

University of Michigan Journal of Law Reform

Volume 41

2007

Reflections on the Future of Child Advocacy

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Recommended Citation

Bobbe J. Bridge, *Reflections on the Future of Child Advocacy*, 41 U. MICH. J. L. REFORM 259 (2007).

Available at: <https://repository.law.umich.edu/mjlr/vol41/iss1/13>

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Bobbe J. Bridge*

This Essay emphasizes the foster child's rights to well-being and permanency, as well as safety. Noting an ongoing parent-centered approach, this Essay advocates a new paradigm, moving away from a focus on adults and toward a focus on the child. This Essay concludes by reviewing recent advances that promote a child-centered approach.

*"I and the public know
What all schoolchildren learn
Those to whom evil is done
Do evil in return"*

—W.H. Auden, "September 1, 1939"

This excerpt was affixed to my bench as I sat on juvenile offender and child welfare cases; it accompanied me when I returned to preside over adult criminal and family law cases. Its message resonates: if by our interventions we perpetuate the dysfunction that has infected the lives of the children and youth who appear before us, we doom them, and ourselves, to an ever-more violent and chaotic society. No matter how good our intentions may be in individual decisions, if we do not have regard for the specifics of the lives of children and for the impact upon them of the circum-

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Justice Bridge has been active in a variety of efforts to improve the administration of justice for children and families. She currently co-chairs the Washington State Commission on Children in Foster Care and the Becca Task Force (focusing on truancy prevention) and chairs the Steering Committee for Reinvesting in Youth (focusing on dropout prevention and intervention) and the Domestic Violence/Child Maltreatment State Protocol Project. She recently chaired the Select Committee on Adolescents in Need of Long Term Placement, which serves to address the problems of hard to place youths in the foster care and juvenile justice systems. She is a board member of Catalyst for Kids and has served on the Department of Social and Health Services' Children, Youth, and Family Services Advisory Committee; the Child Protection Roundtable; and the Governor's Juvenile Justice Advisory Committee. She has chaired the State Task Force on Juvenile Issues and the Families-at-Risk Subcommittee and co-chaired the Governor's Council on Families, Youth, and Justice.

Research assistance was provided by Rebecca Glasgow.

stances that bring them and their families to the court, we fail them. No matter how well researched and collaborative our efforts at system improvements may be, without the perspective of youth and children in that system, they will fail.

Much has changed in the child welfare system over the past thirty years. Some of the changes include increased oversight by the courts, the extension of due process, formalized hearings, the right to counsel for children, review of proceedings, and the involvement of Court Appointed Special Advocates (“CASAs”) and guardians ad litem (“GALs”) as the independent “eyes and ears” of the court. These changes have helped to make the child welfare process less arbitrary and less subject to abuse at the hands of under-funded and under-trained social service agencies. Many of the changes mirror the reform efforts in the juvenile justice system, which began with *In re Gault*¹ and its progeny.² These reforms have also resulted in more transparency and more accountability. The legislature has effected reforms as well. From Public Law 272³ to the Adoption and Safe Families Act,⁴ the legislative branch has mandated child protection and child safety. Legislatures have given strict timelines and guidelines, in the form of “reasonable efforts,” to be followed prior to the removal of a child from his family of origin, for the completion of a family reunification if placement outside the home of origin has been made, or failing that, for effecting a permanent custodial relationship for the child in care.⁵ We have developed good research on effective family interventions—those interventions that are most efficacious in resolving the parental deficiencies (as some statutes call them)⁶ that caused the child to be removed in the first place.⁷ In recent years, we have increasingly acknowledged that when the state takes custody of a child, it not only must protect him and make him safe, but it must also, like *parens patriae*, attend to his well-being.⁸

1. *In re Gault*, 387 U.S. 1 (1967).

2. See, e.g., Kim Taylor-Thompson, *Symposium: Children, Crime, and Consequences: Juvenile Justice in America: States of Mind/States of Development*, 14 STAN. L. & POL’Y REV. 143, 147 (2003).

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

4. Adoption and Safe Families Act, Pub. L. No. 105-32, 111 Stat. 2115 (1997) (codified at 42 U.S.C. § 671 (2000)).

5. 42 U.S.C. § 671(a)(15) (2000).

