild members - takes place on the **2nd Wednesday of every month, 5:30 - 7:30pm, at Kennedy's Mid-Town Pub** (44 Province St., 2nd Fl., Boston, close to Suffolk Law School). See photos from the last one on page 4. However, **because of Veteran's Day, the date of November's event will be announced later.**

HOLIDAY PARTY

You are invited to the the NLG Annual Holiday Party. This year's party will be on **Friday, December 4, 5:30 - 9:00pm, at Stern Shapiro Weissberg & Garin** (90 Canal St., 5th Fl., Boston). There will be many attractions - excellent food, great wine, out-of-this-world camaraderie, and a raffle drawing with unique prizes (tickets to theater, certificates to restaurants, gifts from around the world.) Please join us!

Street Law Clinic Report

The following Guild members conducted trainings for law students and/or clinics for members of Boston area community organizations and agencies:

October 1: *Legal Observer* training at Northeastern School of Law, by **Melinda Drew**.

October 2: *Tenants' Rights* training at Suffolk Law School, by **Neil Berman**. *Legal Observer* training for NLG observers at Pride Parade in Northampton, by **Jeff Feuer**.

October 5: *Civil Disobedience* training for Clark students from Massachusetts Power Shift, in Worcester, by **Carl Williams**.

October 7: *Stop & Search* training at New England School of Law, by **Andrew Cowan**.

October 8: *Foreclosure Prevention* training at Boston University School of Law, by **Jeff Feuer**.

October 13: *Tenants' Rights* training at Northeastern University School of Law, by **Melinda Drew**.

October 14: *Stop & Search* clinic at SPAN, Inc. in Boston, by **Dave Nathanson** and **Danielle Ponder** (Northeastern student).

October 19: *Civil Disobedience* training for five Western Massachusetts colleges, from Massachusetts Power Shift, in Worcester, by **Jeff Feuer & Lee Goldstein**.

October 22: *Legal Observer* training for observers at series of actions organized by Massachusetts Power Shift, at Harvard, by **Jeff Feuer**.

NLG BROWN BAG LUNCHES

The New Domestic Security Infrastructure

with Thomas Cincotta

Thursday, November 19, 2009, 12:30 PM
14 Beacon St., 1st Fl., Conference Room, Boston

Thom Cincotta, Civil Liberties Project Director of Political Research Associates and NLG National Vice-President, will discuss new efforts by state and federal agencies to coordinate intelligence gathering, and the threat this poses to civil liberties. It will also be an opportunity to strategize on the Guild's ongoing work on government surveillance. (*More information on page 10.*)

ARTICLES FOR MASS DISSENT

The December issue of *Mass Dissent* will look back at the Chapter's work in 2009.

If you are interested in submitting an article, essay, analysis, or art work (cartoons, pictures) related to the topic, please e-mail the articles to nlgmass-director@igc.org.

The deadline for articles is November 7, 2009.

MASSACHUSETTS CHAPTER AT NLG CONVENTION

In mid-October, almost 20 members of the Massachusetts Chapter attended the NLG Convention in Seattle. We will have a report from the Convention in the December issue of *Mass Dissent*, but, just to give you a taste of what the event was, we are sharing with you a few pictures of the Massachusetts contingent.



Photo by Judy Somberg



above (l.-r.): Urszula Masny-Latos, Danny Beck, Marianne Tassone (Boston University), Liz Dedrick (Northeastern), Astrid af Klinteberg, Sara DeConde, Cecilia Candia (Northeastern).
left (center): Emily Yozell conducts a workshop: "Breaking Down the Wall of Impunity: Challenges Facing the FMLN Presidency in El Salvador and the Colom Presidency in Guatemala."

NLG OCTOBER HAPPY HOUR

NLG Happy Hours have become an event not to be missed! If you haven't been at **Kennedy's Midtown** on the second Wednesday of each month from **5:30 to 7:30pm**, please try to make it to the next one in November - **date TBA**. Have a drink with an old friend or meet someone new. We would enjoy your company.



