

Cross-Substantive Representation

By Shari Zimble

This section helps you think about cross-substantive representation:

- what it is;
- why it is important;
- why it may not be happening in your program; and
- how to support cross-substantive work in your program or state.

What Is Cross-Substantive Representation?

Mrs. Khan comes into her office with her 17-year-old son. She and her three children (the other two are in school) have nowhere to sleep that night. Since leaving her husband two weeks earlier, she has been staying with friends in public housing, but, after her husband showed up the night before and broke one of their windows in anger, she had to leave. She has not worked in years and has only \$12.00.

What would you do to assist her? Your initial answer likely depends on your area of substantive expertise. If you are a benefits advocate, you may start with whether the family qualifies for emergency assistance shelter. A family law advocate may look first at whether returning to their former home with a restraining order against the husband is safe for the mother and children. An education

advocate may ask whether the mother has housing options that would keep the children in their schools. Each advocate, looking at the client's situation through a distinct substantive perspective, may not realize how that viewpoint limits the family's options.

Now change the situation a little. The mother speaks no English. While her two youngest children are U.S. citizens, she and her oldest child have no legal status.

You remember from law school that *Plyler v. Doe* secures the right of all Mrs. Khan's children to a public education.¹ But, for the mother's immigration status, what are the implications of seeking emergency assistance shelter, and are there inklings of domestic violence that may enhance her chance of gaining legal status through the Violence Against Women Act? If the first hypothetical did not put you there, you are now squarely in the realm of cross-substantive representation, a world that more closely resembles our clients' reality than the more narrow substantive areas in which most of us practice.

Our clients' problems cross substantive law boundaries. Cross-substantive representation is the practice of incorporating knowledge from other substantive areas of law to meet our clients' complex range of legal needs better. It requires, at minimum, the ability to determine which

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¹ *Plyler v. Doe*, 457 U.S. 202 (1982) (Clearinghouse No. 22,611).

issues from other substantive areas directly implicate your representation and require action by you or another advocate. It encourages you to know where your client would substantially benefit from your assistance, even if the issues do not implicate your current case.

Here are examples of three ways that cross-substantive issues are likely to arise:

- *Cross-substantive representation is a critical component of your case.* For instance, as a housing advocate, you may raise as a defense to your client's eviction the state's delay in paying her a benefit to which she is entitled. If you win a cash judgment for a client who receives public benefits, you need to concern yourself with how it affects her family's eligibility.

- *Cross-substantive representation supports a claim in your area of expertise.* For instance, helping a client gain access to medical care not only helps him but also gives you evidence of disability for his pending Supplemental Security Income hearing or supports his claim that he is a fit custodian for his children.

- *Cross-substantive representation can make an enormous difference to your clients.* Sometimes simple steps that you can take in another area of law and that do not directly relate to your clients' pending cases are very important to their lives. This may include sending a letter to a child's school asking for a special education evaluation, letting your client know that she is judgment proof and can stop harassment by creditors, or helping a client apply for subsidized housing.

Why Should New Advocates Practice Cross-Substantive Representation?

You need to work cross-substantively because your clients' problems are likely to be cross-substantive, and using a more holistic approach improves your advocacy and the outcomes for your clients. As one advocate recently bemoaned, "If I had been more aware of the range of my client's legal needs, I would not have spent hours working up a claim under the Americans with Disabilities Act against

the welfare department, only to find out that during the course of my representation, my client was evicted!"

Cross-substantive representation gives you a handle on the bigger picture—both for your clients and the client community—while providing you with discreet handles to approach new systems and institutions. For instance, asking a client about how her children are doing in school may lead to cases in special education or school discipline. Asking where a client receives health care may be a first step to understanding how the health care system in your state serves—or does not serve—low-income people. Asking a client receiving unemployment compensation whether she wants job training may lead to an investigation of how Workforce Investment Act funds are allocated in your state.

Cross-substantive representation is by definition crosscutting. Here—the intersection of existing laws—is where new law is made. Each area of law has its own values, concepts, and skills, and working cross-substantively introduces you to them. The contrast gives you the knowledge to question or challenge prevailing practice—potentially leading to new litigation theories or ways of working with institutions important to your clients. Cross-substantive work is creative and exciting.

While cross-substantive representation, like all "best practices," can be adopted at any point in your career, the sooner you begin operating this way, the more natural it becomes, and the better the results you achieve for your clients.

Why Is Cross-Substantive Advocacy Not Standard Practice?