6. See, e.g., WASH. REV. CODE ANN. § 13.34.180 (West 2004).

7. CHILD WELFARE INFORMATION GATEWAY, FAMILY REUNIFICATION: WHAT THE EVIDENCE SHOWS (2006), available at http://www.childwelfare.gov/pubs/issue_briefs/family_reunification/cfsr.cfm.

8. 42 U.S.C. § 622(b) (2000) (requiring states to ensure that caseworkers focus case planning and service delivery on safety, permanency, and *well-being* of children); see also

We have a duty to do more than ensure the basic safety of the children in our foster care systems; if we do not attend to their well-being, both they and our communities suffer the consequences. Too many children languish for too long in foster care.⁹ Too many children in foster care experience multiple placements, preventing them from ever establishing connections or security.¹⁰ Too many children in foster care lack much needed medical and dental treatment and mental health services.¹¹ Disproportionate numbers of foster children do poorly in school and drop out.¹² Upon “aging out” of foster care, many youth are poor, homeless, unemployed, sick, or addicted to drugs or alcohol, and far too many have records in the juvenile justice system.¹³ Where is the promise of permanence? Where is the promise of well-being? What have we missed?

I assert that what we’ve missed is a focus on the child. In all of the system reform, and even in our approach to individual cases, our focus is not on the child but on some notion of family preservation that looks first to the parents. Adults in the courtroom are given priority—in the timing of proceedings and in the conduct of our hearings.¹⁴ Some time ago, retired Judge William Byars Jr. wisely opined that we in the child welfare world needed to establish a new paradigm—one that sees each case and each reform effort “through a child’s eyes.”¹⁵ Waiting six months for a hearing when a two-year-old girl is involved clearly fails to address the needs of that child in terms of her concept of time. A “paper” review, with no one present to speak for the child who has been without a permanent home for a year, hardly considers the child’s best interest to be a priority.¹⁶ A hearing to determine whether a child should be

Kenny A. *ex rel.* Winn v. Perdue, 356 F. Supp. 2d 1353, 1360–61 (N.D. Ga. 2005); Braam v. State, 81 P.3d 851, 856–57 (Wash. 2003).

9. PEW COMM’N ON CHILDREN IN FOSTER CARE, *FOSTERING THE FUTURE: SAFETY, PERMANENCE AND WELL-BEING FOR CHILDREN IN FOSTER CARE* 9 (2004).

10. *Id.*

11. *Id.* at 11, 42, 49.

12. *Id.* at 9, 11.

13. *See, e.g.*, Jeff Lawson, *Caring for Foster Care; Flexible Funds, Creative Policies, Needed*, WASH. TIMES, Sept. 25, 2006, at A23.

14. *See New Adoption Law: Newshour Transcript*, PBS ONLINE NEWSHOUR, Nov. 19, 1997, http://www.pbs.org/newshour/bb/youth/july-dec97/adoption_11-19.html.

15. *Id.* Judge Byars is still advocating this view a decade later. *See* Beth Schwartz & Philip Pollock, *Family Court Conference Attendees Discover Tools to Effect a Paradigm Shift*, FLORIDA STATE COURTS: COURT NEWS, Aug. 12, 2006, http://www.flcourts.org/gen_public/news/archive06_lasthalfyear.shtml.

16. *See, e.g.*, PEW COMM’N ON CHILDREN IN FOSTER CARE, *supra* note 9, at 42 (describing how “paper” review of a child welfare case failed to uncover severe neglect in the case of a developmentally disabled nine-year-old who weighed just sixteen pounds when he was finally examined by a doctor); *see also* Kenny A. *ex rel.* Winn v. Perdue, 356 F. Supp. 2d. 1353,

moved from his foster home—of which the child is unaware and to which he is not invited—is unlikely to be responsive to his well-being.¹⁷

What we are missing is a focus on the child as a person—as an independent party to the action—a party that has rights. Even the vocabulary used in the child welfare system perpetuates the notion of the child as property.¹⁸ It is the child that is removed from her home—not for any malfeasance on her part, but rather because the adults in her life have utterly failed her. The question is whether they fail temporarily and are able to quickly (i.e., in a time period that is meaningful to the child) provide a good and stable environment in which she can thrive as she develops into adulthood, or whether they fail permanently, such that they must be replaced.