(l.-r.): Makis Antzoulatos, Atara Rich-Shea, Laura Alfring, Camille Marcos.
Photo by Urszula Masny-Latos



(l.-r.): Jaqueline Del Chairo, Barb Dougan, Sara DeConde, Chrishon Blackwell.
Photo by Doug Babcock

NLG STUDENT CORNER

NORTHEASTERN: The year has started with much enthusiasm. In October we organized several events:

- **"The Human Right to Health Denied: How Health Reform is Failing Immigrants,"** a panel discussion regarding how the current healthcare reform affects immigrants' access to health and the possibility for comprehensive immigration reform.

- **"Why We Refuse,"** a panel with two Israeli young women who talked about their experiences as conscientious objectors in the Israeli army.

- **Street Law Clinic trainings:** Prof. Melinda Drew trained Northeastern students in Legal Observing and also in Tenants' Rights. Now we are ready to do the clinics!

What a Difference a Year Makes to the Children's Mental Health System

by Jennifer Honig

The children's mental health system has changed substantially this past year. As a result of litigation and new legislation, there are new agencies, new programs, new acronyms, new trainings, new providers, and new alliances. This article provides a primer on three of the most critical developments and highlights what children's advocates should be looking for in the future.

Children's Mental Health Legislation: Chapter 321 of the Acts of 2008, An Act Relative to Children's Mental Health Care

What it did: Chapter 321 seeks to remedy a range of barriers to mental health services that advocates and families have been experiencing.

Among other changes, the Act: 1) seeks to ensure the early identification of children with mental health needs by screening youth in pediatricians' offices, early education programs and schools; 2) improves insurance coverage for children with mental health needs, including by requiring Managed Care Organizations (MCOs) to provide written notice to their members that if the MCO cannot provide a service within network, that the MCO must find and cover the service out of network; 3) restructures how the Commonwealth oversees, provides and coordinates children's behavioral health services; and 4) creates processes to expedite discharge to the community for children who are stuck in acute psychiatric facilities.

How it will affect kids with mental health needs: Through a combination of direct services, administrative changes, and requirements for study and pilot projects, the legislation should have a substantial impact for youth with emotional needs. While some impact is visible now, other changes should emerge over time.

Where to find out more: <http://www.childrensmentalhealth-campaign.org/> (click on Legislation)

What advocates should be looking for: Advocates should watch to see how implementation of Section 19 of Chapter 321 proceeds. This section creates a task force on behavioral health and the public schools, requiring the task force to pilot an assessment tool to measure schools' capacity to address behavioral health needs. Advocates are also watching the provision of Chapter 321 that requires the Executive Office of Health and Human Services (EOHHS) to create multi-agency teams and a hearing process to improve case management and access to services for children with complex needs. Advocates also should keep an eye on An Act Relative to Coordination of Children's Mental Health Care, H. 1439/S. 905. This proposed state legislation establishes reimbursement by private health insurers to mental health clinicians for collateral consultations. This provision was originally part of Chapter 321, but was not ultimately enacted.

Rosie D. et al. v. Patrick Litigation

What it did: *Rosie D.* is a feder-

al, class action lawsuit filed in 2001 on behalf of Medicaid-eligible children who were hospitalized or at risk of hospitalization due to lack of home-based services. Plaintiffs sought to compel the Commonwealth to provide intensive home-based mental health services to children with serious emotional disturbance (SED) pursuant to Medicaid's Early Periodic Screening Diagnosis and Treatment (EPSDT) mandate. The class includes the thousands of Massachusetts children eligible for Medicaid (MassHealth) and who have emotional, behavioral or psychiatric disabilities. The decision, issued in 2006, and remedial plan, issued in 2007, sought to restructure the children's mental health system by requiring the development of a set of intensive home-based services for youth eligible for MassHealth. Services continue to come on line throughout 2009. To ensure the implementation of the remedy, a Court Monitor oversees the process, EOHHS has created the Children's Behavioral Health Initiative (CBHI), and the plaintiffs maintain an extensive web site.