In some programs cross-substantive advocacy is standard practice! However, many advocates find this approach hindered by

- *Specialization:* If you are a new advocate in a large program, you are likely to be quite specialized; even if you are in a small program and working with several areas of law, you are likely to practice within certain substantive confines. While specialization certainly does not preclude cross-substantive work, it may require more initiative. Specialization does make it easier to identify the advocates who can

help you learn about other areas of law.

- *Prevailing attitudes:* Specialization provides advocates with a sense of competence within their areas of expertise. Cross-substantive representation by definition requires you to think beyond these boundaries, and this may be intimidating. Newer advocates may be at an advantage here.

- *Funding requirements:* Some advocates are required to maintain high case-loads to satisfy funding requirements. Specialization makes mass-service easier. With limited resources, there is always a tension between the number of clients served and the scope of representation. Some programs are working with funders to make the criteria for evaluating service more qualitative.

How Do I begin?

We recently developed a series of training sessions in cross-substantive representation.² They were primarily for experienced advocates. One of their strongest recommendations was to introduce this approach earlier, as part of the orientation for new advocates. They also had some specific suggestions for new advocates:

- Begin your practice in at least two areas of substantive knowledge. This will start you thinking cross-substantively right away.

- As a new advocate, ask to attend unit meetings in other substantive areas or, better still, cocounsel a case in a different area. This will introduce you to the issues that arise in other substantive areas of law.

- If you identify an issue from another substantive area in a client's case, ask a colleague who practices in that area what the applicable deadlines are (this is the first thing to learn about any new area of law). If possible, take the issue to a meeting of the other substantive unit and sit in on the discussion. If no one in your office practices in that area, find out who does. Private attorneys are often very willing to assist you.

- If you and another advocate represent the same client, have a case conference. Make this standard practice in your office.

- Present a client's situation at an advocates' meeting, and see how colleagues from different substantive areas would frame and handle the issues. Make discussion of crosscutting issues, or issues that fall between the cracks of your office structure, a regular part of the meeting agenda.

- Institute "legal wellness checks" for your clients, or the clients of your office, to catch issues that can affect your representation or your clients' lives.

- Seek training, especially cross-substantive training, because its focus is the intersection of other areas of law and your area of practice. Encourage substantive units to conduct training for other advocates.

- Do not be afraid to ask your clients questions. Often we do not want to get information that we do not know how to handle, and, as new advocates, we are particularly concerned about our abilities and our clients' level of confidence in us. But asking questions—and focusing on

²The Massachusetts Law Reform Institute developed the training for advocates in Massachusetts. Its design was a remarkable experience of cross-substantive creativity and especially benefited from the insights of the institute's Ellen Hemley and Susan Elsen, Cambridge and Somerville Legal Services' Ellen Shachter, and Massachusetts Advocacy Center's Susan Cole, as well as the talent of the trainers and participants. It followed the Khan family through the substantive lenses of emergency assistance shelter benefits, health care law, immigration, asset protection and development, safety planning, education law, benefits for family law advocates, benefits for housing advocates, accessing safe and affordable housing, family law, criminal offender record information, consumer law, education and training, and employment law. While some of the substantive law is specific to Massachusetts, the design and materials can be adapted for your state. They can be found at www.masslegalservices.org and at the National Legal Aid and Defender Association Web site, www.nlada.org, with the Legal Services Training Consortium of New England materials.

what your clients have to say instead of what you will reply—is invaluable.

Are There Outside Resources That Can Help Me?

Yes, there are resources within and outside the legal services community.

- Statewide task forces can work together to address cross-substantive issues. For instance, in Massachusetts three task forces—on family law, on education law, and on children affected by domestic violence—are all working together to block access of batterers at schools. Advocates are looking at what lawyers may include in custody orders, the kinds of information schools should require before sharing student data, and protocols for protecting confidentiality and safety.
- Other providers who work with your clients can be valuable allies. You may want to start with local health centers,

community development corporations, or social service agencies.

- Cross-substantive list-serves offer quick access to advocates in your state.
- Bar associations, including public defenders' organizations, may be helpful. The need for training between public defenders and legal services attorneys can be mutual. You may seek assistance in understanding the criminal record of a client who has been denied public housing or employment, while the public defenders need to know how the resolution of criminal cases may affect their clients' eligibility for public benefits.
- Cross-substantive advocacy leads naturally to such collaboration. As a more complex way of seeing your work, your clients, and their legal needs, it expands both your vision and the resources available to you. As a process, it invites your participation.

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