At best, it seems, when we think about the child's rights at all, we attempt to "balance" the child's rights against the rights of the parents.¹⁹ This is a cruel dichotomy. As with other areas of our law, the child's rights should be balanced against the child's responsibilities,²⁰ which grow as the child grows, but which, at a young age, are fairly minimal. In other words, the rights of the child—to a permanent home, safety, and well-being—should be paramount.²¹ The concomitant responsibilities should be applied age-appropriately: participating in services, going to school, staying in placement, complying with the rules of placement, and so on. Some might claim that this focus on the child's rights and responsibilities in tension with the statutory mandates to reunify,²² but I do not think that these approaches are in conflict. We know that most children want (and need) to return to their birth families—where that is not possible as a permanent arrangement, they want (and need) to maintain some relationship with their birth families (including

1363 (reciting testimony from child advocate attorneys who were able to review paperwork, but who failed to personally meet with 90 percent of their own clients).

17. See PEW COMM'N ON CHILDREN IN FOSTER CARE, *supra* note 9, at 42.

18. See JOSEPH GOLDSTEIN ET AL., THE BEST INTERESTS OF THE CHILD 227 (1996); MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS 156–57 (2005).

19. See, e.g., *Kent K. v. Bobby M.*, 110 P.3d 1013, 1021 (Ariz. 2005); *Evans v. McTaggart*, 88 P.3d 1078, 1090 (Alaska 2004); *Nauditt v. Haddock*, 882 So.2d 364, 367 (Ala. Civ. App. 2003).

20. See Philip Weinberg, *Del Monte Dunes v. City of Monterey: Will the Supreme Court Stretch the Takings Clause Beyond the Breaking Point?*, 26 B.C. ENVTL. AFF. L. REV. 315, 336–37 (1999) (discussing the balance between landowner rights and responsibilities in property law).

21. *Kenny A. ex rel Winn v. Perdue*, 356 F. Supp. 2d 1353, 1363 (finding children's interest in safety, health, well-being, and family integrity to be "fundamental liberty interests").

22. *Id.* at 1358 (recognizing that the interests of parents, children, and the Division of Family and Children Services often conflict).

parents, kin, and siblings).²³ Considered in this light, any tension is less likely.

Looking ahead to the next thirty years of child advocacy, trends are emerging that promise increasing recognition of the rights of children. We will need zealous advocates to see that these trends become norms of practice.

THE PEW COMMISSION ON CHILDREN IN FOSTER CARE

The Pew Commission, a bipartisan, multi-disciplinary commission was formed to assess the current management of child welfare cases and to make recommendations to improve outcomes for children in care. In 2004, the Pew Commission opined, “[t]o safeguard children’s best interests in dependency court proceedings, children . . . must have a direct voice in court, effective representation, and the timely input of those who care about them.”²⁴ To that end, “[c]ourts should be organized to enable children . . . to participate in a meaningful way in their own court proceedings.”²⁵ State courts are encouraged to consider changes in court calendars, hearing room and waiting room accommodations, and the provision of interpreters to ensure direct participation.²⁶ But, as the report notes, “[i]n our legal system, individuals are most likely to have an informed and effective voice when they are represented by competent counsel.”²⁷

THE COURT-APPOINTED SPECIAL ADVOCATES/ GUARDIANS AD LITEM

Another more traditional avenue for inserting the voice of the child into the decision-making process has been through the appointment of CASAs or GALs.²⁸ Although practices vary from jurisdiction to jurisdiction, these individuals typically provide independent, objective factual assessments to the court and offer recommendations that may differ from those of the state caseworker or the parents’ legal counsel.²⁹ The CASA’s mandate is to promote the best interest of the child—to advocate for the child

23. *Id.*

24. PEW COMM’N ON CHILDREN IN FOSTER CARE, *supra* note 9, at 41.

25. *Id.*

26. *Id.* at 42.