How it will affect kids with mental health needs: Youth eligible for MassHealth who take advantage of these services may benefit from Intensive Care Coordination, Family Support and Training, Mobile Crisis Services, In-Home Behavioral Services, Therapeutic Monitoring, In-Home Therapy, and Crisis Stabilization Units.

Where to find out more: www.Rosied.org.; www.mass.gov (then search CBHI); <http://old-dockeller.blogspot.com/>

What advocates should be

Continued on page 6

What a Difference a Year Makes

Continued from page 5

looking for: Advocates should be looking to see if their clients could be or are receiving *Rosie D.* services, including services received through the new Community Service Agencies (CSAs). Advocates also should monitor the interplay between the *Rosie D.* providers and the traditional agencies that serve youth with mental health issues: DMH, DCF (formerly DSS), DYS, and DPH. Advocates should also watch how schools interface with the CSAs.

The Massachusetts Mental Health Parity Law, Chapter 256 of the Acts of 2008 & the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, H.R. 6983, 110th Cong. § 2(c)(2)*

What it did: The Massachusetts Mental Health Parity law, Chapter 256 of the Acts of 2008 (effective upon policy renewal/issuance after 7/1/09), expands the existing state parity law to include additional mental health diagnoses – eating disorders, post traumatic stress disorders, substance abuse disorders, and autism. This change fulfills a mandate to treat certain biologically based diagnoses in the same manner as physical conditions. Under the law, coverage in terms of annual or lifetime limits, in dollars or number of visits, co-pays and other financial requirements may not be different. The original diagnoses that were covered with respect to full parity are schizophrenia; schizoaffective disorder; major depressive disorder; bipolar disorder; paranoia and other psychotic disorders; obsessive-compulsive

disorder; panic disorder; delirium and dementia; and affective disorders. Insurers must cover medically necessary treatment of other mental disorders for a minimum of 60 days inpatient care and 24 outpatient visits per year.

However, not all health plans are subject to the Massachusetts law. Medicaid and most out-of-state employers do not fall under the state law. M.G.L.A. c. 175, § 110 (A). Self-funded plans, usually offered by big employers, are only subject to the new federal parity law, discussed below.

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, H.R. 6983, 110th Cong. § 2(c)(2) (effective upon policy renewal/issuance after 10/3/09), covers self-insured employer group health plans, which are not covered by the Massachusetts law. The law amends the federal Mental Health Parity Act of 2006 to require that coverage of treatment for mental illness and substance use under “self-funded” plans or group health plans of 50 or more employees is no more restrictive than coverage of treatment for physical ailments. The new federal law will be effective for most plans by January 2010, depending on when the plan was renewed. It does not mandate coverage of mental health treatment; only parity if mental health is covered.

How it will affect kids with mental health needs: Under state parity law, insurers already had to provide parity coverage for children under age 19 for the diagnosis and treatment of non-biologically based mental, behavioral or emotional disorder which “substantially interfere with or substantially limit the functioning

and social interactions of such a child.”

Where to find out more: <http://www.masslegalhelp.org/mental-health/mental-health-parity>

What advocates should be looking for: Insurers may attempt to control costs by denying care on the basis that it is not “medically necessary.” Insurers also may attempt to make authorization processes more onerous to clinicians by authorizing less service and requiring more frequent re-authorizations requests. Finally, insurers will attempt to shift the financial risk of treatment to clinicians by attempting to enter into financial arrangements with providers that pay a flat fee to either an individual provider or group of providers that is calculated based upon and limited to an insured’s diagnosis, episode of care, length of service, or combination of the aforementioned. These payment arrangements may be called capitated fees or global payments. Unfortunately, these arrangements set up an inherent conflict of interest between the clinician and the patient as the clinician bears the financial risk of offering more services than are covered by the flat fee paid and, within certain parameters, stands to gain if fewer services are offered.

Advocates should be aware of how both medical necessity and financial arrangements affect the care of the children for whom they advocate.

Jennifer Honig is a staff attorney with Mental Health Legal Advisors Committee in Boston. She is a longtime member of the Guild.

Zero Tolerance for Zero Tolerance in Massachusetts

by *Melanie Jane Debrosse*

Public policy towards children has moved towards treating them more like adults and in ways that increasingly mimic the adult criminal justice system. The most recent version of this movement is so-called "zero tolerance" in schools, where theories of punishment that were once directed to adult criminals are now applied to first graders.^[1]

Zero tolerance is a punitive and exclusionary attitude towards school discipline. With regard to education, zero tolerance policies stemmed from federal and state drug enforcement agencies in the 1980s as part of a get tough on crime mentality.^[2] As a result of the rise in school violence, zero tolerance has been used with regard to school discipline procedures. Massachusetts has enacted two laws dealing specifically with this issue. M.G.L. c. 71 §37H and 37H 1/2 grants broad discretion to school officials in disciplinary matters and provides for the mandatory expulsion, after a hearing, of a student found in possession of a weapon or drugs at school, or during a school-sponsored or school-related event. The school principal is given discretion to use suspension, instead of expulsion, where the official determines that the student is not a threat to the safety, security, and

welfare of the staff and other students. The enactment in Massachusetts of these two laws has led to a number of expulsions, with principals rarely exercising their discretion to suspend, rather than expel, the students found in possession of the proscribed items.^[3] However, should a principal decide to expel rather than suspend the student, "[N]o school or school district within the commonwealth shall be required to admit such student or to provide educational services to said student."^[4]

Such harsh policies may be linked to a disproportionate number of minority students being expelled from schools. Harvard University's Advancement Project and Civil Rights Project June 2000 report, *Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline Policies* notes that "[t]hese policies require that children in kindergarten through 12th grade receive harsh punishments, often for minor infractions that pose no threat to safety, and yet cause them and their families severe hardship. A strong body of compelling research indicates that these 'get-tough' disciplinary measures often fail to meet sound educational principles and, in many cases, their application simply defies common sense....Often African-American, Latino, and dis-

abled children bear the brunt of the consequences of these policies.^[5]

In Massachusetts, African American students are over six times more likely to be [expelled and] excluded than are White students: the exclusion rate for African American students was 6.1 and for White students was 1.0 in 2002-2003, according to the Massachusetts Department of Education's (DoE) Report of *Student Exclusions, 2002-03*, the latest paper available from the DoE reporting information about student exclusions in Massachusetts public schools. In fact, exclusion rates by race/ethnicity between 2000 and 2003 have shown that African American and Hispanic students are excluded at much higher rates than other groups in Massachusetts.^[6] Per the DoE report, a student exclusion is defined as the removal of a student from participation in regular school activities for disciplinary purposes for more than ten consecutive school days. This removal could be permanent or indefinite.

Couple these statistics with the current state of the law in Massachusetts that effectively bars students from being accepted into a public school should they be expelled and one can see why many have dubbed the effect of zero tolerance as a "school to prison pipeline". Once these students are released into society with an abrogated education, their prospects for attaining employment are at best bleak. It should come as no surprise if many of these children turn to criminal activity. Instead of focusing on a more rehabilitative approach for these children, zero tolerance policies seem to push them out

Continued on page 11

1 ABA Juvenile Justice Policies: Zero Tolerance Report available at <http://www.abanet.org/crimjust/juvjus/zerotolreport.html>.

2 Mass. Appleseed Center for Law and Justice, *Keep Kids in Class: Breaking the School to Prison Pipeline*.

3 ABA Juvenile Justice Article: Weapons in Schools and Zero Tolerance available at <http://www.abanet.org/crimjust/juvjus/cjweapons.html>.