27. *Id.*

28. *Id.* at 43; see also WASH. REV. CODE ANN. § 13.34.030(8) (West 2004).

29. PEW COMM’N ON CHILDREN IN FOSTER CARE, *supra* note 9, at 43.

but not to be the child's legal representative.³⁰ In fact, many CASAs and GALs are not attorneys.³¹ Their perspectives are generally based on experience and derived from interviews not only with the child, but also with key adults in the child's life.³² As the Pew Commission noted, "CASA is a proven means of strengthening the voice of children in dependency courts."³³

UNIFORM REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT, AND CUSTODY PROCEEDINGS ACT

The Pew Commission has observed, "[w]hile some state statutes provide clearer direction than others, the dissonance among state legislation, legal theory, and individual practice contributes to confusion within the field—to the detriment of children who need strong, clear advocacy."³⁴ In response to this observation, the National Conference of Commissioners on Uniform State Laws ("NCCUSL") has adopted and is promulgating the Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act (the "Act").³⁵ Released in August of 2006, the proposed Act attempts to sort through and clarify the various roles that advocates for children in child welfare cases may play. The Act also attempts to establish qualifications and training requirements, and to clearly delineate the disparate and often conflicting duties of the various professionals who may be called upon to "represent" the child in a dependency proceeding.³⁶ For example, the Act distinguishes the duties of a child's attorney from those of a "best interest" attorney. The former provides legal representation for the child; the latter provides legal representation for the child "without being bound by the child's directives or objectives."³⁷ In turn, each of these advocates is contrasted with the "court-appointed advisor," who is defined by the terms of the Act as an individual, not acting as an attorney, who is appointed to assist the court in determining

30. *Id.*

31. *See id.* at 43; *e.g.* WASH. REV. CODE ANN. § 4.08.050 (West 2007) (containing no requirement that a guardian ad litem be an attorney).

32. PEW COMM'N ON CHILDREN IN FOSTER CARE, *supra* note 9, at 43.

33. *Id.*

34. *Id.*

35. *See generally* NAT'L CONFERENCE OF COMMISSIONERS ON UNIF. STATE LAWS, UNIFORM REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT, AND CUSTODY PROCEEDINGS ACT (2006), available at http://www.abanet.org/legalservices/probono/nccusl_act_rep_children.pdf.

36. *Id.* §§ 7–8, 11–14.

37. *Id.* §§ 2(2)–2(3).

the best interests of the child.³⁸ No professional relationship is established between the court-appointed advisor and the child.³⁹

The Act contributes significantly to the actualization of children's right to be heard in child welfare cases. The Act responds to the ethical challenges presented by the practitioner whose role may be unclear, or whose duties tend to blur in a given proceeding.⁴⁰ The Act also provides the judicial decision-maker with a clear line of communication with the child and with a variety of perspectives on children's various circumstances. In these complex situations, the court benefits from multiple opinions and views of the "facts." Most importantly, the child does not get lost; rather, the child is central to the proceedings.

CODIFICATION OF THE RIGHTS OF FOSTER YOUTH

The State of California has codified the rights of foster youth.⁴¹ In a brightly colored brochure, given by law to each child in care, a child placed out of her home in California is advised, "You Have Rights Too!"⁴² The same brochure provides the telephone number, the website, and an email address for the Foster Care Ombudsman.⁴³ The child is told, "[n]o one can scare you, hurt you, or get you in trouble for telling us that your rights are not being followed."⁴⁴ These rights include the right to talk with a social worker; to contact attorneys, probation officers, and CASAs; freedom from certain forms of restraint or physical punishment; the right to go to court, talk with the judge, and get copies of court reports and case plans; the right to health care, school attendance, and job skills training; and the right to contact with parents and siblings (unless prohibited by court order).⁴⁵ This is clearly a statutory acknowledgement of the rights of children in child welfare cases as independent from—not derivative of—parental rights.

38. *Id.* § 2(4).

39. *Id.* §§ 2(4), 14.