4 M.G.L. c 71 37H(e)

5 *Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline Policies*. Harvard University's Advancement Project and Civil Rights Project. Cambridge, MA. June 2000.

6 Report of Student Exclusions, 2002-03. Malden, MA: Massachusetts Department of Education's (DoE), 2004. p. 2.

Rescuing Our Disposable Youth

by Timothy J. Muise

During the tough time on crime era of the early 1900s the Massachusetts legislature passed law making it much easier to try as an adult a juvenile who was charged with first or second degree murder. On the heels of this legislation this state did in fact sentence many youth, some as young as thirteen years of age, to life without the possibility of parole. Media hyperbole on certain high profile cases made this class of youth disposable. The fiber of our society rejects such treatment and it is time to revisit the law as it applies to juvenile offenders.

Recent advances in brain science have dispelled an old belief that the rational portion of the brain was fully developed by the age of 13-18. The new science shows, through more advanced and accurate MRI technology, that is portion of the brain may not develop in some youth until as late as 24 years of age, but that the mean average is around 18-

22. In legal circles such lower brain function is seen as affecting culpability. Reduced culpability, in legal penalties, effects the level of punishment an offender receives.

Both the federal judicial system and the state legislature are taking measures to attempt to change the law as far as youthful offenders being treated as adults in criminal prosecution. In 2005, the United States Supreme Court ruled that juveniles could not be executed due to the fact that, among other things, they possessed an undeveloped sense of responsibility and "can and probably would change." See *Roper v. Simmons*, 543 U.S. 551, S. Ct. 1183 (2005). Although the Roper decision did not bar the LWOP sentences for juveniles it did recognize that advancements in science have shown that these youthful offenders are not fully formed and will in the vast majority of cases mature into redeemable souls. This is the crux of the rational argument for parole opportunities for all such offenders.

Amnesty International is

pushing hard for the abolishment of these sentences. They rely heavily upon an article written by expert John Hubner which lays out the case of the new brain science and philosophy. Hubner states, "MRIs show that frontal lobes, specifically the prefrontal cortex, do not develop fully until the early twenties. This part of the brain is responsible for the cognitive control of behavior, for impulse inhibition. The prefrontal cortex regulates aggression, weighs cause and effect, and considers long term consequences." The criminal decisions made by juveniles are made with an undeveloped sense of reason or control. We cannot throw these children away knowing that they will most likely develop into mature adults who can control behavior with the installation of rehabilitative and life skill tools.

Supreme Court Justice Anthony M. Kennedy opined, "Even a heinous crime committed by a juvenile is not evidence of an irretrievably depraved character." The high Court has ruled that youthful offenders will change, but the moral fiber of our society has long demanded that we protect our children and ensure that the transgressions of unformed adolescence are not "until death do them part" sentences to the circles of hell in prison. Case by case review must be afforded our youthful offenders and the redeemed must be granted the opportunity for self-actualization our civilization demands.



"Juvenile Court: 'In God We Trust' (But Not Too Much)," drawing by Joseph Donovan, an inmate at Old Colony Correctional Center in Bridgewater.

Timothy Muise is an inmate at MCI in Norfolk, MA, and he is a frequent contributor to Mass Dissent.

Incarcerated Youth

by *Laura Alfring*

I was contacted by a friend who was recruiting volunteers to teach an entrepreneurship class for incarcerated youth at the Department of Youth Services (DYS) in Roslindale. Feeling like a complete phony because of my utter lack of entrepreneurial experience, I tentatively agreed to do it and set up a meeting with the program's director, Baillie Aaron.

Baillie's enthusiasm was infectious. She convinced me to teach, gave me a textbook and some slides, and set up the schedule. When I walked in that first day, I was intimidated. As an attorney at the Juvenile Justice Center, I am familiar with DYS and with the population confined within its walls. I have visited clients held at DYS facilities, I have watched clients be led out of the courtroom in shackles, knowing they are bound for the transport van that will take them to DYS.

But now I had a different role. I was not an attorney, I was a teacher. On my first day, I met the boys who would be in my class. They sized me up a bit, but were polite. I was really struck by the creativity they all demonstrated over the course of the next nine weeks. For one class, my co-teacher, Margo Lindauer, and I asked them to create a business and give a small presentation on the product or service they would offer, how much it would cost, and why it would be better than what a competitor had to offer. They came up with a variety of interesting things. After Margo and I nixed a couple suggestions for strip clubs and stores selling pirated goods...they got down to business. One student invented a bouncer service, and gave an amazing pitch for it, saying he would provide bouncers trained in karate for any

number of functions or private needs, even saying to Margo and me, "perhaps ladies such as yourselves would enjoy a little protection when you go out at night." Such a charmer! The name of his business? Big, Heavy, Strong Bouncers, Inc. He even drew up a business card with a picture on it of an extremely muscley man inexplicably flanked on both sides by palm trees. I would hire them in a second if they existed.

Another boy invented the Blueberry, which he admitted is a direct rip-off of the Blackberry but will be a little cheaper. Sign me up! Another invented a laundromat/bar where you can put in a few loads of laundry, grab a cold one, and read the paper. I would do a lot more laundry if I could enjoy a beer at the laundromat, I can tell you that much.

But for all their intelligence and wit, the young people in detention facilities too often bear internal scars from their backgrounds which often include abuse, neglect, poverty, and growing up in neighborhoods where violence is the norm. I noticed that many of them had an internalized suspicion of others. I would say things in class like, "let's brainstorm – I want to make a list of challenges entrepreneurs face, what do you think would be a hurdle in starting a business?" I was expecting answers like: competitors, getting start-up money, working long hours, etc. Instead, hands shot up and answer after answer had to do with preventing robbery, preventing shoplifting, or dealing with friends who would try to sabotage them because they were jealous.

When I visited a basement room where many of the boys slept, I was shocked by the conditions. This was not a cell, this was a large room with floor to ceiling bunk beds and was extremely cramped. The room was loud as

many of the boys were having conversations with their neighbors. It seemed like complete chaos to me. I was also told that when the facility is even more overcrowded, incarcerated youths must sleep on the gym floor. And the DYS in Massachusetts is one of the better detention programs in the nation. DYS offers various classes and vocational training to its population, and has made huge strides in hiring staff that have higher levels of training and education.

California has one of the most notoriously mismanaged and neglectful juvenile corrections systems in the United States. California's detained population is growing, and facilities house many violent and mentally ill offenders. According to the New York Times, last year thirty-six youth offenders in California seriously injured themselves or attempted suicide.^[1] Unfortunately, this is becoming more common – with states cutting budgets on rehabilitative programs and on mental health services, jails and youth jails have become asylums. According to the same New York Times article referenced above, approximately two-thirds of juvenile inmates nationwide have at least one mental illness. And juvenile detention facilities have few counselors and therapists, in addition to being places that breed anxiety, stress and paranoia. It's no surprise that often inmates' mental illnesses become worse while they are detained.

These young people will eventually be freed back into our communities. For our sake and their sake, there must be nationwide reform to fund and provide services and programs that appropriately and thoroughly treat the complex needs of this population.

Laura Alfring is a fellow at the Suffolk Law School Juvenile Justice Center and a member of the Board of Directors.