40. See GUGGENHEIM, *supra* note 18, at 163.

41. See, e.g., CAL. WELF. & INST. CODE § 361.5(a)(3) (Deering 2007); CAL. FAM. CODE § 7851 (Deering 2007); CAL. FAM. CODE § 7890 (Deering 2007); CAL. FAM. CODE § 7891 (Deering 2007); CAL. FAM. CODE § 7950-52 (Deering 2007).

42. CAL. FOSTER CARE OMBUDSMAN, YOU HAVE RIGHTS TOO! (2007), available at <http://www.dss.cahwnet.gov/Forms/English/pub395net.pdf>.

43. *Id.*

44. CAL. FOSTER CARE OMBUDSMAN, FOSTER YOUTH RIGHTS (2007), available at <http://www.dss.cahwnet.gov/Forms/English/pub396.pdf>.

45. *Id.*; see also CAL. WELF. & INST. CODE § 361.5(a)(3) (Deering 2007); CAL. FAM. CODE § 7851 (Deering 2007); CAL. FAM. CODE § 7890 (Deering 2007); CAL. FAM. CODE § 7891 (Deering 2007); CAL. FAM. CODE § 7950-52 (Deering 2007).

FOSTER CARE ALUMNI MOVEMENT

Most importantly, children themselves have begun a movement to share their stories, to develop the skills of self-advocacy, and to ensure that their voices are heard in the halls of state legislatures, in the policy-making rooms of the departments of social services, and in the courtrooms.⁴⁶

Begun in 1999, the movement of youth and alumni of foster care is now spreading to many states and localities across the country.⁴⁷ Some are officially recognized groups, others informal collectives, but each is organized to bring current and former foster youth together to connect through their shared experiences and to collaborate to improve the foster care system for those who come after them.⁴⁸ Members have been active in promoting legislative changes, in serving on statewide commissions advising child welfare professionals, and in hosting leadership skill-building sessions.⁴⁹ These young people are raising a formidable voice for change and forming the grassroots of a new civil rights movement.

SUMMARY AND CHARGE

If we are to transform the child welfare system such that the outcomes for children in the next thirty years will represent an improvement over those of the past thirty years, the rights of children need to be acknowledged and the voices of children need to be heard. We act in the name of the community when children are removed from their homes, and they are removed with the promise of betterment—better safety, better stability, better well-being. That promise is the community's to fulfill. The judge is given the authority to oversee that community effort. The judge ultimately bears the responsibility for the acceptability of a placement, the effectiveness of the provision of the various intervention services, and the degree of permanence that a child is afforded. Thus, it is the judge who should ensure that the rules and procedures in the courtrooms across our land respect the rights of the child and are open to the voices of children.

46. Foster Care Alumni of America, History, http://www.fostercarealumni.org/fcaa_history.jsp; CASEY FAMILY PROGRAMS, ONE UNITED VOICE FOR CHANGE: FOSTER YOUTH AND ALUMNI LEADERSHIP SUMMIT REPORT (2006), available at http://www.casey.org/NR/rdonlyres/F7240897-5626-4D05-8101-D506FC78E3BC/1190/Alumni_Summit_Report.pdf.

47. Foster Care Alumni of America, *supra* note 46.

48. *Id.*

49. *Id.*; see also CASEY FAMILY PROGRAMS, *supra* note 46, at 10–12.

Judges can invite children to the proceedings and offer them an opportunity to speak. Judges can appoint counsel, CASAs, or both, depending on the circumstances of the child and the issues before the court. Judges can require that the court operate on child-friendly time, in child-friendly locations. Judges can guide the child in her understanding of the responsibilities she has to help ensure the success of reunification or other permanent placement. Taking nothing away from the rights of all the parties before the court and with deference to the due process considerations that are paramount in these proceedings, the judge must see that the focus of the testimony, the argument, and the decision is the child.

We have made great progress in the past thirty years. We will make great progress in the next thirty years. But “[p]roblems will always torment us, because all important problems are insoluble: that is why they are important. The good comes from the continuing struggle to try and solve them, not from the vain hope of their solution.”⁵⁰

50. ARTHUR M. SCHLESINGER, JR., *THE VITAL CENTER: THE POLITICS OF FREEDOM* 254 (1949).