1 www.nytimes.com/2009/08/10/us/10juvenile.html?_r=2&pagewanted=1&emc=eta1

A Parent-Child Evidentiary Privilege

by Hillary B. Farber

It may be surprising to learn that the government can compel testimony about communications and observations between a parent and his child. Forty-five states and the federal courts do not recognize an evidentiary parent-child privilege. The absence of a testimonial privilege leaves parents and children without protection from acting as witnesses against one other. Whether this legal phenomenon occurs frequently or occasionally has not been researched. But the mere fact that such an option is available to legal adversaries is deeply concerning. Compelling parents to testify against their minor children is antithetical to our social commitment to create and nurture strong family bonds. Furthermore, the legally accepted biological and psycho-social differences between adolescents and adults reinforce the need to construct legal protection around parent-child communication in order to improve the quality of decision-making by juveniles. The competing interests at stake in the debate over a parent-child testimonial privilege are the ascertainment of all relevant evidence and the preservation of a deeply valued social relationship. The conflict is particularly ripe in a political climate that elevates

"family values" while simultaneously prosecuting more children as adults at ages younger than ever before. Historically, evidentiary privileges exist to protect important social relationships by ensuring confidentiality between the parties. The relationships which have been extended an evidentiary privilege in the United States are: attorney and client, psychotherapist and patient, clergy and penitent, and husband and wife. The attorney client privilege is premised on the principle that clients must be assured confidential communication in order to tell their lawyers truthful and accurate information. Without the protection of lawyer-client confidentiality, the utility and integrity of the legal profession would be undermined. The parent child relationship shares many characteristics with relationships that have been extended a testimonial privilege. For example, throughout the course of the relationship, a parent provides guidance and advice to his child that closely parallels the role of an attorney, psychotherapist, or spiritual counselor. Parents typically are the "first responders" to a child's dilemma. Parents are the conduits through which professionals will be retained to assist the child. Children depend on the active engagement of parents to advise, support, and nurture them. Accurate and truthful infor-

mation from the child better equips the parents to serve their child's best interests. In light of society's expectations of parents, the law should incentivize open communication between parents and their children. Massachusetts GEN. LAW ch. 233 § 20 disqualifies a minor child from testifying against his natural or adoptive parents in a grand-jury inquiry or criminal proceeding, unless the subject of the inquiry involves domestic violence or child abuse. At present, Massachusetts does not have a statute that protects parents from testifying against their children. House Bill 1570 proposes a parent-child privilege in any proceeding where an unemancipated minor child is alleged to have committed a crime, except against a family member. The privilege would disqualify a parent from being compelled to testify against his minor child. The bill is presently before the Massachusetts Joint Committee on the Judiciary, with a hearing likely to be scheduled sometime this year.

Hillary Farber is an assistant professor at Northeastern University and a member of the Chapter Board of Directors.

NLG BROWN BAG LUNCHES

We hope you will be able to reserve your 3rd Thursdays of the month (12:30 - 1:30 pm) to have brown bag lunch with other Guild members and friends and participate in an exciting discussion on the most interesting legal topics.

In case you missed it...

September Brown Bag was on the Fight for Transgender Equality with Gunner Scott, Director of the Massachusetts Transgender Political Coalition. Gunner shared the difficult challenges faced by transgender people, who confront employment discrimination, denial of public services, denial of health care, hate crimes and other forms of dis-

crimination. But he also shared the successful efforts to ban such discrimination. Thirteen states ban discrimination on the basis of gender identity or expression. Massachusetts may well be next, if and when pending legislation is passed. When Scott spoke, the bill -- H1728 and S1687 -- had 104 co-sponsors in the State House and Senate.

What about you? Do a brown bag or suggest a speaker. The brown bag lunches are a chance for the progressive legal community to share cases, issues, and stories. You need not be a law professor, a lawyer, or even a Guild member to speak. If you have a speaker to suggest -- including yourself! -- please contact Bonnie Tenneriello, 617-482-2773 ext. 106, or e-mail btenneriello@mcls.net.

NLG Massachusetts Chapter Sustainers

In the spring of 2003, the Massachusetts Chapter of the NLG initiated the Chapter Sustainer Program. Since its inception, the Program has been very successful and has been enthusiastically joined by the following Guild members:

Adkins, Kelston & Zavez • Anonymous • Michael Avery • Susan Barney & Kamal Ahmed • Samuel Berk • Neil Berman • Steven Buckley • Howard Cooper • Andrew Cornell & Shelley Kroll • Melinda Drew & Jeff Feuer • Carolyn Federoff • Howard Friedman • Roger Geller • Lee Goldstein & Ken Quat • Benjie Hiller • Stephen Hrones • Myong Joun • Martin Kantrovitz • Nancy Kelly & John Willshire-Carrera • David Kelston • Leslee Klein & Mark Stern • Petrucelly, Nadler & Norris • Hank Phillippi Ryan & Jonathan Shapiro • Allan Rodgers • Martin Rosenthal • Sharryn Ross • Anne Sills & Howard Silverman • Judy Somberg • Stern, Shapiro, Weissberg & Garin

The Sustainer Program is one of the most important Chapter's initiatives to secure its future existence. Please consider joining the Program.

YES, INCLUDE MY NAME AMONG NLG MASSACHUSETTS CHAPTER SUSTAINERS!

I, _____, am making a commitment to support the Massachusetts Chapter of the Guild with an annual contribution of:
_____ \$500 (not including my membership dues)
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As a sustainer I will receive:

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- 1/8 page ad in the Dinner Program;
- acknowledgement in every issue of *Mass Dissent*;
- two (2) free raffle tickets for a Holiday Party raffle;
- invitation to special events.

Three ways to become a sustainer:

- contribute \$500 or more a year (not including dues)
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- join the "Guild Circle" and pay \$50/month minimum.

Please mail to: NLG, Massachusetts Chapter
14 Beacon St., Suite 407, Boston, MA 02108

Zero Tolerance for Zero Tolerance in Massachusetts

Continued from page 7

without taking any steps to solve the underlying problem. "When we say students will be expelled for one incidence of violence, we seem to forget that making them 'disappear' from school does not make them disappear from society. They go somewhere and their time on the street is rarely productive."^[7]

The research suggests that breaking the cycle of violence in school must begin with long-term planning aimed at fostering nonviolent school communities. This approach relies on prevention and planning.^[8] This would include

prevention efforts, such as conflict resolution, behavior management, screening and early identification of troubled children, and implementing effective discipline plans to deal with disruptive behaviors.^[9]

Given the broad discretionary power given to school officials and the intensely punitive nature of the current state of laws here in Massachusetts, many children run the risk of having their education stolen from them based on preconceived and at times culturally insensitive notions that will permanently affect their lives. There must be more protections in place with regard to the seem-

ingly unfettered discretion of school authorities to deem a student in violation of the current laws. This approach treats students as though they are in an adult criminal justice system, rather than within a school system. It is understandable that certain violations demand protection of the school community as a whole, but school administrators must have specific guidelines to prevent potential abuse of discretion.

Melanie Jane Debrosse is a 2007 graduate of Thomas M. Cooley Law School. She has provided research for the Massachusetts Appleseed Center for Law & Justice.

7 Gloria Ladson-Billings, "America Still Eats Her Young" in *Zero Tolerance*, p. 80.

8 Stacy Ellen Rossi, *From Zero To Infinite Tolerance: An Examination of Exclusion Rates in Massachusetts Public Schools*, p. 53.

9 Roger Ashford, "Can Zero-Tolerance Keep Our Schools Safe?" (November 2000).

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" ... an association dedicated to the need for basic change in the structure of our political and economic system. We seek to unite the lawyers, law students, legal workers and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of people, to the end that human rights shall be regarded as more sacred than property interests. Our aim is to bring together all those who regard adjustments to new conditions as more important than the veneration of precedent; who recognize the importance of safeguarding and extending the rights of workers, women, farmers, and minority groups upon whom the welfare of the entire nation depends; who seek actively to eliminate racism; who work to maintain and protect our civil rights and liberties in the face of persistent attacks upon them; and who look upon the law as an instrument for the protection of the people, rather than for their repression."

Preamble to the Constitution of the National Lawyers Guild, originally adopted February 22, 1937, and most recently amended in July 1971.

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